

Instrument prepared by and return to:  
Ashley D. Lupo, Esq.  
Roetzel and Andress, L.P.A.  
850 Park Shore Drive, Third Floor  
Naples, FL 34103

(Space above line for recording information)

**CERTIFICATE OF AMENDMENT**

The undersigned, being the President of Gleneagles at Pelican Sound Neighborhood Association, Inc., a Florida not for profit corporation, does hereby certify that at the annual members meeting on February 27, 2013, where a quorum was present, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Gleneagles at Pelican Sound Neighborhood and the Amended and Restated Bylaws of Gleneagles at Pelican Sound Neighborhood Association, Inc. set forth in Exhibits "A" and "B" respectively and attached hereto, were approved and adopted by the required vote of the membership. The original Declaration of Covenants, Conditions and Restrictions for Gleneagles at Pelican Sound Neighborhood was recorded at O.R. Book 3036 at Page 1611, et. seq., Public Records of Lee County, Florida.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and the seal of the corporation.

GLENEAGLES AT PELICAN SOUND  
NEIGHBORHOOD ASSOCIATION, INC.

(SEAL)

Isaac Stringham  
Witness  
Print Name: Lisa D. Stringham

By: Robert S. Clemons  
Print Name: ROBERT S. CLEMONS President

Pam Nuedling  
Witness  
Print Name: Pam Nuedling

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of March, 2013, by Robert Clemons as President of Gleneagles at Pelican Sound Neighborhood Association, Inc., the corporation described in the foregoing instrument, who is personally known to me or who has produced \_\_\_\_\_ as identification and who took an oath, and acknowledged executing the same under authority vested in him by said corporation.

Christa Mcknight  
Notary Public  
Printed Name of Notary Public

My Commission Expires:



**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**GLENEAGLES AT PELICAN SOUND NEIGHBORHOOD**

**EXHIBIT "A"**  
**TO CERTIFICATE**

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Note: Substantial rewording of entire Declaration of Covenants, Conditions and Restrictions. See current Declaration of Covenants, Conditions and Restrictions, and subsequent amendments thereto for present text.

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR GLENEAGLES AT PELICAN SOUND NEIGHBORHOOD**

**THIS AMENDED AND RESTATED DECLARATION** is made this 27 day of February, 2013, by Gleneagles at Pelican Sound Neighborhood Association, Inc., a Florida Not-For-Profit Corporation ("Association").

**The original Declaration of Covenants, Condition and Restriction for Gleneagles at Pelican Sound Neighborhood was recorded the in Official Records Book 3036, Pages 1611 through 1640 of the Public Records of Lee County, Florida, to provide for the preservation and enhancement of the property values, amenities and opportunities in the Gleneagles at Pelican Sound Neighborhood and to create a corporate entity to which was to be delegated and assigned the powers of administering and enforcing the Declarations of Covenants, Conditions and Restrictions, and collecting and disbursing the assessments and charges created thereby. The acquisition of title to property or any other interest in Gleneagles at Pelican Sound or the lease, occupancy, or use of any portion of a Lot constitutes an acceptance and ratification of all provisions of this instrument as amended from time to time, and an agreement to be bound by its terms.**

**1. DEFINITIONS.** All terms and words in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Sound Golf & River Club, Inc., as originally recorded in O.R. Book 3002, Pages 869 through 933, Official Records of Lee County, Florida, (the "Club Declaration"), as it may be amended from time to time, or, if different, the meanings stated below, unless the context clearly requires otherwise.

1.1 **"ARC"** or **"Architectural Review Committee"** means the Committee described in Article XIII of the Club Declaration.

1.2 **"Association"** or **"Neighborhood Association"** means Gleneagles at Pelican Sound Neighborhood Association, Inc. a Florida corporation not for profit.

1.3 **"Association Property"** or **"Common Areas"** means and refers to the land, systems, facilities, rights and easements which may be deeded, leased, licensed, granted, reserved, assigned, dedicated or transferred to the Association, or was or is designated Association Property, together with all improvements and personal property thereon and equipment, facilities and rights associated therewith, including real property, regardless of whether title has been conveyed to the Association, that has been dedicated to the Association or its Members by a recorded plat or committed by this Declaration or other restrictive covenants to be leased or conveyed to the Association or any property for which the Association has assumed responsibility of maintenance. The term "Association Property" shall include, without limitation, all "Common Areas" within the Properties, as that term is defined in Section 720.301 of the Act, and as may be dedicated or described on the Plat for the Properties.

1.4 **"Board"** means the Board of Directors of the Association.

1.5 **"Club"** means Pelican Sound Golf & River Club, Inc., a Florida corporation not for profit.

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1.6 "**Club Declaration**" means the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Sound Golf & River Club, Inc. , as recorded in O.R. Book 3002, Pages 869 through 933, Official Records of Lee County, Florida (the "Club Declaration"), as it may be amended from time to time.

1.7 "**Club Documents**" means the Club Declaration and all recorded exhibits to it, including the Articles of Incorporation and By-Laws of the Club, all as amended from time to time.

1.8 "**Community Development District**" or "**CDD**" means the River Ridge Community Development District which is a special purpose government unit created under Chapter 190, Florida Statutes, and which may fund, construct, operate and maintain certain infrastructure and community services within or outside the Properties.

1.9 "**Community**" or "**Properties**" means the real property described as such in to the Club Declaration, together with any additional property subjected to the Club Declaration from time to time.

1.10 "**Governing Documents**" means the Club Documents, as well as this Declaration and all recorded exhibits to it, and the Rules and Regulations 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.

1.11 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Gleneagles at Pelican Sound Neighborhood, as amended from time to time.

1.12 "**Guest**" means a person who is physically present in, or occupies a Living Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.13 "**Institutional Mortgagee**" or "**Institutional Lender**" shall refer to any one of the following:

- A. A lending institution holding a mortgage encumbering a Lot, including without limitation any of the following types of institutions or entities: a federal or state savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company doing business in Florida which is approved by the Commissioner of Insurance of the State of Florida.
- B. A governmental, quasi-governmental or private company that is engaged in the business of making, purchasing, holding, guaranteeing or insuring residential mortgages, including without limitation the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration and the Department of Urban Development.

1.14 "**Lease**" means the grant by an owner of a temporary right to occupy the owner's Living Unit for valuable consideration.

1.15 "**Living Unit**," "**Unit**," or "**Residence**" means any or all the residential dwellings which will be constructed on the Lots, each intended for use and occupancy as a residence for a single family.

1.16 "**Lot**" means any one or more of the up to sixty-nine (69) platted parcels of land into which the Neighborhood has been subdivided as shown in Exhibit "B," upon each of which a Living Unit has been constructed. Wherever it appears, "Lot" shall be interpreted as if it is followed by the words "and Living Unit constructed thereon," except where the context clearly requires a different interpretation.

1.17 "**Neighborhood**" means all the real property which is subject to this Declaration.

1.18 "**Occupant**" when used in connection with a Living Unit, means any person who is physically present in the Living Unit on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant.

1.19 "**Owner**" or "**Member**" means a record owner of legal title to a Lot.

1.20 "**Pelican Sound**" means the name given to the master planned community developed on the Properties in Lee County in accordance with the Club Documents.

1.21 "**Rules and Regulations**" means the administrative rules and regulations governing procedures for administering the Association and the Neighborhood, as adopted, amended or rescinded by resolution of the Board of Directors.

1.22 "**Service Charge**" means a charge against the owners of one or more Lots for any service, material or combination thereof which may be provided by the Association for the use and benefit of those owners, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the owners accepting or receiving the repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Lots so benefitted. The owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.23 "**Temporary**" or "**Temporarily**" means not more than sixty (60) days in any calendar year.

2. **GLENEAGLES AT PELICAN SOUND.** The real property which shall be held, transferred, sold, conveyed, given, donated, leased and/or occupied subject to this Declaration shall include the real property described in Exhibit "A", attached hereto, together with any and all other real property which has since been or may be subjected in the future to the conditions of this Declaration.

3. **ASSOCIATION; MEMBERSHIP VOTING RIGHTS.** The administration and management of this Neighborhood shall be by Gleneagles at Pelican Sound Neighborhood Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

3.1 **Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached as Exhibit "C".

3.2 **Bylaws.** The Bylaws of the Association shall be the Amended and Restated Bylaws as attached as Exhibit "D" to this Declaration, as they are amended from time to time.

3.3 **Members.** Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership and the fulfillment of the requirements set forth in the Bylaws.

3.4 **Voting Interests.** The members of the Association are entitled to one (1) vote in Association affairs for each Lot owned by them. Votes shall be cast as provided in the Bylaws.

3.5 **Termination of Membership.** 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 Association during the period of his membership, nor does it impair any rights or remedies which 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.

3.6 **Association As Owner of Lots.** The Association has the power to purchase Lots and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns two (2) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests, unless the Association obtains title to the Lot by virtue of its foreclosure action, in which case no membership vote shall be required.

3.7 **Board of Directors.** Except as otherwise specifically provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members.

3.8 **Powers and Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 720, Florida Statutes and (the "Act") Chapter 617, Florida Statutes, to the extent not inconsistent with the foregoing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Neighborhood. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as the representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

3.9 **Member Approval of Certain Litigation.** Notwithstanding any other provisions of the Governing Documents, the Board of Directors shall be required to obtain the prior approval of at least three-fourths (3/4ths) of the voting interests of the Association present and voting at a membership meeting prior to the payment of, or contracting for the payment of, legal or other fees or expenses to any person engaged by the Association in contemplation of a lawsuit or for the purposes of making, preparing or investigating any lawsuit, where the amount in controversy is in excess of \$50,000, or commencing any lawsuit, other than for the following purposes:

- A. The collection of assessments;

Amended and Restated Declaration of Covenants, Conditions and Restrictions  
For  
Gleneagles at Pelican Sound Neighborhood

- B. The collection of other charges which members are obligated to pay;
- C. The enforcement of the Governing Documents;
- D. The enforcement of the rules and regulations of the Association;
- E. In an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members, but in such event, the aforesaid vote shall be taken with respect to the continuation of the action at the earliest practical date (the eminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of the members; or
- F. Filing a compulsory counterclaim.

This Section 3.9 shall not be amended without the approval of at least three-fourth (3/4ths) of all voting interests present and voting at a membership meeting.

4. **ASSESSMENTS.** The Association has the authority to levy assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Neighborhood Common Areas, association property, and those components of the individual Lots for which the Association is responsible; the expenses of insurance for the Association and/or directors and officers; the costs of carrying out the powers and duties of the Association; and any other expense, whether or not included in the foregoing, designated as a common expense by this Declaration or the Bylaws. If the Board enters into such a contract, the costs of a duly franchised cable or satellite television service obtained pursuant to a bulk contract shall be a common expense. The Club has the authority to enter into such an agreement for the Neighborhood in which case each Lot shall be billed directly by the Club as a portion of the Club's assessments.

4.1 **Covenant to Pay Assessments.** Each Owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- A. The Lot's pro-rata share of annual assessments based on the annual budget adopted by the Association;
- B. The Lot's pro-rata share of any special assessments levied for expenses not provided for by the annual budget; and
- C. Any service assessments or charges against less than all of the Lots specifically authorized in this Declaration or the Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws. The assessments and charges, together with interest, late fees, costs, and reasonable attorneys' fees shall bind each Lot in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor any amounts paid by the transferee therefor. Except as provided elsewhere in this Declaration as to Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

Amended and Restated Declaration of Covenants, Conditions and Restrictions

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Gleneagles at Pelican Sound Neighborhood

4.2 **Share of Assessments.** Except as otherwise provided below, each Lot and the owner thereof shall be liable for an equal share of all annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots included within the Neighborhood.

