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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 I VILLAS OWNERS ASSOCIATION**

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 to be hereinafter known as Marsh Landing Villas I Owners Association, Inc. (hereinafter, the "Association"), located in Lee County, Florida as previously recorded, including but not limited to the Declaration of Covenants, Conditions and Restrictions for Marsh Landing properties recorded in O.R. Book 2725, Page 0664 *et seq.*, and its Amendments, the Declaration of Covenants, Conditions and Restrictions of Marsh Landing Villas Owners Association, as recorded at O.R. Book 2776, Page 3681 *et seq.*, and the Amendment of the Declaration of Covenants, Conditions and Restrictions of Marsh Landing Villas Owners Association, as recorded by Instrument Number 2015000072151, 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 the 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. **"Assessments"** means a share of the funds required for the payment of Common Expenses and individual expenses which from time to time are assessed by the Association against an Owner as regular, special, and individual Assessments.
 - 1.3. **"Association"** means Marsh Landing Villas I Owner's Association, Inc., a Florida corporation not-for-profit, consisting of 46 Units and Lots.
 - 1.4. **"Association Property" or "Property"** means any real property administered by the Association under its Governing Documents, including any Improvements located thereon, and all personal property, including equipment, owned by the Association.

- 1.5. **“Board of Directors” or “Board” or “Directors”** means the Board of Directors responsible for the administration of the Association.
- 1.6. **“Bylaws”** as used herein, means the Bylaws of the Association, as amended from time to time.
- 1.7. **“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.
- 1.8. **“Charge”** means any legal or equitable indebtedness to the 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 Association’s documents. Charges may include attorney fees. Said Charges may be secured by a lien against the Unit as provided herein.
- 1.9. **“Committee”** means a group of Board members, Unit Owners, or Board members and/or Unit 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.
- 1.10. **“Common Areas” or “Common Facilities”** means the portions of the Property not included in the Units and shared among Owners and Members. Common Areas are managed and maintained by the Master Association pursuant to its governing documents as written and amended. The Surface Water Management System or Irrigation System is managed jointly by the Master Association and the Villas I Association.
- 1.11. **“Common Expenses”** means the expenses incurred by the Association in the course of performing its duties under the Governing Documents and the law. Common Expenses of the Association include the costs of operating the Association, the costs of administration, maintenance, operation, repair, and replacement of the Properties, as described herein, and items required to be maintained by the 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.
- 1.12. **“Common Roof”** shall mean and refer to any roof common to two (2) or more Villas, which shall be owned equally by the Owners of such Villas.
- 1.13. **“Common Surplus”** means the excess of all receipts of the Association, including but not limited to Assessments, profits, and revenues over the Common Expenses.
- 1.14. **“Common Wall”** means any wall common between two (2) Villas, which shall be owned equally by the Owners of such Villas. The wall is sometimes referred to as a “party wall”.
- 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, their spouse, if any, and 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 Unit (Villa) 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 person who is physically present in or Occupies a Property on a temporary basis twenty-one (21) days or less during any twelve (12) month period) at the invitation of the Owner or legally permitted Occupant, without the payment of consideration. Any person who is not a Family member, as defined above, and who resides at the Property for more than twenty-one (21) days will be deemed an unapproved Occupant and is subject to the Leasing provisions of this Declaration and the Association's Rules. Said Occupant(s) will be subject to eviction at the Owner's expense should they fail to comply with the same. The Association may restrict or prohibit Guest visitation by convicted felons, including but not limited to, registered sex offenders and persons who have been convicted of drug offenses.

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 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 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, Villa 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. **“Lease” or “Leasing” or “Rent”** means the grant by a residential Owner of a temporary right of use of the Owners Villa for valuable consideration. Leasing shall be construed to include any licensing or other arrangement with a third party where persons other than the Owner are permitted to Occupy the Villa for the payment of consideration to any party. Any person who qualifies as a Tenant shall be deemed to be Leasing a Villa.
- 1.24. **“Lien for Charges”** means a lien which is recorded to secure a Charge.
- 1.25. **“Lot”** means one or more of the numbered parcels of land graphically depicted on the plats as previously recorded into which the Property has been subdivided, upon each of which a Unit or Villa has been or is intended to be constructed. Whenever the term “Lot” is used in the Governing Documents, it shall be deemed to be followed by the words “and Unit or Villa constructed thereon”, except where the context clearly requires otherwise.
- 1.26. **“Maintenance” or “Maintain”** means, unless the context of a provision in the Governing Documents requires otherwise, landscaping, painting where applicable, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement, including roof replacement, as described herein. 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 their Villa or 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.
- 1.27. **“Master Association”** means the Marsh Landing Community Association at Estero, Inc. as defined in the Master Declaration.
- 1.28. **"Member"** means and refers to those persons who are entitled to membership in the Association as provided in its Articles of Incorporation and Bylaws. An Owner shall automatically become a Member of the Association, by virtue of acceptance of the deed

or conveyance to their Lot or 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.

- 1.29. **"Occupy" or "Occupying"** when used in connection with a Unit, means the act of staying overnight in a Unit. **"Occupant"** is a person who Occupies a 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" or "Unit Owner" or "Villa Owner"** means the record owner of legal title to a Parcel. Wherever a portion of the Governing Documents, including the Rules and Regulations, proscribes, restricts, prohibits, governs or requires that an Owner take or refrain from taking any action, or engage or refrain from engaging in any conduct, or providing for liability to the Association arising from such acts or conduct or the failure to take required action or engage in required conduct, 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 Unit or Villa 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 Unit for such period.
- 1.33. **"Rules and Regulations"** means the rules, regulations, and policies governing the personal conduct of Owners and Occupants and the use, Occupancy, alteration, Maintenance, transfer and appearance of the Villas, community, Association Property, and Common Areas, that may be promulgated by the Board from time to time by resolution.
- 1.34. **"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, playground equipment, and sheds.
- 1.35. **"Surface Water Management System" or "Irrigation System"** means and refers to constructed surface water and/or underground systems and facilities for the drainage and irrigation throughout the Association.
- 1.36. **"Tenant" or "Licensee" or "Lessee"** means a natural Person Occupying a Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said Occupancy by such Person involves the payment or existence of consideration, including, but not limited to, the payment of money, the exchange of goods or services,

or the provision of direct economic or indirect economic benefit, including tax benefits and the furtherance of business interests, including, but not limited to, use of a Unit as an employee, supplier, or customer rewards or incentive, or a charity auction or similar prize.

