

THIS INSTRUMENT WAS PREPARED BY,
AND AFTER RECORDING RETURN TO:
Jason Hamilton Mikes, Esq.
HAMILTON MIKES, P.A.
3301 Bonita Beach Road, Suite 200
Bonita Springs, Florida 34134

CERTIFICATE OF AMENDMENT

**AMENDED AND RESTATED DECLARATION OF
NEIGHBORHOOD COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SERAFINA AT TIBURON**

I, the undersigned President of Serafina at Tiburon Homeowners' Association, Inc., hereby certify that on March 19, 2021, at a duly-called and properly-noticed meeting of the Association members at which a quorum was present, the following amendments to the Declaration of Neighborhood Covenants, Conditions and Restrictions were approved by the required percentage of voting interests of the Association.

See Exhibit A attached hereto for amendments.

Dated this 23rd day of March, 2021.

Witnesses:

Katherine Intriago
By: Katherine Intriago

Eliz. Opalka
By: Elizabeth Opalka

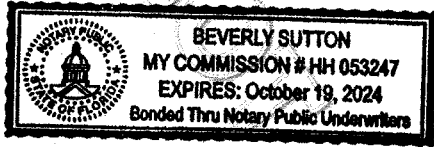
Serafina at Tiburon Homeowners' Association,
Inc.

George W. Powell, Jr.
By: George W. Powell, Jr.
Association President

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF COLLIER

Subscribed before me this 23rd day of March 2021, by George W. Powell, Jr.,
Association President, who is personally known to me.



B Sutton
NOTARY PUBLIC
Beverly Sutton
Printed Name of Notary Public

My Commission Expires: 10-19-2024

CERTIFIED COPY

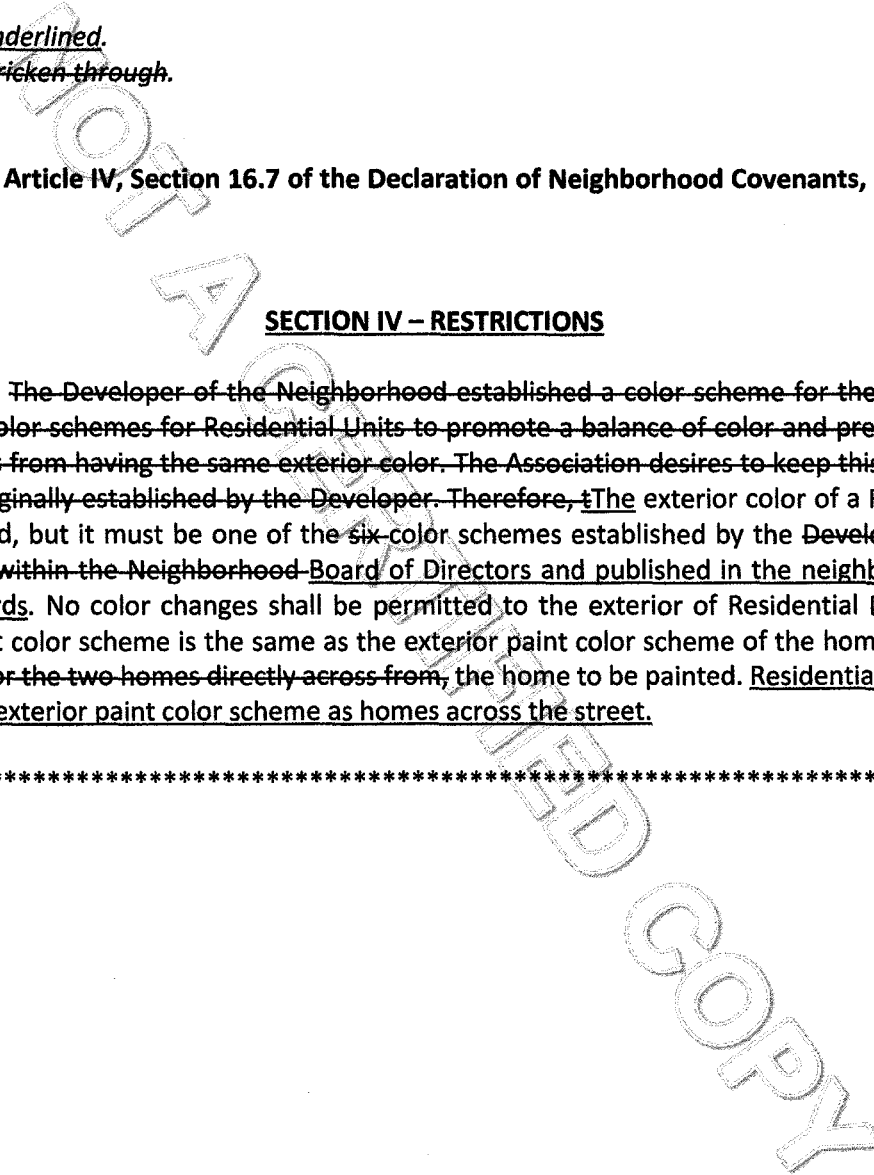
**Amendments to the
Declaration of Neighborhood Covenants, Conditions and Restrictions
for
Serafina at Tiburon**

