

**PROPOSED SECOND AMENDED AND RESTATED BYLAWS  
OF  
WILDCAT RUN COMMUNITY ASSOCIATION, INC.**

**SUBSTANTIAL REWORDING OF BYLAWS -  
SEE CURRENT BYLAWS FOR CURRENT TEXT**

**1. GENERAL:** These are the Amended and Restated Bylaws of Wildcat Run Community Association, Inc., hereinafter the “Association”, a not-for-profit corporation organized under the laws of Florida for the purpose of operating Wildcat Run (the “Community”) pursuant to the Florida Not-For-Profit Corporation Act, as it may be amended from time to time, and as a homeowners’ association pursuant to Chapter 720, Florida Statutes, as it same may be amended from time to time (the “Act”).

**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 inscribed with the name of the Association, the year of its organization, and the words “Florida” and “not for profit.” 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. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law.

**1.3 Definitions.** The definitions set forth in the Second Amended and Restated Declaration of Covenants and Restrictions for Wildcat Run, as amended from time to time (the “Declaration”) and the Act 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 and Condominium Units in the Community. Membership shall become effective upon recording in the Public Records of Lee County, Florida, a deed or other instrument evidencing legal title to a Lot or Condominium Unit. A copy of the recorded deed must be supplied to the Association within ten (10) days of recordation of the deed.

**2.2 Voting Interest.** The Members of the Association are entitled to one (1) vote for each Lot or Condominium Unit owned by them. The total number of Voting Interests equals the total number of Lots and Condominium Units subject to the Declaration (i.e., 450). Suspension of voting rights shall not affect the basis for which Common Expenses are shared or Common Areas and Common Surplus owned. However, suspended Voting Interests shall be subtracted from the total number of votes required when calculating any required vote or quorum during the period for which said Voting Interest is suspended. If a Lot or Condominium Unit is owned by one (1)

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natural person, his right to vote shall be established by the record title to the Lot or Condominium Unit. If a Lot or Condominium Unit is owned jointly by two (2) or more natural persons that are not acting as trustees, that Lot or Condominium Unit's vote may be cast by any one (1) of the Owners. If two (2) or more Owners of a Lot or Condominium Unit do not agree among themselves how their one (1) vote shall be cast, that vote shall not be counted for any purpose. If a Lot or Condominium Unit is owned by a corporation, any officer may vote on behalf of said corporation. If a Lot or Condominium Unit is owned by a partnership, any general partner may vote on behalf of the partnership. If a Lot or Condominium Unit is owned in trust, the grantor of the trust or any beneficiaries residing in the Unit shall be entitled to vote. If a Lot or Condominium Unit is owned by a limited liability company, any member or manager may vote on behalf of the limited liability company. Subject to the qualifications above, any person with apparent authority asserting the right to vote on behalf of a Lot or Condominium Unit owned by an artificial entity shall be conclusively presumed to be entitled to vote on behalf of said Lot or Condominium Unit, unless the Lot or Condominium Unit has filed voting instructions with the Association designating some other person entitled to vote. If multiple Owners or non-individual Owners of a Lot or Condominium Unit cannot agree on a vote, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary. No individual may cast a vote assigned to a Lot or Condominium Unit where the voting rights assigned to the Lot or Condominium Unit are suspended pursuant to the terms of the Governing Documents and/or Florida Law.

**2.3 Approval or Disapproval of Matters.** Whenever the decision or approval of the Owner of a Lot or Condominium Unit is required upon any matter, whether or not the subject of a Association meeting, such decision or approval may be expressed by any person authorized to cast the vote of such Lot or Condominium Unit at a Association meeting as stated in Section 2.2 above, unless the joinder of all Owners is specifically required by law or an express requirement in the Governing Documents.

**2.4 Change of Membership.** A change of membership in the Association shall be established by the new Member's membership becoming effective as provided in Section 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 obligations incurred under or in any way connected with the Community 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, or at a minimum within fifteen (15) months of the prior annual meeting. Failure

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to hold an annual meeting does not cause a forfeiture or give cause for dissolution of the corporation, nor does such failure affect otherwise valid corporate acts, except as provided in Section 617.1430, Florida Statutes (2014), as amended from time to time. The annual meeting shall be held on a day, time, and at a place designated by the Board of Directors, for the purpose of electing Directors and transacting any business duly authorized to be transacted by the Members.