4.3 **Establishment of Liens to Secure Payment.** All assessments and charges levied by the Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, late fees, and costs of collection (including, but not limited to costs and reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Lot against which each such assessment or charge is made, and shall also be the personal obligation of the owner of each Lot assessed. This lien is superior to any homestead rights the owner may acquire. No owner may be exempt from personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by a waiver of use rights, or by abandoning the Lot. The Association's lien is activated by recording a Claim of Lien by the Association in the public records of Lee County, but shall relate back to the date of recording of the original Declaration, setting forth the amount and due date of each unpaid assessment or charge as of the date the Claim of Lien is recorded. The Claim of Lien secures payment of all assessments and charges due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

4.4 **Priority of Liens.** Except as otherwise provided by law, the Association's lien for unpaid assessments and charges shall be subordinate and inferior to that of any recorded First Institutional Mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage regardless of when recorded. A lease of a Living Unit is also subordinate and inferior to any Claim of Lien for the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. A mortgagee of a first mortgage of record acquiring title to a Lot at the public sale resulting from a foreclosure judgment in a foreclosure suit in which the Association has been initially named as a defendant junior lienholder, or by deed in lieu of foreclosure where such mortgage is no longer a lien against the property, shall be liable for the share of common expenses or assessments attributable to the Lot, which came due prior to the mortgagee's acquisition of title, to the fullest extent provided by the Act, as the same may be amended from time to time, plus attorney fees and costs of collection, including the protection of any assessment rights in any foreclosure action by any Institutional Lender or in an Owner's bankruptcy action. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all Owners. No acquirer of title to a Lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership. Third party purchaser acquiring title to a Lot at the public sale shall be responsible for all unpaid assessments, common expenses and other charges, including interest, late fees, attorneys fees and costs. Any unpaid assessment or charge which cannot be collected by reason of this Section shall be treated as a common expense, collectible from all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

The Association may file a Claim of Lien against a Lot for unpaid assessments after written notice or demand for past due assessments as well as any other amounts owed to the Association has been made by the Association. The written notice or demand must (i) provide the Owner with 45 days to make payment for all amounts due, including, but not limited to, any attorney's fees and actual costs associated with the

preparation and delivery of the written demand; and (ii) be sent by registered or certified mail, return receipt requested, and by first-class U.S. mail to the Owner at his/her last address as reflected in the records of the Association, if the address is within the U.S., and to the address of the Lot if the Owner's address as reflected in the records of the Association is not the Lot address. If the Owner's address is outside the U.S., the Association may send the notice to that address and to the Lot address via first-class U.S. mail. A Claim of Lien shall secure payment of all Assessments due at the time of recording (including interest, late fees, costs and attorney's fees as provided above), as well as all Assessments, interest, late fees, costs and attorney's fees coming due subsequently, until the Claim of Lien is satisfied or a final judgment of foreclosure obtained. Any payment received by the Association and accepted shall be applied first to any interest accrued, then to any late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent Assessment. The preceding sentence applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

4.5 **Collection of Assessments.** If any owner fails to pay any assessment, charge, or installment thereof, within ten (10) *days* after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association.

- A. To charge interest on such assessment or charge, from the due date until paid, at the highest rate allowed by law; and, in addition, to impose a late payment penalty which may not exceed the greater of twenty-five dollars (\$25.00) or 5% of each delinquent installment payment of the assessment, or such other maximum as may be provided for by law.
- B. To suspend the voting rights of the owner in the Association during the period of delinquency if any monetary obligation to the Association is delinquent in excess of ninety (90) days.
- C. To file an action in equity to foreclose its lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association, in the same manner as provided in Section 720.3085 of the Act, as amended from time to time.
- D. To bring an action at law for money judgment against the Owner without waiving any lien foreclosure rights of the Association.
- E. If an Owner is delinquent for more than ninety (90) days in paying any monetary obligation due to the Association, to levy reasonable fines, or may suspend the Owner's right to use common areas or common facilities until the monetary obligation is paid, except for that must be used to access the Lot, utility services, or parking. Any such fines or suspension shall be imposed in accordance with the requirements of the Act.
- F. If any Owner is delinquent for more than 90 days in paying any monetary obligation due to the Association to suspend the voting rights of a Member until the monetary obligation is paid.



- G. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Owner and the recording of a claim of lien, the Association may declare any Assessment installments due for the remainder of the budget year in which the claim of lien was filed to be accelerated and immediately due and payable.
- H. If a Lot is occupied by a tenant and the Owner is delinquent in paying any obligation due to the Association, the Association may make written demand on the tenant to pay directly to the Association the future monetary obligations related to the Lot, and the tenant must make such payment. Such demand shall be continuing in nature and the tenant must continue to pay the monetary obligations until the Association releases the tenant or the tenant discontinues its tenancy, provided that the tenant shall not be liable for any increase in monetary obligations due unless the tenant was notified in writing of the increase at least ten (10) days before the date on which rent is due. If the tenant fails to make such payment the Association may sue for eviction under Sections 83.59-83.65. Florida Statutes, as if the Association were a landlord thereunder, however, the Association is not otherwise considered a landlord under Chapter 83 of the Florida Statutes and shall have no duties thereunder.

4.6 **Certificate.** The Association shall, within fifteen (15) days of request for same, furnish to any owner liable for assessments a certificate in writing signed by an officer or agent of the Association, setting forth whether all assessments and charges against the owner's Lot have been paid. Any person, except the owner, who relies on the certificate, shall be protected thereby.

4.7 **Termination of the Association.** If the Association no longer exists for any reason, and if no other Neighborhood Association has assumed its duties and functions, the Club shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

5. **ARCHITECTURAL AND AESTHETIC CONTROL.** No owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style of roofing materials used on the Residence or appurtenant structure, including without limitation the color of the driveways, without prior written approval of Architectural Review Committee of the Club (the "ARC"). No building, structure or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Neighborhood Common Areas be performed without the prior written approval of the Board of Directors, as well as the ARC. In obtaining the written approval, the owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents and any Rules and Regulations adopted by the Board. Refusal to approve proposed changes may be based on purely aesthetic reasons. The membership, term of office, composition, compensation (if any), qualifications and procedures of the ARC shall be as provided in the Club Declaration and By-Laws of the Club.

6. **APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.**

6.1 **Appurtenances to Each Lot.** The owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

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- A. Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.
- B. The non-exclusive right to use the Neighborhood Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.
- C. Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth in Section 4.2 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.
- D. Class "A" membership and voting rights in the Club, and the non-exclusive right to use Club Common Areas, subject to the restrictions and limitations provided in the Governing Documents.
- E. Other appurtenances as may be provided in the Governing Documents.

The appurtenances to a Lot automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Lots.

6.2 **Use and Possession**. An owner is entitled to exclusive use and possession of his Lot and Living Unit. He is entitled to non-exclusive use of the Neighborhood Common Areas in accordance with the purposes for which they are intended, but no use of any Lot or Neighborhood Common Areas may unreasonably interfere with the rights of other owners or residents. No Lot may be subdivided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, and over the walkways and private roads laid out on the Club Common Area for use in common with all other owners, their tenants, guests and invitees. The portions of the Neighborhood Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners and each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

- A. The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of the Neighborhood Common Areas and improvements thereon.
- B. The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Neighborhood Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of owners to use the Neighborhood Common Areas for the purposes intended.

- C. The right of an owner to the non-exclusive use and enjoyment of the Neighborhood Common Areas and facilities thereon shall extend to the members of this immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.

The Association shall be responsible for the maintenance and operation of the Neighborhood Common Areas, and any improvements and personal property thereon, unless such authority is delegated to the Owners under the Governing Documents.

6.3 **Partition; Separation of Interests.** There shall be no judicial partition of the Neighborhood Common Areas, except as expressly provided elsewhere herein, nor shall any owner or any other person acquiring any interest in the Neighborhood, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Living Unit owned in co-tenancy. The ownership of any Lot and the ownership of the Living Unit constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Living Unit hold membership in the Association.

6.4 **Easements.** Each of the following easements and easement rights is reserved through the Neighborhood and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Neighborhood. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Neighborhood for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Neighborhood.

- A. **Utility and other Easements.** The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, and to relocate any existing easements, in any portion of the Neighborhood, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Neighborhood. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.
- B. **Encroachments.** If for any reason other than the intentional act of the owner or the Association, any Living Unit or Lot encroaches upon any of the Neighborhood Common Areas, upon any other Lot, or any Neighborhood Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- C. **Ingress and Egress.** A non-exclusive easement shall exist in favor of each owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Neighborhood Common Areas as from time to time may be

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intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Neighborhood Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

- D. **Drainage.** A perpetual, non-exclusive easement shall exist in favor of the Association, the Club, the CDD and their employees or other designees for the use of drainage areas established throughout the Neighborhood, and an easement for ingress, egress, and access to enter any portion of the Neighborhood 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 Neighborhood Common Areas by the CDD or 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.
- E. **Club.** A perpetual, non-exclusive easement shall exist in favor of the Club to perform any function on behalf of the Neighborhood, which forms the basis of a proper Neighborhood Expense, as further provided in the Club documents.

6.5 **Easements for Playing Golf.** Non-specific, non-exclusive easements are hereby created over all Lots, Living Units and the Neighborhood Common Areas to permit every act necessary, incidental, or appropriate to the playing of golf. These acts include, without limitation, the recovery by golfers of errant golf balls, the flight of golf balls over and across such Lots, Living Units or Common Areas, the landing of errant golf balls upon the Lots, Living Units or Common Areas, the use of necessary and usual golf carts and maintenance equipment, the usual and common noises and other disturbances created by maintenance of the course and the playing of the game of golf, including occasional tournaments, together with all other common and usual occurrences normally associated with the existence and operation of a golf course. The Association shall not be liable for damage to property of Lot owners from errant golf balls.

## 7. **MAINTENANCE; IMPROVEMENTS.**

7.1 **Responsibility of Owners.** The maintenance, repair and replacement of each Lot and Living Unit is the responsibility of its owner, except as provided in Section 7.2 below. The owner's responsibility includes the driveway located on his lot.

7.2 **Landscaping.** In order to provide a means by which the covenants in this Declaration requiring Lots to be maintained may be fulfilled without jeopardizing the security of the Community by the possibility of admission thereto of a large number of landscaping contractors and their agents and employees, the Association shall be responsible for the maintenance of landscaping and in particular lawn care and irrigation system maintenance for each and every Lot within the Neighborhood, and the cost shall be a common expense; provided, however, such duty of maintenance shall not extend to areas specifically designated by the Association as an "area of high maintenance", such as a rose garden. Areas of high maintenance shall be maintained by the owner of the Lot or by special arrangement as may be

approved by the Association. Should the maintenance, repair or replacement of any landscaping or irrigation be the result of the negligence, act or omission of the owner, their tenants, guests, agents or invitees, the cost of such maintenance, repair or replacement may be charged to the owner under Section 4.1 of this Declaration.

7.3 **Oak Tree Root Damage.** Oak trees planted in homeowners' lot easements may cause damage to utility lines, specifically potable water supply and irrigation water supply, as a result of infiltration of roots into the supply lines. The Association is responsible for the repair of such damage.

Additionally, spreading of the root system over time may cause damage to sidewalks, driveways or irrigation systems. As provided in Article 7.1 of the Declaration of Covenants, Conditions and Restrictions for Gleneagles at Pelican Sound Neighborhood, the repair of such damage is the responsibility of the owner on whose Lot the oak tree is located.

Should the homeowner in any way alter the natural growth of the root system, other than as a result of repairs for which the Association is responsible, then any adverse consequences to the tree resulting from such alteration shall be the responsibility of the homeowner.

7.4 **Irrigation System Damage to Driveways.** Irrigation lines running beneath driveways may rupture or leak potentially eroding the fill and causing damage to driveways. As provided in Section 7.2 of the Declaration of Covenants, Conditions and Restriction for Gleneagles at Pelican Sound Neighborhood, the repair of the irrigation system is the responsibility of the Association. As provided in Section 7.1 of the same Declaration, the repair of the driveway is the homeowner's responsibility.

7.5 **Enforcement of Maintenance.** If the owner of a Lot and Living Unit fails to maintain it as required in this Declaration, the Association may institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot and performing the work necessary to bring the Lot into compliance with the Governing Documents, with or without consent of the owner. The Association may, but is not obligated to, repair, replace, or maintain any item which constitutes a hazard to other property or residents, or which has a material adverse effect on the appearance of the Neighborhood. Any expenses so incurred by the Association shall be assessed against the owner as service assessments, together with reasonable attorney's fees and all other expenses of enforcement pursuant to the terms of this Declaration.

7.6 **Negligence, Damage Caused by Condition in Living Unit.** The owner of each Lot and Living Unit shall be personally liable for the expenses of any maintenance, repair or replacement made necessary by his negligence, act or omission, or by that of any member of his family or his guests, employees, invitees, agents, or lessees; but such liability shall be limited to the extent that such expenses are not met by the proceeds of insurance available.