Additions are underlined.
Deletions are ~~stricken through~~.

Amendment to Article IV, Section 16.7 of the Declaration of Neighborhood Covenants, Conditions and Restrictions

SECTION IV – RESTRICTIONS

4.10 **Colors.** ~~The Developer of the Neighborhood established a color scheme for the Neighborhood and chose six color schemes for Residential Units to promote a balance of color and prevent numerous adjacent homes from having the same exterior color. The Association desires to keep this color schemes and balance originally established by the Developer. Therefore, †~~The exterior color of a Residential Unit may be changed, but it must be one of the six color schemes established by the Developer and which currently exist within the Neighborhood Board of Directors and published in the neighborhood Design Review Standards. No color changes shall be permitted to the exterior of Residential Dwellings if the requested paint color scheme is the same as the exterior paint color scheme of the homes immediately contiguous to, ~~or the two homes directly across from,~~ the home to be painted. Residential Dwellings may have the same exterior paint color scheme as homes across the street.



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CERTIFICATE OF AMENDMENT

**AMENDED AND RESTATED DECLARATION OF
NEIGHBORHOOD COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SERAFINA AT TIBURON**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
AMENDED AND RESTATED BY-LAWS OF
SERAFINA AT TIBURON HOMEOWNERS' ASSOCIATION, INC.**

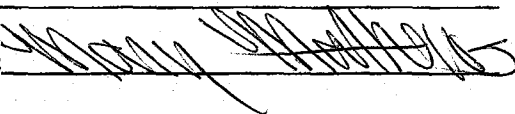
I, the undersigned President of Serafina at Tiburon Homeowners' Association, Inc., hereby certify that on March 1, 2019, at a duly-called and properly-noticed meeting of the Association members at which a quorum was present, the following amendments to the Declaration of Neighborhood Covenants, Conditions and Restrictions, Articles of Incorporation, and By-Laws were approved by the required percentage of voting interests of the Association.

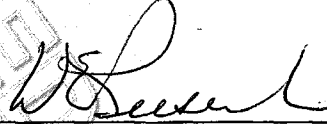
See Exhibit A attached hereto for amendments.

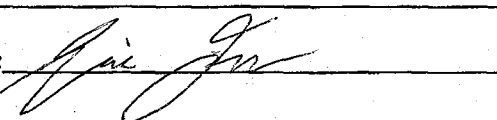
Dated this 14 day of March, 2019.

Witnesses:

Serafina at Tiburon Homeowners' Association,
Inc.

By: 


By: William E. Reiser, Jr.
Association President

By: 

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF COLLIER

Subscribed before me this 14 day of March 2019, by William E. Reiser, Jr.,
Association President, who is personally known to me.

