

**SECOND AMENDED AND RESTATED BYLAWS
OF
CAPTAIN'S COVE HOMEOWNERS' ASSOCIATION, INC.**

1. Identity. These are the Bylaws of Captain's Cove Homeowners' Association, Inc. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, organized for the purpose of administering Captain's Cove, a residential Community located in Lee County, Florida.

1.1 Mailing Address. The mailing address of the Association shall be designated by the Board of Directors from time to time.

1.2 Seal. The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.

1.3 Document Conflict. The term "Governing Documents," as used in these Bylaws and elsewhere shall include the Deed of Restrictions for the Property, the Articles of Incorporation, these Bylaws, the Rules and Regulations of the Association, the Plats, Surveys, Plot Plans, and graphic descriptions of improvements of record, and all other exhibits to the original Deed of Restrictions. In the event of a conflict between the language in the Deed of Restrictions and the graphic descriptions of record, the graphic description of record shall control. In the event of a conflict between language in any of the other Governing Documents, the following priorities shall control:

- (a) Deed of Restrictions;
- (b) Articles of Incorporation;
- (c) Bylaws; and
- (d) Rules and Regulations.

2. Definitions. The terms used herein shall have the same definitions as stated in the Deed of Restrictions unless the context requires otherwise.

3. Members. The Members of the Association shall be the record owners of fee title to the Parcels. In the case of a Parcel subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the Parcel for purposes of determining voting, assessment and use rights.

3.1 Qualifications. Membership shall become effective upon the recording in the Public Records of a deed or other instrument evidencing the Member's legal title to the Parcel.

3.2 Voting Rights: Voting Interests. The Members of the Association are entitled to one (1) vote for each Parcel owned by them. The vote of a Parcel is not divisible. The right of a Member to vote may be suspended by the Association for the nonpayment of regular annual

assessments that are delinquent in excess of 90 days. The following persons shall be authorized to cast a vote on behalf of a Parcel depending on the specified ownership interests:

(a) If a Parcel is owned by one natural person, that person has the right to cast the vote on behalf of the Parcel.

(b) If a Parcel is owned jointly by two or more persons, any of the record owners may cast the vote on behalf of the Parcel.

(c) If a Parcel is subject to a life estate, any of the life tenants may cast the vote on behalf of the Parcel, or the holder(s) of the remainder interest may cast the vote.

(d) If the owner of a Parcel is a corporation, any officer of the corporation may cast the vote on behalf of the Parcel.

(e) If a Parcel is owned by a partnership, any general partner may cast the vote on behalf of the Parcel.

(f) If a limited liability company owns a Parcel, any authorized agent may cast the vote on behalf of the Parcel.

(g) If a Parcel is owned by a trustee(s), the vote for the Parcel may be cast by any trustee of the trust, or by any grantor or beneficiary of the trust provided the grantor or beneficiary occupies the Parcel, and provides proof to the Association that he or she is a beneficiary.

In a situation where there are two or more persons authorized to cast a vote on behalf of a Parcel, it shall be presumed that the person casting the vote has the consent of all such persons. In the event the persons who are authorized to vote on behalf of a Parcel do not agree among themselves how their one vote shall be cast, the disagreement must be provided to the Association in writing and the vote shall not be counted.

3.3 Approval or Disapproval of Matters. Whenever the decision of a Parcel Owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such Parcel at an Association meeting as stated in Section 3.2 above, unless the joinder of all owners is specifically required.

3.4 Termination of Membership. The termination of membership in the Association does not relieve or release any former Member from liability or obligation incurred under or in any way connected with the Community during the period of membership, nor does it impair any rights or remedies which the Association may have against any former Member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.

4. Members' Meetings: Annual and Special.

4.1 Annual Meeting. The annual Members' meeting shall be held on the date, at the

place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than thirteen (13) months after the last preceding annual meeting. However, the failure to hold an annual meeting within the required time frame shall not serve to invalidate actions of the Association, or the Board. The purpose of the meeting shall be to elect directors and to transact any other business authorized to be transacted by the Members. The transfer of power to the newly elected Directors of the Board will transpire upon adjournment of the annual meeting.