**3.2 Special Members' Meetings.** Special Members' meetings must be held whenever called by the President, by a majority of the Directors, and must also be called by the President or Secretary within a reasonable time of receipt of petition of the Members, holding at least twenty five percent (25%) of the entire 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. The notice of meeting must be mailed to each Member at the address which appears on the books of the Association, or may be furnished by personal delivery or electronic transmission, as provided by law. The Member is responsible for providing the Association with notice of any change of address. The Association shall only be obligated to mail or deliver notice to one location, no matter how many persons own a Lot or Condominium Unit and no matter how many other residences such Owner may have. In the absence of written direction to the contrary, notices will be given to the address of the Lot or Condominium Unit. The Notice of Meeting must be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing or delivery shall be retained in the Association records as proof of mailing. 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 and attends solely to object to notice. A Member may waive notice of any meeting at any time, but only by written waiver or attendance.

Notice to the Members of meetings of the Board, meetings of a committee for which the Act requires notice in the same manner as meetings of the Board, and annual and special meetings of the Members, may be electronically transmitted in the manner set forth in the Act and Section 617.0141, Florida Statutes (2014), as amended from time to time. Notice by electronic transmission is effective when actually transmitted by facsimile telecommunication, if correctly directed to a facsimile number at which the Member has consented to receive notice; or when actually transmitted by electronic mail, if correctly directed to an electronic mail address at which the Member has consented to receive notice. Notice is also effective when posted on an electronic network that the Member has consented to consult, upon the later of such correct posting; or the giving of a separate notice to the Member of the fact of such specific posting; or when correctly transmitted to the Member, if by any other form of electronic transmission consented to by the Member to whom notice is given. Consent by a Member to receive notice by electronic transmission must be in writing and shall be revocable by the Member by written notice to the Association. Any such consent shall be deemed revoked if the Association is

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unable to deliver by electronic transmission two (2) 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. However, the Association is not liable for an erroneous disclosure of an electronic mail address or facsimile number. As used in these Bylaws, the term “electronic transmission” means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via electronic mail between computers, and attachments to such text which is readily capable of being viewed through customary home or office computing systems, including but not limited to “Word”®, PDF® or similar attachments. An affidavit of the Secretary, an Assistant Secretary, or other authorized agent of the Association that the notice has been given by a form of electronic transmission is, in the absence of fraud, prima facie evidence of the facts stated in the notice.

**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 votes of the entire Voting Interests. Those Members whose voting rights are suspended pursuant to the terms of the Governing Documents and/or Florida Law shall be subtracted from the required number of votes in any calculation for purposes of determining whether a quorum is present during the period of suspension and such Voting Interests shall likewise be subtracted from the required number of votes when calculating any required vote as set forth in the Governing Documents or the Act. 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 Members 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. No individual may cast a vote assigned to a Lot or Condominium Unit where the voting rights assigned to the Lot or Condominium Unit are suspended pursuant to the terms of the Governing Documents and/or Florida Law.

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**3.6 Proxy Voting.** To the extent lawful, any Member 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, 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. A photographic, photostatic, facsimile, electronic or equivalent reproduction of a signed proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the Owner's intent to cast a proxy vote. The use of proxies is to be liberally construed.

**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 and voting, in person or by proxy, regardless of whether a quorum has been attained. When a meeting is adjourned it shall not be necessary to give notice to all Members of the time and place of its continuance. 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.** The order of business at Members' meetings shall be substantially as follows:

**3.8.1** Call of the roll or determination of quorum.

**3.8.2** At the discretion of the President, appointment by the President of a chairman of the meeting (who need not be a Member or a Director);

**3.8.3** Proof of Notice

**3.8.4** Appointment by the Chair of Inspectors of Election (Annual Meeting)

**3.8.5** Election of Directors (Annual Meeting)

**3.8.6** Reading or disposal of minutes of the last Members' meeting

**3.8.7** Reports of Officers

**3.8.8** Reports of Committees

**3.8.9** Unfinished Business

**3.8.10** New Business Designated on Agenda

**3.8.11** Adjournment

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The President shall preside over all membership meetings. In his absence, a Vice President shall preside, or in the absence of both, the membership shall select a Chairman (who need not be a Member or a Director); provided that the Board may designate agents of the Association (including but not limited to association legal counsel or the association's manager) as Chairman.