7.7 **Termite Abatement.** Not later than March 31 of each calendar year, each Living Unit owner shall be required to show proof of the existence of a Termite Control System on their respective properties. Such system, and the evidence thereof, must be acceptable to and approved by the Board of Directors or its appointed designee. In the event a Living Unit owner does not or cannot provide evidence of an acceptable Termite Control System, the Association shall install an acceptable system, and assess and recover from that respective Living Unit owner, all costs associated with the installation and maintenance of such system which cost shall be a charge collectable as assessments pursuant to this Declaration.

## 8. INSURANCE; DUTY TO RECONSTRUCT.

8.1 **Duty to Insure and to Reconstruct.** Each owner shall at all times maintain property insurance, including casualty, windstorm and flood insurance, on his residence and all other insurable improvements in an amount equal to the full replacement cost thereof. If any Living Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements shall remove all debris and cause repair or replacement to be made in accordance with the Club documents. All such repairs or replacements must restore the improvements to substantially their original character, design and appearance, and shall utilize and conform to the original foundation and appearance of the original improvements, except as otherwise approved by the ARC. The Association shall have the right, but not the obligation, to request a copy of the owner's insurance policy required by this section. Upon written request to the owner, the owner shall provide the Association with a copy of the policy within thirty (30) days.

8.2 **Failure to Reconstruct.** If the owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in the Club Documents, the Association shall give written notice to the owner of his default. If the owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty (30) days after the Association mailed such notice, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to remove all debris and damaged improvements, and additionally to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section, which shall be in the sole discretion of the Board of Directors, the owner of the Lot shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Lot and residence to secure payment.

8.3 **Failure to Insure: Association as Additional Insured.** For the purpose of this Section 8, each owner of a Lot within the Neighborhood agrees that the Association shall be an additional insured under any contract of property insurance and/or flood insurance relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may exist, from time to time. The Association has the right to require each owner to produce proof of insurance. If an owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the owner, in writing, that it has procured such insurance, and the costs thereof. Such cost is assessable as a special charge against the Lot and collectable as an assessment pursuant to the terms of this Declaration.

8.4 **Association's Right of Entry.** For the purpose of performing the duties authorized by this Section 8, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the Lot at reasonable hours.

8.5 **Association Insurance: Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the owners without naming them, and their mortgagees.

8.6 **Required Coverage.** The Association shall maintain adequate liability insurance and casualty insurance covering all buildings and other insurable improvements (if any) within the Neighborhood Common Areas in an amount determined annually by the Board of Directors, such insurance to afford the following protection:

- A. **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism, and malicious mischief, and other hazards covered by what is commonly referred to as an "all risk" property contract.
- B. **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the owners as a group to any single owner.
- C. **Fidelity.** Adequate fidelity bond coverage for all individuals having control of or access to Association funds.

8.7 **Optional Coverage.** The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and owners. Some common examples are:

- A. Flood insurance.
- B. Broad Form Comprehensive General Liability Endorsement.
- C. Directors and Officers Liability.
- D. Automobile. Automobile liability for bodily injury and property damage for owned and/or non-owned motor vehicles, in such limits of protection and with such coverage as shall be required by the Board of Directors
- E. Medical Payments.

8.8 **Description of Coverage.** A detailed summary of the coverages included in the Association's policies shall be available for each owner upon request. All Association insurance policies shall be available for inspection by owners upon request.

8.9 **Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogate as to any claim against owners, the Association, or their respective servants, agents or guests, except for any claim based primarily upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

8.10 **Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

8.11 **Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

8.12 **Association as Agent.** The Association is hereby irrevocably appointed agent for each owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Living Units.

## 9. **GENERAL COVENANTS AND USE RESTRICTIONS.**

9.1 **Residential Use.** Each Living Unit shall be occupied by only one Family and its temporary guests at any time, as a residence and for no other purpose. No time-sharing, business or commercial activity shall be conducted in or from any Living Unit. No person may publicly advertise the address of a Living Unit as the address of any business. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. This Section 8.1 shall not be construed to prohibit any Living Unit occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Living Unit, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. This Section 9.1, however, is intended to prohibit commercial or business activity by an owner which would noticeably change the residential ambiance of the Neighborhood, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Neighborhood by persons making deliveries or pick-ups, employees or other business associates, or customers and clients. "Family" shall refer to one (1) natural person (as opposed to an artificial entity); or a group of two (2) or more natural persons living together each of whom is related to each of the others by blood, marriage, legal custody or adoption; or not more than two (2) persons not so related who reside together as a single housekeeping unit, along with their children, if any.

9.2 **Approval of Improvements by ARC.** As described in Section 5 hereof and in the Club Documents, all buildings, structures, landscaping and improvements to be built on or in the Community, including the Neighborhood, must be approved by the ARC. The Club Declaration provides the procedure and method of obtaining said approval.

9.3 **Leasing.** An owner may lease his Living Unit without prior Association approval, subject to the Club Declaration and the following restrictions and conditions:

- A. The lease must be written, and a fully executed copy must be provided to the Association not less than three (3) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require, including, but not limited to, personal information of each occupant under the lease and vehicle information.
- B. No Living Unit may be leased or rented for a term of less than thirty (30) consecutive days. No Living Unit may be leased for more than four terms during one calendar year without prior written approval of the Board of Directors, which may be granted in the Board's sole discretion to avoid undue hardship. The first



day of the lease shall determine in which calendar year the lease occurs, unless the lessee(s) occupies the Living Unit prior to the commencement of the lease term in which case the date of occupancy shall be determinative.

- C. No subleasing or assignment of lease rights is allowed. All of the provisions of the Governing Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Living Unit as a lessee or guest to the same extent as against an owner, and a covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Governing Documents, designating the Association as the owner's agent, with the authority to seek damages, injunctive relief, and/or terminate any lease and evict the tenant, his family and his guests in the event of violations by the tenant of such covenant, without the need to join the Owner in such action, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not. In addition, the Association may proceed against the tenant and Owner for the recovery of the Association's expenses, costs and attorneys fees in any such action.

9.4 **Nuisance.** No noxious or offensive activity shall be carried on upon any Lot or in any Living Unit, nor shall anything be done that is or may become an unreasonable source of annoyance or nuisance to other residents.

9.5 **Temporary Structures.** No structure of a temporary character, including trailer, tent or shack shall be used on any Lot, either temporarily or permanently.

9.6 **Signs.** To the extent lawful, the display of signs, advertisements and advertising shall be subject to the Club Declaration and the control of the Club. The Board of Directors shall have the right to summarily remove and destroy all unauthorized signs.

9.7 **Appearance; Refuse Disposal.** Each owner shall keep his Lot free and clear of weeds, underbrush, unsightly growths, trash and debris and shall reasonably maintain his Living Unit. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers suitably screened from view from the street and adjacent Lots.

All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

9.8 **Maintenance.** Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the owner is given reasonable notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of said Lot, which charge shall be a lien on the Lot which may be foreclosed, and which shall secure the Association's attorney's fees and other costs in connection with said foreclosure.

9.9 **Awnings and Windows.** Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to the prior approval and control of the ARC.

9.10 **Fences.** No fence, wall, hedge or other similar structure shall be erected on any Lot, except as approved by the ARC.

9.11 **Lawns; Landscaping.** Except for designated Conservation Areas, buffer zones, open space or other similar areas, all areas not covered by structures, walkways or paved parking facilities shall be maintained by their owners as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas as provided in Section 7.2 above. Stone, gravel, or paving may not be used as a substitute for grass in a lawn, unless required by law. Certain areas, as determined by the CDD, shall remain in a natural or unimproved state. No landscaping shall be installed, cut down, destroyed or removed without the prior written approval of the ARC.

9.12 **Outside Lighting.** No spotlights, floodlights, or other outdoor high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereof without the written authorization of the ARC. Low intensity lighting which does not unreasonably disturb the owners or other occupants of the Neighborhood shall be allowed. The owner of each Lot shall maintain the front yard lamp (if any), and keep it operating during all hours of darkness. The owner's responsibility includes the photoelectric cell and replacement of light bulbs.

9.13 **Commercial Activities.** No business or commercial activity shall be conducted in the Neighborhood.

9.14 **Pets.** The owner of each Living Unit may keep a reasonable number of household pets, such as a dog, cat, tropical fish or caged birds in a Living Unit, subject to reasonable regulation by the Club or the Association. All pets must be carried under the owner's arm or leashed at all times while outside of the Living Unit. The owner is responsible for cleaning up after his pet. The ability to keep such pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Neighborhood. No reptiles, amphibians, poultry or livestock may be kept in the Neighborhood. Pets shall not be left unattended on screened porches, lanais, yards or in garages.

9.15 **Motor Vehicles: Parking.** Parking in the Neighborhood is restricted to private automobiles and passenger-type "mini-vans," jeeps and pick-up trucks having a capacity of no more than two (2) tons. Abandoned or inoperable automobiles or oversized vehicles of any kind shall not be stored or parked on any portion of the property. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three (3) weeks or longer; provided however, this shall not include operable vehicles left on the Lots by owners while on vacation. No commercial vehicles, campers, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers or house trailers shall be permitted to be parked or to be stored in the Neighborhood. For the purpose of this Section 9.15, "commercial vehicles" shall mean those which are not designed and used for customary personal/family purposes or those with commercial markings. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The determination of the Club's Board of Directors as to the commercial nature of a vehicle shall be binding. The prohibitions on parking contained above in this Section 9.15 shall not apply to temporary parking of commercial vehicles such as for construction use or providing pick-up and delivery and other commercial services. No parking on lawns shall be permitted. No vehicle shall be parked anywhere but on paved areas intended for that purpose, or as approved by the Club for construction purposes. The Association shall have the right, without notice, to tow any vehicle not in compliance with this section.

9.16 **Garages, Carports and Accessory Buildings.**

- A. No detached garage or other accessory building shall be erected. Each residence shall have an attached or built in garage which shall accommodate no less than one (1), nor more than three (3), automobiles. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain closed.
- B. Carports are not permitted.
- C. No garage shall ever be permanently enclosed or converted to other uses without substitution of another enclosed garage and approval of the ARC. All garages must have a minimum 16-foot wide overhead style garage door, or two (2) 8-foot wide overhead style garage doors.

9.17 **Garage Sales.** No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot without prior written approval of the Board of Directors and under no circumstances may more than one (1) such event be held on any Lot in any period of twelve (12) consecutive months.

9.18 **Mailboxes, Lamp Posts.** Mailboxes, front yard lamp posts, and their supporting structures shall be substantially uniform in style, appearance and location, and are subject to regulation by the ARC.

9.19 **Antennas, Radio Equipment and Flagpoles.** No antennae, aerials, ham radios or satellite dishes shall be placed upon any portion of a Lot or the Neighborhood Common Areas, except as may be required in connection with the provision of a cable television or master antenna system servicing the Neighborhood or that comply with the terms of the Club Documents or as may be allowed by any law. No ham radios or radio transmission equipment shall be operated or permitted to be operated within the Neighborhood without the prior written consent of the Board of Directors and the ARC. A flagpole, for display of the American flag only, may be permitted if its design and location are first approved by the ARC. No owner shall be prohibited from displaying a portable, removable United States flag or official flag of the State of Florida in a respectful manner, a portable, removable US Army, Navy, Air Force, Marine Corps or Coast Guard flag not larger than 4.5' x 6'. Notwithstanding the foregoing, no one shall be permitted to display the United States flag in a manner that violates: (i) Federal law or any rule or custom as to the proper display or use of the United States flag; or (ii) any reasonable restriction pertaining to the time, place and manner of displaying the flag. An approved flagpole shall not be used to mount an antenna. It is the intent of this Section 9.19 to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting equipment.

9.20 **Swimming Pools.** An owner, if approved by the ARC, may construct a swimming pool and screened enclosure on his Lot. In the event such construction requires entry of or access over an adjoining Lot, the entry or access shall be only with the consent of the owner of the adjoining Lot, which consent may not be withheld without good cause.

9.21 **Conservation Areas.** Certain portions of the Neighborhood contain or are adjacent to wetland preservation or mitigation areas and upland buffers that are or will be designated as conservation areas on the plat of the Neighborhood ("Conservation Areas"), which Conservation Areas will be protected by and be subject to a conservation easement in favor of the CDD and the South Florida Water

Management District, and a conservation easement in favor of the CDD and the U.S. Army Corp of Engineers ("Conservation Easements").

The terms of the Conservation Easements shall provide that the Conservation Areas shall be maintained and managed in perpetuity by the CDD, its successors and assigns and the CDD shall enforce the terms and conditions of the Conservation Easements.

In accordance with the terms of the Conservation Easements, the CDD shall be responsible for the installation and perpetual maintenance of permanent physical signs/markers designating the Conservation Areas as required by South Florida Water Management District.