4.2 Special Meetings. Special Members' meetings may be called by the President, Vice President, or by a majority of the Board of Directors of the Association, and must be called by the Association upon receipt of a written request from ten percent (10%) of the voting interests. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

4.3 Notice of Meeting; Waiver of Notice. Notice of a meeting of Members shall state the time, place, date, and the purpose(s) for which the meeting is called. The notice shall include an agenda. The notice of any Members' meeting shall be provided to every Member by one of the following methods: (1) mailed postpaid and correctly addressed to the Member's address shown in the current records of the Lee County Tax Collector. Each Member bears the responsibility of notifying the Lee County Tax Collector of any change of address. The mailing of the notice shall be affected not less than fourteen (14) days, nor more than sixty (60) days, prior to the date of the meeting. Notice must also be posted conspicuously and continuously at the Community property for not less than 14 days before the meeting. Proof of notice shall be given by affidavit of the person giving notice.

Notice of specific meetings may be waived before or after the meeting and the attendance of any Member shall constitute such Member's waiver of notice of such meeting, except when attendance is for the sole and express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting was not lawfully called.

4.4 Quorum. A quorum at Members' meetings shall be obtained by the presence, either in person or by proxy, of persons entitled to cast thirty (30%) percent of the voting interests.

4.5 Majority Vote. The acts approved by a majority of the voting interests present and voting, in person or by proxy, at a meeting at which a quorum shall have been attained shall be binding upon all Parcel Owners for all purposes, except where otherwise provided by law, the Deed of Restrictions, the Articles or these Bylaws.

4.6 Votes/Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid

for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be filed in writing, signed by the person authorized to cast the vote for the Parcel and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Holders of proxies must be persons eligible to cast a vote on behalf of a Parcel as set forth in Section 3.2 of these Bylaws, or a spouse of an eligible voter.

An executed facsimile appearing to have been transmitted by the proxy giver, or a photographic or equivalent reproduction of a proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the owner's intent to cast a proxy vote and ratifying the vote cast by his or her proxy.

4.7 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting.

4.8 Order of Business. If a quorum has been attained, the order of business at annual Members' meetings, and, if applicable, at other Members' meetings, shall be:

- (a) Call to order by President;
- (b) At the discretion of the President, appointment by the President of a chairperson of the meeting (who need not be a Member or a director);
- (c) Calling of the roll, certifying of proxies, and determination of a quorum, or in lieu thereof, certification and acceptance of the preregistration and registration procedures establishing the owners represented in person, and by proxy;
- (d) Proof of notice of the meeting or waiver of notice;
- (e) Reading and disposal of any unapproved minutes;
- (f) Reports of officers;
- (g) Reports of committees;
- (h) Ask for nominations from the floor;
- (i) Call for final balloting on election of directors and close of balloting;
- (j) Appointment of inspectors of election;
- (k) Election of directors;
- (l) Unfinished business;

- (m) New business;
- (n) Member comments;
- (o) Adjournment.

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

4.9 Minutes of Meeting. The Board approved minutes of all meetings of Parcel Owners shall be kept available for inspection by Parcel Owners or their authorized representatives at any reasonable time. The Association shall retain these minutes for a period of not less than seven years. Minutes for each meeting must be reduced to written form within sixty (60) days after the meeting date.

4.10 Action without a Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, provided the Association mails or delivers a letter or similar communication to each owner that explains the proposed action. The communication shall include a form of consent to permit each owner to consent to the proposed action, and instructions on consent procedures. The Association may proceed with the proposed action without further notice and without a vote at a membership meeting provided consents in writing, setting forth the action so taken, shall be signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of Members at which a quorum of Members entitled to vote thereon were present and voted. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the Members at a meeting of the Members held on the sixtieth (60th) day. Within ten (10) days after obtaining such authorization by written consent, notice must be given to Members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. Members may also consent in writing to actions taken at a meeting by providing a written statement to that effect and their vote shall be fully counted as though they had attended the meeting.