**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 maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

**3.10 Parliamentary Rules.** Robert's Rules of Order (latest edition) shall be used as a general, non-binding guide in the conduct of Members' meetings, Board meetings, and Committee meetings to ensure fairness, impartiality, and respect for minority views without unduly burdening majority rights. Meetings shall also be conducted in accordance with these Bylaws and the procedures established by the Board from time to time, including the form of voting documents to be used. The ruling of the Chair of the meetings, unless he or the Board of Directors designates a third person as Parliamentarian, shall be binding on all matters of procedure, unless contrary to law. The failure or alleged failure to adhere to Robert's Rules of Order shall not be used as a basis to legally challenge any action of the Association.

**3.11 Action by Members without Meeting.** Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice, and without a vote if a consent in writing setting forth the action so taken, shall be signed by the requisite number of Voting Interests to approve the action.

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

**4.1 Number and Terms of Service.** The number of Directors which shall constitute the whole Board of Directors shall be seven (7). All Directors will be elected for a two (2) year term. It is the intention of these Bylaws that a staggered Directorate be maintained. To maintain a staggered Directorate, the Board may hold seats in future elections open for one or two year terms, when necessary or appropriate. In any election where candidates are elected for different terms, those 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 pre-qualified candidates than open seats, the Directors who are seated shall agree amongst themselves which

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shall serve the two-year terms and which shall serve the one-year terms. This decision shall be recorded in the minutes of a duly noticed Board of Directors' meeting. In the event the Directors cannot agree on which among them shall serve the lengthier and shorter seats, the Board shall hold a "run-off" election, wherein those receiving the most votes will be elected to a lengthier term. Directors shall be elected in accordance with the Act, these Bylaws and the election rules, if any, and process established and utilized by the Board of Directors. Not less than 60 days before a scheduled election, the Association shall mail, or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, and including electronic transmission for those Members who have so consented, to each Member entitled to vote, a first notice of the date of the election. Any eligible person who nominates himself to be a candidate may do so no later than forty (40) days prior to the annual meeting and may also submit a resume by such deadline on one side of an 8 and 1/2" x 11" sheet of paper. Nominations from the floor shall not be accepted. Not less than fourteen (14) days prior to the annual meeting, the Association shall send a Second Notice of Annual Meeting to all Members, along with either an election ballot for the election of Directors, any timely submitted candidates' resumes, a proxy and any other documents in the Board's discretion. The election ballot shall contain the names of all candidates who nominated themselves in a timely manner, listed in alphabetical order by surname. If a voter checks off the names of more candidates than the number of Directors to be elected, the election ballot shall not be counted for the election. Elections shall be determined by a plurality of the votes cast; a quorum of the Members need not cast a vote for a valid election to occur, so long as at least ten percent (10%) of the eligible Voting Interests cast a ballot. The candidates who are elected shall take office upon the adjournment of the annual meeting. The use of secret balloting provided for in Section 720.306(8) of the Act, shall be followed. The Board may require all ballots to be received by the Association at some point prior to the annual meeting so that the votes can be tallied prior to the annual meeting and the results announced at the annual meeting. No election shall be necessary if the number of candidates is less than or equal to the number of vacancies.

A Director's term ends at the adjournment of the second annual meeting following his election, unless he sooner resigns, is recalled, or becomes ineligible for Board membership due to no longer owning a Lot or Condominium Unit in the Community, or becomes ineligible under these Bylaws or the Act.

**4.2 Qualifications.** Directors must be Members. When a Lot or Condominium Unit is owned by a corporation, partnership, limited liability company or similar entity, any eligible voter, as described in Section 2.2 shall be eligible for Board service. No two individuals from the same Lot or Condominium Unit shall be eligible to serve on the Board at the same time, unless they own more than one Lot, in which case eligibility is limited to one Director per Lot.

**4.3 Vacancies on the Board.** If the office of any Director becomes vacant for any reason, other than recall of a majority of the Board by the Members, a majority of the remaining Directors or the sole remaining Director, though less than a quorum, may choose a successor to serve for the remainder of the unexpired term, or may choose to hold a special election to fill the

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vacancy, in which case the election procedures must conform to the requirements of Section 4.1 hereof. If the Association fails to fill vacancies on the Board sufficient to constitute a quorum, or if no Director remains on the Board, the vacancy may be filled by the Members (via a special meeting of the Membership which may be called by a single Member) or any Member may apply to the Circuit Court for the appointment of a receiver to manage the Association's affairs, in the manner provided by law.

