

AMENDED AND RESTATED BYLAWS
OF
CREEKSIDE PRESERVE CONDOMINIUM ASSOCIATION, INC.

AMENDED AND RESTATED BYLAWS

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FOR

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CREEKSIDE PRESERVE CONDOMINIUM ASSOCIATION, INC.

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

**AMENDED AND RESTATED BYLAWS
OF
CREEKSIDE PRESERVE CONDOMINIUM ASSOCIATION, INC.**

1. **GENERAL.** These are the Amended and Restated Bylaws of Creekside Preserve Condominium Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a condominium. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 **Principal Office.** The principal office of the Association shall be at such location as may be designated from time to time by the Board of Directors.

1.2 **Seal.** The seal of the Association shall be circular in shape inscribed with the name of the Association, the year of its organization, and the words "Florida" and the year of establishment. The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 **Definitions.** The definitions set forth in the Declaration of Condominium, as amended ("Declaration") shall apply to terms used in these Bylaws. If a term is not defined in the Declaration and the case clearly requires the term be defined then the definitions set forth in the Master Declaration shall also apply to terms used in these Bylaws. The Condominium Documents and the Master Declaration are sometimes referred to collectively herein as the "Governing Documents".

2. **MEMBERS.**

2.1 **Qualifications.** The members of the Association shall be the record Owners of legal title to the Units. In the case of a Unit subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Unit 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 Unit.
- (B) Approval by the Board of Directors as provided for in the Declaration of Condominium.
- (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.

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2.2 Voting Interest. The members of the Association are entitled to one (1) vote for each Unit owned by them. The total number of possible votes is equal to the total number of Units. The vote of a Unit is not divisible. If a Unit is owned by one (1) person, his right to vote shall be established by the record title to the Unit. If a Unit is owned jointly by two (2) or more persons, that Unit's vote may be cast by any one of the record Owners. If two (2) or more Owners of a Unit do not agree among themselves how their one vote shall be cast, no vote for that Unit shall be counted. If the Owner of a Unit is a corporation, partnership, limited liability company, trust or other artificial entity, the vote of that Unit shall be cast by either of the Unit's Primary Occupants designated as set forth in the Declaration of Condominium. If the Primary Occupants do not agree among themselves how their one (1) vote shall be cast, no vote for that Unit shall be counted. Owners who are delinquent in any monetary amount owed to the Association shall have their voting rights suspended if allowed by the Condominium Act, as amended, and after notice to the Owner of such suspension.

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 Unit at an Association meeting as stated in Section 2.2 above, unless the specific approval of all record Owners is specifically required.

2.4 Change of Membership. Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new member's membership becoming effective as provided in 2.1 above. At that time the membership of the prior Owner shall be terminated automatically.

2.5 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 the Condominium Property (or such other location within fifteen (15) miles of the Condominium Property if specified in the notice), at a day, place and time 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. During the annual meeting, the ballots cast in the annual election of Directors shall be counted and results announced.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President, Vice President, or by a majority of the Directors, and may also be called by written petition of at least ten percent (10%) of the Voting Interests. 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

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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. Notice of a meeting called to recall a member or members of the Board of Directors pursuant to Section 718.112(2)(j) of the Condominium Act shall not be given by electronic transmission. 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. However, the Association is not liable for an inadvertent disclosure of an electronic mail address or facsimile number. 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 Unit 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 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting shall be posted in a conspicuous location on the Condominium Property in accordance with Board rule for at least fourteen (14) continuous days prior to the annual meeting.

3.5 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 votes in the Association. Voting Interests which have been suspended pursuant to the terms of the Declaration or Florida law shall not be considered for purposes of establishing a quorum during the period of suspension.

3.6 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 Condominium Documents.

3.7 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 it was originally given and any lawful adjournment of that meeting, and no proxy is valid for a period 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 Unit, specify the date, time and place of the meeting for which it is given, and must be delivered to the Secretary, or other individual designated by the Board, by the appointed time of the meeting or adjournment thereof. A photostatic, facsimile 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. Limited proxies and general proxies shall not be used in the election of directors. General proxies may be used for other matters for which limited proxies are not required, and may also 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 Condominium Documents or the Condominium Act requires or permits a vote of the members and for which a general proxy is not permitted, including, without limitation, votes taken to: waive or reduce reserves; waive financial statement requirements, and amend the Condominium Documents. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended shall contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.** Notwithstanding the foregoing, members may vote in person at members' meetings.