5. Directors.

5.1 Number, Tenure and Qualifications. The number of Directors which shall constitute the whole Board of Directors shall be five (5). All Directors shall be elected for two (2) year terms. A Director's term ends at the annual election at which his successor is to be duly elected, or at such other time as may be provided by law. Directors shall be elected by the Members as described in Section 5.3 below, or in the case of a vacancy, as provided in 5.4 below.

5.2 Qualifications. Every director must be at least 18 years of age and a person that is

eligible to cast a vote on behalf of a unit as set forth in Section 3.2 of these Bylaws, or a spouse of an eligible voter.

5.3 Election of Directors. The following procedures shall apply to the election of directors:

(a) **The Board of Directors may appoint** a nominating committee to nominate or recommend specific persons for election to the Board, and shall generally recruit and encourage eligible persons to run as candidates for election to the Board.

(b) **Any eligible person desiring to be a candidate** may submit a self nomination, in writing, not less than forty (40) days prior to the scheduled election and shall automatically be entitled to be listed on the ballot.

(c) **The ballot prepared for the annual meeting** shall list all Director Candidates in alphabetical order. Ballots shall be mailed to all voting interests with notice of the annual meeting and may be returned to the Association prior to the meeting, or cast at the meeting.

(d) **Nominations shall also be accepted** from the floor on the date of the election.

(e) **The election shall be by plurality vote** (the nominees receiving the highest number of votes are elected). Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by the flipping of a coin by a neutral party or by lot.

(f) **No election shall be necessary** if the number of candidates is less than or equal to the number of vacancies.

5.4 Vacancies on the Board. If the office of any director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected as follows:

(a) **If a vacancy is caused by the death, disqualification or resignation** of a director, a majority of the remaining directors, even though less than a quorum, shall appoint a successor, who shall hold office for the remaining unexpired term.

(b) **If a vacancy occurs as a result of a recall** and less than a majority of the directors are removed, the vacancy may be filled by appointment by a majority of the remaining directors, though less than a quorum. If vacancies occur as a result of a recall in which a majority or more of the directors are removed, the vacancies shall be filled by the Members in the agreements used to recall the Board Members, or by vote at the recall meeting, as applicable.

For purposes of the foregoing provisions, in order to establish a quorum at the Board of Director's meeting held to appoint a replacement Member to the Board, it shall be

necessary only for a majority of the remaining directors to attend the meeting, either in person or by telephone conference participation.

5.5 Removal of Directors. 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. The question shall be determined separately as to each director sought to be removed. If a special meeting is called by twenty percent (20%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. All recall proceedings shall be in accordance with the provisions of Section 720.303(10), Florida Statutes (2007), as amended from time to time.

5.6 Organizational Meeting. The organizational meeting of elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors.

5.7 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times as shall be determined by a majority of the directors. Except for meetings with the Association's attorney which are subject to the attorney-client privilege, as provided by law, meetings of the Board of Directors shall be open to all Parcel Owners. Conspicuous notice of such meetings shall be posted at a designated location in the Community at least forty-eight (48) continuous hours in advance for the attention of the Members of the Association, except in the event of an emergency. Conspicuous written notice of any meeting at which a special assessment, or at which rules regarding Parcel use, will be considered, shall be provided to the Parcel Owners via one of the methods set forth in Section 4.3 of these Bylaws and posted at a designated location in the Community not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by affidavit by the person providing the notice, and filed among the official records of the Association.

5.8 Special Meetings. Special meetings of the directors may be called by the President, or Vice President, and must be called by the President or Secretary at the written request of two (2) directors. Special meetings of the Board of Directors shall be noticed and conducted in the same manner as provided herein for regular meetings. Parcel Owners may petition for an item of business to be discussed at a board meeting to the extent and so long as permitted by Section 720.303(2)(d), Florida Statutes, as amended from time to time.

5.9 Notice to Board Members/Waiver of Notice. Notice of Board meetings shall be given to Board Members in person, by telephone or one of the methods set forth in Section 4.3 of these Bylaws which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than forty-eight (48) hours prior to the meeting. Any director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said director of notice. Attendance by any director at a meeting shall constitute a waiver of notice of such meeting, except when attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting was not lawfully called.