**4.4 Removal and Resignation of Directors.** Any or all Directors may be removed with or without cause by a majority vote of the entire Voting Interests, either by a written petition, or at any meeting called for that purpose, in the manner required by the Act. A Director who ceases to be Member of the Association, or an eligible representative, a Director who is more than ninety (90) days delinquent in the payment of any financial obligation to the Association, or a Director who is convicted of a felony in any state, shall become ineligible for Board service on the date of such disqualification, delinquency or conviction, and his seat shall be deemed vacated as of that date. Any Director may resign his office at any time, in writing (including e-mail) addressed to any other Director, the manager or management company, Association legal counsel, or the Association's registered agent, and such resignation shall take effect from the time of its receipt by such person, unless some later time be fixed in the resignation, and then from that date. Resignations need not be accepted by the Board and cannot be rescinded after being given, even if not effective until a later date.

**4.5 Organizational Meeting.** The annual organizational meeting of the new Board of Directors shall be held within ten (10) days after the annual meeting. The organizational meeting may be held immediately following the annual meeting, in which case the noticing of such meeting may be effectuated by the Board existing prior to the election.

**4.6 Other Meetings.** Meetings of the Board may be held at such time and place, 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, electronic transmission or telegram at least forty-eight (48) hours prior to the time of such meeting.

**4.7 Notice to Owners.** A meeting of the Board of Directors occurs whenever a quorum of the Board simultaneously gathers (in person, by telephone, or video conferencing, or any combination thereof) to conduct Association business. All meetings of the Board of Directors shall be open to Members except for (a) meetings between the Board and the Association's attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege; (b) meeting regarding personnel matters; (c) such other meetings permitted to be closed by the Act. Notices of all Board meetings shall be posted conspicuously in the Community for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. In the alternative to the posting requirements discussed above, notice of each Board meeting must be mailed or delivered to each Member at least 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 or is considered by the Board at a meeting. The Board may adopt reasonable, written rules governing the rights of Members to speak and governing the frequency, duration, and other manner of Member statements, which rule must be consistent with the minimum requirements of Section 720.303(2)(b) of the Act. Any Owner may tape-record or videotape meetings of the Board and meetings of the members, but may not post such recordings on any website or other media which can readily be viewed by persons who are not Members of the Association. The Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.

**4.8 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.

**4.9 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 Board meeting by a conference telephone call, video conference or similar communicative arrangement whereby all persons present can hear all other persons. Participation by such means shall be deemed equivalent to presence in person at a Board meeting.

**4.10 Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting for which a quorum is established 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 applicable statutes. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. After a quorum has been established at a Board of Directors' meeting, the subsequent withdrawal of any Directors, so as to reduce the number of Directors represented below the number required for a quorum, shall not affect the validity of any action taken by a majority of the Directors present at the meeting before or after such persons leave.

**4.11 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 date, time and place. No further notice needs to be given to Directors or Members.

**4.12 The Presiding Officer.** The President, or in his absence, a 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 majority vote of the Directors present; provided however, that the Board may designate agents of the Association (including but not limited to association legal counsel or the association's manager) as Chairman.

**4.13 Compensation of Directors and Officers.** Neither Directors nor Officers shall receive compensation for their services as such. Directors and Officers may be reimbursed for

actual and appropriate out-of-pocket expenses relating to the proper discharge of their respective duties, subject to any procedures adopted by the Board with respect to reimbursement. Assistant Officers may be compensated as approved by the Board of Directors.

**5. POWERS OF THE BOARD OF DIRECTORS:** All of the powers of the Association existing under the laws of Florida generally, Florida Not For Profit Corporation Statute, the Act, and the Governing Documents, all as amended from time to time, shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees, when said powers have been delegated by the Board, subject only to the approval by Members when such is specifically required. The powers of the Directors shall include, but shall not be limited to, the power:

**5.1** To call meetings of the Members.

**5.2** To appoint, remove at pleasure all Officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Member, Officer or Director of the Association in any capacity whatsoever.