[Signature]
NOTARY PUBLIC

Eric Lasek
Printed Name of Notary Public

My Commission Expires: 10/16/2020



ERIC LASEK
MY COMMISSION # GG 038745
EXPIRES: October 16, 2020
Bonded Thru Budget Notary Services

NOT A CERTIFIED COPY

**AMENDED AND RESTATED DECLARATION OF
NEIGHBORHOOD COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SERAFINA AT TIBURON**

**SUBSTANTIAL REWORDING OF DECLARATION OF NEIGHBORHOOD COVENANTS, CONDITIONS AND
RESTRICTIONS. SEE PRIOR DECLARATION OF NEIGHBORHOOD COVENANTS, CONDITIONS AND
RESTRICTIONS AND AMENDMENTS FOR PREVIOUS TEXT.**

On October 8, 2001, the original Declaration of Neighborhood Covenants, Conditions and Restrictions affecting the real property subject hereto was recorded in Official Records Book 2905, at Pages 0070, *et seq.*, of the Public Records of Collier County, Florida. Said Declaration was amended on December 19, 2002 as evidenced in Official Records Book 3179, at Pages 1516, *et seq.*, in the Public Records of Collier County, Florida. Said Declaration was amended again on October 15, 2003 as evidenced in Official Records Book 3422, at Pages 2495, *et seq.*, in the Public Records of Collier County, Florida. Said Declaration was amended again on January 25, 2005 as evidenced in Official Records Book 3721, at Pages 1329, *et seq.*, in the Public Records of Collier County, Florida. The Declaration is hereby further amended and restated in its entirety.

The land subject to this Amended and Restated Declaration of Neighborhood Covenants, Conditions and Restrictions, (hereinafter "Declaration"), is known as Serafina at Tiburon, and is legally described as:

Lots 1-44, inclusive, and Tract F, and as graphically depicted on that certain plat of Serafina at Tiburon, a subdivision being a parts of Section 25 and 36, Township 48 South, Range 25 East, Collier County, Florida.

SECTION I – DEFINITIONS

1.1 **"Access Monitor Program"** shall mean any electronic surveillance and/or monitoring system intended to monitor access, provide alarm service, and/or enhance the welfare of the Neighborhood and the property being subject to that certain Declaration of Covenants and Restrictions for Tiburon Estates recorded in O.R. Book 2579, Page 364, in the Public Records of Collier County, Florida (the "Master Association Property"). By way of example, and not of limitation, the term "Access Monitor Program" may include one or more manned gatehouses, one or more electronic gates, roving attendants using vehicles, an electronic entrance gate, gatehouses, a perimeter access monitoring system, such as fences, walls, hedges, or the like on certain perimeter areas, a bulk alarm contract or combination thereof.

1.2 **"Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of the "Association," as such term is defined below, attached hereto as Exhibit "A" and incorporated herein by this reference.

1.3 **"Association"** shall mean and refer to Serafina at Tiburon Homeowners Association, Inc., a non-profit Florida corporation, whose purpose is to administer the "Common Properties", as such

term is defined below, in accordance with the provisions of this Declaration and the governing documents of the Association.

1.4 **"Board"** shall mean and refer to the Board of Directors of the Association.

1.5 **"Building Height"** shall mean and refer to the vertical distance measured from the first habitable finished floor elevation to the uppermost finished ceiling elevation of the structure.

1.6 **"By-laws"** shall mean and refer to the By-laws of the Association, a photocopy of which By-laws is attached hereto as Exhibit "B" and incorporation herein by this reference.

1.7 **"Charge"** means any legal or equitable indebtedness or sums owed to or due to the Association, incurred by or on behalf of an Owner, other than Assessments. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Governing Documents.

1.8 **"Club"** shall mean and refer to Tiburon Golf Ventures Limited Partnership, a Delaware limited partnership, doing business as Tiburon Golf Club, and its successors and assigns.

1.9 **"Club Facilities"** shall mean and refer to the golf, social and other recreational facilities owned by the Club from time to time.

1.10 **"Common Assessment"** shall mean and refer to the charge against each Owner and such Owner's "Site", as such term is defined below, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Common Properties.

1.11. **"Common Expenses"** shall mean and refer to the actual and estimated costs of: maintenance, management, operation, repair and replacements of the Common Properties (including unpaid Special Assessments) including those costs not paid by the Owner responsible for payment; any commonly-metered charges for the Common Properties; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, utilities, gardening and other services benefiting the Neighborhood; the costs of fire, casualty and liability insurance, workmen's compensation insurance, and other insurance covering the Common Properties; the costs of bonding of the members of the management body; any taxes paid by the Association, including any real property taxes for the Common Properties; any amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Properties, or portions thereof; and the costs of any other expenses incurred by, the Association for any reason whatsoever in connection with the Common Properties for the benefit of the Owners.