5.10 Quorum. Except as provided in Section 5.4 hereof, a quorum at directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of directors is specifically required by the Deed of Restrictions, the Articles or these Bylaws. Directors may not vote by proxy or secret ballot at Board meetings (except that Directors may vote by secret ballot when electing Officers) and a vote or abstention for each member present shall be recorded in the minutes. Directors may not abstain from voting except in the case of an asserted conflict of interest.

5.11 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

5.12 Joinder in Meeting by Approval of Minutes. A Member of the Board may submit in writing his or her agreement or disagreement with any action taken at a meeting that the Member did not attend, but such action may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

5.13 Presiding Officer. The presiding officer at the directors' meetings shall be the President (who may, however, designate any other person to preside). In the absence of the presiding officer, the directors present may designate any person to preside.

5.14 Order of Business. If a quorum has been attained, the order of business at directors' meetings shall be:

- (a) Proof of due notice of meeting;
- (b) Reading and disposal of any unapproved minutes;
- (c) Report of officers and committees;
- (d) Unfinished business;
- (e) New business;
- (f) Member comments;
- (g) Adjournment.

Such order may be waived in whole or in part by direction of the President, or the presiding officer.

5.15 Minutes of Meetings. The Board approved minutes of all meetings of the Board

of Directors shall be kept available for inspection by Parcel Owners, or their authorized representatives, at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

5.16 Executive Committee: Other Committees. The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three (3) or more Members of the Board of Directors. Such Executive Committee shall have and may exercise all of the powers of the Board of Directors in management of the business and affairs of the Community during the period between the meetings of the Board of Directors insofar as may be permitted by law, except that the Executive Committee shall **not** have power (a) to determine the Common Expenses required for the affairs of the Community, (b) to determine the assessments payable by the Parcel Owners to meet the Common Expenses, (c) to adopt or amend any rules and regulations governing the details of the operation and use of the Parcels or Common Areas, (d) to fill vacancies on the Board of Directors or (e) to borrow money.

The Board of Directors may by resolution create other committees and may invest in such committees such powers and responsibilities as the Board shall deem advisable. The Board may authorize the President to appoint committee Members, and designate the chairpersons of each committee.

Any committee authorized to take final action on behalf of the Board regarding (1) the approval or disapproval of architectural decisions or (2) the authorization of expenditures of Association funds, shall conduct their affairs in the same manner as provided in these Bylaws for Board of Director meetings. All other committees may meet and conduct their affairs in private without prior notice or owner participation. Notwithstanding any other law or documentary provision, the requirement that committee meetings be open to the Parcel Owners is inapplicable to meetings between a committee and the Association's attorney which is subject to the attorney-client privilege, as provided by law.

6. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Community and the Association and may take all acts, through the proper officers of the Association, in executing such powers, except such acts which by law, the Deed of Restrictions, the Articles or these Bylaws may **not** be delegated to the Board of Directors by the Parcel Owners. Such powers and duties of the Board of Directors shall include the following:

(a) **Operating and maintaining the Common Areas**, including surface water and drainage facilities and systems.

(b) **Determining and paying the Common Expenses** required for the operation of the Community and the Association.

(c) **Collecting the assessments** for Common Expenses from Parcel Owners.

(d) **Employing and dismissing the personnel** necessary for the maintenance and operation of the Community and the Association.

(e) **Adopting and amending rules and regulations** concerning the operation and use of the Common Areas and to establish criteria for architectural approval, as provided in the Deed of Restrictions.

(f) **Maintaining accounts** at depositories on behalf of the Association and designating the signatories.

(g) **Purchasing Parcels** at foreclosure or other judicial sales, in the name of the Association, or its designee.

(h) **Enforcing obligations** of the Parcel Owners.