**5.3** To establish, levy and assess, and collect the assessments against Lots and Condominium Units as necessary to operate the Association and carry on its activities, and to create such reserves for extraordinary expenditures as may be deemed appropriate by the Board of Directors.

**5.4** To use the proceeds of assessments in the exercise of its powers and duties.

**5.5** To maintain, repair, replace, operate and improve the Property, as provided in the Declaration.

**5.6** To adopt and amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Property, including but not limited to the Lots, Condominium Units and Common Areas, including reasonable admission charges if deemed appropriate, and to adopt and amend rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration.

**5.7** To reconstruct any Association property improvements after casualty and to further improve the Property.

**5.8** To enforce by legal means the provisions of applicable laws and the Governing Documents, and to interpret said Governing Documents, as the final arbiter of their meaning, unless such interpretation is wholly arbitrary, or contrary to law.

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**5.9** To authorize and cause the Association to enter into contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations.

**5.10** To carry insurance for the protection of the Members and the Association.

**5.11** To pay the cost of all utility services rendered to the Common Area and not billed to Owners of individual Lots or Condominium Units.

**5.12** To employ personnel to be paid a reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

**5.13** To bring and defend suits and other proceedings and exercise its business judgment as to whether the interests of the Association are best served with respect to settlement of a matter or whether a suit or other proceeding should be commenced.

**5.14** To incur liabilities, borrow money at such rates of interest as the Board may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, Assessments, Special Assessments, income or rights.

**5.15** To make and execute contracts, deeds, mortgages, notes and other evidence of indebtedness, leases, and other instruments by its Officers, purchase, own, lease, convey, and encumber real and personal property subject to the provisions of the Declaration, and grant or modify easements and licenses over the Condominium Property necessary or desirable for proper operation of the Association.

**5.16** Pursuant to Section 720.305 of the Act, impose fines not to exceed the maximum permissible by law against any Member or any Member's Tenant, Guest, or Invitee for the failure of the Owner of the Lot or Condominium Unit or its Occupant, Licensee, or Invitee to comply with any provision of the Governing Documents, and/or suspend, for a reasonable period of time, the right of a Member, or a Member's Tenant, Guest, or Invitee, to use Common Areas and facilities for the failure of the Owner of the Lot or Condominium Unit or its Occupant, Licensee, or Invitee to comply with any provision of the Governing Documents.

**5.16.1** A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed five thousand dollars (\$5,000). Any fine of one thousand dollars (\$1,000) or greater not paid within thirty (30) days shall become a lien on the Lot or Condominium Unit of the Owner who owes the fine. Said lien may be foreclosed in the same manner as a lien for assessments as provided for in the Governing Documents.

**5.16.2** A suspension shall be levied and enforceable for a reasonable amount of time, as determined by the Board of Directors, and subject to the approval of the independent committee specified in Article 5.16.3 hereof. This Section 5.16 does not apply to that portion of

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Common Areas used to provide access or utility services to the Lot or Condominium Unit. A suspension may not impair the right of an Owner or Tenant of a Lot or Condominium Unit to have vehicular and pedestrian ingress to and egress from the Lot or Condominium Unit, including, but not limited to, the right to park.

**5.16.3** The Owner and, if applicable, the party against whom the fine and/or suspension is sought to be levied (if different from the Owner), shall be afforded an opportunity for hearing by being given notice of not less than fourteen (14) days. Notice shall be effective when mailed by United States Mail to the address of the Owner listed in the official records of the Association, and as to Tenants, to the mailing address for the Lot or Condominium Unit. Said notice shall include:

**5.16.3.1** A statement of the date, time and place of the hearing;

**5.16.3.2** A statement of the provisions of law or the Governing Documents which have allegedly been violated; and

**5.16.3.3** A short and plain statement of the matters asserted by the Association.

**5.16.4** The Owner and, if applicable, the party against whom the fine and/or suspension is sought to be levied (if different from the Owner), shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be held before a committee of at least three (3) Members appointed by the Board who are not Officers, Directors, or employees of the Association, or the spouse, parent, child, brother or sister of an Officer, Director or employee. If the Committee, by majority vote, does not approve the proposed fine and/or suspension, the fine and/or suspension may not be levied.

