

After Recording Return to: NextGen Community Management  
9410 Corkscrew Palms Circle #201  
Estero, FL 33928  
(239)372-2996 (Telephone)  
(239)522-4344 (Facsimile)

**CERTIFICATE OF  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND AMENDED AND RESTATED BYLAWS**

**(MARSH LANDING VILLAS II OWNERS ASSOCIATION)**

THE UNDERSIGNED, being the President of **MARSH LANDING VILLAS II OWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation (the "Association"), does hereby certify that:

1. Attached hereto as **Composite Exhibit "A"** are the following: (A) The Amended and Restated Declaration of Covenants, Conditions and Restrictions for Marsh Landing Villas II Owners Association, Inc.; and (B) the Amended and Restated Bylaws of Marsh Landing Villas II Owners Association, Inc., each of which was duly approved, adopted and enacted by the affirmative vote of the proper percentage of voting interests of the Members at the Annual Membership Meeting of the Members of the Association at which a quorum was present held on January 30, 2025.

The original Declaration of Covenants and Restrictions are recorded in **Official Records Book 3212, Page 0660** as amended and restated by that certain Declaration of Covenants and Restrictions recorded as **Instrument No. 4797640, of the Public Records of Lee County, Florida.**

The original Bylaws are recorded as **Instrument No. 4797640, of the Public Records of Lee County, Florida.**

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IN WITNESS WHEREOF, the President of the Association has executed this Amended and Restated Deed of Restrictions effective as of the 11 day of March 2025.

**WITNESSES:**

Janice Severson

Signature

Janice Severson

Printed Name of Witness

Alexandra Segarra

Signature

Alexandra Segarra

Printed Name of Witness

**MARSH LANDING VILLA II OWNERS  
ASSOCIATION, INC.**

By:

James McCrow

James McCrow, President

STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 11 day of March, 2025, by James McCrow as President of Marsh Landing Villa II Owners Association, Inc., a Florida not-for-profit corporation, on behalf of said corporation, ☒ who is personally known to me or ☐ who produced \_\_\_\_\_ as identification.

Cynthia A. Woods

Notary Public

Cynthia A. Woods

Printed Name

My Commission Expires: 9-27-26



Janice Severson  
Signature

Janice Severson  
Printed Name of Witness

Alexandra Segarra  
Signature

Alexandra Segarra  
Printed Name of Witness

MARSH LANDING VILLA II OWNERS  
ASSOCIATION, INC.

By: [Signature]  
Vice President

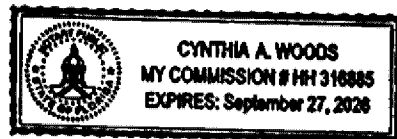
STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 11 day of March, 2025, by Louis Angelini as President of Marsh Landing Villa II Owners Association, Inc., a Florida not-for-profit corporation, on behalf of said corporation, ☒ who is personally known to me or ☐ who produced \_\_\_\_\_ as identification.

Cynthia A. Woods  
Notary Public

Cynthia A. Woods  
Printed Name

My Commission Expires: 9-27-26



**Prepared by and return to:**

Leland Wilson, Esq  
Association Legal Services  
Ft. Myers, FL 33907  
(239) 298-1238 (Telephone)  
(941) 237-5687 (Facsimile)

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

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MARSH LANDING VILLAS II OWNERS ASSOCIATION**

**KNOW ALL INDIVIDUALS BY THESE PRESENTS**, that the undersigned, Marsh Landing Community Association of Estero, Inc., a Florida corporation, is the owner of certain property to be hereinafter known as Marsh Landing Villas II 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 664 *et seq.*, and its Amendments; the Declaration of Covenants, Conditions and Restrictions and Bylaws of Marsh Landing Villas II Owner's Association, as recorded at O.R. Book 3212, Page 660, *et seq.*, and as Amended as recorded at O.R. Book 3725, Page 3964 *et seq.*, as recorded at Instrument No. 2011000029188, and as recorded at Instrument No. 2015000030829, 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 II Owner's Association, Inc., a Florida corporation not-for-profit.
  - 1.4. **"Association Property" or "Property"** means any real property owned by the Association, including any Improvements located thereon, and all personal property 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 is hereby declared to be a part of the Common Areas.
- 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 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 Units, which shall be owned equally by the Owners of such Units.
- 1.13. **“Common Surplus”** means the excess of all receipts of the Association, including but not limited to Assessments, rents, profits, and revenues over the Common Expenses.
- 1.14. **“Common Wall”** means any wall common between two (2) Units, which shall be owned equally by the Owners of such Units. 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, his or her spouse, if any, and his, her or their parents, grandparents, grandchildren, siblings, or children (related by blood, marriage, or adoption), who do and plan to reside together indefinitely and continuously as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family.

Not more than two (2) natural Persons not meeting the requirement above, who do and plan to reside together indefinitely and continuously as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family and their respective parents, grandparents, grandchildren, siblings, or children (related by blood, marriage, or adoption).