3.8 Electronic Voting. The Association may conduct elections and other owner votes through an Internet-based online system if an owner consents, in writing, to online voting. The Association must comply with the requirements for electronic voting as set forth in Section 718.128 of the Condominium Act and Chapters 61B-23.0021(4) and 61B-23.00211 of the Florida Administrative Code, as amended.

3.9 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.

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

- (A) Call to order by the President or other designated Chairman of the meeting.
- (B) (Annual meeting) Collection of election ballots not yet cast and closing of the polls; or announcement of names of candidates who will take office upon adjournment of the annual meeting.
- (C) Call of the roll or certification of a quorum.
- (D) Proof of Notice of Meeting (and posting, if applicable).
- (E) Reading or disposal of any unapproved minutes.
- (F) Reports of Officers.
- (G) Reports of Committees.

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- (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.

3.11 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 thirty (30) days after the meeting at which they were taken.

3.12 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 Condominium 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.

3.13 Action by Members Without Meeting. 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, setting forth the action to be taken, are signed by the members having not less than the minimum number of votes that would be necessary to take such action at a meeting in the manner required by Chapter 617, Florida Statutes. To be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the Association to its principal office in this state, its principal place of business, the secretary, or another officer or agent of the Association having custody of the book in which proceedings of meetings of members are recorded. Written consent to take the corporate action referred to in the consent is not effective unless the consent is signed by members having the requisite number of votes necessary to authorize the action within ninety (90) days after the date of the earliest dated consent and is delivered in the manner required by this section.

- A. Any written consent may be revoked prior to the date that the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Association at its principal office in this state or its principal place of business, or received by the secretary or other officer or agent of the Association having custody of the book in which proceedings of meetings of members are recorded.
- B. Within thirty (30) days after obtaining authorization by written consent, notice must be given to those members who are entitled to vote on the action but who have not consented in writing. The notice must fairly summarize the material features of the authorized action.
- C. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

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Nothing in this paragraph shall be construed in derogation of members' rights to call a special member's meeting, as provided for elsewhere in these Bylaws.

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 Condominium Documents or the Master Declaration, shall be exercised by the Board of Directors, subject to approval or consent of the members only when such is specifically required by the Condominium Act or the Condominium Documents. The Board is specifically empowered to perform all functions set forth in the governing documents of the Condominium and the Association Property that the Association shall operate pursuant to corporate merger.

4.1 **Number and Terms of Service.** The affairs of the Association shall be managed by a Board of Directors consisting of three (3) Directors. The Board shall have the authority to increase or decrease the number of Directors to an odd number of not less than three (3) and not more than five (5). A majority of the Board must approve the change in the number of Directors at a duly called meeting prior to the mailing of the first notice of the annual election in order for the increase or decrease to be effective. The directorships of those whose terms have expired shall be elected from the membership of the Association for a term of one (1) year. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns, or is removed as provided by Section 4.6 below. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in Section 4.5 below.

4.2 **Qualifications.** Each Director must be a: member; or a Primary Occupant (in the case of Units required to designate Primary Occupants pursuant to the Declaration); or the spouse of a member or Primary Occupant. Thus, trustees of trusts, partners of the partnership and officers of corporations are eligible to run for the Board if they are also the Primary Occupant of the Unit as defined in the Declaration. Co-owners of a unit may not serve as board members at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the Board of Directors at the time of the vacancy. A person who has been suspended or removed by the Division under Chapter 718, or who is delinquent in the payment of any fee, fine or special or regular Assessment as provided in Chapter 718, is not eligible for Board membership. A person who has been convicted of a felony in this State or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that 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 a period of no less than five (5) years as of the date on which such person seeks election to the Board. The validity of an action by the Board of Directors is not affected if it is later determined that a member of the Board of Directors is ineligible for Board of Directors membership due to having been convicted of a felony. A Director more than ninety (90) days delinquent in the payment of any monetary obligation due the Association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to Florida law and any applicable Division rules. A Director charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property must be removed from office, creating a vacancy in the office to be filled according to Florida law until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. While such Director has such criminal charge pending, he or she may not be appointed or elected to a position as a Director. However, if the charges are resolved without a finding of guilt, the Director shall be reinstated for the remainder of his or her term of office, if any.