**5.16.5** Should the Association be required to initiate legal proceedings to collect a duly levied fine, or enforce a duly imposed suspension, the prevailing party shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining and/or suspension hearings), at trial, and on appeal. Members shall be jointly and severally liable for the payment of fines levied against and/or suspension imposed upon the Member's Tenant, Guest, or Invitee.

**5.17** Pursuant to Section 720.305 of the Act, suspend the voting rights of a Member and/or suspend the right of a Member, or the Member's Tenant, Guest, or Invitee, to use Common Areas and facilities for the nonpayment of any monetary obligation due to the Association that is delinquent in excess of ninety (90) days. All suspensions imposed pursuant to this Section 5.17 must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Owner and, if applicable, the Lot or Condominium Unit's Occupant,

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Licensee, or Invitee by mail or hand delivery. This Section 5.17 does not apply to that portion of Common Areas used to provide access or utility services to the Lot or Condominium Unit. A suspension may not impair the right of an Owner or Tenant of a Lot or Condominium Unit to have vehicular and pedestrian ingress to and egress from the Lot or Condominium Unit, including, but not limited to, the right to park. The suspension ends upon full payment of all obligations currently due or overdue to the Association.

**5.18** To exercise emergency powers. In the event of an “emergency” as defined in Section 5.18.7 below, the Board of Directors 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:

**5.18.1** The Board may name assistant officers, which assistant officers shall have the same authority as the executive officers to whom they are assisting during the period of the emergency, to accommodate the incapacity or unavailability of any officer of the Association.

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

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

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

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

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

**5.18.7** For purposes of this Section 5.18, an “emergency” exists only while the Community, or the immediate geographic area in which the Community is located, is subjected to:

**5.18.7.1** a state of emergency declared by law enforcement authorities;

**5.18.7.2** a hurricane warning;

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**5.18.7.3** a partial or complete evacuation order;

**5.18.7.4** designated by federal or state government as a “disaster area”; or

**5.18.7.5** a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Community, such as an earthquake, tidal wave, fire, hurricane, tropical storm, tornado, war civil unrest, or acts of terrorism.

## **6. OFFICERS:**

**6.1 Officers and Elections.** The executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary, all of whom must be Directors. All officers shall be appointed annually by the Board of Directors. Any officer may be removed with or without cause by vote of a majority of the Directors present at any properly noticed Board meeting. Any person may hold two (2) or more offices as long as he qualifies for both offices; except the President and Secretary may not be the same person. The Board may, from time to time, appoint such other officers, including Assistant Officers, and designate their powers and duties, as the Board deems necessary to manage the affairs of the Association. Assistant Officers need not be Directors or Members.

**6.2 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. He 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.

**6.3 Vice-President.** The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and he shall perform such other duties as the Board of Directors shall assign.

**6.4 Secretary.** The Secretary shall attend or provide for proper documentation of 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 kept. 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. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated, or the Association’s attorney, manager, or management company.

**6.5 Treasurer.** The Treasurer shall be responsible for Association funds, 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. He shall

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oversee the disbursement of the funds of the Association, and shall render to the Directors, 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, if any has been designated, or the Association's accountant, manager or management company.

**6.6 Resignation of Officer.** Any Officer may resign his office at any time, in writing (including e-mail) addressed to any other Director, the manager or management company, Association legal counsel, or the Association's registered agent, and such resignation shall take effect from the time of its receipt by such person, unless some later time be fixed in the resignation, and then from that date. Resignations need not be accepted by the Board and cannot be rescinded after being given, even if not effective until a later date.

**7. COMMITTEES.** The Board 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. Any such committee shall have the powers and duties assigned to it in the resolution or motion creating the committee. Where required by the Act, committee meetings shall be open to attendance by any Member, and notice of those committee meetings shall be posted in the same manner as required in Section 4.7 above. All other committees may meet and conduct their affairs in private without prior notice or Owner participation, unless otherwise directed by the Board of Directors. Notwithstanding the foregoing, the Building and Grounds Maintenance Committee and the Design Review Committee shall be selected and conduct its affairs as set forth in this Article 7, which may be supplemented by Board resolution without the need for amending these Bylaws.

**7.1 Building and Grounds Maintenance Committee.** The Building and Grounds Maintenance Committee shall be selected and conduct its affairs as provided in this Section 7.1.