(i) **Levying fines** against Parcel Owners or suspending the right to use the common areas and facilities for a reasonable period of time for violations of the Governing Documents or the Rules and Regulations. The Board of Directors may levy a fine against a Parcel Owner, his or her family member, tenants, guests, visitors, or invitees, not to exceed one hundred dollars (\$100.00) per violation. A fine may be levied on the basis of each day of a continuing violation, except that no such fine may exceed two thousand five hundred dollars (\$2,500.00) in the aggregate. A separate fine for each repeat or continued violation, may be levied, however, written notice of the nature of the violation and an opportunity to attend a hearing shall be given prior to the levy of the initial fine. No written notice or hearing shall be necessary for the levy of a separate fine for repeat or continued violations if substantially similar to the initial violation for which notice and a hearing was provided. The Board of Directors shall have the authority to adopt rules, regulations and policies to fully implement its fining and suspension authority.

The party against whom the fine is sought to be levied or whose right to use the common areas and facilities is sought to be suspended shall be afforded an opportunity for a hearing after reasonable notice of not less than fourteen (14) days and said notice shall include:

1. A statement of the date, time and place of the hearing;
2. A statement of the provisions of the Deed of Restrictions, Association Bylaws, or Association Rules which have allegedly been violated; and
3. A short and plain statement of the matters asserted by the Association.

The party against whom the fine may be levied or the suspension may be imposed shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be conducted before a panel of three (3) Parcel Owners appointed by the Board, none of whom may then be serving as a director, officer or employee of the Association, or be a spouse, parent, child, brother, or sister of an officer, director, or employee. If the panel, by majority vote, which

may be taken by secret ballot, does not agree with the fine or suspension, it may not be levied or imposed.

(j) **Borrowing money on behalf of the Association** when required in connection with the operation, care, upkeep and maintenance of the Community. The Association may pledge personal property (including reserve funds and assessment rights) as security for a loan, but may not mortgage the Common Area unless approved by at least two-thirds (2/3rds) of the entire voting interests.

(k) **Contracting for a management company** of the Community upon approval by A majority of the voting interest of the community The Community.

(l) **Contracting for the maintenance of the Community.** All contracts for the purchase, lease or renting of materials or equipment, all contracts for services, and any contract that is not to be fully performed within one year, shall be in writing. For so long as required by law, the Association shall obtain competitive bids for any contract which requires payment exceeding ten (10%) percent of the total annual budget of the Association (except for contracts with employees of the Association, attorneys, accountants, architects, engineers, or landscape architects), unless the products and services are needed as the result of any emergency or unless the desired supplier is the only source of supply within the county serving the Association. The Board need not accept the lowest bid.

(m) **Exercising (i) all powers specifically set forth in the Deed of Restrictions, the Articles, these Bylaws (ii) all powers incidental thereto, and (iii) all other powers granted by statute or other law to a Florida corporation not for profit.**

(n) **Convey a portion of the Common Areas or personal property of the Association to a condemning authority or a utility for the purpose of providing utility easements, right-of-way expansion, or other public utility purposes, whether negotiated or as a result of eminent domain proceedings.**

(o) **Provide and maintain waste water treatment and collection facilities for Captain's Cove Homeowners Association, Captain's Cove Condominiums, and Captain's Harbor Condominiums.**

(p) **Except as otherwise provided in paragraph (n) above, the Board may not sell, lease, donate, rent, or otherwise dispose of any or all Common Property without the prior written approval of two-thirds (2/3) of the Parcel Owners of the Community.**

(q) **Review and approve building plans and specifications in accordance with the Deed of Restrictions.**

7. Emergency Board Powers.

In the event of any "emergency" as defined below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by

Section 617.0207, Florida Statutes (2007), and Section 617.0303, Florida Statutes (2007), as amended from time to time.

(a) **The Board may name** as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

(b) **The Board may relocate** the principal office or designate alternative principal offices or authorize the officers to do so.

(c) **During any emergency the Board may hold meetings with notice given** only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(d) **Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.**

(e) **The Board may use reserve funds to meet Association needs.**

(f) **Any officer, Director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.**

(g) **These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.**

(h) **For purposes of this Section only, an "emergency" exists only during a period of time that the home, or the immediate geographic area in which the home is located, is subjected to:**

(1) **a state of emergency declared by local civil or law enforcement authorities;**

(2) **a hurricane warning;**

(3) **a partial or complete evacuation order;**

(4) **federal or state "disaster area" status;**

(5) **a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the Community, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism;**
or

(6) an unanticipated set of circumstances, which, if not acted upon with immediacy, is likely to cause imminent and significant financial harm to the Association, the Owners, the Community, or Association Property.