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4.3 Nomination and Elections. On the day of each annual meeting, the Members shall elect by secret written ballot as many Directors as there are regular terms of Directors expiring. The Board of Directors may not appoint a committee for the purpose of nominating candidates for the election of Directors. However, the Board of Directors may appoint a search committee to encourage qualified persons to become candidates.

A. First Notice. The First Notice of each annual election shall be mailed, hand-delivered or electronically transmitted to all Owners at least sixty (60) days in advance. Any person eligible to serve as a Director who wishes to qualify as a candidate shall notify the Association in writing of his or her desire to be a candidate at least forty (40) days prior to the annual election, and must be eligible to serve on the Board of Directors at the time of such notification deadline in order to have his or her name listed as a proper candidate on the election ballot or to serve on the Board of Directors. Notice shall be deemed effective when received by the Association. Any person indicating his or her desire to qualify as a candidate may also return a separate information sheet, no larger than 8 1/2 inches by 11 inches, which describes the candidate's background, education and qualifications for office, and any other information deemed relevant by the candidate, which information sheet must be furnished by the candidate at least thirty-five (35) days prior to the election. The Association has no liability for the contents of the information sheets prepared by the candidates.

B. Second Notice. The Association shall mail, hand-deliver or electronically transmit a Second Notice of the election, together with the candidate information sheets and ballot which shall list all candidates in alphabetical order by surname, at least fourteen (14) days in advance of the election; provided, however, that if the number of candidates does not exceed the number of vacancies, then no election shall be required, and the candidates become members of the Board of Directors effective upon the adjournment of the annual meeting. Any remaining vacancies shall be filled by the affirmative vote of the majority of the Directors making up the newly constituted Board even if the Directors constitute less than a quorum or there is only one (1) Director.

C. Balloting. Directors shall be elected by a plurality of the ballots cast. In the event of a tie, the Association shall proceed with a runoff election pursuant to rules adopted by the Division. There shall be no quorum requirement; however, at least twenty percent (20%) of the Members must cast a ballot in order to have a valid election of Directors. A Member shall not permit any other person to vote his ballot, and any ballots improperly cast are invalid. Notwithstanding the foregoing, a Member who needs assistance in casting the ballot by reason of blindness, disability, or inability to read or write or other reasons as set forth in Section 101.051, Florida Statutes, may obtain such assistance. In the election of Directors, there shall be appurtenant to each Unit as many votes for Directors as there are Directors to be elected, but no Unit may cast more than one (1) vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Notices, candidate information sheets and ballots may be given by electronic transmission (to those Members who have so consented), pursuant to rules adopted by the Division.

D. Certification. Within ninety (90) days after being elected or appointed, each newly elected or appointed Director shall certify in writing to the Secretary that he or she has read the Declaration of Condominium, Articles of Incorporation, Bylaws and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. In lieu of this written certification, within ninety (90) days after being elected or appointed, the newly elected or appointed

Director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved condominium education provider within one (1) year before or ninety (90) days after the date of election of appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the Director serves on the Board of Directors without interruption. A Director who fails to timely file the written certification or educational certificate is suspended from service on the Board of Directors until he or she complies with the requirements set forth above. The Board of Directors may temporarily fill the vacancy during the period of suspension. The Secretary shall cause the Association to retain a Director's written certification or educational certificate for inspection by the Members for five (5) years after a Director's election. Failure to have such written certification or educational certification on file does not affect the validity of any Board action.

E. Challenge. Any challenge to the election process must be commenced within sixty (60) days after the election results are announced.

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. Alternatively, an Owner may seek the appointment of a receiver pursuant to Section 718.1124 of the Condominium Act.

4.5 Replacement. If a vacancy occurs on the Board of Directors as a result of a recall by Unit Owners and less than a majority of the Members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors. If vacancies occur on the Board of Directors as a result of a recall by Unit Owners and a majority or more of the Members are removed, the vacancies shall be filled pursuant to Chapter 718 of the Florida Statutes.

4.6 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 the Condominium Act.

4.6.1 Recall of Directors by Meeting. A special meeting of the Unit Owners to recall a member or members 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. A Director that has been recalled shall turn over to the Board within ten (10) full business days after the vote any and all Association records and property in their possession.

4.6.2 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. A Director that has been recalled shall turn over to the Board within ten (10) full business days any and all Association records and property in their possession, or shall proceed as set forth in Section 4.6.3 below.

4.6.3 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.

4.6.4 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 Division.

4.6.5 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, as amended.