1.12 **"Common Properties"** shall mean and refer to any and all real property and improvements thereon, owned by, leased or dedicated to, or otherwise the responsibility of the Association, for the common use, enjoyment or benefit of the Members, and may include, without limitation, parks, recreation facilities, administrative facilities, environmental habitat and preservation areas, surface water management and drainage systems, entry gates and control systems, entrance

ways, roads, landscaping on roadways and buffers within and in the vicinity of the Neighborhood and any lakes located within or adjacent to the Neighborhood.

1.13 **"County"** shall mean and refer to Collier County, Florida.

1.14 **"Declaration"** shall mean and refer to this Declaration of Neighborhood Covenants, Conditions and Restrictions for Serafina at Tiburon recorded in the Public Records of Collier County, Florida, as the same may be amended from time to time.

1.15 **"Design Guidelines"** shall mean and refer to design review standards, timetables and procedures established and published by the Association and subject to change by the Association and/or the "DRC", as such term is defined in Section 12.1 below, without notice outlining the process which each Owner must have the plans and specifications for all construction, exterior alterations, modifications, repairs or reconstruction on such Owner's Site approved by the Association.

1.16 **"District"** shall mean and refer to Pelican Marsh Community Development District, a special taxing district that is described in Section 3 below.

1.17 **"District Property"** shall mean and refer to all real and personal property which the District may hereafter own, hold or otherwise administer pursuant to its responsibilities under Chapter 190, Florida Statutes.

1.18 **"Family" or "Single Family"** shall refer to any one of the following: (i) one natural person, the person's spouse, if any, and their custodial children and dependent parents of said parties, if any, or (ii) not more than two natural persons not meeting the description in (i), but who customarily and continuously reside together as a single housekeeping unit, and the custodial children and dependent parents of said parties, if any.

1.19 **"Governing Documents"** shall mean and refer to this Declaration and the Articles of Incorporation, By-laws and rules, regulations and resolutions of the Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order or priority as stated in the foregoing sentence.

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

1.21 **"Medallion Membership"** shall mean and refer to a non-equity full golfing membership to use the Club Facilities as provided in the Membership Plan.

1.22 **"Member"** shall mean and refer to an Owner who is a member of the Association as provided in Section 5 below.

1.23 **"Membership Plan"** shall mean and refer to the Tiburon Golf Club Membership Plan prepared by the Club or its agents, as the same may, from time to time, be amended or supplemented by the Club in its sole and absolute discretion.

1.24 **“Neighborhood”** shall mean and refer to the real property subject to this Declaration and any additional property added by supplemental declaration in accordance with the provisions contained herein.

1.25 **“Owner” or “Owners”** shall mean and refer to any person or persons, entity or entities, who are the record owner(s) of legal title to any Site, their heirs, successors and legal representatives.

1.26 **“Pelican Marsh”** shall mean and refer to those certain lands located within the “PUD”, as such term is defined below.

1.27 **“PUD”** shall mean and refer to the document titled Planned Unit Development for Pelican Marsh, a Planned Residential Community, adopted by the Board of County Commissioners of Collier County, Florida on January 24, 1995, and assigned ordinance number 95-4, as amended on December 9, 1997, and as it may from time to time be further modified.

1.28 **“Purchase Money Mortgagee”** shall mean and refer to either an institutional or a private lender which holds a first mortgage encumbering a Site which was extended for the purpose of purchasing the Site and which has notified the Association in writing that it holds the same.

1.29 **“Residential Unit”** shall mean and refer to the structure built or intended to be built on the Site intended for occupancy as a detached single family residence.

1.30 **“Signature Membership”** shall mean and refer to a social and limited golfing membership to use the Club Facilities as provided in the Membership Plan.

1.31 **“Site” or “Sites”** shall mean and refer to any one or all of those platted sites in the Neighborhood.