The reference to "natural" is intended to distinguish between an individual and a corporation, partnership, limited liability partnership, limited liability company, trust, estate, or other artificial entity. A "Family Member" is a natural Person who resides in a Unit as part of the Owner's Family or as part of the Family of a Tenant or a Guest, but, in each case, is not a title holder.

- 1.17. **"Governing Documents"** means and includes this Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations of the Association and all recorded exhibits to them, all as amended from time to time. If there is an irreconcilable conflict between the provisions of any two of these documents, the first document to appear in the foregoing list shall prevail.
- 1.18. **"Guest"** means any 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 person 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, Unit or Occupant, or otherwise entering the Property on a temporary basis at the expressed or implied consent of the Owner or Occupant, including, but not limited to, contractors, workmen, delivery persons, domestic assistants, and health care assistants. A Guest and a Licensee are each an Invitee.
- 1.23. **"Lease" or "Leasing" or "Rent"** means the grant by a residential Owner of a temporary right of use of the Owners Unit 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 Unit for the payment of consideration to any party. Any person who qualifies as a Tenant shall be deemed to be Leasing a Unit.
- 1.24. **"Lien for Charges"** means a lien which is recorded to secure a Charge.
- 1.25. **"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.
- 1.26. **"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 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 constructed thereon", except where the context clearly requires otherwise.
- 1.27. **"Maintenance" or "Maintain"** means, unless the context of a provision in the Governing Documents requires otherwise, landscaping, day-to-day cleaning, heavy cleaning, painting where applicable, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement. The term "Maintenance" does not include repair after casualty, unless the context of a provision in the Governing Documents requires otherwise. Whenever an Owner is obligated by the Governing Documents or law to maintain, repair, or replace portions of the Association Property, the Board has the authority to establish reasonable standards for such maintenance, repair, or replacement, including mandating maintenance, repair, or replacement of said items, when the Board deems same are reasonably necessary, and the Board may likewise adopt specifications for replacement components, without need for Owner approval, notwithstanding any provision in this Declaration to the contrary.
- 1.28. **"Master Association"** means the Marsh Landing Community Association of Estero, Inc. as defined in the Master Declaration.
- 1.29. **"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 his 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.

- 1.30. **"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.
- 1.31. **"Officer"** means the executive Officers and Assistant Officers (if any) appointed by the Board as provided in the Bylaws.
- 1.32. **"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.
- 1.33. **"Resident"** means any natural Person who is Occupying a Unit for thirty (30) days or more, whether or not consecutive, in any calendar year and includes, as applicable, Owners, Tenants, Guests, and their respective Family members who reside in the Unit for such period.
- 1.34. **"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 Units, community, Association Property, and Common Areas, that may be promulgated by the Board from time to time by resolution.
- 1.35. **"Structure"** means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The term includes, without limitation swimming pools, walls, flagpoles, antennas, playground equipment and sheds.
- 1.36. **"Surface Water Management System" or "Irrigation System"** means and refers to constructed surface water and/or underground systems and facilities for the drainage, irrigation, and/or storage of surface water throughout the Association.
- 1.37. **"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.

- 1.38. **“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 his 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 Association's and Villas II 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 II 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 II 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 of 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 II 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 all 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 II Associations responsibilities include the following:
  - 4.1.1. **Common Areas.** The Master Association shall be responsible for the exclusive management and control of the 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 II 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 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.
- 4.1.3. **Roofing.** The Villa II Association shall collect and maintain reserve funds for roof replacement. Owners are responsible for general Maintenance and insurance of their portion of their roof.
- 4.2. **Association Responsibilities.** The Villas II Association is responsible for basic exterior Maintenance care and preservation as described below. The cost is a Common Expense. The Villas II Association's responsibilities include the following:
  - 4.2.1. **Landscaping.** In addition to Maintenance upon the Common Areas, the Villas II 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 47 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, his family, guests or invitees, then cost of repairs or maintenance shall be borne by that Owner.
- 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 for the development known as Marsh Landing, the Owners of Units within Marsh Landing Villas II shall be subject to Assessment by Marsh Landing Community Association of Estero, Inc. for their proportionate share of the cost of said Maintenance and management, and with regard to said Assessments, they shall have the same rights as other Members of Marsh Landing Community Association of Estero, Inc. 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 II is the responsibility of the Association through its assessment upon each unit.

Representation in the Association shall be through the Association's designated representative who shall vote on behalf of all Owners within the development as instructed by the Board of Directors of the Association.

- 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 Units owned by him and all improvements thereon in good order and repair, free of debris, including but not limited to the seeding and watering 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 Master Association, and other improvements, all in a matter and with such frequency as is consistent with Property management. Roofs and exterior wall paint shall be maintained by Owners between the scheduled replacement and repainting of same by the Association as previously described, and any minor repairs are the responsibility of the Owners.