**7.1.1 Members; Qualification.** The Building and Grounds Maintenance Committee shall be composed of at least three (3) persons, who may also be Directors of the Association.

**7.1.2 Selection; Terms.** The members of the Building and Grounds Maintenance Committee shall be appointed by the Board to serve terms of one year beginning on January 1 of each year. If a mid-term vacancy occurs for any reason, the Board shall appoint a successor to fill the unexpired term. Members of the Building and Grounds Maintenance Committee may be removed by vote of a majority of the Directors present at any duly noticed meeting of the Board.

**7.1.3 Compensation.** If approved by the Board, any or all members of the Building and Grounds Maintenance Committee may be compensated for their services.

**7.1.4 Meetings.** The Building and Grounds Maintenance Committee shall, if necessary, meet at least once during each quarter, and otherwise at the call of the Chairman as

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necessary, to carry out its duties and functions. The Building and Grounds Maintenance Committee need not meet with the same formalities and notice requirements as required for Board meetings, unless required by law. Special meetings may be called as needed by the Chairman.

**7.1.5 Duties and Functions.** The Building and Grounds Maintenance Committee shall be responsible for performing the duties imposed upon the Building and Grounds Maintenance Committee as may more particularly be set forth in the Declaration of Restrictions and Covenants with respect to the Subdivision, including but not limited to the responsibility for:

**7.1.5.1** Planning, upkeep and maintain the grounds, buildings and equipment;

**7.1.5.2** Planning for future expansion and develop and utilize all existing facilities;

**7.1.5.3** Operating with the Board in all matters relating to the maintenance of the Association, including the equipment therein contained;

**7.1.5.4** Approving the buying of all furnishings except food; and

**7.1.5.5** Recommending necessary repairs and authorize emergency repairs.

**7.2 DESIGN REVIEW COMMITTEE.** The DRC provided for in Article 5 of the Declaration shall be selected and conduct its affairs as provided in this Section 7.2.

**7.2.1 Members; Qualification.** The Design Review Committee, hereinafter the “DRC,” shall be composed of at least three (3) persons, who may also be Directors of the Association. Whenever possible and practical, one of the committee members should be an architect, general contractor, or other person with professional expertise in building, landscaping, or architectural design.

**7.2.2 Selection; Terms.** The members of the DRC shall be appointed by the Board to serve terms of one year beginning on January 1 of each year. If a mid-term vacancy occurs for any reason, the Board shall appoint a successor to fill the unexpired term. Members of the DRC may be removed by vote of a majority of the Directors present at any duly noticed meeting of the Board.

**7.2.3 Compensation.** If approved by the Board, any or all members of the DRC may be compensated for their services.

**7.2.4 Meetings.** The DRC shall, if necessary, meet at least once during each quarter, and otherwise at the call of the Chairman as necessary, to carry out its duties and



functions. The DRC shall meet with the same formalities and notice requirements as required for Board meetings, unless otherwise permitted by law. Special meetings may be called as needed by the Chairman.

**7.2.5 Procedures, Voting.** A majority of the members of the DRC present in person (or by telephonic/video conference participation) at any duly called meeting shall constitute a quorum. All questions shall be decided by a majority of the entire committee. Where a question involves proposed changes to a Lot or Condominium Unit owned by a member of the DRC, that member shall be disqualified from participation in the proceedings, and his place shall be taken by the then President of the Association. If a proposed change is not approved, the reasons for disapproval shall be stated in writing. Minutes of all meetings of the DRC shall be kept in a business-like manner, and shall be available at reasonable times for inspection or photocopying by any owner. Copies of the plans and specifications for all approved changes and construction shall be kept for at least seven (7) years.

**8. FISCAL MATTERS:** The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

**8.1 Depository.** The depository of the Association in which the funds of the Association shall be deposited shall be financial institutions authorized to do business in Florida which carry FDIC insurance or equivalent insurance backed by the full faith and credit of the United States of America. Deposits shall be limited to limits of FDIC or federal insurance at any institution. Principal of Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes and shall not exceed limits of applicable investments. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors or by electronic transfer protocols approved by the Board of Directors.