1.32 **“Special Assessments”** shall mean and refer to a charge against a particular Owner equal to the cost incurred by the Association of maintaining, improving, repairing, replacing, managing and operating the Common Properties.

1.33 **“Voting Interests”** means and refers to the arrangement established in the Governing Documents by which Owners of each Plot (i.e., Members) are collectively entitled to one vote in Association matters for which a vote of the Members is called for or required. There are 44 Sites. Therefore, the total number of Voting Interests is 44.

SECTION II – DEVELOPMENT

2.1 **General Development.** The Neighborhood is a portion of Tiburon which is a master planned community with multi-phase development. Portions of Tiburon, other than the Neighborhood, may be under development for an extended time.

2.2 **Common Properties.** The Association shall operate, maintain and hold record title to the Common Properties. The Board may promulgate rules and regulations regarding use of the Common Properties consistent with the Governing Documents. As long as the Association exists, the Common Properties may not be partitioned. Use of Common Properties shall be available to Members and their invitees, guests, family members and tenants, subject to the Governing Documents. The costs of operating, maintaining, repairing, insuring and protecting the Common Properties and the facilities located thereon shall be a Common Expense.

(a) Any Common Area is not for use by the general public but is for the common use and enjoyment of Members and their guests, tenants and invitees, unless otherwise expressly provided by law or by the instrument of conveyance.

(b) Any Owner may delegate his right of use and enjoyment of the Common Properties to the members of such Owner's family, lessees and social invitees, subject to rules and regulations of the Association. The Association shall have the right to limit the number of social invitees to whom an Owner may delegate his right of use and enjoyment of the Common Properties. The Association may also impose reasonable use fees against any persons, including Owners, for use of parts of the Common Properties.

2.3 **Access Monitor Program.** The Association shall have the right, but not the obligation, to install and/or contract for the installation of an Access Monitor Program within the Neighborhood. The Association may expand the Access Monitor Program by a vote of the majority of the Board, without the joinder or consent of the Owners or any third parties. THE PROVISION OF AN ACCESS MONITOR PROGRAM SYSTEM (INCLUDING ANY TYPE OF GATEHOUSE) SHALL IN NO MANNER CONSTITUTE A WARRANTY OR REPRESENTATION AS TO THE PROVISION OF OR LEVEL OF SECURITY WITHIN THE NEIGHBORHOOD OR THE MASTER ASSOCIATION PROPERTY. THE ASSOCIATION DOES NOT GUARANTEE OR WARRANT, EXPRESSLY OR BY IMPLICATION, THE MERCHANTABILITY OF FITNESS FOR USE OF ANY COMMUNITY ACCESS MONITOR PROGRAM SYSTEM, OR THAT ANY SUCH SYSTEM (OR ANY OF ITS COMPONENTS OR RELATED SERVICES) WILL PREVENT INTRUSIONS, FIRES, OR OTHER OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE ACCESS MONITOR PROGRAM SERVICE IS DESIGNED TO MONITOR THE SAME. EACH AND EVERY OWNER AND THE OCCUPANT OF EACH RESIDENTIAL UNIT ACKNOWLEDGES THAT THE ASSOCIATION, THEIR RESPECTIVE EMPLOYEES, AGENTS, MANAGERS, DIRECTORS, AND OFFICERS, ARE NOT INSURERS OF OWNERS OR RESIDENTIAL UNITS, OR THE PERSONAL PROPERTY LOCATED WITHIN HOMES. THE ASSOCIATION WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY SUCH EVENTS. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE ACCESS MONITORING OR INEFFECTIVENESS OF ACCESS MONITORING MEASURES UNDERTAKEN.

SECTION III – THE DISTRICT

3.1 **Establishment; Powers.** The District was established in accordance with Chapter 190, Florida Statutes. Each Owner hereby acknowledges that the Neighborhood lies within the District created pursuant to Chapter 190, Florida Statutes. The District provides and operates certain urban infrastructure facilities and community development services and has the authority to levy and collect fees, rates, charges, taxes and assessments to pay for, finance, and provide such facilities and services.