1.37. **“Unit” or “Villa”** means and refers to the improvements on the Lot comprising the residence or Villa and the amenities appurtenant thereto. Whenever the term is used, it shall be interpreted as though it were followed by the words “and the Lot on which it is constructed,” unless the context clearly requires another meaning.

1.38. **“Voting Interests”** means the voting rights distributed to the Association Members pursuant to the Bylaws.

2. **VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS.** The ownership of Common Elements and Common Surplus within the Association shall be a pro rata share for each Unit based on the total number of Units. Each Unit in the Association shall have a 1/46th undivided share in the Common Elements and in any Common Surplus. Voting rights may be suspended pursuant to the terms of the Governing Documents and Florida law. Suspension of voting rights shall not affect the basis on which Common Expenses are shared or on which Common Elements and Common Surplus owned. However, suspended Voting Interests are subtracted from the total number of votes required when calculating any required vote or quorum during the period for which said Voting Interest is suspended. The undivided share of ownership of the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately hypothecated. As long as the Association exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred by an Owner except as an appurtenance to the Units.

2.1. **Membership in Association.** All of the record Owners of Units in the Association shall be Members of the Association, and no Owner shall have more than one membership in the Association with respect to any Unit. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner's Unit, and every membership of any Owner in the Association shall be appurtenant to and inseparable from ownership of their Unit. Ownership of such Unit shall be the sole qualification for membership of any Owner in the Association.

2.2. **Unit Owner's Rights.** Each Owner is entitled to the exclusive use and possession of their Unit. They shall be entitled to use the Common Elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of other Owners. There shall be a joint use of the Common Elements and a joint and mutual easement for that purpose is hereby created.

2.3. **Voting.** Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the Bylaws.

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

3. **EASEMENTS.** Each Unit and any Common Area shall be subject to existing easements for public utilities purposes, and the utilities and applicable governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access to any Unit or any Common Area in furtherance of such easements. The easement areas contained in any Unit, whether shown on any plat, shall always be properly Maintained by the Owner whether the utility company properly Maintains the easements area.
- 3.1. **Support.** Each Unit has an easement of support and of necessity and is subject to an easement of support and necessity in favor of all other Units and the Common Elements.
- 3.2. **Appurtenant Easements.** Subject to the restrictions found elsewhere in this Section, the Owner of each Unit, their Guests, Lessees, and Invitees, shall have as an appurtenance to their 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.
- 3.3. **Association's Access Easement.** The Master Associations' and Villas I Associations' 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 Master Association throughout the Property as may reasonably be necessary for the Master Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot.
- 3.4. **Utility Easements.** By virtue of this easement, it shall be expressly permissible for the Master Association, the Villas I Association or the providing utility or service company to install and maintain facilities or equipment on said property, to excavate for such purposes and to affix and maintain wire circuits and conduits on, in and under the roofs and exterior walls of said residences, provided such company restores such disturbed areas to the condition in which they were found. The Master 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, Common Areas, and items to be Maintained by the Master Association.
- 3.5. **Drainage.** A perpetual, non-exclusive easement shall exist in favor of the Master Association, Villas I 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.

3.6. 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.

3.7. Roadway Easement. Access to this property is in part provided by a private easement which is maintained and controlled by the Marsh Landing Community Association at Estero, Inc. Each and every member shall together with their families, guests, and invitees, have and be entitled to the use of this easement for ingress and egress to their Units subject to the Master Association's authority to reasonably regulate same for the welfare of the entire Community.

3.8. Additional Easements. The Master Association and the Villas I Association Board have the authority, without the joinder of any Unit Owner, to grant, modify, vacate, or move any easement if the easement constitutes part of or crosses the Common Areas or Association Property.

3.9. Encroachments. If for any reason other than the intentional act of the Owner or the Master Association, any Unit encroaches upon any of the Common Areas, or upon any Lot, or any Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

3.10. Extent of Easements. Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot or Unit subject to the following provisions:

3.10.1. The right of the Master Association to establish, modify, amend, and rescind reasonable Rules and Regulations regarding use of the Common Area;

3.10.2. The right of the Master Association to dedicate or transfer all or any part of the Common Area to public agency, authority, or utility as provided by its Articles;

3.10.3. The right of the Master Association to open the Common Area for use by non-Members of the Association;

3.10.4. The right of the Association to approve Guests before they can use the facilities.

4. MAINTENANCE AND ALTERATIONS.

4.1. Association Maintenance. The Association is responsible for the protection, Maintenance, repair, and replacement of its Common Areas and Association Property, unless herein or otherwise specified in the Master Associations governing documents.

The cost is a Common Expense. The Master Association's and Villas I Associations responsibilities include the following:

- 4.1.1. Common Areas.** The Villas I Association shall be responsible for the exclusive management and control of its Common Areas and any improvement thereon and shall assess the Owner for the cost of such Maintenance and repair as is necessary to discharge such obligations. Except as otherwise provided herein, the Villas I Association and the Master Association, as specified in the Master Association documents, shall Maintain, repair, and replace any all Improvements constructed on the Common Areas, including without limitations all landscaping, the components of the irrigation systems, including but not limited to the drainage Structures, utility lines, walkways, light fixtures, mailboxes, and other Structures. Additionally, where the Common Areas are contiguous to the right-of-way of a road, the Master Association shall Maintain all landscaping (if any) between the Common Areas and the pavement within such right-of-way.
- 4.1.2. Roadway.** The Maintenance for the roadway shall be the responsibility of the Master Association and it shall be empowered to levy necessary Assessments, which Assessments shall be secured by a lien upon each and every individual Unit and Lot. Additionally, the roadway within the Units development is a private roadway which shall be Maintained for the benefit of the Owner, their guests and invitees, by the Villas or Master Association. In the event of damage to the roadway caused by Owners, their families, guests or invitees, the Master Association shall notify the Owner of the steps necessary to repair said damage, the cost of which will be borne by the Owner.
- 4.2. Association Responsibilities.** The Villas I Association is responsible for basic exterior Maintenance care and preservation as described below. . The cost is a Common Expense. The Villas I Association's responsibilities include the following:

 - 4.2.1. Landscaping.** In addition to Maintenance upon the Common Areas, the Villas I Association shall provide exterior maintenance in the form of routine lawn care, including but not limited to, mowing and edging, and trimming and mulching of the original plantings and trees, upon each Villas which is subject to Assessment hereunder. Services shall be restricted to the then current landscaping contracts as amended and approved by the Board, from time to time, and at any time in its sole discretion.
 - 4.2.2. Exteriors.** The Association shall provide shingle and roof replacement for all 46 Villas and exterior painting of each Villa, including outside concrete walls and trim, in a timely manner as determined by the Association Board, normally within 15-20 years. Exceptions from such maintenance are glass surfaces, solar tubes and skylights, screen doors, lanai cages, lanai screens and patios. The cost of such Maintenance shall be part of the Annual Assessment to Owners through Reserve funding, and/or a Special Assessment, as determined by the Board. In the event the need for Maintenance or repairs is caused through the willful or negligent act of one of the Owners in said structure, their family, guests or invitees, then cost of repairs or maintenance shall be borne by that Owner. Maintenance and cost of repair between the painting and re-roofing cycles,

whether due to damage from weather, accident, an act of god, or other casualty, is each Owner's responsibility. Villas I Association shall collect and Maintain reserve funds for painting and roof replacement. Owners are responsible for insuring their portion of their roof and their property.

4.3. Alterations, Improvements, Additions to Common Areas. The protection, Maintenance, repair, and replacement of the Common Areas and Association Property is the responsibility of the Master 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 Master 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.

4.4. Surface Water Management Maintenance. The overall management of the Surface Water Management System, including but not limited to irrigation, for the development known as Marsh Landing, is through the Master Association and Villas I Association. The Owners of Units within Marsh Landing Villas shall be subject to Assessment by the Master Association for their proportionate share of the cost of said Maintenance and management and shall have the same rights as other Members of the Marsh Landing Community at Estero to participate in the determination of any Assessment. The cost of irrigation, as well as the repair, replacement and Maintenance of equipment, including, but not limited to, wiring, sprinklers, valves and lines, for the irrigation system within Villas is the responsibility of the Association through its assessment upon each Unit. The frequency and scheduling of irrigation, and subsequent cost, will be dependent upon weather conditions and the regulations of Lee County, Florida, in regard to seasonal watering of Lots within its jurisdiction.

Representation, in regards to Surface Water or Irrigation in March Landing Community Association at Estero, Inc. shall be through the Villas I Association's designated representative who shall vote on behalf of all Owners.

4.5. Owner Maintenance. All Maintenance, repairs, and replacements of, in or to any Unit, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, Improvements, shall be performed by the Owner of such Unit at the Owners' sole cost and expense, except as otherwise expressly provided to the contrary herein.

4.5.1. To the extent that the exterior Maintenance is not provided for herein by the Associations, each Owner shall keep all Villas owned by them and all improvements thereon in good order and repair, free of debris, including but not limited to the seeding and watering (beyond scheduled irrigation) of all lawns on Owner's Lot, the pruning, cutting, and replacement of trees and shrubbery as may desired by the Owner with pre-approval by the Association and Master Association. Roofs and exterior wall paint shall be maintained by Owners between the scheduled replacement and repainting of same by the Association as previously described. The exterior wall and roof are to be Maintained by each Unit Owner in quality condition at all times consistent with the provisions of this Declaration.

- 4.5.2. The shared cost of repair and maintenance of Common Walls, except in the case that such repair or maintenance is necessitated by the negligence or deliberate conduct of one or more of the Owners, in which case that Unit Owner or those Unit Owners shall be responsible for the cost of repair.
- 4.5.3. The driveways, walkways, front patios and lanai cages, screens, and patios are to be maintained by each Unit Owner in quality condition at all times.
- 4.6. **Establishment of Common Facilities.** Each common wall and roof shared (or portion thereof) by two or more Units shall be deemed Common Facilities for the perpetual benefit of and use by the Owner of each such Unit sharing such common roof or wall.
- 4.6.1. **Alterations to Common Facilities.** The Owner of any Lot or Unit sharing a Common Facility with an adjoining Unit shall not possess the right to cut windows, skylights, or other openings in the party Common Facilities nor shall any alterations, additions or structural changes in the party Common Facilities be made unless approved by the Association and all mortgagees having a lien on the Units affected by the change.
- 4.6.2. **Repair and Replacement of Common Walls.** In the event of damage or destruction of any Common Wall from any cause whatsoever, other than the negligence or willful misconduct of a Unit Owner or their Invitees, the Owners sharing such wall shall, at their joint expense and theirs only, repair and rebuild said wall(s) and each such Owner shall have the right to full use as herein contained of said wall(s) so repaired or rebuilt. In the event it shall become necessary or desirable to perform Maintenance upon the whole or any part of the common walls, such expense shall be shared equally by the Owners of the adjoining walls. Whenever any such wall or any part thereof shall be rebuilt, it shall be erected or repaired in the same manner and at the same location where it was initially constructed and shall be of the same size and of the same or similar materials and of like quality. Should such Maintenance, repair or construction be required to be done solely by reason of the negligence or the willful misconduct of any one or more but less than all of the Owners in the subject building, any expense incidental thereto shall be borne solely by such wrongdoer or wrongdoers. If any Owner shall refuse to pay their share of such cost to repair the damage or replace the destroyed common walls, for any cause whatsoever, either all or part thereof, as the case may be, any other remaining Owners may have such wall repaired or reconstructed and shall be entitled to recover the cost of same from the Owner so failing to pay in an amount equal to such defaulting Owner's share of the replacement cost. In the event repairs or reconstruction shall be necessary, and necessary entries on the adjacent Unit shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a good and workmanlike manner, and consent of all Owners is hereby given to the Association, as it deems necessary, to enter upon any adjacent Unit to effect necessary repairs and reconstruction as contemplated herein and to charge the

Owner the cost of such repair or reconstruction.