(i) **Additional Board Authority.** In addition to Board authority granted by law and the Governing Documents, the Board shall have the power and authority to declare any portion of the Common Area unavailable for occupation by owners, tenants, or guests after a casualty, including during the rebuilding process. Such decision by the Board shall be made only if necessary to protect the health, safety, or welfare of the Association, owners, tenants, or guests.

8. Officers.

8.1 **Executive Officers.** The executive officers of the Association shall be a President, Vice-President, a Treasurer and a Secretary (the president and vice-president must be directors). All officers shall be elected by the Board of Directors and may be peremptorily removed at any meeting by concurrence of a majority of the directors. A person may hold only one (1) office. No person shall sign an instrument or perform an act in the capacity of more than one (1) office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association.

8.2 **President.** The President shall be the chief executive officer of the Association, and shall have all of the powers and duties that are usually vested in the office of president of an association. Any Director is eligible to serve as President.

8.3 **Vice-President.** A Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President, and shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice-president of an association and as may be required by the directors or the President.

8.4 **Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the Members, shall attend to the giving of all notices to the Members and directors and other notices required by law, shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed, and shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the directors or the President.

The official records shall be maintained within the State of Florida and shall be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt of a written request for access. If the association has a photocopy machine available where the records are maintained, it will provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside vendor and may charge the actual cost of copying. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members.

8.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness, shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. The Treasurer shall submit a Treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of treasurer and as may be required by the directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

The Treasurer, and/or President, shall be the signatories of record for all financial matters.

8.6 Delegation. The Board of Directors may delegate any or all of the functions of the Secretary or Treasurer to an agent or employee, provided that the Secretary or Treasurer shall in such instance generally supervise the performance of the agent or employee in the performance of such functions.

9. Compensation. Neither directors nor officers shall receive compensation for their services as such, provided however, the Board of Directors may hire a Director or officer as an employee of the Association, and may contract with a Director or officer for management or any other compensable service, in their reasonable business discretion. Directors and Officers are entitled to reimbursement of expenditures incurred in the performance of their duties.

10. Resignations. Any director or officer may resign his post at any time by written resignation, including electronic transmission, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Parcels owned by any director or officer shall constitute a resignation of such director or officer without need for a written resignation.

11. Fiscal Matters. The provisions for fiscal management of the Association set forth in the Deed of Restrictions shall be supplemented by the following:

11.1 Budget. The Board of Directors shall adopt a budget of Common Expense for the Community. The assessment is payable annually. The Board of Directors shall post notice of the budget meeting, along with a copy of the proposed budget, at least 48 hours in advance as set forth in Article 5.7 of these Bylaws, and after adoption of the budget, shall provide a single copy of the budget to each Parcel Owner at the annual meeting. The Association shall send a written notice to Owners not present at the annual meeting advising that a copy of the budget will be mailed upon request. If requested, the copy must be provided to the Owner within the time limit set forth in Section 720.303(5), Florida Statutes, at no cost to the Member.

11.2 Reserves. The Board may establish one or more reserve accounts in the operating budget for contingencies, operating expenses, repairs, capital improvements or special projects. These reserves may be used to offset cash flow shortages, provide financial stability, and avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be included in the proposed annual budget. These funds may be spent for any purpose approved by the Board.

11.3 Assessments. An assessment means a sum of money payable by the owner of a Parcel to the Association, which if not paid by the owner of the Parcel can result in a lien against the Parcel.

11.4 Determination of Assessments. In the event that any Member owns two (2) adjacent Parcels, one of which is improved with a Dwelling Unit, the improved Parcel shall be assessed as a Homesite Parcel, and the vacant Parcel shall be assessed as a Vacant Parcel. If a Dwelling Unit has been constructed across a Parcel line so that neither Parcel can be further improved with an additional Dwelling Unit, the total Parcels shall be assessed as one Homesite Parcel.