4.7 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 Second Notice of Annual Meeting. If the notice of the organizational meeting is not provided and posted as part of the Second Notice of Annual Meeting, notice of the Board's organizational meeting must be posted conspicuously on the Condominium Property for at least forty-eight (48) continuous hours in advance of the meeting.

4.8 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, telegram 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.

4.9 Notice to Owners. All meetings of the Board of Directors are open to Owners and notices of all Board of Directors meetings shall be posted conspicuously on the Condominium Property for at least forty-eight (48) continuous hours before each Board of Directors meeting, except in an emergency. Notice of all Board of Directors meetings must specifically identify all agenda items. Any item not included on the agenda may be taken up on an emergency basis by at least a majority plus one (1) of the members of the Board of Directors. Such emergency action must be noticed and ratified at the next regular meeting of the Board of Directors. If twenty percent (20%) of the Voting Interests petition the Board of Directors to address an item of business, the Board of Directors at its next regular Board of

Directors meeting or at a special meeting of the Board of Directors, but not later than sixty (60) days after the receipt of the petition, shall place the item on the agenda. Notice of any Board of Directors meeting at which a non-emergency Special Assessment will be considered shall conform to the requirements set forth in Section 6.6 below. Notice of any Board of Directors meeting at which an amendment to Rules and Regulations concerning the use of a Unit, as permitted by the Declaration or by the Condominium Act, will be considered must be mailed, hand-delivered, or electronically transmitted (in the latter case, to those Owners who have so consented) to all Owners and posted conspicuously on the Condominium Property at least fourteen (14) days before the meeting. Prior to the Board of Directors approving a contract where the term of the contract will be in excess of five (5) years, notice of the Board meeting where the contract will be considered, along with a copy of the proposed contract, must be mailed, hand-delivered, or electronically transmitted (in the latter case, to those Owners who have so consented) to all Owners, and the notice posted conspicuously on the Condominium Property, at least fourteen (14) days before the meeting. Notice of any Board of Directors meeting at which a budget will be adopted or amended shall conform to the requirements of Section 6.2 below. The rights of Owners to attend Board of Directors meetings includes the right to speak with reference to all designated agenda items, subject to the Rules and Regulations of the Association as to the manner of doing so. Evidence of compliance with the notice and posting requirements set forth in this Section 4.9 and elsewhere in the Condominium Documents (including, without limitation, Sections 6.2 and 6.6 of these By-Laws) may be made by an affidavit executed by the person giving notice and posting same, and filed with the Association's official records. Notwithstanding anything to the contrary contained in the Condominium Documents, meetings of the Board of Directors or a committee with the Association's attorney with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice, and meetings held for the purpose of discussing personnel matters, shall not be open to the Owners. Notices of Board of Directors meetings may be given by electronic transmission (to those Members who have so consented) in lieu of mail or hand-delivery, when the latter two (2) methods are otherwise required pursuant to the Condominium Act. Tape recording and videotaping of Board of Directors meetings shall be governed by the Rules and Regulations.

4.10 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

4.11 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. Directors can communicate by using e-mail but may not vote or participate at Board Meetings via e-mail.

4.12 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 Condominium 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 or abstained because of an asserted, actual conflict of interest. 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. 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 Condominium 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 for the purpose of determining a quorum.

4.13 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 4.9 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.

4.14 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.

4.15 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.

4.16 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 Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Meetings of a committee which advises the Board on the proposed annual budget, or a committee which has authority to take final action on behalf of the Board, shall be open to attendance by any Unit Owner, and notice of such committee meetings shall be posted in the same manner as required in Section 4.9 above for Board meetings, including by broadcast on closed-circuit cable television system serving the Association. All other committees shall not be subject to the requirements of Section 718.112(2)(c) of the Condominium Act, as set forth in Section 4.9 of these Bylaws, but may voluntarily post notices of their meetings and open such meetings to attendance by the members.

4.17 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) Consideration of communications. (if applicable)
- (F) Resignations. (if applicable)
- (G) Reports of officers and manager.
- (H) Reports of committees.
- (I) Unfinished business.
- (J) New business.
- (K) Adjournment.