- 4.7. Alterations and Improvements; Architectural Control.** No improvements, alterations, repair, change of paint color, excavation, change in grade or other work which in any way alters the exterior of any Property or improvements located thereon or in any way defaces or changes the color of the exterior of a Villa shall be permitted, unless specifically approved in advance by the Association's Board of Directors, as well as the Master Association through its required form. Failure to maintain the Villa in such a manner will result in a thirty (30) day notice to the Unit Owner from the Association setting forth the items to be corrected. In the event the notice is not heeded, the Association shall have the right to perform, or contractor perform, the necessary work or correct any deficiency and the Owner shall be responsible for these costs and the Association shall have the right to file a lien against the Unit as provided herein. All modifications to landscaping or architecture, without exception, must be submitted in writing to the Board and pre-approved. Failure to do so may result in damage to utility, sewer and/or irrigation lines and the changes may have to be undone at the Owner's expense.
- 4.7.1. Exterior Paint Color.** The Board of Directors may authorize and select a change of exterior paint color(s) at the Boards sole discretion. Any change in paint color is contingent upon final approval by the Master Association. Should the proposed paint color not receive the requisite approval from the Master Board, then the Units shall be repainted in their then current color.
- 4.8. Existing Additions, Alterations, or Improvements by Owners.** Owners are financially responsible for any modifications, alteration, installation, or addition to the Lot or Villa 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 Association becomes necessary due to violations of the Architectural Standards set forth by the Master Association's Architectural Modifications Committee or violations of local, county or state regulations as they change from time to time and at any time.
- 4.9. Enforcement of Maintenance.** If the Owner of a Lot fails to Maintain their Lot as required above, the Association shall have the right to institute legal proceedings to enforce compliance or may take any and all other steps necessary to remedy such violation, including but not limited to fining, or entering the Lot and remedying the violation, with or without consent of the Owner but only after thirty (30) days written notice of intent to do so. The Association may repair, replace, or maintain any item which constitutes a hazard to other property or Residents, prevents the Association from fulfilling its Maintenance responsibilities, or which has a materially adverse effect on the appearance of the Properties. Any expenses so incurred by the Association shall be billed directly to the Owner of the Lot to which such services are provided, together with reasonable attorney fees and other expenses of collection and shall be an individual Assessment charged against the Lot, secured by a lien against the Lot as provided herein.
- 4.10. Negligence.** Each Owner shall be liable for the expenses of any Maintenance, repair, or replacement of their Lot, other Lots, 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. Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached to the original Declaration.
- 5.3. Bylaws.** A copy of the Amended and Restated Bylaws of the Association is attached to this Declaration.
- 5.4. Assessments and Charges.** The power to make and collect regular Assessments, Special Assessments, and other Charges against Unit Owners.
- 5.5. Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operations and use of the Association Property.
- 5.6. 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.
- 5.7. 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.
- 5.8. Purchase of Units.** The Association has the power to purchase Units 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.

5.9. 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.

5.10. 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.

5.11. Official Records. The Association shall maintain its official records as required by law. The books, records, and papers of the Association shall be subject to inspection by any member upon ten (10) days prior written notice. The Declaration, Articles of Incorporation, and Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, and on the Marsh Landing Community Association at Estero website, through the Community Association Manager, or through any Officer of the Board of Directors. Physical copies shall be made available for sale to Members at a reasonable price.

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 photocopy machine 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.

5.12. Roster. The Association shall maintain a current roster of names and mailing addresses

of Owners, based upon information supplied by the Owners. 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 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 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. The Association has the power to levy and collect Assessments against each Unit and Unit Owner in order to provide the necessary funds for proper operation and management of the Association. This power includes both regular Assessments for each Unit's share of the Common Expenses, which includes Operating Funding and Reserve Funding, as set forth in the annual budget, and special Assessments for unusual, nonrecurring or unbudgeted Common Expenses. The Association may also levy special Charges against any individual Unit for any amounts, other than for Common Expenses, which are properly chargeable against such Unit or Unit Owner under the Governing Documents.

6.1. Determination of Assessments. Assessments by the Association against each Owner of a Unit, and against each Unit, shall be based upon the annual budget, adopted by the Board as hereinbelow specified. The Assessment for each Unit shall be a pro rata share in relation to Member ownership of Common Areas and the Association's yearly expenses and liabilities. 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 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 of 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. A Unit Owner is liable for all Assessments and Charges coming due while they are the Owner. Any Person which acquires title to a

Unit is jointly and severally liable with their 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 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, of either the Villas I Association or Master Association, may not be avoided or abated by waiver of the use or enjoyment of any Common Areas, by abandonment of the Unit for which the Assessments are made, or by interruption in the availability of the 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. The Association may accelerate Assessments of an Owner delinquent in payment of any Assessment or installment thereof due. Accelerated Assessments shall be due and payable on the date the claim of lien is filed. Such accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of lien is filed.
- 6.5. Interest and Late Fees; Application of Payments.** Assessments and installments thereof not paid within thirty (30) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board which, unless otherwise specified, shall be the maximum allowed by law. The Association has a lien on each Unit for any unpaid Assessments on such Parcel, with interest, late fees and for reasonable attorneys' fees, as well as costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien. If prohibited by Chapter 720, no lien may be filed by the Association against a Unit until forty-five (45) days after the date on which a notice of intent to file a lien has been delivered to the Owner, pursuant to Chapter 720. The Association's lien is in effect until all sums secured by it have been fully paid or until barred by law. 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.
- 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 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 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.** So long as required by law, no foreclosure judgment may be entered until at least forty-five (45) days 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 at least forty-five (45) days 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 Unit Owner or by certified mail, return receipt requested, addressed to the Owner at their 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 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 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 Unit Owner.
- 6.8. Subordination of Assessment Lien to First Mortgage Liens to Institutional Lenders.** The Association's lien shall be subordinate only to that of the first mortgagee. The Association shall be entitled to recover any and all funds from a first mortgagee as they would be entitled to recover in accordance with Chapter 720 of the Florida Statutes, as it may be amended from time to time, and any and all other Statutes and subsequent governing entities created as homeowner Associations.
- 6.9. 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.
- 6.10. Suspension of Use Rights.** If an Owner is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, or the Association may request the Master Association, to suspend the right of an Owner and their Unit's Occupant, Licensee, or Invitee to use Common Areas, Common Facilities, or any other Association Property until the monetary obligation is paid. Such use rights may also be suspended after notice and hearing, for a period not to exceed thirty (30) days for an infraction of published rules and regulations.
- 6.11. Suspension of Voting Rights.** The Association may also suspend the voting rights of a Unit 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.