- 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 his 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 Unit 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. The exterior wall and roof are to be maintained by each Unit Owner in quality condition at all times consistent with provisions of this paragraph. Failure to maintain the Unit 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 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 a change of exterior paint color(s) provided the color(s) being considered by the Board has received the approval of sixty-six percent (66%) of the Unit Owners eligible to vote, in-person or by proxy, at an official meeting. Any change in paint color is contingent upon final approval by the Master Association. Should the proposed paint color not receive the requisite approval, either from the membership or the Directors of 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 Unit made by the Owner or his 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 Association and the Master Associations Modification Committee.

- 4.9. Enforcement of Maintenance.** If the Owner of a Lot fails to Maintain his 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 his Lot, other Lots, or personal property made necessary by his act or negligence or by that of any Member of his Family or his 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. Copies shall be made available for sale to Members at a reasonable price.
- 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 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 for each fiscal year. The annual budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

- 6.1.2. General Operating Reserve.** The Board, when establishing each annual budget, may, when deemed necessary or desirable, include therein a sum to be collected and maintained as a general operating reserve to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of Assessments by Owners, as a result of emergencies or for other reason placing financial stress upon the Association. The annual amount allocated to such operating reserves and collected therefore shall not exceed ten percent (10%) of the current annual Assessment levied against the Unit Owners. Upon accrual in the operating reserve of an amount equal to twenty-five percent (25%) of the current annual Assessment, no further payments shall be collected from the Owners as a contribution to such operating reserve, unless it shall be reduced below the twenty-five percent (25%) level, in which event the annual Assessment against each Owner may be increased to restore the operating reserve to an amount which will equal twenty-five percent (25%) of the current annual amount of said Assessment.
- 6.2. Liability for Assessments and Charges.** A Unit Owner is liable for all Assessments and Charges coming due while he is the Owner. Any Person which acquires title to a Unit is jointly and severally liable with his predecessor in title for all unpaid Assessments and Charges against the predecessor for his 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 One 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 his share of the Common Expenses unless all Owners are likewise proportionately excused from payment, except as provided below as to certain mortgages.
- 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 his last known address; and, upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the 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, the Association may suspend the right of an Owner and his 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 his 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 his 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.** A master policy of property and casualty insurance may be maintained through the Master Association. Such insurance shall insure all of the Structures to the maximum insurable replacement value. Such coverage shall afford protection against the loss or damage by fire and other hazards covered by standard extended coverage endorsement. Each Owner shall be

assessed annually for the insurance premium, as part of his annual Maintenance fee. The Association shall also purchase such insurance as may be necessary on the Common Property to protect the Association and the Owners. Such insurance shall be maintained in the same manner and method as set forth above. The insurance carried by the Association shall afford at least the following provisions:

- 7.1.1. **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards.
- 7.1.2. **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.
- 7.1.3. **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.
- 7.2. **Optional Coverage.** The Association may purchase and carry other such insurance coverage as the Board may determine to be in the best interest of the Association and Owners.
- 7.3. **Description of Coverage.** A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by Owners or their authorized representatives upon request.
- 7.4. **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.
  - 7.4.1. **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.
  - 7.4.2. **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, he 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.
  - 7.4.3. **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.

- 7.5. 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.
- 7.6. 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.
- 7.7. 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.
- 7.8. 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.
- 7.9. 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:
- 7.9.1. 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.
- 7.9.2. 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.

- 7.9.3. 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.

- 7.10. 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:

- 7.10.1. 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.

- 7.10.2. 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.

- 7.11. Association as Agent.** The Association is hereby irrevocably appointed as agent for each Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Lots, Units, or items Maintained by the Association.

- 8. OCCUPANCY AND USE RESTRICTIONS.** The use of the Property of the Association shall be in accordance with the Master Associations governing documents, as well as the following provisions:

- 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 his personal professional library, keeping his personal business or professional records or accounts or handling his personal, business or professional telephone calls or correspondence in and from his Lot or Unit. Such uses are expressly declared customarily incident to the principal residential use.

**8.4. Animals.** No horses, cows, swine, poultry, monkeys or livestock of any kind may be kept on any Lot or Unit. 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 Unit, 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 Association.
- 8.4.6. Owners may not leave animals unattended in courtyards, screened porches, 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 other paved surfaces designated by the Association. Parked vehicles cannot overhang into the streets, sidewalks, or Common Areas. No parking on areas of 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 15 feet of a stop sign or intersection is expressly forbidden as is parking around the Villas II circle.

Automobiles owned by governmental law enforcement agencies are expressly permitted.

**8.6.2. 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 vehicle 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.

**8.6.3. 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.

**8.6.4. 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.

**8.6.5. 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 II 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 his vehicle in an assigned parking spot during an extended period of absence.

**8.6.6. Licensed Vehicles.** All vehicles must maintain current registration and license plates and shall be road operable.