Any acts or uses detrimental to the preservation of the Conservation Areas in their natural condition shall be prohibited, with the exception of exotic or nuisance vegetation removal, or otherwise in accordance with the terms of the Conservation Easements and Permits. Pursuant to the terms of the Conservation Easements, exotic and/or nuisance vegetation may include Melaleuca, Brazilian pepper, Australian Pine, Japanese Climbing Fern, cattails, primrose willow and grape vine.

THE CONSERVATION AREAS SHALL BE THE PERPETUAL RESPONSIBILITY OF THE CDD AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION REMOVAL; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE; FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

9.22 **Lakes, Water Retention Ponds.** No Lot or Neighborhood Common Areas shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the CDD and the South Florida Water Management District. No person other than the Association or the Club may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

9.23 **Open Space.** Any land subject to this Declaration and designated as open space, landscape buffer, preserve area, Conservation Areas or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Association, the Association shall preserve and maintain such land. No development may occur on such land except structures or improvements which promote the use and enjoyment thereof for open space purposes.

9.24 **Energy Conservation Equipment.** All solar heating apparatus must conform to the standards set forth in the HUD intermediate Minimum Property Standards Supplement, Solar Heating and Domestic Water Systems. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as reasonably determined by the Association or ARC. This provision is not intended to prohibit the use of solar energy devices.

9.25 **Additional Restrictions.** The Club Documents contain additional restrictions which are applicable to the Neighborhood and the owners. In the event of a conflict between the provisions of this Declaration and the provisions of the Club Documents, the provisions of the Club Documents shall control; provided, however, that this Declaration and the other Neighborhood documents may contain provisions which are more restrictive than those contained in the Club Documents, in which event the more restrictive provisions shall control.

**10. OWNERSHIP OF LOTS. THE TRANSFER OF OWNERSHIP OF LOTS SHALL BE SUBJECT TO THE FOLLOWING RESTRICTIONS:**

10.1 **Notice to Association.** An owner intending to sell his Lot shall give the Association written notice of such intent at least seven (7) days prior to the closing of the sale, including the name of the purchaser and such other information about the purchaser as the Association may reasonably require. A new owner acquiring title shall provide to the Association a copy of the recorded deed, or other instrument evidencing title, within thirty (30) days after the transfer occurs. The Association may designate by rule a separate entity to receive the applicable conveyance documents on behalf of the Association.

10.2 **Designation of Golf Member of the Club.** Where legal title to a Lot is held in the name of two or more natural persons who are not husband and wife, or in the name of a corporation, partnership or other entity which is not a natural person, the owner shall designate in writing one individual or family as the regular member of the Club, as further provided in Rules and Regulations of the Club. For purposes of applying restrictions on the occupancy of Living Units, the individual or family designated to the Club shall also be deemed the owner of the Lot.

10.3 **Life Estate.** A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be as if the life tenant was the only owner. The life tenant shall be liable for all assessments and charges against the Lot. Any consent, approval or vote required may be given by the life tenant, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

**11. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.** Every owner, and all guests, tenants and occupants, shall at all times comply with Chapter 617, Florida Statutes, Chapter 720, Florida Statutes, the Governing Documents, and the rules of the Club and of the Association. Before undertaking any remedy, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with Florida Statutes Chapters 720 and Chapter 617, the Governing Documents, and the rules of the Club and of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by a member against:

- A. The Association;
- B. A member;

- C. Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and
- D. Any tenants, guests, or invitees occupying a parcel or using the Neighborhood Common Areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section 11 does not deprive any person of any other available right or remedy.

11.1 **Enforcement Action.** Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.2 **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 land, 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.

11.3 **Suspension of Common Area Use Rights: Fines.** The Association may levy a reasonable fine or suspend, for a reasonable period of time, the rights of an owner, the owner's family, or an owner's tenants, guests, or invitees, or both, to use Neighborhood' Common Areas and facilities in the event of their failure to comply with any covenant, restriction, or rule contained in the Governing Documents or applicable law or in the event they condone such violation by their family members, guests, tenants or invitees. The procedure for levying fines and suspending use rights is set forth in the Bylaws.

12. **THE CLUB.** By taking title to a Lot, the owner becomes subject to the terms and conditions of the Club Declaration as it may be amended from time to time.

12.1 **Golf Membership in the Club.** Each Lot shall have as an appurtenance one Golf membership in the Club, which membership shall carry such rights and obligations, and be exercised in such manner, as is more fully set forth in the Governing Documents. The Membership cannot be sold, conveyed or assigned separately from the Lot. Assessments and dues levied by the Club shall be paid directly by the Lot owner to the Club.

12.2 **Membership and Voting in the Club.** All owners in this Neighborhood are automatically Class "A" members of the Club. Notwithstanding such membership, only authorized representatives of the members shall be entitled to vote on behalf of all members at meetings of the members of the Club. At Club meetings, the votes of this Neighborhood shall be cast by the Association President, as Neighborhood Voting Representative.

13. **SECURITY.**

THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE NEIGHBORHOOD DESIGNED TO MAKE THE NEIGHBORHOOD SAFER THAN IT OTHERWISE MIGHT BE. ADDITIONALLY, THE CLUB, NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE

Amended and Restated Declaration of Covenants, Conditions and Restrictions

For

Gleneagles at Pelican Sound Neighborhood

SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL OWNERS AGREE TO HOLD THE CLUB AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, OR THE CLUB, SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE NEIGHBORHOOD. NEITHER THE ASSOCIATION OR THE CLUB SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OR SECURITY MEASURES UNDERTAKEN, IF ANY. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND TENANTS, GUESTS AND INVITEES OF OWNERS, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, OR THE CLUB AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO THE GUIDELINES ESTABLISHED BY THE CLUB, THE ARC OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD, THE CLUB AND ITS BOARD OF DIRECTORS AND THE ARC ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST, AND INVITEE OF THE UNIT OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND LIVING UNITS AND TO THE CONTENTS OF LIVING UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD, THE CLUB AND ITS BOARD OF DIRECTORS AND THE ARC HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER OR OCCUPANT OF ANY LOT, OR ANY TENANT, GUEST OR INVITEE OF AN OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE NEIGHBORHOOD, IF ANY.

**14. COMMUNITY DEVELOPMENT DISTRICT.** A uniform community development district pursuant to Chapter 190, Florida Statutes, known as River Ridge Community Development District ("CDD") exists to administer all or a portion of the Properties, including this Neighborhood. CDD will provide certain urban infrastructure facilities and services and will have the authority to levy and collect fees, rates, charges, taxes and assessment to pay for, finance and provide such services. CDD is empowered to plan, establish, acquire, construct and reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for basic infrastructure which may include, without limitation, the following:

- A. water management and control lands within the CDD;
- B. roads and bridges;
- C. potable water distribution;
- D. sewage collection;

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- E. waste water management;
- F. irrigation;
- G. perimeter landscaping; and
- H. limited access assurance services.

CDD will impose taxes and/or assessments on the Lots through a special taxing district. These assessments pay the construction, operation and/or maintenance costs of certain public facilities within CDD and are set annually by its governing board. These assessments are in addition to county and all other taxes and assessments provided for by law.

These fees, rates, charges, taxes and assessments will either appear on the annual real estate bill for each unit as a separate and district tax payable directly to the Lee County Tax Collector or on a separate bill issued to each owner by the CDD.

Each owner agrees, by acceptance of a deed or other instrument conveying title to a Lot, to pay any and all fees, rates, charges, taxes and assessments imposed by CDD with respect to the Lot, and to abide by all of the rules and regulations of CDD, as they may be amended from time to time.

**15. DURATION OF COVENANTS; AMENDMENT OF DECLARATION:**

15.1 **Duration of Covenants.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Neighborhood, and shall inure to the benefit of and be enforceable by the Association, and any owner, their respective legal representatives, heirs, successors and assigns, for an initial period that expires on the thirtieth (30th) anniversary of the date of recordation of the Declaration of Covenants, Conditions, Restrictions, and Easements for Pelican Sound Golf & River Club, Inc. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of members of the Association vote in favor of terminating this Declaration at the end of its then current term. Written notice of any meeting at which such a proposal will be considered shall be given at least forty-five (45) days before the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the Public Records of Lee County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

15.2 **Amendments; Proposal.** Notwithstanding the foregoing, this Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

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For  
Gleneagles at Pelican Sound Neighborhood



15.3 **Amendments; Vote Required.** Except as otherwise provided by law or by other specific provision of the Governing Documents, a proposed amendment to this Declaration shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association present and voting at any annual or special meeting called for the purpose, provided that notice of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendments shall be in substantially the same form as is specified in Chapter 718, Florida Statutes, for proposed amendments to a Declaration of Condominium. No amendment shall change any Lot's share of liability for assessments or any owner's voting rights, unless the owner consents to the amendment.

15.4 **Amendments; Certificate; Recording; Effective Date.** A copy of each amendment shall be attached to a certificate attesting that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration was originally recorded, and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County.

15.5 **Exceptions.** Wherever in this Declaration the consent, approval, or affirmative vote of more than two-third (2/3rds) of the voting interests present and voting in person or by proxy 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.

## 16. **GENERAL PROVISIONS.**

16.1 **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Declaration is, for any reason, held invalid or unconstitutional by any court-of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

16.2 **Headings and Capitalization.** The headings of Sections and paragraphs herein, and the capitalization of certain words, are for convenience only, and do not affect the meaning or interpretation of the provisions of this Declaration.

16.3 **Notices.** Any notice required to be sent to any owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner in the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

16.4 **Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

16.5 **Rule Against Perpetuities.** In the event any court should hereafter determine any provisions as originally drafted herein in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose. "Measuring lives" shall be that of the incorporator of the Association.

**Q. GRADY MINOR & ASSOCIATES, P.A.**  
Civil Engineers • Land Surveyors • Planners

Q. GRADY MINOR, P.E.  
MARK W. MINOR, P.E.  
C. DEAN SMITH, P.E.  
DAVID W. SCHMITT, P.E.

ALAN V. ROSEMAN  
ROBERT W. THINNES, A.I.C.P.  
ERIC V. SANDOVAL, P.S.M.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**GLENEAGLES AT PELICAN SOUND NEIGHBORHOOD**

PARCELS OF LAND LOCATED IN SECTIONS 29 AND 32, TOWNSHIP 46 SOUTH,  
RANGE 25 EAST, LEE COUNTY, FLORIDA; BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

**GLENEAGLES PARCEL NO. 1**  
**(SKETCH B-1338)**

COMMENCE AT THE NORTHEAST CORNER OF SECTION 32, TOWNSHIP 46 SOUTH,  
RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S 00°30'33" E, ALONG  
THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 32, FOR A  
DISTANCE OF 527.19 FEET; THENCE RUN S 89°29'27" W FOR A DISTANCE OF  
1515.02 FEET TO THE POINT OF BEGINNING; THENCE RUN N 69°54'37" W  
FOR A DISTANCE OF 112.00 FEET TO THE BEGINNING OF A TANGENTIAL  
CIRCULAR CURVE CONCAVE TO THE NORTHEAST; THENCE RUN NORTHEASTERLY  
ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00  
FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", SUBTENDED BY A CHORD OF  
35.36 FEET AT A BEARING OF N 24°54'37" W, FOR AN ARC LENGTH OF  
39.27 FEET TO THE END OF SAID CURVE; THENCE RUN N 20°05'23" E FOR  
A DISTANCE OF 526.87 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR  
CURVE CONCAVE TO THE WEST; THENCE RUN NORTHWESTERLY ALONG THE ARC  
OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 622.50 FEET, THROUGH  
A CENTRAL ANGLE OF 35°19'40", SUBTENDED BY A CHORD OF 377.77 FEET  
AT A BEARING OF N 02°25'33" W, FOR AN ARC LENGTH OF 383.82 FEET TO  
THE END OF SAID CURVE; THENCE RUN N 15°14'17" W FOR A DISTANCE OF  
315.42 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE  
TO THE EAST; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE  
TO THE RIGHT, HAVING A RADIUS OF 90.00 FEET, THROUGH A CENTRAL  
ANGLE OF 39°07'00", SUBTENDED BY A CHORD OF 60.26 FEET AT A BEARING  
OF N 04°19'13" E, FOR AN ARC LENGTH OF 61.44 FEET TO A POINT OF  
REVERSE CURVATURE; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE  
TO THE LEFT, HAVING A RADIUS OF 55.00 FEET, THROUGH A CENTRAL ANGLE  
OF 258°14'01" SUBTENDED BY A CHORD OF 85.34 FEET AT A BEARING OF  
S 74°45'43" W, FOR AN ARC LENGTH OF 247.89 FEET TO A POINT OF  
REVERSE CURVATURE; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID  
CURVE TO THE RIGHT, HAVING A RADIUS OF 90.00 FEET, THROUGH A  
CENTRAL ANGLE OF 39°07'00", SUBTENDED BY A CHORD OF 60.26 FEET AT  
A BEARING OF S 34°47'47" E, FOR AN ARC LENGTH OF 61.44 FEET TO THE  
END OF SAID CURVE; THENCE RUN S 15°14'17" E FOR A DISTANCE OF  
315.42 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE  
TO THE WEST; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE

SHEET 1 OF 4

**EXHIBIT "A"**  
**TO DECLARATION**

KGMA@aol.com  
1a 34134

063036 161642

TO THE RIGHT, HAVING A RADIUS OF 577.50 FEET, THROUGH A CENTRAL ANGLE OF  $35^{\circ}19'40''$ , SUBTENDED BY A CHORD OF 350.46 FEET AT A BEARING OF  $S 02^{\circ}25'33'' W$ , FOR AN ARC LENGTH OF 356.08 FEET TO THE END OF SAID CURVE; THENCE RUN  $S 20^{\circ}05'23'' W$  FOR A DISTANCE OF 642.98 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE NORTHWEST; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET, THROUGH A CENTRAL ANGLE OF  $16^{\circ}10'46''$ , SUBTENDED BY A CHORD OF 112.58 FEET AT A BEARING OF  $S 28^{\circ}10'46'' W$ , FOR AN ARC LENGTH OF 112.95 FEET TO THE END OF SAID CURVE; THENCE RUN  $S 36^{\circ}16'09'' W$  FOR A DISTANCE OF 48.96 FEET; THENCE RUN  $N 53^{\circ}43'51'' W$  FOR A DISTANCE OF 135.00 FEET; THENCE RUN  $N 36^{\circ}16'09'' E$  FOR A DISTANCE OF 61.86 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE NORTHWEST; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 250.00 FEET, THROUGH A CENTRAL ANGLE OF  $16^{\circ}10'46''$ , SUBTENDED BY A CHORD OF 70.36 FEET AT A BEARING OF  $N 02^{\circ}25'33'' E$ , FOR AN ARC LENGTH OF 274.69 FEET TO THE END OF SAID CURVE; THENCE RUN  $N 20^{\circ}05'23'' E$  FOR A DISTANCE OF 634.78 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE WEST; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 445.50 FEET, THROUGH A CENTRAL ANGLE OF  $35^{\circ}19'40''$ , SUBTENDED BY A CHORD OF 270.36 FEET AT A BEARING OF  $N 02^{\circ}25'33'' E$ , FOR AN ARC LENGTH OF 274.69 FEET TO THE END OF SAID CURVE; THENCE RUN  $N 46^{\circ}42'47'' W$  FOR A DISTANCE OF 68.00 FEET; THENCE RUN  $N 15^{\circ}14'17'' W$  FOR A DISTANCE OF 58.00 FEET; THENCE RUN  $S 74^{\circ}45'43'' W$  FOR A DISTANCE OF 5.00 FEET; THENCE RUN  $N 15^{\circ}14'17'' W$  FOR A DISTANCE OF 17.34 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE SOUTHEAST; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 195.00 FEET, THROUGH A CENTRAL ANGLE OF  $180^{\circ}00'00''$ , SUBTENDED BY A CHORD OF 390.00 FEET AT A BEARING OF  $N 74^{\circ}45'43'' E$ , FOR AN ARC LENGTH OF 612.61 FEET TO THE END OF SAID CURVE; THENCE RUN  $S 15^{\circ}14'17'' E$  FOR A DISTANCE OF 93.97 FEET; THENCE RUN  $S 16^{\circ}13'53'' W$  FOR A DISTANCE OF 68.00 FEET; THENCE RUN  $S 15^{\circ}14'17'' E$  FOR A DISTANCE OF 254.94 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE WEST; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 759.50 FEET, THROUGH A CENTRAL ANGLE OF  $35^{\circ}19'40''$ , SUBTENDED BY A CHORD OF 460.91 FEET AT A BEARING OF  $S 02^{\circ}25'33'' W$ , FOR AN ARC LENGTH OF 468.30 FEET TO THE END OF SAID CURVE; THENCE RUN  $S 20^{\circ}05'23'' W$  FOR A DISTANCE OF 551.87 FEET TO THE POINT OF BEGINNING, CONTAINING 10.32 ACRES, MORE OR LESS.

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AND  
GLENEAGLES PARCEL NO. 2  
(SKETCH B-1339)

COMMENCE AT THE NORTHEAST CORNER OF SECTION 32, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S 00°30'33" E, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 32 FOR A DISTANCE OF 431.45 FEET; THENCE RUN S 89°29'27" W FOR A DISTANCE OF 1448.80 FEET TO THE POINT OF BEGINNING; THENCE RUN S 69°54'37" E FOR A DISTANCE OF 116.00 FEET; THENCE RUN N 85°50'20" E FOR A DISTANCE OF 63.61 FEET; THENCE RUN S 79°12'27" E FOR A DISTANCE OF 54.53 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE NORTHWEST; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 195.00 FEET, THROUGH A CENTRAL ANGLE OF 208°31'36", SUBTENDED BY A CHORD OF 377.98 FEET AT A BEARING OF S 25°03'21" W, FOR AN ARC LENGTH OF 709.70 FEET TO THE END OF SAID CURVE; THENCE RUN N 50°40'51" W FOR A DISTANCE OF 27.64 FEET; THENCE RUN N 48°41'37" W FOR A DISTANCE OF 62.22 FEET; THENCE RUN N 69°54'37" W FOR A DISTANCE OF 116.00 FEET; THENCE RUN N 20°05'23" E FOR A DISTANCE OF 130.00 FEET; THENCE RUN S 69°54'37" E FOR A DISTANCE OF 172.84 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE SOUTHWEST; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 90.00 FEET, THROUGH A CENTRAL ANGLE OF 39°07'00", SUBTENDED BY A CHORD OF 60.26 FEET AT A BEARING OF S 50°21'07" E, FOR AN ARC LENGTH OF 61.44 FEET TO A POINT OF REVERSE CURVATURE; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 55.00 FEET, THROUGH A CENTRAL ANGLE OF 258°14'01", SUBTENDED BY A CHORD OF 85.34 FEET AT A BEARING OF N 20°05'23" E, FOR AN ARC LENGTH OF 247.89 FEET TO A POINT OF REVERSE CURVATURE; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 90.00 FEET, THROUGH A CENTRAL ANGLE OF 39°07'00", SUBTENDED BY A CHORD OF 60.26 FEET AT A BEARING OF N 89°28'07" W, FOR AN ARC LENGTH OF 61.44 FEET TO THE END OF SAID CURVE; THENCE RUN N 69°54'37" W FOR A DISTANCE OF 167.84 FEET; THENCE RUN N 20°05'23" E FOR A DISTANCE OF 135.00 FEET TO THE POINT OF BEGINNING, CONTAINING 2.96 ACRES, MORE OR LESS.

AND  
GLENEAGLES PARCEL NO. 3  
(SKETCH B-1340)

COMMENCE AT THE NORTHEAST CORNER OF SECTION 32, TOWNSHIP 46, SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE RUN S 00°30'33" E ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 32, FOR A DISTANCE OF 842.79 FEET; THENCE RUN S 89°29'27" W FOR A DISTANCE OF

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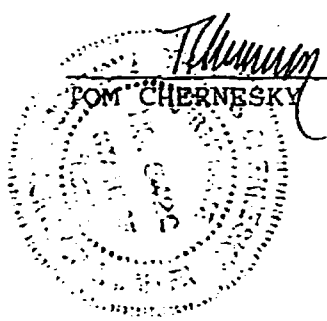
1655.34 FEET TO THE POINT OF BEGINNING; THENCE RUN N 53°43'51" W FOR A DISTANCE OF 132.00 FEET; THENCE RUN N 36°16'09" E FOR A DISTANCE OF 37.55 FEET; TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE NORTHWEST; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, THROUGH A CENTRAL ANGLE OF 16°10'46", SUBTENDED BY A CHORD OF 56.29 FEET AT A BEARING OF N 28°10'46" E, FOR AN ARC LENGTH OF 56.48 FEET TO THE END OF SAID CURVE; THENCE RUN N 20°05'23" E FOR A DISTANCE OF 124.12 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE SOUTHEAST; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", SUBTENDED BY A CHORD OF 35.36 FEET AT A BEARING OF N 65°05'23" E, FOR AN ARC LENGTH OF 39.27 FEET TO THE END OF THE SAID CURVE; THENCE RUN S 69°54'37" E FOR A DISTANCE OF 107.00 FEET; THENCE RUN S 20°05'23" W FOR A DISTANCE OF 153.67 FEET; TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE TO THE NORTHWEST; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 300.00 FEET, THROUGH A CENTRAL ANGLE OF 16°10'46", SUBTENDED BY A CHORD OF 84.43 FEET AT A BEARING OF S 28°10'46" W, FOR AN ARC LENGTH OF 84.72 FEET TO THE END OF SAID CURVE; THENCE RUN S 36°16'09" W FOR A DISTANCE OF 42.10 FEET TO THE POINT OF BEGINNING, CONTAINING 0.79 ACRES, MORE OR LESS.

THE ABOVE DESCRIBED PARCELS (NO. 1 THROUGH NO. 3) CONTAIN A TOTAL OF 14.07 ACRES, MORE OR LESS.

BEARING SHOWN HEREON REFER TO THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AS BEING S 00°30'33" E.

SUBJECT TO EASEMENTS, RESERVATIONS AND/OR RESTRICTIONS OF RECORD.

SIGNED 2-10-98



POM CHERNESKY

P.S.M. #5426  
STATE OF FLORIDA

SHEET 4 OF 4









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

FILED  
97 OCT -2 AM 9:20  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**OF**

**GLENEAGLES AT PELICAN SOUND NEIGHBORHOOD ASSOCIATION, INC.**

(Originally incorporated under the name of Gleneagles at Pelican Sound Condominium Association, Inc.)

Pursuant to Section 617.1007(4), Florida Statutes (1995), these Articles of Incorporation of Gleneagles at Pelican Sound Neighborhood Association, Inc., a Florida corporation not for profit which was originally incorporated under the name Gleneagles at Pelican Sound Condominium Association, Inc. on September 18, 1997, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1007(2), Florida Statutes (1995), and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.1007(2), Florida Statutes (1995).

0K3036 Pg 1650

**ARTICLE I**

**NAME:** The name of the corporation shall henceforth be known as Gleneagles at Pelican Sound Neighborhood Association, Inc., sometimes hereinafter referred to as the "Association". **THIS ASSOCIATION IS NOT A CONDOMINIUM ASSOCIATION**, pursuant to Chapter 718, Florida Statutes.

**ARTICLE II**

**PRINCIPAL OFFICE:** The initial principal office and mailing address of the corporation shall be at 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida 34134.

**ARTICLE III**

**PURPOSE AND POWERS:** This Association will not permit pecuniary gain or profit nor distribution of its income to its members, officers or Directors. It is a nonprofit corporation formed for the purpose of establishing a corporate residential neighborhood homeowners association which, subject to a Declaration of Covenants, Conditions, Restrictions, and Easements (the "Declaration") to be recorded in the Public Records of Lee County, Florida, has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Articles and with said Declaration and shall have all of the powers and authority reasonably necessary or appropriate to the operation and regulation of a residential neighborhood, subject to said Declaration, as it may from time to time be amended.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration these Articles of Incorporation and the Bylaws.

**EXHIBIT "C"  
TO DECLARATION**

**Articles of Incorporation  
Page 2**

**ARTICLE IV**

**MEMBERSHIP AND VOTING RIGHTS:** Membership and voting rights shall be as set forth in the Declaration, to which a copy of these Articles will be attached as an Exhibit, and the Bylaws of the Association.

**ARTICLE V**

**TERM:** The term of the Association shall be perpetual. The Association may be dissolved in the manner provided by the Declaration.