- 6.12. Attachment of Rental Income When Unit is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association has the following options when payment of Assessments or Charges is in default. 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 Units 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 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.
- 6.13. 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 a Unit 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.
- 6.14. Mortgage Foreclosure.** If the mortgagee of a first mortgage acquires title to a 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 Unit, or to the former Owner of the Unit, which came due prior to the mortgagee's acquisition of title as required by Chapter 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 their successors and assigns. All other persons or entities acquiring title to a 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 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 their ownership.

- 6.15. 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.
- 6.16. 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 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 not to exceed the maximum amount allowed by law to issue an estoppel certificate. The Association may but is not obligated to respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire the Association may charge up to \$150.00 (in addition to any charge for an estoppel letter) plus attorney fees for doing so.

7. INSURANCE.

- 7.1. Association Insurance; Duty and Authority to Obtain.** Property, liability, and casualty insurance on Common Areas and facilities to the extent appropriate shall be maintained through the Master Association and the Villas I Association as each Board deems necessary. Villas Owners shall be assessed by the Association for insurance premiums through its Operating Budget, annually or such other regular period as is convenient, to service the referenced coverage. Each Owner shall be assessed annually or such other regular period as is convenient to service the insurance preference for the referenced coverage. Additionally the Association is empowered to purchase such other insurance as may be necessary on the Common Areas or otherwise to protect the Association, its Directors, and its Members and any premium for such insurance shall be handled as set for herein. In the event of any casualty, loss or other consequences leading to the payment of insurance proceeds, the Association shall be agent of all Owners and shall adjust such loss on their behalf.
- 7.2. Description of Coverage.** A detailed summary of coverage or a copy of the Master Association policies shall be available through the Master Association upon request by an Owner. Copies of the Villas I Association policies are available for inspection upon request to the Association Board or its Community Association Manager. The insurance carried by the Association shall afford at least the following provisions:
- 7.2.1. Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards.

- 7.2.2. **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board, with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.
- 7.2.3. **Directors and Officers Liability Coverage.** The Association may obtain and maintain adequate Directors' and Officers' liability insurance utilizing the broad form of policy coverage for all Directors and Officers and, if available, committee members of the Association.
- 7.3. **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.
- 7.4. **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.
- 7.5. **Common Walls.** Any wall which is built as part of the original construction of any Unit subject to this Declaration and placed on the dividing line between adjoining Units and Lots shall constitute a Common Wall.
- 7.5.1. **Cost of Repair.** The cost of reasonable repair and Maintenance of a Common Wall shall be shared equally by the Owners who share the Common Wall unless such damage is caused by the negligent or intentional acts of one of the Owners or his Family, Guests, Invitees or Licensees, in which case repair shall be at such Owner's expense.
- 7.5.2. **Destruction by Casualty.** If a Common Wall is destroyed or damaged by casualty, any Owner who uses the Common Wall may restore it, and if the other Owner thereafter makes use of the Common Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts of omissions.
- 7.5.3. **Binding Arbitration.** Any dispute concerning a Common Wall shall be submitted to binding arbitration before being the basis for a lawsuit. Each party shall choose one arbitrator, and those arbitrators shall choose one additional arbitrator. The decision of a majority of arbitrators shall bind the parties. The cost of the arbitration shall be shared equally by the parties.
- 7.6. **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.
- 7.7. **Waiver of Subrogation.** If available and where applicable, the Board shall endeavor to

obtain insurance policies which provide the insurer waives its right to subrogation as to any claim against the Association Unit 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.

7.8. Owner's Duty to Insure. Each Unit Owner is responsible for insuring the real and personal property within his own Lot and 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. In the event of damage or destruction of any Common Wall from any cause whatsoever, other than the negligence or willful misconduct of an Owner or their Invitees, the Owners sharing such wall shall, at their joint expense and theirs only, repair and rebuild said wall(s) and each such Owner shall have the right to full use as herein contained of said wall(s) so repaired or rebuilt. Such expense may be borne initially by either of the Owners, whether by using insurance proceeds or other funds, and the adjoining Owner shall reimburse the other Owner for the equal share of the cost incurred.

7.9. Association's Right of Entry. The Association or its employees, agents or assigns, after giving an Owner reasonable notice and opportunity to cure a violation of these Covenants Conditions and Restrictions, may enter upon a Lot (but not within a residential structure) for the purpose of curing the violation, but shall have no liability to the Owner, whether for trespass or otherwise as a result of such entry upon the Lot. The Association may levy and collect a special assessment pursuant to the provisions of this Declaration, in an amount to be determined in the sole and absolute discretion of the Association against any Owner who fails to abide by, or whose guests, invitees, licensees and lessees fail to abide by, any of the Covenants, Conditions and Restrictions, or any Rules and Regulations.

7.10. 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:

7.10.1. 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.

7.10.2. Mortgagee. If a mortgagee endorsement has been issued as to a 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 Units, 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.

7.10.3. 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 cost shall be distributed to the beneficial Owners, remittances to Owners and their mortgagees being paid jointly to them.

7.11. Damage. Where loss or damage occurs to the items Maintained by the 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:

7.11.1. 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.

7.11.2. 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.

7.12. 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, Units, or items Maintained by the Association.

8. OCCUPANCY AND USE RESTRICTIONS. The use of the Property, the Units and Lots of the Association, shall be in accordance with the following provisions, as well as those of the Master Association under its Governing Documents as written and amended:

8.1. Occupancy of Units; Single Family Residence. A Unit shall be used only as a Single Family residence. As used in the Governing Documents, "Single Family" means one natural person, a group of two or more natural persons who customarily reside together as a Single Family housekeeping unit, each of whom is related to each of the others by blood, marriage (or domestic partnership) or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping unit. No Unit may be divided or subdivided into a smaller Unit, nor any portion sold or otherwise transferred.

8.2. Guest Suspension. 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 an opportunity before a hearing before the Board to show cause why the suspension or ban should not be imposed. The decision of the Board shall be final and shall not be subject to any requirement for a hearing before any type of Committee.

8.3. Residential Business Uses. These use restrictions shall not be construed in such a manner as to prohibit an Owner from maintaining their personal professional library, keeping their personal business or professional records or accounts or handling their personal, business or professional telephone calls or correspondence in and from their Lot or Unit. Such uses are expressly declared customarily incidental to the principal residential use.