4.18 Powers and Duties of the Board of Directors. All of the powers and duties of the Association existing under the Florida Not-For-Profit Corporation Statute, the Condominium Act, the Declaration of Condominium, the Articles of Incorporation and these By-Laws shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by unit owners when such is specifically required. The Board is specifically empowered to perform all functions set forth in the governing documents for both the Condominium and all other Association Property and common areas that the Association shall operate pursuant to corporate merger. Such powers and duties of the Directors shall include, but not limited to the following:

- 4.18.1 To adopt budgets and make and collect assessments and fees from and against owners and users to defray the expenses of the Association.
- 4.18.2 To use the proceeds of assessments in the exercise of its powers and duties.
- 4.18.3 To supervise and oversee the maintenance, repair, replacement and operation of the Condominium Property and all other Association property within the community of Creekside Preserve.
- 4.18.4 To enact rules and regulations concerning the use of the common elements, the Association Property and the units subject to any limitations contained in the Condominium Act, the Declaration of Condominium, and the Master Declaration.
- 4.18.5 To reconstruct common element improvements after casualty and the further improvement of the property.
- 4.18.6 To approve or disapprove proposed actions in the manner provided by the Condominium Declaration and the Master Declaration.

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- 4.18.7 To enforce by legal means the provisions of applicable laws and the Condominium documents and the Master Declaration.
- 4.18.8 To contract for management of the Condominium.
- 4.18.9 To carry insurance for the protection of the unit owners, users and the Association.
- 4.18.10 To pay the cost of all utility services rendered to the Condominium and not billed to owners of individual units or users.
- 4.18.11 To employ personnel for reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.
- 4.18.12 To bring and defend suits, make and execute contracts, deeds, mortgages, leases, licenses and other instruments by its officers and to purchase, own, lease, convey and encumber real and personal property. To grant easements and licenses over the Condominium property and Association Property necessary or desirable for proper operation of the Condominium and the community of Creekside Preserve.
- 4.18.13 To Comply with Requirements for Entering Contracts for Products and Services. All contracts for the purchase, lease or renting of materials or equipment or for services, or which are not to be fully performed within one (1) year, shall be in writing. As to any such contract which requires payment exceeding five (5%) percent of the total annual budget of the Association including reserves except for contract with employees of the Association, and for attorneys, accountants, Community Association managers, architects, engineers and landscape architects, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within Collier or Lee County. The Association need not accept the lowest bid. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time.
- 4.18.14 To Levy Fines. The Directors may, pursuant to F.S. 718.303, impose fines for failure to comply with the provisions of the Condominium documents, including the rules and regulations, by owners, occupants, licensees, tenants and invitees. The procedure for imposing such fines is set forth in Section 8.1 below.
- 4.18.15 To Appoint Committees. The Directors may appoint committees, except that committees for the purpose of nominating candidates for election to the Board of Directors are prohibited. The Board may, however, appoint a search committee to encourage qualified persons to become candidates for

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the Board. All committees and committee members shall serve at the pleasure of the Board.

4.18.16 To Maintain Fire Safety Compliance. The Directors may accept a Certificate of Compliance from licensed electrical contractor or electrician as evidence of compliance of the Condominium units with the applicable Fire and Life Safety Code.

4.18.17 To Adopt Specifications for Hurricane Shutters. The Board of Directors may adopt hurricane shutter specifications for the buildings, which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with applicable building code and the specifications set forth in the Declaration. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications set forth in the Declaration. The Board may, subject to the provisions of Section 718.3026, Florida Statutes, and the approval of a majority of Voting Interests of the Condominium, install hurricane shutters, hurricane protection, impact glass (whether on doors or windows) or other code-compliant doors, windows or glass, that complies with or exceeds the applicable building code. However, a vote of the Owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, or code-compliant doors or windows are the responsibility of the Association pursuant to the Declaration of Condominium. If hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection, which complies with or exceeds the current applicable building code, has been previously installed, the Board may not install hurricane shutters, hurricane protection, or impact glass or other code-compliant windows or doors except upon approval by a majority vote of the Voting Interests of the Condominium. Shutters shall be maintained in good repair and operating order.

4.18.18 To borrow money to pay for the Association's maintenance, repair and replacement obligations.

4.19 To Have the Following Emergency Powers. In accordance with Section 718.1265 of the Condominium Act, the Board of Directors, in response to damage caused by an event for which a state of emergency is declared pursuant to Section 252.36, Florida Statutes, in the locale in which the Condominium is located, may, but is not required to, exercise the following powers:

4.19.1 In anticipation of or during any emergency defined in Section 4.19.6 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

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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.

4.19.2 During an emergency defined in Section 4.19.6 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;
- (b) The Director or Directors in attendance at a meeting shall constitute a quorum.