**8.6.7. 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 II 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 Unit, 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, unless specifically exempted in any of the paragraphs of this article. The Board of Directors may appoint Members to the Master Associations New Construction Review Board (NCRB) or the Master Associations Modification Committee to assist in investigating architectural change requests and making recommendations, as per Marsh Landing Community Associations Governing Documents.
- 8.9. Flags.** Any Owner may display one 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 Protection.** The Board of Directors of the Master Association shall adopt and approve a model, style and color of hurricane shutter, as a standard hurricane shutter for use in the Community, or impact glass, code-compliant windows or doors, and other code compliant hurricane protection products used to preserve and protect the Association Property. All specifications adopted by the Master Associations Modification Committee must comply with the applicable building code. No hurricane protection except of the standard model, type, color and style adopted or approved by the Master Associations Modification Committee shall be used in or upon the Property. Any hurricane shutters installed and existing prior to the adoption of a standard are grandfathered. Owners shall be responsible for the repair, replacement or Maintenance of any hurricane protection for Unit.
- 8.12. Nuisances.** No Owner shall use his Lot, Unit or Association Property, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the Occupant of another Unit, or which would not be consistent with the maintenance of the highest standards for a first-class residential community nor permit the premises to be used in a disorderly or unlawful way. 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 Units,

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 sign, banner, billboard, notice, or advertisement of any other kind shall be placed, erected, displayed or shown anywhere within the Property including, but not limited to, those posted in windows of buildings or motor vehicles. One (1) temporary real estate 'For Sale' sign that conforms to the standards and specifications adopted by the Board of Directors. Such signs may only be posted in locations designated by the Board of Directors. For homes with a security system, one (1) Home Security sign is allowed to be placed at the front corner of the garage.
- 8.15. Temporary or Permanent Structures.** Other than one Unit, 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 Units 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 Unit 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 or the Villas II Board of Directors shall have the authority to approve or disapprove all Leases and Rentals. The Master Association or the Villas II Board of Directors 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 Master Association or Villas II Board of Directors shall have the right to delegate the screening of proposed Tenants to a committee, or a commercial Tenant screening concern.
- 9.2. Term of Lease and Frequency of Leasing.** No Unit 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 Master Association or Villas II Board of Directors 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 his Unit shall give to the Master Association or Villas II Board of Directors 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 Master Association or Villas II, and such other information as the Master Association or Villas II Board of Directors may reasonably require including but not limited to a credit report, background check, and proof of lawful residency. The

Master Association or Villas II Board of Directors 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. Master Association or Villas II Board of Directors Action.** After the required notice and all information or interviews requested have been provided, the Master Association or Villas II Board of Directors shall have thirty (30) days in which to approve or disapprove the proposed Lease. If the Master Association or Villas II Board of Directors 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 Master Association or Villas II 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 Master Association or Villas II Board of Directors. 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, under Article XI Section 10, 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 said Article XI, Section 10.5.2.

**9.5. Unapproved Leases.** Any Lease of a Living Unit not approved pursuant to this Section, or through the provisions in the Marsh Landing Community Association Declaration, shall be void and unenforceable unless subsequently approved by the Master Association or Villas II Board of Directors. 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, 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 Unit.

**10.1. Transfers.**

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

**10.1.2. Devise or Inheritance.** Notwithstanding any other provision hereof, if any

Owner acquires his title by devise or inheritance, his right to Occupy or use the Unit shall be subject to the approval of the Master Association or Villas II Board of Directors. 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 Unit before being approved by the Master Association or Villas II Board of Directors under the procedures outlined herein.

**10.1.4. Transfer Committee.** To facilitate transfers proposed during times when many of its Members are not in residence, the Master Association or Villas II Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) Owners, or to the President, Vice President or Treasurer, any of whom may be deemed a Vice President for purposes of executing a Certificate of Approval.

**10.2. Notice to Association.**

**10.2.1. Sale or Gift.** An Owner intending to make a sale or gift of his Unit or any interest therein shall give to the Master Association or Villas II Board of Directors or its 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 Master Association or Villas II Board of Directors may reasonably require including but not limited to a credit report, background check and proof of lawful residency. The Master Association or Villas II may charge a reasonable Fee in addition to the costs of any background and credit checks for the cost of processing each applicant. The Master Association or Villas II Board of Directors may require a personal interview with any purchaser or recipient and his spouse, if any, as a precondition to approval.

**10.2.2. Devise, Inheritance or Other Transfers.** The transferee must notify the Master Association or Villas II Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Master Association or Villas II Board of Directors may reasonably require. The transferee shall have no Occupancy or use rights until and unless approved by the Master Association or Villas II Board of Directors 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 Master Association or Villas II Board of Directors, at its election may approve or disapprove at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a 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 disapproval.