8.4. Animals. A total of two (2) animals of a normal domesticated household type (such as cats, dogs, birds, fish, hamsters, ferrets, gerbils, guinea pigs and rabbits) are permitted, unless the Board of Directors, at its discretion, approves a greater number by request of an Owner. No animal shall weigh more than fifty (50) pounds, currently or at maturity. No horses, cows, swine, poultry, monkeys or livestock of any kind may be kept on any Lot or Villa. The ability to keep animals is a privilege, not a right, and the Association and Master Association are empowered to fine an Owner in addition to ordering and enforcing the removal 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.

8.4.1. Service Animals. Whereas Florida Statute 413.08 defines an "individual with a disability" as meaning "a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled", and a "service animal" as meaning "an animal that is trained to perform tasks for an individual with a disability" the Board requires proof of disability and proof of training for the service animal, and a letter signed from a physician attesting to the fact that the animal is essential.

8.4.2. Support Animals. However, there is another group of animals that today are ambiguously referred to as "prescription" or "support" animals. Because of this ambiguity, it is necessary that rules governing these animals be more definitive. That being the case, if a Resident is to have a "support" animal on the premises, the following rules apply:

8.4.2.1. If you are requesting the presence of a "service" or "support" animal, you must submit an application to the Association office with documentation that supports a physical or mental impairment that substantially limits one or more major life activities. According to HUD (federal level) and Florida Statute 413.08, a "major life activity" means those activities that are of central importance to daily life such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.

8.4.2.2. It must describe the needed accommodation and show the relationship between the person's disability and the need for the requested accommodation.

- 8.4.2.3. The animal must be registered annually.
 - 8.4.2.4. Proof of current vaccination for rabies, distemper, hepatitis, leptospirosis, parainfluenza, and parvovirus.
 - 8.4.2.5. Current picture.
 - 8.4.2.6. Proof of current license.
 - 8.4.2.7. Proof of current liability insurance for any damage caused by the animal.
- 8.4.3. All animals must be under handheld leash or carried at all times while outside the Villa, and therefore electronic devices such as fences to control animals are not permitted. No pets are permitted to run at-large.
- 8.4.4. 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.
- 8.4.5. 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 Property.
- 8.4.6. Owners may not leave animals unattended in courtyards, screened lanais or patios, or where their noise may bother others.
- 8.4.7. 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.
- 8.4.8. 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.
- 8.4.9. Feeding of wildlife and other animals, especially ducks, bears, panthers, turtles, alligators, or fish 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, 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. Said restrictions shall become enforceable upon providing each Owner with notice thereof either through written notice to the Owners or the posting of signs. The Association shall follow all policies, rules and procedures established through the Master Association's Declaration of Covenants, Conditions and Restrictions as amended from time to time and at any time.

8.6.1. Parking. Parking is only permitted in the driveways and garages of the Lots and Villas and other paved surfaces designated by the Association. Parked vehicles cannot overhang into the streets, sidewalks, or Common Areas. No parking on areas of the grass, walkways or patios shall be permitted. Overnight parking on the street is not allowed. Parked vehicles shall not block mailboxes, driveways, speed control signs or cause hazards that impede the safe passage of emergency vehicles. Parking within fifteen (15) feet of a stop sign or intersection is expressly forbidden as is parking around the Villas circle.

Automobiles owned by governmental law enforcement agencies are expressly permitted.

8.6.2. Special Parking Permits. Owners only may apply for a special permit to temporarily park vehicles such as trailers, boat trailers, "PODS" or moving vans, and trailers on their driveways or on Marsh Landing roadways and parking areas. Special parking permits are issued by, denied, or revoked at the sole discretion of the Master Association's 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 parked with a special permit is subject to all street-parking restrictions as described in this Declaration. 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.

8.6.3. Commercial Vehicles. No commercial vehicle shall be permitted to be parked or stored on any property without the express written consent and approval by the Association, in its sole and unbridled discretion. Commercial vehicles shall mean those that are not designed and used for customary personal/family purposes. The absence of commercial type of 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 shall be considered non-commercial unless used as a commercial vehicle. The prohibitions of parking shall not apply to temporary parking, during reasonable business hours, of a commercial vehicle or car providing commercial services including but not limited to repairs, remodeling, pick-up and delivery services.

8.6.4. Other Vehicles. Gasoline powered motorcycles, motor scooters, ATV's, go-carts and similar powered vehicles must be licensed and registered with the State of

Florida to be legally operated on Marsh Landing 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. Prohibited Vehicles.** No boats, boats with trailers, vans, mobile homes, motor homes, house trailers, trailers of every other description, campers, nor recreational vehicles, both licensed or unlicensed shall be permitted to be parked on any property or street side, unless a special permit has been issued to the Owner by the Master Association.
- 8.6.6. Abandoned, Inoperable or Unregistered Vehicles.** A vehicle which has not been moved from the same spot for twenty-one (21) consecutive days shall be presumed to be unable to operate on its own power. Any member of the Master Association or the Villas I Association, or any of the Association's agents, who has reasonable cause to believe that a vehicle is unable to operate on its own power shall affix a sticker thereto notifying the Owner of the vehicle that is considered to be in violation of the Governing Documents. The Owner of such vehicle shall have seventy-two (72) hours from the date and time affixed to the sticker to respond to the Association or its agent and demonstrate that the vehicle can operate on its own power. If the vehicle Owner cannot so demonstrate or if the vehicle Owner does not contact the Association, the vehicle may be towed at the Owner's expense. This section shall not be construed to prohibit an Owner from leaving their vehicle in an assigned parking spot during an extended period of absence.
- 8.6.7. Licensed Vehicles.** All vehicles must maintain current registration and license plates and shall be road operable.
- 8.6.8. Oversized Vehicles.** Oversized vehicles shall not be stored or parked on any portion of the Property. Oversized vehicles shall mean vehicles that are too high to clear the entrance of a standard residential garage.
- 8.7. Towing.** Any vehicle that is parked in violation of the Association or Master Associations restrictions, or deemed to be a danger to the Villas community, 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 or Master 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 Units, Guests, and Invitees, comply with the Association's and Master Associations parking restrictions. Owners shall indemnify, defend, and hold the Association and Master Association harmless from all claims against the Association and/or Master Association on account of towing or booting a vehicle, including claims against the Association or Master Association asserted by any Occupant of the Unit, Guests, and Invitees, excepting only if it has been judicially determined that the Association or Master Association is guilty of gross negligence or a higher degree of culpability.
- 8.8. Architectural and Landscaping Control.** Other than Improvements constructed upon the Property by the Association or traffic control and security signs placed on the Property by the Association, no structure or Improvement, including without limitation,