4.19.3 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.

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

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

4.19.6 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.

4.20 To Convey to Condemning Authorities. To convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right of way expansion, or other public purposes, whether negotiated or as the result of eminent domain proceedings.

4.21 Certified Public Accountant. To retain the services of a Certified Public Accountant.

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, who do not have to, but may, be directors. All officers 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, except the President, may hold two or more offices. The Board may, from time to time, appoint such other officers, and

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designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. The Board of Directors may delegate powers of removal of subordinate officers to any officer. 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.

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 Condominium 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 Association funds and securities, the keeping 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 Employee Compensation. The compensation of all employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.

5.7 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 of willful malfeasance, misfeasance or 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.

5.8 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. The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following provisions:

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 the following: interest-bearing accounts; money market funds primarily invested in U.S. 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 a budget of estimated revenues and expenses for each fiscal year, prior to the beginning of the fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted shall be mailed, hand-delivered or electronically transmitted (to those Unit Owners who have so consented) to the Owner of each Unit not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications in the form and manner required by Sections 718.112(2)(f) and 718.504(21) of the Condominium Act, as the same may be amended from time to time. The Board shall follow the same procedures as outlined above in the event that it wishes to amend an already approved budget for the remainder of the fiscal year.

6.2.1 Member Rejection of Budget. If an annual budget adopted by the Board of Directors requires an Assessment against the Unit Owners in any fiscal year exceeding one hundred fifteen percent (115%) of the Assessment for the previous fiscal year, the Board shall conduct a special members' meeting to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special members' meeting from at least ten percent (10%) of the Voting Interests. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board shall provide each Unit Owner a notice of the meeting. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of the Voting Interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board shall take effect as scheduled. Provisions for reasonable reserves for repair or replacement, nonrecurring expenses and Assessments for betterments shall be excluded from the computation in determining whether Assessments exceed one hundred fifteen percent (115%) of similar Assessments in the previous fiscal year.

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6.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, each proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by Section 718.112(2)(f) of the Condominium Act. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000, or as otherwise required by amendments to Florida Statutes Chapter 718. The amount to be reserved 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. These reserves shall be funded unless the members determine by a majority vote at a duly called meeting of the members, to fund no reserves or less reserves than required by Section 718.112(2)(f) of the Condominium Act. The Board of Directors may schedule its budget meeting to occur immediately after the adjournment of a membership meeting held for purposes of voting on reserve funding for the subsequent fiscal year. 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), and 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. 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 each Condominium and 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 (also referred to as Association maintenance fees) based on the adopted budget shall be paid either monthly or quarterly, as determined by the Board. 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 Unit'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 Unit Owners who have so consented) to all Owners and posted conspicuously on the Condominium Property 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 cause to be prepared and completed by a third party the financial statement or report required by the Condominium Act, as amended from time to time. Within twenty-one (21) days after that statement or report is completed or received from the third party, the Association shall mail or hand deliver to each Owner a copy of the most recent financial statement or report, as required by the Condominium Act, or a notice that a copy of the most recent financial statement or report, will be mailed or hand delivered to the Owner, without charge, within five (5) business days after receipt of a written request from the Owner.

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 Elements, the Condominium Property including Units, and the Association Property including all common areas of the community subject to any limits contained in the Declaration of Condominium and/or the Master 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 Master Declaration as applicable to the common area or reasonably inferable therefrom. Rules and Regulations regarding Unit use shall be adopted by the Board of Directors as set forth in Section 4.9 hereof. Rules and Regulations or amendments thereto may, but need not be, recorded in the Public Records of Lee County, Florida, irrespective of any prior recording of Rules and Regulations of the Association.

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

8.1 Fines and Suspension of Use Rights. The Board of Directors may levy reasonable fines against Units and suspend the common element/ association property use rights of individuals where the Owners commit violations of the Condominium Act, the provisions of the Condominium Documents, or condone such violations by their family members, guests or lessees. No fine may become a lien against a Unit, however, the Board may proceed with a court action to obtain a judgment for any fine amount not paid. 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 no fine shall in the aggregate exceed \$1,000, unless allowed by law. 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 other Owners, who are neither Board members nor persons residing in a Board member's household, after reasonable notice of not less than fourteen (14) days, and the notice shall include:

- (1) A statement of the date, time and place of the hearing;
- (2) A statement of the provisions of the Condominium 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, the fine 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 Unit 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 Unit Owner and, if applicable, the Units Occupant, licensee or invitee by mail or hand delivery.