11.5 Special Assessments. Special assessments may be approved by the Board of Directors. All special assessments shall be secured by a lien in the same manner as regular annual assessments per the Deed of Restrictions.

11.6 Assessment Roll. The assessments for Association expenses and charges shall be set forth upon a roll of the Parcels which shall be available for inspection at all reasonable times by Members. Such roll shall indicate for each Parcel the name and address of the owner, and the assessments and charges paid and unpaid. A certificate made by a duly authorized representative of the Association or by the Board of Directors as to the status of a Member's account may be relied upon for all purposes by any person for whom made.

11.7 Liability for Assessments and Charges. A Member shall be liable for all assessments and charges coming due while the owner of a Parcel, and such Member and Member's grantees or successors after a voluntary conveyance or other acquisition 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 Association property or by abandonment of the Parcel for which the assessments are due.

11.8 Fidelity Bonds. The President, Vice-President(s), Secretary and Treasurer, and all other persons who are authorized to sign checks, or have access to or control of Association funds shall be bonded in such amounts as may be required by law or otherwise determined by the Board of Directors. The premium on such bonds is a Common Expense.

11.9 Financial Reporting. Within 90 days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the Association or received from the third party, but not later than 120 days after the end of the fiscal year, the Association shall, within the time limits set forth in Section 720.303(5) Florida Statutes (2007), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial statements shall be based upon the Association's total annual revenues, as per section 720.303 (7), Florida Statutes (2007).

11.10 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may adopt a different fiscal year in accordance with law and the regulations of the Internal Revenue Service.

11.11 Depository. The depository of the Association shall be such bank, banks or other federally insured depository, in the State, as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited not to exceed the amount of federal insurance available provided for any account. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons authorized by the directors. All funds shall be maintained separately in the Association's name.

12. Roster of Parcel Owners. Each Parcel Owner shall, within thirty (30) days of taking title, file with the Association a copy of the recorded deed or other recorded document showing his ownership, and remit an e-stopple fee, as determined annually by the Board, to the Association. The Association shall maintain such information and may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Parcel Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other owners shall produce adequate evidence, as provided above, of their ownership interest and shall waive in writing notice of such meeting.

13. Parliamentary Rules. Robert's Rules of Order (latest edition) shall be used as a 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 of Directors designates a third person, as Parliamentarian, shall be binding unless contrary to law.

14. Indemnification.

14.1 Indemnity. The Association shall indemnify any officer, director, or committee member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, or committee member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnity, that he did not act in good faith or in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. It is the intent of the membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their officers, directors, and committee members as permitted by Florida law.

14.2 Defense. To the extent that a director, officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 14.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

14.3 Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected director, officer, or committee member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article 14.

14.4 Miscellaneous. The indemnification provided by this Article 14 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

14.5 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, or agent of the Association, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this

Article.

14.6 Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article 14 may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

14.7 Delegation. To the extent permitted by law, the powers and duties of the directors and officers may be delegated for the purpose of management.

15. Amendments. These Bylaws may be amended in the following manner:

15.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.

15.2 Resolution. A proposed amendment may be proposed either by the President, the Board of Directors, or by not less than twenty percent (20%) of the voting interests of the Association.

15.3 Approval. Except as otherwise required by law, a proposed amendment to these bylaws shall be adopted if it is approved by a majority of participating interest of the association, present and voting in person or by proxy, at any annual or special meeting, provided that notice of any proposed amendment has been given to the members of the association, and that the contains the text of the proposed amendment.

15.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed with the formalities of a deed. The amendment shall be effective when the certificate and a copy of the amendment are recorded in the Public Records of Lee County.

16. Rules and Regulations. The Board of Directors may, from time to time, adopt, amend or add to rules and regulations governing the use of Common Areas, the operation of the Association, and architectural standards to the extent permitted by the Deed of Restrictions.

17. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all genders.

18. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these Bylaws or the intent of any provision hereof.

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