- 10.4. Master Association or Villas II Board of Directors 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 Master Association or Villas II Board of Directors 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 Master Association or Villas II in recordable form and delivered to the transferee. If the Master Association or Villas II Board of Directors 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 Master Association or Villas II Board of Directors shall issue a Certificate of Approval to the transferee.
- 10.5. Disapproval.**
- 10.5.1. With Good Cause.** Approval of the Master Association or Villas II shall be withheld for good cause only if a majority of the whole Board so votes. If the Master Association or Villas II Board of Directors disapproves a transfer for good cause, the Association has no duty to purchase the Unit or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Master Association or Villas II Board of Directors. 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 Master Association or Villas II's approval be required for the subsequent resale or Lease of a Unit by such mortgagee of the Unit so acquired but shall apply to the acquisition of title by any other person without regard to how the title was acquired. The Master Association and/or the Villas II Board of Directors 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 Master Association or Villas II Board of Directors.
- 10.8. Fees and Deposits Related to the Sale of Units.** Whenever herein the Master Association or Villas II Board of Directors approval is required to allow the sale or other transfer of an interest in a Unit, the Association may charge the Owner a preset Fee for processing the application, such Fee shall not exceed the maximum amount allowed by law. A separate Fee may be charged for each person who is obtaining an interest in the 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 his 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 his Tenants (express or implied), and their Licensees, Invitees, or Guests. Failure of any Owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each Owner shall be responsible for any and all violations by his Tenants, Licensees, Invitees or Guests and by the Guests, Licensees, and Invitees of his Tenants, at any time.
- 11.3. Self-help Remedies.** Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the 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 an opportunity for 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. 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 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.

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

**11.9. 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.

- 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 of Marsh Landing Community Association, Inc. (The Master Association) and is subject to the terms and conditions of the Declaration of Covenants, Conditions, and Restrictions for the Master Association.
- 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.

**Prepared by and return to:**

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**AMENDED AND RESTATED BYLAWS OF  
MARSH LANDING VILLAS II OWNERS ASSOCIATION, INC.**

1. **GENERAL.** These are the Amended and Restated Bylaws of Marsh Landing Villas II Owners Association, Inc. (hereinafter "Association"), a Florida not-for-profit corporation formed for the purpose of operating a Homeowners Association, which is located in Lee County, Florida, upon the lands described in the Declaration of Covenants, Conditions and Restrictions.
  - 1.1. **Office.** The principal office of the Association shall be at the Marsh Landing Clubhouse located at 9410 Corkscrew Palms Circle, Ste 201, Estero, FL 33928, or such other 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 Lots or Units in the Association.
  - 2.2. **Voting Interests.** The Members of the Association are entitled to one (1) vote for each Lot or Unit owned by them. The total number of possible votes (the Voting Interests) of the Association is the total number of Lots or Units. The vote of a Lot or 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 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, each year and shall be held in the first quarter of each calendar year, at a time and place determined by the Board, for the purpose of transacting any business duly authorized to be transacted by the Members. During the annual meeting the ballots cast in the annual election of Directors shall be counted and results announced.
- 3.2. **Special and General Meetings.** Special Members' meetings shall be held whenever called by the President or by a majority of the Members of the Board, and shall be called by the President or Secretary within a reasonable time upon receipt of written notice from at least twenty (20%) percent 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. General membership meetings may be called by the Association President or by two (2) members of the Board of Directors at any time. All member meetings shall be duly noticed and posted.
- 3.3. **Notice of Members' Meeting.** Written notice of a meeting of Members stating the time and place and the objects, including a copy of any proposed contracts to be discussed, for which the meeting is called shall be given by the President or, if so delegated, the Secretary. A copy of the notice shall be posted on the Villas II Community Board and a copy shall be delivered either personally, electronically, or by first class mail to each Member entitled to attend the meeting. The delivery or mailing shall be to the address of the Member as it appears on the roster of Members. The delivery shall be not fewer than fifteen (15) nor more than thirty (30) days before the date of the meeting. This initial notice shall specify the day, hour, place and purpose of the meeting, as well as the process for applying to become a Board member. A second meeting notice shall be sent not less than at least ten (10) days before the meeting and shall include a meeting agenda and proxy form for those unable to be present. Proof of posting shall be given by Affidavit, and proof of mailing of the notice shall be given by retention of post office receipts and electronic receipts. Attendance at any meeting by a Member constitutes waiver of notice by that Member unless the Member objects to the lack of notice at the beginning of the meeting. A Member may also waive notice of any meeting at any time by written waiver.



In lieu of posting or mailing, copies of the proposed contracts may be made available online or by email on request, with the relevant website or email contact posted conspicuously on the notice of meeting.

- 3.4. **Quorum.** A quorum at Members' meetings shall consist of persons entitled to cast thirty (30%) percent of the votes of the Membership, either in person or by proxy.
- 3.5. **Indivisible Vote.** Each Lot or Unit shall have one (1) indivisible vote. No individual may cast a vote assigned to a Lot or Unit where the voting rights assigned to the Lot or Unit are suspended for nonpayment of a fee, fine or other monetary obligation to the Association 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 shall be valid only for the particular meeting for which it is given and any adjournment thereof, and in no event shall such proxy be valid for more than ninety (90) days after the original meeting date. A proxy may permit a proxy holder to appoint a substitute to act in his place. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the Lot, specify the date, time, and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. No proxy shall be valid if it names more than one (1) person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. No proxy, limited or general, shall be used in the election of Board Members.
- 3.7. **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:
  - 3.7.3. 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
  - 3.7.4. 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. 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 or at special meetings shall be substantially as follows:

- A. Calling of the roll and certifying the proxies
- B. Proof of notice of meeting or waiver of notice
- C. Election of Directors
- D. Reading and disposal of any unapproved minutes
- E. Reports of Officers
- F. Reports of committees
- G. Unfinished business
- H. New business
- I. 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 Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the Owners only when such is specifically required.
- 4.1. **Number and Terms of Service.** The number of Directors which shall constitute the whole Board of Directors shall be no less than three (3). Directors will generally serve a term of two (2) years each and shall be elected at the annual meeting of the membership. However at the next Annual Meeting, one of the Directors will serve a one (1) year term. The following year, the one year Director will be replaced with a two (2) year Director so as to provide continuity to the Board with at least one Director having had experience serving on the Board when two new Board members are elected. In the case of vacancy upon the Board of Directors, whether occasioned by the resignation or removal of a member, or the inability of a Director to complete his term, the vacancy will be filled by the person appointed by the remaining Board of Directors and the newly appointed Member will serve for the unexpired term of the seat being filled.
- 4.2. **Qualifications.** The Directors shall be Members or the spouse of a Member. All qualified members shall be entitled to apply for candidacy as a Director through an application form provided with the first notice of the Annual Meeting. Pursuant to Florida Law, an election is required every year for a Director whose term is expiring. If no candidates submit their names for election, no election vote is held and the Board shall appoint a Director as needed to provide the required minimum of three (3) Directors. In the case of multiple Owners of a Lot or Unit, only one Owner may serve as a director of the Board at any given time unless they own more than one Lot or Unit or unless there are not enough eligible candidates to fill the vacancies on the Board at the time of the vacancy.
- 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. 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.
- 4.3.2. 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.
- 4.3.3. 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.

- 4.3.4. 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.
- 4.3.5. **Tie Votes.** Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, such as the flipping of a coin by a neutral party.
- 4.3.6. **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.
- 4.6. **Resignation.** Any Director of the Association may resign at any time, by a written instrument, including but not limited to notice provided via electronic mail to the President or Secretary. Resignations shall take effect at the time specified in the written instrument, and if no time is specified, resignations shall take effect at the time of receipt of such resignation. Resignations cannot be rescinded after being given, even if not effective until a later date. The acceptance of a resignation shall not be necessary to make it effective. Any Director or Officer more than 90 days delinquent in the payment of any monetary obligation due the Association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.
- 4.7. **Organizational Meeting.** The organizational meeting of each newly-elected Board of Directors to elect Officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, the organizational meeting shall be held no later than ten (10) days following the annual meeting of the Members.

- 4.8. Regular Meetings of the Board.** Regular meetings of the Board may be held at such time and place as may be determined from time to time by a majority vote of the Directors. Notice of regular meetings shall be mailed, transmitted, or delivered to each Director at least forty-eight (48) hours prior to the date of such meeting and notice shall be posted in a conspicuous place on the premises at least forty-eight (48) hours prior to the meeting. In an Association of more than 10 Units, the Board of Directors shall meet at least once each quarter. At least four times each year, the meeting agenda must include an opportunity for Members to ask questions of the Board.
- 4.9. Special Meetings of the Board.** Special meetings of the Directors may be called by the President at any time. 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 and/or 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.

- 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 of Directors may appoint such other committees as it may deem appropriate in the performance of its duties, including but not limited to an Architectural Modification Committee, a Landscape Review Committee and a Fining Committee. Committees shall make recommendations to the Board which will make the final determination and will ensure decisions are compliant with the then current Rules and Regulations of the Villas II Association and Master Association. A Fining Committee will be created as needed to review fines imposed upon members for nonpayment of monies owed the Association for violations of rules, pursuant to Florida Law for homeowner associations (Statute 720.303), and the Board will follow its decision.
- 4.18. **Director Compensation.** Directors shall serve without pay but shall be entitled to reimbursement for expenses reasonably incurred. This provision shall not preclude the Board from employing an Officer or Director as an agent or employee of the Association.
- 4.19. **Conflicts of Interest.** No Director, or member of their immediate Family, may transact business with the Association, or have any financial interest in any contractor or entity that provides goods or services to the Association. No Director may transact personal business with any Association contractor except on terms at fair market value. No Director may serve as the manager or managing agent for the Association during their term as Director or within two years after the term expires. A Director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the Director relative to their performance as a Director. A Director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

The Directors shall establish a conflict of interest policy for the employees of the Association.

**4.20. Misuse of Position.** An Officer, Director or Manager who knowingly solicits or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the Association is subject to monetary damages under Florida Statutes 617.0834.

**4.21. 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 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 officers created pursuant to these Bylaws. 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.