(D) Payment of Penalties. Fines shall be paid not later than five (5) days after notice of the imposition of same.

(E) Remedy. For non-payment of fines, the Association shall have all of the remedies allowed by law and shall be entitled to recover attorney's fees, costs and pre and post-judgment interest in the amount of 18% calculated from the due date in any action for collection of such fines.

(F) Non-Exclusive Remedy. The fines provided for herein shall not be construed to be an exclusive remedy of the Association, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any penalty paid by the offending Unit Owner shall be deducted from or offset against any damage which the Association may otherwise be entitled to recover by law.

8.2 Mandatory Non-Binding Arbitration. In the event of any "dispute", as defined in Section 718.1255 Florida Statutes, between an Owner and the Association, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division prior to filing suit in Lee County over the disputed matters.

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8.3 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 Condominium Property and Association Property free from unreasonable restraint and annoyance.

8.4 Correction of Health and Safety Hazards. Any violations which are deemed by the Board of Directors to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit Owner.

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

9.1 Proposal. Amendments to these Bylaws may be proposed by the President of the Association, a majority of the Board of Directors or by one-third (1/3rd) of the Voting Interest of the Association.

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 by at least a majority of the Voting Interests present and voting at a duly called members meeting. A proposed amendment may also be approved by written consent of the Owners by written consents in lieu of a meeting in the same percentage as required to approve an amendment at a meeting. 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 to 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.

AMENDED AND RESTATED BYLAWS

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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 718.111(12) of the Condominium Act.

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 five (5) working days after receipt of a written request by the Board or its designee. The Association may comply with this requirement by having a copy of the official records available for inspection or copying on the Condominium Property or Association Property if the original official records are maintained elsewhere in Lee County or the State of Florida. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. A renter of a unit has a right to inspect and copy the Association’s bylaws and rules. The Board may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying. The Association shall maintain on the Condominium Property, the Association Property or with the Association’s manager an adequate number of copies of the Condominium Documents, as well as the question and answer sheet described in Section 718.504 and year-end financial information required by Section 718.112 of the Condominium Act to ensure their availability to Unit Owners and prospective purchasers. The Association may charge its actual costs for preparing and furnishing these documents to those requesting the same. An Association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association’s providing the member or his or her authorized representative with a copy of such records. The Association may not charge a member or his or her authorized representative for the use of a portable device.

10.3 **Official Records Exempt from Inspection and Copying.** The following records shall not be accessible to Unit 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 Unit.
- (C) Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-paragraph, 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 Unit Owners.
- (E) Social Security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the Association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit 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. Notwithstanding the restrictions in this subparagraph, an Association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the Association. An owner may consent in writing to the disclosure of other contact information described in this subsection. The Association is not liable for the inadvertent disclosure of information that is protected under this subparagraph 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 Unit Owner owns a copy of the same software used by the Association. The data is part of the official records of the Association.

10.4 Owner Inquiry. When a Unit Owner files a written inquiry by certified mail with the Board, the Board shall respond in writing to the Unit Owner within thirty (30) days of its receipt of the inquiry. The Board's response shall either give a substantive response to the Owner, notify the Owner that a legal opinion has been requested, or notify the Owner that advice has been requested from the Division of Florida Land Sales. If the Board requests advice from the Division, the Board shall, within ten (10) days of its receipt of the advice, provide in writing a substantive response to the Owner. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The Association may adopt reasonable rules and regulations regarding the frequency and manner of responding to Unit Owner inquiries, one of which may be that the association is only obligated to respond to one written inquiry per unit in any given thirty (30) day period. In such a case, any additional inquiry or inquiries must be responded to in the subsequent thirty (30) day period, or periods, as applicable.

10.5 Relinquishing Official Records. An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five (5) days after the election. A board or committee member who

willfully and knowingly fails to relinquish the records and property may be subject to a civil penalty imposed by the Division pursuant to the Condominium Act.

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 and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration and of the Articles of Incorporation shall prevail over the provisions of these Bylaws.

11.4 **Certificate of Compliance.** In accordance with Section 718.112(2)(1) of the Condominium Act, a Certificate of Compliance from a licensed electrical contractor or electrician may be accepted by the Board as evidence of compliance of the Units to the applicable fire and life safety code.