landscaping and landscaping devices, clotheslines, buildings, roads, drives, parking facilities, fences, walls, swimming pools, decks, patios, bulkheads, sewers, drains, hurricane shutters or disposal systems shall be commenced, erected, placed or maintained upon any portion of the Property nor shall any addition, exterior change or alteration, including without limitation, color change, or rebuilding be made to any portion of the Property or any Improvement located thereon, including any Villa, until the plans and specifications, including without limitation, the nature, kind, shape, height, materials, color and locations of the same, shall have been submitted to and approved in writing by the Board of Directors of the Master Association, and an Officer of the Villas I Association, unless specifically exempted in any of the paragraphs of this article. The Master Board of Directors may appoint Members from Villas I Association to its Architectural Modification Committee or Landscaping Committee to assist in investigating architectural and/or landscape change requests and to make recommendations.

- 8.9. Flags.** Any Owner may display one (1) portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4 1/2 feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, Space Force or Coast Guard, a POW-MIA flag, or a first responder flag.
- 8.10. Firearms, Firecrackers, or Fireworks.** The display or shooting of firearms, fireworks, or firecrackers is expressly forbidden.
- 8.11. Hurricane Shutters and Hurricane Protection.** The Master Association shall adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the March Landing Community. No hurricane shutter except of the standard model, color and style adopted or approved by the Architectural Modification Committee shall be used in or upon the Property. Shutters installed and existing prior to the adoption of a standard are grandfathered, however any replacement of existing shutters must comply with the new guidelines and building codes, including specifications for impact glass, code-compliant windows or doors and products. The Board, Master Association, or Architectural Modification Committee cannot deny an application for installation, enhancement, or replacement of certain hurricane protection. All specifications adopted by the Board, Master Association, or Architectural Modification Committee and hurricane shutters and hurricane protection products installed by the Owners shall comply with the applicable building code and Florida law. Owners shall be responsible for the repair, replacement and Maintenance of any hurricane protection for their Units.
- 8.12. Nuisances.** No Owner shall use their Lot, Villa 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 Villa, 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. No noxious, illegal or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Association Property.
- 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 Villas,

provided however, that copies of such Rules and Regulations are furnished to each Owner prior to the time that they become effective.

8.14. Signs. No signs, billboards, posters, or advertising devices of any character shall be permitted anywhere within Marsh Landing, including but not limited to, those posted in windows of buildings, on boats, trailers or in or on motor vehicles except for one (1) temporary real estate "For Sale" sign that conforms to the standards and specifications adopted by the Master Board of Directors. The Association may choose to designate a place within the Property for the posting of notices required or permitted by the Governing Documents and Chapter 720 and may specify by Rules and Regulations such other types of notices and information that Owners may post at such location, if any.

8.15. Temporary or Permanent Structures. Other than one Villa, no free-standing structure, trailer, house trailer, tent, shack, shed, barn, or other outbuilding shall be used or placed on any Lot or the Property at any time either temporarily or permanently. The Association may elect to erect a temporary structure for the purpose of events or natural disasters.

9. LEASING OF UNITS. In order to foster a stable residential community and prevent a transient atmosphere, the Leasing of Units by their Owners shall conform to provisions in the Marsh Landing Community Association Declaration of Covenants and Restrictions (as amended). All Leases of Villas must be in writing and for the residential use of a single family. The Lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc. The ability of an Owner to lease a Villa to others is a privilege, not a right. The privilege may be revoked by the Board of Directors if it is abused by an Owner.

9.1. Regulation by Association. The Master Association and the Villas Board of Directors shall have the authority to approve or disapprove all Leases and Rentals. The Board and/or Master Association shall have the authority to promulgate or use a uniform Lease, license or Rental application and require such other information from the proposed Lessees as is appropriate under the circumstances. The Board and/or Master Association shall have the right to delegate the screening of proposed Tenants to a committee, or a commercial Tenant screening concern, as it deems necessary.

9.2. Term of Lease and Frequency of Leasing. Leasing during the first thirty-six (36) months of ownership is prohibited. No Villa may be Leased more often than three (3) times in any calendar year, with the minimum Lease term being sixty (60) days. For purposes of this restriction, the first day of Occupancy under the Lease shall conclusively determine in which year the Lease occurs. No Lease may be for a period of more than one (1) year. However, the Board and/or Master Association may, in its discretion, approve the same Lease from year to year. No subleasing or assignment of Lease rights by the Lessee is allowed.

9.3. Notice By Unit Owner. An Owner intending to lease their Unit shall give to the Board of Directors of the Association and/or Master Association written notice (or via email) of such intention at least thirty (30) days prior to the first day of Occupancy under the lease, together with the name and address of the proposed lessee, a fully- executed copy of the Uniform Lease promulgated by the Board and/or Master Association, and such other

information as the Board and/or Master Association may reasonably require including but not limited to a credit report, background check, and proof of lawful residency. The Board of Directors and/or Master Association may exercise discretionary power in certain special or emergency situations to expedite the approval process. Any Owner who fails to complete the necessary paperwork and/or pay any applicable fees will be in violation and subject to a fine.

9.4. Approval Action. After the required notice and all information or interviews requested have been provided, the Board and/or Master Association shall have thirty (30) days in which to approve or disapprove the proposed Lease. If the Board and/or Master Association 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. The Board of Directors has the right to approve or disapprove all applications to lease property. Disapproval of a lease shall be by a majority vote of the Board. The Master Association also has the authority to approve or disapprove any lease and has established conditions, rules and restrictions for leasing in its Declaration of Covenants, Conditions and Restrictions, all of which apply as described and amended and shall be followed by the Association. The specific reasons for denial of a lease are listed under Section 9.6 of the Master Associations Declaration..

