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

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

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

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

3. MEMBERS' MEETINGS; VOTING.

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

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

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

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

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

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

4. **BOARD OF DIRECTORS.** The administration of the affairs of the Master Association shall be by a Board of Directors. All powers and duties granted to the Master Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the Owners only when such is specifically required.

4.1. **Number and Terms of Service.** The affairs of the Association shall be managed by not less than seven (7) Directors, two (2) each from the condominiums, villas, single-family homes and one (1) at-large, all of whom shall be Members of the Association. Condominium owners elect two (2) Directors representing condominiums. Villa owners elect two (2) Directors representing villas. Single family homeowners elect two (2) Directors representing single family homes. The entire membership of the Master Association elects the one (1) Director at-large. Directors once duly elected and qualified will serve until their successors are duly elected or until such Director's death, resignation or removal as provided herein. The term of each Director's service shall be two (2) years.

4.2. **Qualifications.** Each Director must be a Member or the spouse of a Member. If a Lot or Condominium Unit is owned by a corporation, partnership or trust, any officer, director, partner or trustee, as the case may be, shall be eligible to be a Director. No more than one natural person may represent any one Lot or Condominium Unit on the Board at any given time.

4.3. **Board of Directors Election Meetings; Notice and Procedure.** The regular election of Directors shall occur as the first item of business at the annual meeting.

4.3.1.1. Not less than sixty (60) days before a scheduled election, the Association shall provide to each Member entitled to vote, a first notice of the date of the election. Any person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than forty (40) days before the scheduled election. Not less than fourteen (14) days before the election, the Association shall mail or deliver a second notice of the election to all Members entitled to vote therein, together with a ballot containing the names of all properly pre-qualified candidates which shall include an information sheet (if provided by the candidate), no larger than 8½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of copying and mailing to be borne by the Association.

4.3.1.2. There is no quorum requirement necessary for an election. However, at least twenty percent (20%) of the Voting Interests must cast a ballot in order to have a valid election, and elections shall be decided by a plurality of those votes cast.

4.3.1.3. The candidates receiving the highest number of votes from each of the three (3) housing types shall be elected. The candidate receiving the highest number of votes running from the At-Large position shall be elected. The three (3) Directors currently representing each of their neighborhoods will serve the remainder of their present terms.

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

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

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

by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting.

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

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

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

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

and all powers incidental thereto;

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

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

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

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

7.1. Fiscal Year. The fiscal year of the Association shall be the calendar year. Upon a majority vote of the Board, it may adopt a different fiscal year.

7.2. Budget. The Board of Directors shall adopt a budget of Common Expenses for each fiscal year. A copy of the proposed budget, and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted, shall be mailed to or served on the Owners of each Lot or Condominium Unit not less than fourteen (14) days before that meeting. The proposed budget must be detailed and must show the amounts budgeted by income and expense classifications, including without limitation as those specified in Chapter 720.

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

7.3. Reserves. The Board may establish in the budget one or more reserve accounts for capital expenditures, deferred Maintenance, or contingency reserves for unanticipated operating expenses. Board adopted reserve funds are not controlled by Chapter 720 Florida Statutes and therefore may be spent, waived, or used as approved by the Board. Membership adopted reserves are restricted by Chapter 720, Florida Statutes and therefore Membership adopted reserves may only be used, waived, or reduced on a yearly basis according to Chapter 720 Florida Statutes. The purpose of reserves is to provide financial stability and to avoid the need for special Assessments. The annual amounts proposed to be so reserved shall be shown in the annual budget.

7.4. Regular Assessments. All regular Assessments for Common Expenses shall be paid in monthly or quarterly installments (as determined by the Board), in advance of the first day of each period and shall become delinquent 10 days thereafter. Written notice of each monthly or quarterly installment shall be sent to all Members by or on behalf of the Treasurer, but failure to receive such notice does not excuse the obligation to pay. By resolution, the Board may establish the place for payment, the method of payment, and a late payment fee. The Association shall have the right to accelerate Assessments of an

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

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

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

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

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

The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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