**ARTICLE VI**

**BYLAWS:** The Bylaws of the Association may be altered, amended or rescinded in the manner provided therein.

**ARTICLE VII**

**AMENDMENTS:** Amendments to these Articles shall be proposed and adopted in the following manner:

- A. **Proposal; Vote Required.** After turnover, an amendment may be proposed by either the Board of Directors or by twenty-five percent (25%) of the voting interests and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the Bylaws, which includes a notice of the substance of the proposed amendment; prior to turnover, by a majority of the Directors alone.

After turnover, the amendment must be approved by a vote of 67% of the voting interests of the Association; prior to turnover, by a majority of the Directors alone.

- C. **Effective Date.** An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Lee County, Florida.
- D. **Conflict.** In the event of a conflict between the provisions of these Articles and the provisions of the Declaration, the provisions of the Declaration shall prevail.

**ARTICLE VIII**

**DIRECTORS AND OFFICERS:**

- A. The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.
- B. Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- C. The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board.

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ARTICLE IX

INDEMNIFICATION:

The Association shall indemnify every Director and every officer of the Association against all expenses and liabilities including attorney's fees (at all trial and appellate levels), actually and reasonably incurred by or imposed on such person or persons in connection with any claim, legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing provisions for indemnification shall apply whether or not such person is a Director or officer at the time such expenses are incurred. The foregoing right of indemnification shall not apply to:

- (1) Gross negligence or willful misconduct in office by any Director or officer.
- (2) Any criminal action, unless the Director or officer acted in good faith and in a manner reasonably believed was in, or not opposed to, the best interest of the Association, and had no reasonable cause to believe his action was unlawful.

To the extent that a Director or officer has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.

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.

ARTICLE X

DEFINITIONS:

All terms utilized herein shall have the same meanings as set forth in the Declaration, to which a copy of these Articles will be attached as an Exhibit.

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**CERTIFICATE**

The undersigned, being the duly elected and acting President of Gleneagles at Pelican Sound Neighborhood Association, Inc., hereby certifies that the foregoing were approved by the affirmative vote of at least a majority of the Directors at a meeting held on the 30 day of September, 1997, after due notice, in accordance with the requirements of the Articles of Incorporation for their amendment, said vote being sufficient for adoption. The foregoing both amend and restate the amended Articles of Incorporation in their entirety.

Executed this 30 day of September, 1997.

**GLENEAGLES AT PELICAN SOUND  
NEIGHBORHOOD ASSOCIATION, INC.**

Stefan O. Johansson  
Stefan O. Johansson, President  
(CORPORATE SEAL)

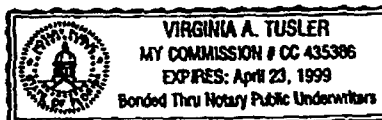
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STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 30 day of September, 1997, by Stefan O. Johansson, President, of Gleneagles at Pelican Sound Neighborhood Association, Inc., a Florida corporation not for profit, on behalf of the corporation.

Notary Public-State of Florida:

Sign Virginia A. Tusler  
Print VIRGINIA A. TUSLER  
Personally Known X; or Produced Identification       
Type of Identification       
Produced:       
Affix Seal Below:



**AMENDED AND RESTATED BYLAWS**

**OF**

**GLENEAGLES AT PELICAN SOUND NEIGHBORHOOD ASSOCIATION, INC.**

**EXHIBIT "B"  
TO CERTIFICATE  
EXHIBIT "D"  
TO DECLARATION**

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

**AMENDED AND RESTATED BYLAWS**

**OF**

**GLENEAGLES AT PELICAN SOUND NEIGHBORHOOD ASSOCIATION, INC.**

**1. GENERAL.** These are the Amended and Restated Bylaws of Gleneagles at Pelican Sound Neighborhood Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a residential community pursuant to Chapter 720, Florida Statutes (the "Act"). All prior Bylaws are hereby revoked and superseded in their entirety. The purpose of Chapter 720, Florida Statutes is to give statutory recognition to corporations not for profit that operate residential communities in this state, to provide procedures for operating homeowners associations and to protect the rights of association members without unduly impairing the ability of such associations to perform their function.

1.1 Name. The name of the corporation is GLENEAGLES AT PELICAN SOUND NEIGHBORHOOD ASSOCIATION, INC.

1.2 Principal Office. The principal office of the Association is at 4985 Tamiami Trail East, Naples, FL 34113, or at such location as may be designated by the Association's Board of Directors.

1.3 Definitions. The definitions set forth in the Declaration of Covenants, Conditions and Restrictions of Gleneagles at Pelican Sound, as amended shall apply to terms used in these Bylaws.

**2. MEMBERS.**

2.1 Qualifications. The members of the Association shall be the record Owners of legal title to the Lots in the Neighborhood. In the case of a Lot subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Lot for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events:

- (A) Recording in the Public Records of a Deed or other instrument evidencing legal title to the Lot.
- (B) Approval by the Board of Directors as provided for in the Declaration.
- (C) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.
- (D) Delivery to the Association, if required, of a written designation of the Primary Occupants.

2.2 Voting Interest. The Association shall have one class of voting Members. These Members shall be limited to Owners of Lots who, subject to the terms of the Declaration, automatically

AMENDED AND RESTATED BYLAWS

become voting members of the Association. Each Lot shall have one vote, notwithstanding that the public records may disclose multiple ownership of such Lot. If a Lot is owned by one (1) natural person, his right to vote shall be established by the record title to the Lot. If a Lot is owned jointly by two (2) or more natural persons, that Lot's vote may be cast by any one of the record Owners. If two (2) or more Owners of a Lot do not agree among themselves how their one vote shall be cast, no vote for that Lot shall be counted. If the Owner of a Lot is a corporation, partnership, limited liability company, trust or other entity other than a natural person, the vote of that Lot shall be cast by the person designated in a Voting Certificate signed by all of the Owners (or the proper corporate officer) of said property. If the Owners do not agree among themselves how their one (1) vote shall be cast, no vote for that Lot shall be counted. The Membership of any Owner in the Association shall automatically terminate when the voting Member sells or transfers his or her Lot. The Association may suspend a Member's voting rights in the event of nonpayment of assessments that are delinquent in excess of ninety (90) days.

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, such decision may be expressed by any person authorized to cast the vote of such Lot at an Association meeting as stated in Section 2.2 above, unless the specific approval of all record Owners is specifically required.

2.4 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 Association during the period of his membership, nor does it impair any rights or remedies which 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 at place, date and time as designated by the Board of Directors. The purpose of the annual meeting is to conduct the election of directors and for any purpose as may be transacted by the Members.

3.2 Special Members' Meetings. Special Members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by Members having at least ten percent (10%) of the voting interests in the Association. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings; Waiver of Notice. Notice of all Members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The notice of meeting must be mailed to each member at the address which appears on the books of the Association (which shall be the address last furnished to the Association by the Owner), or may be furnished by hand-delivery, or by electronic transmission in the manner set forth in Section 617.0141, Florida Statutes, to the extent that a member has consented to receive notices by electronic transmission and has not revoked such consent. Any such consent to receiving electronic transmissions shall be deemed revoked if the Association is unable to deliver by electronic transmission two consecutive notices given by the Association in accordance with such consent, and such inability becomes known to the Secretary, Assistant Secretary or other authorized person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action. The member is responsible for providing the Association

with notice of any change of mailing address, facsimile number or electronic mail address. To the extent that a member has provided the Association with a facsimile number or electronic mail address and consented to receive notices by electronic transmission, such information shall be considered an "official record" until the member has revoked his consent. The Association is not liable for an inadvertent disclosure of an electronic mail address or facsimile number where that information is not an official record of the Association.

The notice of meeting must be mailed, hand-delivered, or electronically transmitted at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. If ownership of a Lot is transferred after notice has been mailed, no separate notice to the new Owner is required. Attendance at any meeting by a Member constitutes waiver of notice by that Member unless the Member objects to the lack of notice at the beginning of the meeting. A Member may waive notice of any meeting at any time, but only by written waiver.

3.4 Quorum. A quorum at meetings of the Members shall be attained by the presence, either in person or by proxy, of Members entitled to cast at least thirty percent (30%) of the voting interests of the entire membership. After a quorum has been established at a Members' meeting, the subsequent withdrawal of any Members, so as to reduce the number of voting interests represented below the number required for a quorum, shall not affect the validity of any action taken at the meeting before or after such persons leave.

3.5 Vote Required. The acts approved by a majority of the votes cast, in person or by proxy, at a duly called meeting of the Members at which a quorum has been attained shall be binding upon all Owners for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the Governing Documents.

3.6 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a Members' meeting may establish his presence and cast his vote by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, however a proxy is not valid longer than ninety (90) days after the date of the first meeting for which it was given. 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 must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. A photostatic, facsimile, pdf or equivalent reproduction of a proxy is a sufficient proxy. Holders of proxies need not be members. No proxy shall be valid if it names more than one 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. Except as specifically otherwise provided herein, Members may not vote by general proxy, but may vote by limited proxy. Limited proxies and general proxies may be used to establish a quorum. General proxies shall not be used in the election of directors. General proxies may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Limited proxies shall be used for any matter for which the Governing Documents require or permit a vote of the Members and for which a general proxy is not permitted, including, without limitation, election of directors, votes taken to waive or reduce reserves; waive financial statement requirements, and amend the Governing Documents. Notwithstanding the foregoing, Members may vote in person at Members' meetings.

3.7 Adjourned Meetings. Any duly called meeting of the Members may be adjourned to be reconvened at a specific later time by vote of the majority of the voting interests present in person or by

proxy, 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 at the continuance, provided a quorum is then present, in person or by proxy.

3.8 Order of Business/Agenda. The order of business and agenda at Members' meetings shall be substantially as follows:

- (A) Call of the roll or certification of a quorum.
- (B) Proof of Notice of Meeting.
- (C) Appointment by President of Inspectors of Election (Annual Meeting).
- (D) Election of Directors (Annual Meeting).
- (E) Reading or disposal of any unapproved minutes.
- (F) Reports of Officers.
- (G) Reports of Committees.
- (H) Unfinished Business.
- (I) New Business (with the items to be voted on specifically listed in the agenda and in the limited proxy).
- (J) Adjournment.

3.9 Minutes. Minutes of all meetings of Members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by Members or their authorized representatives and Board members at reasonable times and for a period of seven (7) years after the meeting. Minutes must be reduced to written form within a reasonable time after the meeting at which they were taken.

3.10 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall guide the conduct of the Association meeting when not in conflict with Florida law or the Governing Documents. The Chairman of the meeting may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.11 Action by Members Without Meeting. Except for the holding of the annual meeting and the election of Directors, any action required or permitted to be taken at a meeting of the Members may be taken by mail without a meeting, if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by Members having not less than the minimum number of votes that would be necessary to take such action at a meeting. If the requisite number of written consents is 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 held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall meet to tabulate the votes and send written notice of action taken to all Members. Nothing in this section affects the rights of Members to call a special meeting of the membership, as

provided in these Bylaws or by law. If the vote is taken by the method described in this section, the list of Owners on record with the Secretary at the time of mailing the voting materials shall be the list of qualified voters. The written consents used to authorize an action without a meeting shall become part of the Association's official records.

4. **BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by the Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Governing Documents, shall be exercised by the Board of Directors, subject to approval or consent of the members only when such is specifically required.

4.1 **Number and Terms of Service.** The affairs of the Association shall be managed by a Board of three (3) Directors. Each Director is elected to a two (2) year term of office that expires at the annual election in which a successor is to be elected. Directors are currently serving two (2) year staggered terms. In any election where candidates are elected for different terms (such as an election for the remainder of a vacant term), the candidates receiving the higher number of votes shall be elected to the lengthier seat. In the event that there is no election, such as in a case where there are fewer candidates than open seats, the Directors who are seated shall agree amongst themselves which shall serve the lengthier term. This decision shall be recorded in the minutes of a duly notice Board of Directors' meeting. In the event the Directors cannot agree on which among them shall serve the lengthier and shorter seats, the Directors shall decide by drawing straws.

4.2 **Qualifications.** Each Director must be a Member, a Primary Occupant (in the case of Lots required to designate Primary Occupants), or the spouse of a Member or Primary Occupant. Co-owners of a Lot may not serve as board members at the same time, unless they own more than one (1) Lot. 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. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for Board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the Board.

4.3 **Nomination and Elections.** Directors shall be elected on the day of each annual meeting by the Members by secret written ballot or limited proxy according to the procedures established by the Board. An Owner who needs assistance in casting the ballot due to blindness, disability, inability to read or write or other reasons set forth in Section 101.051, Florida Statutes, may obtain such assistance. The Board may utilize a nominating committee and/or solicit candidates from the owners directly. Nominations from the floor shall be accepted only if required by Florida Statutes Chapter 720 (the "Act").