9.5. Unapproved Leases. Any Lease of a Villa not approved pursuant to this Section 9, or through the provisions in the Marsh Landing Community Association at Estero's Declaration, shall be void and unenforceable unless subsequently approved by the Master Association. The Master Association shall have the right to evict the Tenant without securing the consent from the Owner. For the purpose of such eviction, the Master 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.

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, and the integrity of its original design, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Unit 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 Villa.

10.1. Transfers.

10.1.1. Sale or Gift. No Owner may transfer a Villa or any ownership interest in a Villa by sale or gift (including agreement for deed) without prior written approval of the Board of Directors and/or Master Association.

- 10.1.2. Devise or Inheritance.** Notwithstanding any other provision hereof, if any Owner acquires their title by devise or inheritance, their right to Occupy or use the Unit shall be subject to the approval of the Board of Directors and/or Master Association. The approval shall not be 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 Villa before being approved by the Board of Directors and/or Master Association under the procedures outlined herein, or as stated in the Master Associations documents.
- 10.1.4. Transfer Committee.** To facilitate transfers proposed during times when many of its Members are not in residence, the Board of Directors and/or Master Association 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 their Unit or any interest therein shall give to the Board of Directors, the Master Association, or their designee written notice of such intention at least thirty (30) 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 and/or Master Association may reasonably require including but not limited to a credit report, background check and proof of lawful residency. The Villas I Association and/or Master 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 and/or Master Association may require a personal interview with any purchaser or recipient and their spouse, if any, as a precondition to approval.
- 10.2.2. Devise, Inheritance or Other Transfers.** The transferee must notify the Board of Directors and/or Master Association of their ownership and submit a certified copy of the instrument evidencing their ownership and such other information as the Board and/or Master Association may reasonably require. The transferee shall have no Occupancy or use rights until and unless approved by the Board and/or Master Association but may sell or Lease the Unit following the procedures in this Declaration.

- 10.3. Failure to Give Notice.** If no notice is given, the Board of Directors and/or Master Association, at its election may approve or disapprove at the time it learns of the transfer. If any Owner fails to obtain the approval prior to selling an interest in a Unit, 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 and/or Master Association disapproval.

10.4. Approval 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 and/or Master Association shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Letter of Approval executed by the President or Vice-President of the Association and/or Master Association in recordable form and delivered to the transferee. If the Board and/or Master Association 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 and/or Master Association shall issue a Certificate of Approval to the transferee.

10.5. Disapproval.

10.5.1. With Good Cause. Approval shall be withheld for good cause only if a majority of the whole Board of the Association or Master Association so votes. If the Board and/or Master Association disapproves a transfer for good cause, the Association and/or Master Association has no duty to purchase the Villa 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 and/or Master Association. 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 Villa by such mortgagee of the Villa so acquired but shall apply to the acquisition of title by any other person without regard to how the title was acquired. The Association and/or Master 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 and/or Master Association.

10.8. Fees and Deposits Related to the Sale of Units. Whenever herein the Board and/or Master Association's approval is required to allow the sale or other transfer of an interest in a Villa, they 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 Unit except if such persons are married.

10.9. Required Documents. Each prospective purchaser who has entered into a contract for the purchase of a Unit or Lot is entitled, at the seller's expense, to a current copy of all of the required documents under Florida Statutes as amended from time to time.

11. ENFORCEMENT.

11.1. Enforcement. Enforcement of the Governing Documents may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition, rule, or restriction, either to restrain violation or to recover damages, and against any Unit to enforce any lien created by these covenants. Failure of the Association or any Owner to enforce any covenant, condition or restriction contained in the Governing Documents for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

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 their right of use in, as well as to any other person Occupying any Unit under Lease from the Owner or by permission or invitation of the Owner or their 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 their Tenants, Licensees, Invitees or Guests and by the Guests, Licensees, and Invitees of their 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 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 the Rules and Regulations, 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 single continuing violation shall not exceed \$2,000.00. If allowed by law, fines shall be secured by a lien on the Owner's Unit. A fine or suspension will not be imposed without a 14 day notice to the Unit Owner, or, if applicable, to any Occupant or invitee sought to be fined or suspended, and without the opportunity for a hearing before the fining committee.

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 follows:

- 11.4.1. Notice.** If the Association, or the Master Association, imposes a fine or suspension, the Association and/or the Fining Committee must provide written notice of such fine or suspension by mail or hand delivery to the Unit Owner and, if applicable, 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 possible amounts of any proposed fine and possible use rights of Common Areas or Facilities to be suspended.
- 11.4.2. 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 and/or the Fining Committee. 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. If confirmed, payment of any fine shall be due within five (5) days after notice of the decision has been given to the Owner. In the event any legal action is taken to recover or remove a fine, the prevailing party will be entitled to reasonable attorney fees and costs as determined by the court. The Fining Committees decision shall be binding upon the Board and Owner.
- 11.4.3. Approval or Disapproval.** Written notice of the hearing committee's decision shall be sent to the Owner at their 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.

- 11.4.4. Collection of Fines.** Any fine not paid within thirty (30) 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. 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.
- 11.4.5. 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.
- 11.5. 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 shared with the Master Board, 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. A suspension ends upon full payment of all obligations due the Association.
- 11.6. 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.
- 11.7. 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.
- 11.8. Availability of Remedies.** Each Member, for themselves, their 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.

- 11.9. 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.

- 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 two-thirds (2/3) 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, but no sooner than thirty (30) days from the date the petition is submitted.
- 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 (2/3) of the Voting Interests present and voting, in person or by proxy, at any annual or special meeting called for that purpose, or by written consent of two-thirds (2/3) of the Members in lieu of a meeting. 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. **THE MASTER ASSOCIATION.** By taking title to a Lot or Unit, an Owner also becomes a Member at Marsh Landing Community at Estero 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.

13.1. **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 by the Master Association from each Member.

13.2. **Master Association Voting Rights.** In accordance with the provisions of the Governing Documents, all Owners are automatically and irrevocably Members of the Master Association so long as they maintain such Ownership. Voting rights are set forth in the Master Association Bylaws.

14. **GENERAL PROVISIONS.**

14.1. **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.

14.2. **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 Unit shall constitute notice to all co-Owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association, or the current Community Association Manager (CAM), in writing of any change of address.

14.3. **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.

14.4. **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.

- 14.5. 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.
- 14.6. 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.
- 14.7. 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.