**5.1. President.** The President shall be the Chief Executive Officer of the Association, shall preside at all meetings of the Board and Association meetings. The President shall have general supervision over the affairs of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation. The President shall sign all checks and promissory notes of the Association; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, deeds, and other instruments. The President shall be the contact person for all independent contractors hired by the Board, especially the Community Association Manager ("CAM") if one is under contract with the Association. The President, or CAM as appropriate, shall respond to Owner questions, issues and disputes in a timely manner but no longer than thirty (30) days from receiving an inquiry. Resolutions of significant issues, violations of the rules and regulations, or restrictions of any of the governing documents may require a meeting of the Board or referral to a special committee at the discretion of the President.

**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. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

**5.3. Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall

keep and have custody of the records of the Association, except those of the Treasurer. He 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. In the event a Community Association Manager has been contracted to perform any or all of the above duties, the Secretary shall oversee said duties and be responsible for their completion.

**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. Any of the foregoing duties may be performed by an Assistant Treasurer if one is elected. In the event a Community Association Manager has been contracted to perform any or all of the above duties, the Treasurer shall oversee said duties and be responsible for their completion.

**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 or 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.** Encourage and cause the Common Areas to be maintained by the Master Association;
- 6.2.** Determination of the expenses required for the operation of the Association;
- 6.3.** Fix the amount of the Assessments and any Special Assessments against each Unit in advance of each annual assessment year following a budget review. All Members will be invited to attend a budget meeting, held in the fall of each year, and will receive a copy of



each budget yearly by mail or email.

- 6.4. Collection of Assessments for Common Expenses from Owners required to pay same;
- 6.5. Employment and dismissal of the personnel necessary for the Maintenance and operation of the Common Elements;
- 6.6. 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;
- 6.7. Maintaining bank accounts on behalf of the Association and designating the signatories required therefor;
- 6.8. 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;
- 6.9. Supervise all Officers, agents, independent contractors and employees of the Association and see to it that their duties are properly performed, per negotiated contracts and agreements;
- 6.10. Purchasing Lots or Units at foreclosure or other judiciary sales, in the name of the Association or its designee;
- 6.11. Selling, Leasing, mortgaging or otherwise dealing with Units acquired by, and subleasing Units Leased by, the Association, or its designee;
- 6.12. Organizing corporations to act as designated agents of the Association in acquiring title to or Leasing Units by the Association;
- 6.13. Procure and maintain liability and hazard insurance on all Association property;
- 6.14. Making repairs, additions, and Improvements to, or alterations of, the Association Property, in accordance with the provisions of the Declaration after damage or destruction by Casualty or as result of condemnation or eminent domain proceedings;
- 6.15. Enforcing obligation of the Owners, allocating profit and expenses and doing anything and everything necessary and proper for the sound management of the Association;
- 6.16. Levying fines against the Owners for violations of the Rules and Regulations established by it to govern the conduct of the Owners;
- 6.17. Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and Maintenance of the Common Elements, provided, however, that the consent of the Owners of at least two-thirds (2/3) of the Units, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws.
- 6.18. Contract for the management of the Association and delegate to such contractor such powers and duties of the Board as the Board may deem appropriate under the

circumstances, except those which may be required by the Declaration and these Bylaws to be approved by the Board or other Owners; to contract for the management or operation of portions of the Association Property susceptible to separate management or operation thereof; and to grant concessions for the purpose of providing services to the Owners. In exercising this power, the Association may contract with affiliates of itself provided that such contracts do not involve undisclosed or unlawful self-dealing or undisclosed relationships with Board Members;

- 6.19. At its discretion, to authorize Owners or other persons to use Common Elements, including but not limited to social rooms, meeting rooms, pool terraces, etc. for private parties and gatherings and to impose reasonable Charges for such private uses;
- 6.20. To exercise all powers specifically set for in the Association Documents and Chapter 720 and all powers incidental thereto;
- 6.21. 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;
- 6.22. To impose lawful fees in connection with the approval of the Transfer, Lease, Sale, or Sublease of Lots or Units, not to exceed amounts permitted by Florida Statutes as amended from time to time;
- 6.23. To exercise the emergency powers authorized by Section 617.0207, Florida Statutes, Section 617.0303, Florida Statutes, and Chapter 720, all as amended from time to time.

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 Treasurer shall prepare, and the Board shall adopt a budget of Association estimated revenues and expenses for each coming 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 not less than fourteen (14) days before that meeting. Once adopted, the Association shall provide to each Member a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Member. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and revenue and expense classifications. The estimated surplus or deficit as of the end of the current year shall be shown and all Fees or Charges for recreational amenities shall be set out separately.