At the commencement of the annual meeting, any nominations from the floor shall be accepted only if required by the Act, all election ballots not yet cast shall be collected and the polls shall then be closed. The remaining business of the annual meeting shall proceed while the ballots and proxies are counted. Elections shall be determined by a plurality of the votes cast. The candidates who are elected shall take office upon the adjournment of the annual meeting.

4.4 **Vacancies on the Board.** If the office of any Director becomes vacant for any reason other than removal by the Members, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to fill the remaining unexpired term. If for any reason there shall arise

circumstances in which no Directors are serving and the entire Board is vacant, or if the remaining Board members are unwilling or unable to appoint a successor, the Members shall elect successors by written ballot in the same manner as provided generally for regular annual elections, except that the election need not take place on the date of the annual meeting.

4.5 Recall of Directors. Any or all Directors may be removed (“recalled”) with or without cause by a majority vote of the entire Membership, either by a written petition, or at any meeting called for that purpose, in the manner required by Section 720.303(10), Florida Statutes.

4.5.1 Recall of Directors by Meeting. A special meeting of the Members to recall a Director or Directors of the Board may be called by at least ten percent (10%) of the voting interests, giving notice of the meeting as required for any other Members’ meeting, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for the purpose of a recall. If the recall is approved by a majority of the entire membership by a vote at a meeting, the recall will be effective as provided below. The Board shall duly notice and hold a Board meeting within five (5) full business days of the adjournment of the Members’ recall meeting. At the Board meeting, the Board shall either certify the recall, in which case such member or members of the Board shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all Association records and property in their possession, or shall proceed as set forth in Section 4.5.3 below.

4.5.2 Recall of Directors by Written Agreement. If the proposed recall is by a written agreement by a majority of the entire membership, the written agreement or a copy thereof shall be served on the Association by certified mail or by personal service in the manner authorized by Chapter 48, Florida Statutes and the Florida Rules of Civil Procedure. The Board shall duly notice and hold a Board meeting within five (5) full business days after receipt of the written agreement. At the meeting, the Board shall either certify the written agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all Association records and property in their possession, or shall proceed as set forth in Section 4.5.3 below.

4.5.3 Recall Arbitration. If the Board determines not to certify the recall, the Board shall, within five (5) full business days after its meeting, file with the Florida Division of Condominiums a Petition for Arbitration pursuant to the procedures set forth in the Act. For the purposes of this section, the members who voted at the meeting or who executed the written agreement shall constitute one party under the Petition for Arbitration. If the Arbitrator certifies the recall as to any member or members of the Board, the recall will be effective upon mailing of the final order of arbitration to the Association. Any member or members so recalled shall deliver to the Board any and all Association records in their possession within five (5) full business days of the effective date of the recall.

4.5.4 Failure of Board to Hold Board Meeting. If the Board fails to duly notice and hold a Board meeting within five (5) full business days of service of a written recall agreement or within five (5) full business days of the adjournment of the Members’ recall meeting, the recall shall be deemed effective and the Board members so recalled shall immediately turn over to the Board any and all Association records and property in their possession.

4.5.5 Filling Vacancies Caused by Recall. If a vacancy occurs on the Board as a result

of a recall and less than a majority of the Directors are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors. If for any reason, the remaining Board members are unwilling or unable to appoint a successor, the members shall elect successors by written ballot in the same manner as provided generally for regular annual elections, except that the election need not take place on the date of the annual meeting. If vacancies occur on the Board as a result of a recall and a majority or more of the Directors are removed, the vacancies shall be filled in accordance with administrative rules of the Florida Division of Condominiums.

4.5.6 Administrative Rules of the Division. The recall of one or more Directors shall occur in accordance with Rules 61B-23.0027 and 23.0028, Florida Administrative Code.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election. The organizational meeting may occur immediately following the election, in which case notice of the organizational meeting may be provided by the existing Board as a notation in the Notice of Annual Meeting. If the notice of the organizational meeting is not provided and posted as part of the Notice of Annual Meeting, notice of the Board's organizational meeting must be posted conspicuously in the community for at least forty-eight (48) continuous hours in advance of the meeting.

4.7 Other Meetings. Meetings of the Board may be held at such time and place in Lee County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, facsimile, electronic mail or other form of electronic transmission at least forty-eight (48) hours prior to the day named for such meeting. If notice is transmitted by facsimile, notice shall be effective if correctly directed to a number at which the Director has consented to receive notice. If notice is transmitted by electronic mail, notice shall be effective if correctly directed to an email address at which the Director has consented to receive notice.

4.8 Notice to Owners. A meeting of the Board occurs whenever a quorum of the Board gathers to conduct Association business. All 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 contents of the discussion would otherwise be governed by the attorney-client privilege; personnel matters; or those meetings permitted to be closed by the Act. Notices of all Board meetings shall be posted conspicuously in Neighborhood for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. In the event of an emergency meeting, any action taken shall be noticed and ratified at the next regular meeting of the Board. In the alternative to the posting requirements discussed above, notice of each Board meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. An Assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that Assessments will be considered and the nature of the Assessments. Members have the right to speak, for at least three (3) minutes, on any matter that is placed on the Board meeting agenda by petition of the membership pursuant to Section 720.303(2)(d) of the Act. The Association may adopt reasonable, written Rules and Regulations expanding the rights of Members to speak and governing the frequency, duration, and other manner of Member statements, (including a sign-up sheet requirement), which Rules and Regulations must be consistent with the minimum requirements of Section 720.303(2)(b) of the Act.

4.9 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. If all Directors are present at a meeting, no notice to Directors shall be required.

4.10 Quorum of Directors. A quorum at a Board meeting shall exist when at least a majority of all Directors are present at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons participating by phone or physically present at the meeting can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy at Board meetings.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Governing Documents or by Florida law. A Director who is present at a meeting of the Board shall be deemed to have voted with the majority on any item of business voted upon, unless he voted against such action. A Director who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes and is only permissible for an asserted, actual conflict of interest. In the event of an emergency such as a hurricane where it is impossible for the Directors to participate by a conference telephone call or similar communicative arrangement whereby all persons participating by phone or physically present at the meeting can hear and speak to all other persons, action required or permitted by Florida law or the Governing Documents to be taken at a Board meeting may be taken without a meeting if all Directors sign written consents describing the action taken. Action taken without a meeting is effective when the last written consent is obtained, unless the written consent specifies a different effective date. The written approval of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of that Director for the action taken at said meeting, but such concurrence cannot be used to create a quorum.

4.12 Adjourned Meetings. The 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 specific time and date. Notice of the rescheduled or reconvened meeting shall be provided in the manner set forth in Section 4.8 above. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

4.13 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by a majority of the Directors participating in the meeting.

4.14 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses, as determined by the Treasurer, relating to the proper discharge of their respective duties. Reimbursement of the Treasurer's expenses shall be approved by the President, or his designee.

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board deems necessary and convenient for the efficient and effective operation of the Association or Neighborhood. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Only if required by the Act, as the same may be amended from time to time, committee meetings shall be open to attendance by any Member and notice of such meetings must be posted in the same manner as Board meetings. However, committee meetings between the committee and its attorney with respect to proposed or pending litigation where the contents of the discussion would



otherwise be governed by the attorney-client privilege; personnel matters; or other meetings permitted to be closed under the Act may not be open to attendance by Members. As of the effective date of these Bylaws, Section 4.8 requires meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of Association funds, and to the Architectural Review Committee, if one has been established pursuant to the Declaration, to be open to attendance by Members and notice posted accordingly.

4.16 Order of Business/Agenda. The order of business and agenda at all regular meetings of the Board of Directors shall be as follows:

- (A) Call to Order.
- (B) Call of the Roll or certification of quorum.
- (C) Proof of Notice and Posting.
- (D) Reading or disposal of any unapproved minutes.
- (E) Reports of officers and manager.
- (F) Reports of committees.
- (G) Unfinished business.
- (H) New business (with the items to be voted on specifically listed in the agenda).
- (I) Adjournment.

4.17 Powers and Duties of the Board of Directors. All of the powers and duties of the Association existing under the Chapter 617, Florida Statutes, Chapter 720, Florida Statutes, the Declaration, the Articles of Incorporation, these By-Laws and the Rules and Regulations shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by Members when such is specifically required. Such powers and duties of the Directors shall include, but not be limited to, the following:

4.17.1 To adopt budgets, borrow money and levy and collect assessments and fees from and against owners and users to defray the expenses of the Association.

4.17.2 To use and expend the assessments collected for the purpose stated in the Declaration and to maintain, operate, lease, care for and preserve the Common Property.

4.17.3 To purchase the necessary equipment required in the maintenance, care and preservation referred to above.

4.17.4 To enter into and upon the Lots when necessary, with as little inconvenience to the Owners as possible, in connection with said maintenance, care and preservation.

4.17.5 To insure and keep insured said Common Property against loss from fire and/or

other casualty and the Owners against public liability, and to purchase such other insurance as the Board may deem advisable.

4.17.6 To reconstruct common improvements after casualty and the further improvement of the property.

4.17.7 To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin and/or seek damages from the Members for violations of these By-Laws, the Articles of Incorporation, the Declaration, and the Rules and Regulations promulgated by the Board.

4.17.8 To employ and compensate such personnel as may be required for the maintenance and preservation of the Common Property.

4.17.9 To enact rules and regulations concerning the use and operation of the property within Neighborhood.

4.17.10 To acquire, rent or lease Lots and/or portions of the Common Property in the name of the Association or a designee.

4.17.11 To contract for the management of the Common Property and to delegate to such other party all powers and duties of the Association except those specifically required by the Declaration to have the specific approval of the Board or the Members.

4.17.12 To grant easements and licenses over the Common Property as necessary or desirable for proper operation of the Community. To carry out the obligations of the Association under any easements, restrictions or covenants covered by the Declaration.

4.17.13 To approve or disapprove the renting or the transfer of ownership of Lots in the manner provided in the Declaration and these By-Laws.

4.17.14 The maintenance, repair, replacement, operation and improvement of the Common Property.

4.17.15 To bring and defend suits, make and execute contracts, deeds, mortgage, leases, licenses and other instruments by its officers and to purchase, own, lease, convey and encumber real and personal property.

4.17.16 To Levy Fines. The Directors may, pursuant to Florida Statutes Section 720.305 and Section 8.1 hereof, impose fines or impose suspension of use rights for failure to comply with the provisions of the Governing Documents, including the Rules and Regulations, by owners, occupants, licensees, tenants and invitees.

4.18 To Have the Following Emergency Powers. In the event of an "emergency" as defined in Section 4.18.6 below, the Board may exercise the following emergency powers, and any other emergency powers authorized by Section 617.0207, Florida Statutes, as may be amended from time to time:

4.18.1 In anticipation of or during any emergency defined in Section 4.18.6 below, the Board of Directors of the Association may:

- (a) Name as assistant officers persons who are not Board members, 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 or unavailability of any officer of the Association; and
- (b) Relocate the principal officer or designate alternative principal offices or authorize the officers to do so.

4.18.2 During an emergency defined in Section 4.18.6 below:

- (a) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- (b) The Director or Directors in attendance at a meeting shall constitute a quorum.

4.18.3 Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:

- (a) Binds the Association; and
- (b) Shall have the presumption of being reasonable and necessary.

4.18.4 An officer, director or employee of the Association acting in accordance with any emergency By-Laws is only liable for willful misconduct.

4.18.5 The provisions of these emergency By-Laws shall supersede any inconsistent or contrary provisions of the By-Laws for the period of emergency.

4.18.6 An emergency exists for purposes of this Section if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event, a state of emergency has been declared by law enforcement authorities for the geographic area comprising the Neighborhood, a voluntary or mandatory evacuation order is in effect for the Neighborhood, or a governmental agency has designated the geographic area including the Neighborhood as a "disaster area".

## 5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Association shall be a President and Vice President, who must be Directors, and Secretary and Treasurer, all of whom shall be elected annually by the Board of Directors. Any officer may be removed with or without cause by a majority vote of the Board of Directors. Any person may hold two or more offices except the President. 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. An officer more than ninety (90) days delinquent in the payment of regular Assessments shall be deemed to have abandoned the office, creating a vacancy to be filled according to law.

5.2 President. The President shall be the chief executive officer of the Association; he shall

preside at all meetings of the Members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association. He shall serve as the Neighborhood Voting Representative to the Club.