**8.2 Budget.** The Treasurer shall prepare and the Board of Directors shall adopt a budget of Association estimated revenues and expenses for each coming fiscal year. Once adopted, the Association shall provide to each Member a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Member. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and revenue and expense classifications. The estimated surplus or deficit as of the current year shall be shown and all fees or charges for recreational amenities shall be set out separately. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year, provided that, once the amended budget is adopted by the Board of Directors, the Association shall provide to each Member a copy of the amended budget or a written notice that a copy of the amended budget is available upon request at no charge to the Member.

**8.3 Reserves.** The Board may establish in the budget one (1) or more restricted reserve accounts for capital expenditures, deferred maintenance or contingencies. Board adopted

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reserve funds may be spent for any purpose approved by the Board except in cases where the use of reserves are restricted by the Act. The annual amounts proposed to be reserved shall be shown in the annual budget.

**8.4 Contingency Funds.** In addition to the reserves provided in Section 8.3 above, or in place of them, 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 minimize 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.

**8.5 Assessments.** Regular Annual Assessments based on the adopted budget shall be paid either monthly, quarterly or annually, 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 new budget is adopted and Assessments are calculated, at which time any overage or shortage shall be added to or subtracted from each Lot or Condominium Unit’s next installment due.

**8.6 Special Assessments.** Special Assessments may be imposed when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special Assessments may be adopted by the Board. Special Assessments are due on the day specified in the resolution or materials approving such Special Assessments. Except in an emergency, a Special Assessment may not be levied unless a written notice of the meeting is provided to each Member at least fourteen (14) days before the meeting, which notice includes a statement that a Special Assessment will be considered at the meeting and the nature of the proposed Special Assessment. Written notice of any meeting at which Special Assessments will be considered must be mailed, delivered, or electronically transmitted (to the extent permitted by law) to the Members and posted conspicuously in the Community or broadcast on closed-circuit television not less than fourteen (14) days before the meeting, except in the case of an emergency.

**8.7 Fidelity Bonds.** The Association shall obtain and maintain adequate fidelity bonding, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer. 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. The Association shall bear the cost of bonding of Directors and Officers. In the case of a community association manager or management firm, the cost of bonding may be allocated as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse Association funds, shall provide the Association with a certificate of insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy. The Association may opt out of this requirement as provided in the Act.

**8.8 Financial Reporting.** Not later than ninety (90) days after the close of each fiscal year, the Board shall cause to be prepared a financial report as prescribed in Section 720.303 of the Act, unless waived as provided by law. The Association shall provide each Member with a copy of the financial report or a written notice that a copy of the financial report is available upon request at no charge to the Member.

**8.9 Fiscal Year.** The fiscal year shall be the calendar year, unless modified by the Board of Directors.

**8.10 Application of Payments.** All payments made to the Association on account by an Owner shall be applied as specified in the Act.

**9. RULES AND REGULATIONS: USE RESTRICTIONS:** The Board of Directors may, from time to time, adopt and amend Rules and Regulations governing the Community subject to any limits contained in the Declaration. Written notice of any meeting at which Rules and Regulations that regulate the use, transfer, maintenance, appearance of Lots and/or Condominium Units may be adopted, amended, or revoked must be mailed, delivered, or electronically transmitted (to the extent permitted by law) to the Members and posted conspicuously in the Community or broadcast on closed-circuit television not less than fourteen (14) days before the meeting. A written notice concerning changes to the Rules and Regulations that regulate the use of Lots and/or Condominium Units must include a statement that changes to the Rules and Regulations regarding the use of Lots and/or Condominium Units will be considered at the meeting. Any Rules and Regulations created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the Owners, and, unless otherwise permitted by law, uniformly applied and enforced.

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

**10.1 Proposal of Amendments.** An amendment may be proposed by the President of the Association, the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

**10.2 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3rds) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds (2/3rds) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

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

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## 11. INDEMNIFICATION:

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

**11.2 Defense.** To the extent that a Director, Officer, or Committee Member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 11.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

**11.3 Advances.** Reasonable expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, or Committee Member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article 11.

**11.4 Miscellaneous.** The indemnification provided by this Article 11 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, or Committee Member and shall inure to the benefit of the heirs and personal representatives of such person.

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**11.5 Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, employee, or agent of the Association, or a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the duty to indemnify him against such liability under the provisions of this Article.

**12. MISCELLANEOUS:**

**12.1 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.

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

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

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