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

- 7.3. Regular Assessments.** All regular Assessments for Common Expenses shall be paid in quarterly installments, in advance of the first day of each period and shall become delinquent ten (10) days thereafter. Written notice of each monthly installment shall be sent to all Members by or on behalf of the Treasurer, but failure to receive such notice does not excuse the obligation to pay. The Association shall have the right to accelerate Assessments of an Owner delinquent in the payment of Common Expenses. Accelerated Assessments shall be due and payable on the date a claim of lien is filed and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.
- 7.4. 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.
- 7.5. Certificate as to Assessment, Mortgagee Questionnaires.** Within ten (10) days after request by an Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all Assessments and other monetary obligations owed to the Association by the Owner with respect to the Lot have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association may charge a preset fee, not to exceed the maximum amount permissible 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.
- 7.6. Assessments for Charges.** Charges by the Association against Members for other than Common Expenses shall be payable in advance. These charges may be collected by Assessment in the same manner as Common Expenses, and when approval of a Member or when expressly provided for in the Declaration or the exhibits annexed thereto as the same be amended from time to time, which Charges include without limitation Charges for the use of the 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. Liability for Assessments and Charges.** A Member shall be liable for all Assessments and Charges coming due while the Owner of a Unit, and such Member and Member's grantees or successors, after a conveyance or other transfer of title, shall be jointly and severally liable for all unpaid Assessments and Charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any Common Elements or Association Property or by abandonment of the Unit for which the Assessments or Charges are due. Where a mortgagee holding a first mortgage of record obtains title to a Lot by foreclosure, such mortgagee shall be liable for such Lot'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.
- 7.8. Liens for Assessments.** The unpaid portion of an Assessment, including an accelerated Assessment which is due, together with all costs, collection expenses, interest, late fees, and reasonable attorneys' fees for collection, including appeals, shall be secured by a continuing lien upon the Lot.
- 7.9. Lien for Charges.** Unpaid Charges due to the Association together with costs, interest, late fees, expenses and reasonable attorneys' fees, including but not limited to appeals, bankruptcies, fees incurred in litigating entitlement thereto or fees incurred in litigation after entitlement has already been determined shall be secured by a common law and contractual lien upon the Lot and all appurtenances thereto and its lien priority is established by Chapter 720.
- 7.10. Interest; Administrative Late Fee; Application of Payments.** Assessments or Charges paid on or before ten (10) days after the date due shall not bear interest, but all sums not paid on or before ten (10) days after the due date shall bear interest at the highest rate permitted by law from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the maximum late fee permissible by law. All payments upon account shall be first applied to interest, then the late fee, then to any costs and collection expenses and reasonable attorneys' fees incurred, and then to the Assessment payment first due.
- Except as otherwise provided in 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.
- 7.11. Association Depository.** The depository of the Association, in which the funds of the Association shall be deposited, shall be financial institutions authorized to do business in Florida which carry **FDIC** insurance or equivalent insurance, provided that such insurance is backed by the full faith and credit of the United States of America. All deposits shall be within the limits of such insurance. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors or by electronic transfer protocols approved by the Board of Directors.
- All funds collected by the Association shall be maintained separately in the Association's name, except that for investment purposes only, reserve funds may be commingled with

operating funds, but must always be accounted for separately and the balance in a commingled account may not, at any time, be less than the amount identified as reserve funds.

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

- 7.12. **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.
  - 7.13. **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.
  - 7.14. **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 transfer, use, appearance, Maintenance, and Occupancy of the Lots or 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.
  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. 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.
- 9.4. **Suspensions.** The Board of Directors has the right to suspend certain use rights and voting rights in accordance with the following:
  - 9.4.1. **Suspension of Use Rights.** If an Owner is more than ninety (90) days delinquent in paying a fee, fine, or other monetary obligation due to the Association, the Board may suspend the right of the Owner or the Unit's Occupants, Guests, Tenants or other Invitees to use Common Elements, Common Facilities, or any other Association Property until the fee, fine, or other monetary obligation is paid in full. Suspension does not apply to Limited Common Elements intended to be used only by that Unit, Common Elements needed to access the Lot, utility services provided to that Lot or Unit, or parking spaces. The Notice and Hearing requirements do not apply to suspensions imposed for financial delinquencies. A fine or suspension will not be imposed without a fourteen (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.
  - 9.4.2. **Suspension of Voting Rights.** The Board of Directors may suspend the voting rights of a Unit or an Owner due to nonpayment of any fee, fine, or other monetary obligation due to the Association which is more than ninety (90) days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the Association. The notice and hearing requirements do not apply to suspensions imposed for financial delinquencies.
- 9.5. **Member Inquiries.** When a Member files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Member within thirty (30) days of receipt of said inquiry. The Board's response shall either give a substantive response to the inquirer, or notify the inquirer that legal advice has been requested, or notify the inquirer that advice has been requested from the Association's counsel or the Division. If the Board requests advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer, as provided herein, precludes the Association from recovering attorneys' fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. Absent a different rule adopted by the Board of Directors, the Board shall only be obligated to respond to one inquiry per month

pertinent to any particular Unit. In the event of a grievance of a Member against the Association, the Board of Directors, or a Member thereof, written notice in detail of the grievance shall be given the Directors prior to the institution of litigation, (including but not limited to arbitration), and they shall be allowed a period of thirty (30) days in which to resolve the grievance.

- 9.6. **Mandatory Arbitration.** Where required by the 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 two-thirds (2/3) 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 (2/3) 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 (2/3) 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.** 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 the share in the Common Elements appurtenant to it, or increase the Unit Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners or other holders of the mortgages on such Lot 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.