5.3 Vice-Presidents. The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

5.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Governing Documents. Any of the foregoing duties may be performed by an Assistant Secretary, if any has been designated, or in the Secretary's and Assistant Secretary's absence, by appointment of the President.

5.5 Treasurer. The Treasurer shall be responsible for the supervision of Association funds and securities, the proper handling of full and accurate amounts of receipts and disbursements in books belonging to the Association, and 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 of Directors. The Treasurer shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer or management company, as designated by the Board.

5.6 Indemnification. Every Director and every officer and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees through all trial and appellate levels, reasonably incurred by or imposed in connection with any proceeding, arbitration, or settlement to which such person may be a party, or in which they may become involved, by reason of being or having been a Director, officer, or committee member of the Association. Notwithstanding the foregoing, in the event of a voluntary settlement, the indemnification provisions herein shall not be automatic and shall apply only when the Board approves such settlement. Notwithstanding anything contained herein to the contrary, in instances where the Director, officer, or committee member admits or is adjudged guilty or willful malfeasance, willful misfeasance or willful nonfeasance in the performance of their duties, the indemnification provisions contained herein shall not apply. Otherwise, the foregoing right of indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which such Director, officer or committee member may be entitled by common law or statute.

5.7 Resignation of Officer. Any Director or officer may resign his office at any time, in

writing, and such resignation shall take effect from the time of its receipt by the Association, unless some later time be fixed in the resignation, and then from that date.

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

## 6. FISCAL MATTERS.

6.1 Depository. The Association shall maintain its funds in such financial institutions as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board, or its designee, may invest Association funds in interest-bearing accounts, money market funds primarily invested in government securities, certificates of deposit, U.S. Government securities, FDIC backed investments, and other similar investment vehicles.

6.2 Budget. The Board of Directors shall adopt an annual budget that sets out the annual operating expenses, prior to the beginning of the fiscal year. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The Association shall provide each Member with a copy of the annual budget or a written notice that a copy of the budget is available at no charge to the Member.

6.3 Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, each proposed budget may include reserve accounts for capital expenditures and deferred maintenance or as required by Section 720.303(6), Florida Statutes. The amount to be reserved for any mandatory reserves shall be computed by a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve Assessments annually to take into account any changes in estimates or extensions of the useful life of a reserve item caused by deferred maintenance. Reserves funded under this Section 6.3, and all interest earned on such reserves, shall not be commingled with operating funds (unless combined for investment purposes). If required by the Act, reserves shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority vote at a Members' meeting called for that purpose. Other reserves may be spent for any purpose approved by the Board. Operating and reserve funds may be invested in combined accounts, but such funds shall be accounted for separately, and the combined account balance may not, at any time, be less than the amount identified as reserve funds. Operating and reserve funds may be combined in the quarterly Assessment paid by Owners.

6.4 Contingency Funds. In addition to the statutory reserves provided in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more "contingency funds" for contingencies and operating expenses for the Association. The purpose of these contingency funds is to provide financial stability and to avoid the need for Special Assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget as a line item in the operating portion of the budget.

6.5 Assessments. Regular annual Assessments based on the adopted budget shall be paid quarterly in advance on the first day of January, April, July and October of the year for which the assessment is made. Failure to send or receive notice of Assessments shall not excuse the obligation to pay. 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 budget is adopted and pro rata Assessments are calculated, at which time any overage or shortage shall be added or subtracted from each Member's next due installment.

6.6 Special Assessments. Special Assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special Assessments are due on the day specified in the resolution of the Board approving such Assessments. Written notice of any Board meeting at which a non-emergency special or regular Assessment, will be considered, must be mailed, hand-delivered, or electronically transmitted (in the latter case, to those Lot Owners who have so consented) to all Owners and posted conspicuously in the Neighborhood at least fourteen (14) days in advance, which notice shall state that Assessments will be considered and the nature, estimated cost and description of the purposes for 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.

6.7 Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time, or the maximum amount required by law. The term "persons who control or disburse Association funds", includes, but is not limited to those individuals authorized to sign checks and the President, Secretary and Treasurer of the Association. The Association shall bear the cost of bonding.

6.8 Financial Statement or Report. Within ninety (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 twenty-one (21) days after the final financial report is completed by the Association or received from the third party, the Association shall 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 Association's financial statement requirement shall be based upon the Association's total annual revenues as set forth in Florida Statutes Section 720.303(7).

If approved by a majority of the voting interests present at a duly called meeting of the Members, the Association shall prepare or cause to be prepared:

- (A) A report of cash receipts and expenditures in lieu of compiled, reviewed, or audited financial statements;
- (B) a report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- (C) a report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

6.9 Fiscal Year. The fiscal year shall be the calendar year, unless modified by the Board of Directors in accordance with IRS regulations.

7. **RULES AND REGULATIONS: USE RESTRICTIONS.** The Board of Directors may, from time to time, adopt and amend administrative Rules and Regulations governing the operation of the Association and the use of the Common Property subject to any limits contained in the Declaration. Any Rules and Regulations created and imposed by the Board must be rationally related to a legitimate Association purpose. The Rules and Regulations may not conflict with the rights of Owners as provided in the Declaration or reasonably inferable therefrom. Rules and Regulations regarding Lot use shall be adopted by the Board of Directors as set forth in Section 4.8 hereof. Rules and Regulations may, but need not be, recorded in the Public Records of Lee County, Florida.

8. **COMPLIANCE AND DEFAULT: REMEDIES.** In addition to the remedies provided elsewhere in the Governing Documents, the following provisions shall apply:

8.1 **Fines.** The Board of Directors may levy reasonable fines against any Member, or suspend the use rights of, any Member's tenant, guest, or invitee for the failure of the Owner, occupant, licensee or invitee to comply with the provisions of the Governing Documents. No fine may exceed \$100 per violation or the maximum allowed by law. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that a fine may not exceed \$1000 in the aggregate. A fine of less than \$1,000 may not become a lien against a Lot. In any action to recover a fine, the prevailing party is entitled to reasonable attorney's fees and costs from the nonprevailing party as determined by the court. The procedure for imposing such fines shall be as follows:

- (A) The party against whom the fine or suspension is sought to be levied shall be afforded an opportunity for hearing before a committee of at least Members who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The party shall receive 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;
  - (2) A statement of the provisions of the Governing Documents which have allegedly been violated; and,
  - (3) A short and plain statement of the matters asserted by the Association.
- (B) The party against whom the fine or suspension 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 shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The Owner shall be the party ultimately responsible for payment of a fine, regardless of whether the fine relates to conduct by a tenant, family member, invitee or guest. If the committee does not agree with the fine or suspension, the fine or suspension may not be levied.
- (C) **Exceptions to Hearing and Notice Requirements.** The notice and hearing requirements of this Section 8.1 do not apply to the imposition of suspensions or fines against a Lot Owner or Occupant because of failing to pay any amounts due the Association. If such a fine or suspension is imposed, the Association must levy the fine or impose a reasonable suspension at a properly noticed Board meeting, and after the imposition of such fine or

suspension, the Association must notify the Lot Owner and, if applicable, the Lot Occupant, licensee or invitee by mail or hand delivery.

8.2 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 businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the Association Property free from unreasonable restraint and annoyance.

9. AMENDMENT OF BYLAWS. Amendments to these Bylaws shall be proposed and adopted in the following manner:

9.1 Proposal. Amendments to these Bylaws may be proposed by the Board at a duly noticed Board meeting. Alternatively, amendments to these Bylaws shall be submitted to a vote of the Owners if the Board receives a written petition to the Board signed by at least twenty-five percent (25%) of the voting interests.

9.2 Procedure. Upon any amendment being proposed as provided above, the proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given. The text of the proposed amendment shall accompany the notice of meeting or the notice that a vote will occur by written consents in lieu of a meeting. A proposed amendment shall contain the full text of the language with proposed new words in the text underlined and words to be deleted lined through with hyphens, unless the proposed change is so extensive that this procedure would hinder rather than assist the understanding of the proposed amendment. In the latter case, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Bylaws. See Bylaws, Section \_\_\_ for present text."

9.3 Vote Required. Except as otherwise provided by law, or by specific provision of these Bylaws, a proposed amendment must be approved at an annual or special Members' meeting at which a quorum has been established by at least a majority of the total voting interests present and voting in person or by proxy. The Bylaws shall be deemed amended by virtue of revisions to laws, regulations and statutes which control over conflicting provisions of the Bylaws. The Board of Directors shall have the authority to amend the Bylaws in order to conform the provisions thereof with such revisions to laws, regulations and statutes. In addition, the Board of Directors may amend the Bylaws to correct author's errors or omissions, and amend and restate the Bylaws in order to consolidate into one document amendments previously adopted by the members or the Board. Amendments adopted by the Board shall occur at a duly noticed Board meeting (with adoption of the amendments set forth on the agenda).

9.4. Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Bylaws, which certificate shall be in the form required by law and shall be executed by the President or Vice President with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida.

10. OFFICIAL RECORDS.



10.1 Maintenance of Official Records. The Association shall maintain all of the following items, when applicable, that are required to be maintained as “official records” pursuant to Section 720.303, Florida Statutes, including the following:

- (A) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair, or replace.
- (B) A copy of the recorded Declaration and Bylaws; a certified copy of the Articles of Incorporation; and a copy of all amendments to the foregoing documents.
- (C) A copy of the current Rules and Regulations.
- (D) A book or books that contain the minutes of all meetings of the Association members, and the Board of Directors, which minutes must be retained for at least (7) years.
- (E) A current roster of all Owners and their mailing addresses, parcel identifications, and, if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and facsimile numbers of Owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers provided by Owners to receive notice by electronic transmission are not accessible to members if consent to receive notice by electronic transmission is not provided in accordance with Section 10.3(E) below. However, the Association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.
- (F) All of the Association’s insurance policies or a copy thereof, which policies must be retained for at least 7 years.
- (G) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the association for work to be performed must also be considered official records and must be kept for a period of 1 year.
- (H) Financial and accounting records of the Association, which must be maintained for at least seven (7) years. The accounting records shall include, but are not limited to:
  - (1) Accurate, itemized and detailed records of all receipts and expenditures.
  - (2) A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
  - (3) All tax returns, financial statements, and financial reports of the Association.
  - (4) Any other records that identify, measure, record, or communicate financial

information.

- (I) A copy of the disclosure summary described in Section 720.401(1), Florida Statutes.
- (J) All other written records of the Association not specifically included in the foregoing which are related to the operation of the Association.

10.2 Access to Official Records. The Association's official records are open to inspection by any member or the authorized representative of such member at all reasonable times within 10 business days after receipt of a written request for access. The Association may comply with this requirement by having a copy of the official records available for inspection or copying in the community. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The Board may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The Association may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association's failure to provide the records within ten (10) working days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this Section. An Owner who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this Section. The minimum damages shall be \$50 per calendar day up to ten (10) days, the calculation to begin on the 11<sup>th</sup> business day after receipt of the written request. The Association shall maintain an adequate number of copies of the recorded governing documents to ensure their availability to Owners and prospective purchasers.

10.3 Official Records Exempt from Inspection and Copying. The following records shall not be accessible to Owners:

- (A) Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes; and any record protected by the work-product privilege, including any record prepared by an Association attorney or prepared at the attorney's express direction; which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.
- (B) Information obtained by the Association in connection with the approval of the lease, sale or other transfer of a Lot.
- (C) Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an Association employee or management company, or budgetary or financial records that indicate the compensation paid to an Association employee

- (D) Medical records of Lot Owners.
- (E) Social Security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, any addresses of Owner other than as provided to fulfill the Association's Notice requirements under the Governing Documents and/or the Act, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the Association to fulfill the Association's notice requirements. However, an owner may consent in writing to the disclosure of protected information described in this sub-paragraph. The Association is not liable for the inadvertent disclosure of information that is protected under this sub-paragraph if the information is included in an official record of the Association and is voluntarily provided by an Owner and not requested by the Association.
- (F) Any electronic security measure that is used by the Association to safeguard data, including passwords.
- (G) The software and operating system used by the Association which allows manipulation of data, even if the Owner owns a copy of the same software used by the Association. The data is part of the official records of the Association.

**11. MISCELLANEOUS.**

11.1 Gender. 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.

11.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

11.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws, the Declaration of Covenants, or the Articles of Incorporation, the provisions of the Declaration and the Articles of Incorporation shall prevail over the provisions of these Bylaws.