The District is empowered to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain systems and facilities for basic infrastructure which may include, without limitation: (i) water management and control lands within the District and the connection of some or any of such facilities with roads and bridges; (ii) roads and bridges; (iii) potable water distribution; (iv) sewage collection; (v) waste water management; (vi) street lighting; (vii) parks and facilities for indoor and outdoor recreational, cultural and educational uses; (viii) fire prevention and control; (ix) limited access assurance services; and (x) mosquito control services. The District will impose taxes and/or assessments on the Neighborhood through a special taxing district. These taxes will pay for the construction, operation and/or maintenance costs of certain public facilities within the District and will be set annually by the governing board of the District. These taxes and assessments are in addition to county and all other taxes and assessments provided for by law. These fees, rates, charges, taxes and assessments will either appear on the annual real estate tax bill for each Owner, in which case they will be payable directly to the Collier County Tax Collector, or they will appear on a separate bill issued to each Owner by the District. All taxes of the District shall constitute a lien on any Site owned by an Owner. The District shall have the power to issue any types of bonds permitted by Chapter 190, Florida Statutes.

3.2 Taxes and Assessments. THE DISTRICT IS A SPECIAL TAXING DISTRICT WITH AUTHORITY TO FUND ITS OPERATIONS BY IMPOSING TAXES OR ASSESSMENTS, OR BOTH, ON THE PROPERTY WITHIN THE DISTRICT. THE TAXES AND ASSESSMENTS PAY FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES OF THE DISTRICT, AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF SUPERVISORS OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW. THESE TAXES AND ASSESSMENTS APPEAR ON THE ANNUAL REAL ESTATE TAX BILL FOR EACH OWNER AS A SEPARATE TAX AND ARE PAYABLE DIRECTLY TO THE COLLIER COUNTY TAX COLLECTOR. THE TAXES AND ASSESSMENTS OF THE DISTRICT CONSTITUTE A LIEN UPON THE PROPERTY THAT IS WITHIN THE DISTRICT.

BY ACCEPTANCE OF A DEED TO A RESIDENTIAL UNIT AND/OR SITE, OR ANY INTEREST THEREIN, EACH OWNER HEREBY AGREES (I) TO PAY ANY AND ALL FEES, CHARGES, TAXES AND ASSESSMENTS IMPOSED BY THE DISTRICT WITH RESPECT TO THE OWNER'S RESIDENTIAL UNIT AND/OR SITE, (II) TO ABIDE BY ALL OF THE DISTRICT'S REGULATIONS, AS THEY MAY BE AMENDED FROM TIME TO TIME, AND (III) TO DISCLOSE IN WRITING TO ANY SUBSEQUENT PURCHASER OF THE OWNER'S SITE THAT SUCH PROPERTY IS WITHIN THE DISTRICT AND THAT SUCH PURCHASER SHALL BE SUBJECT TO DISTRICT ASSESSMENTS.

3.3 Issuance of Bonds. The District has the power to issue general obligation bonds, revenue bonds, refunding bonds, and any other type of bond permitted by Chapter 190, Florida Statutes. Repayment of any such bonds may be funded by non-ad valorem taxes on all the taxable property within the District, or by the imposition of rates, user fees, special assessments, or other charges. The District is empowered to pledge its full faith and credit for the purpose of securing the repayment of bonds it issues. In addition, the District may secure reserve bonds by pledging the rates, fees or charges collected or to be collected by any revenue-producing project. Bonds may be issued for the purpose of financing or refinancing capital improvements, to pay off existing bonds, or any other permitted use.

3.4 **District Property Becoming Common Properties.** If the Association determines that it is in the best interests of the Association for any of the District Property to become Common Properties, and if the Association and the District both determine that such property should be conveyed to the Association, the District shall convey to the Association fee simple title to those portions of the District Property which are to become Common Properties.

3.5 **Common Property Becoming District Property.** If the Association and the District determine, subject to any governmental requirements, that it is in the best interests of the Association and District property owners for any portion(s) of the Common Properties to be owned and/or administered by the District, rather than by the Association, such portion(s) of the Common Properties shall cease to be Common Properties, even if they have already been conveyed to the Association, and shall thereafter be considered District Property, even if legal title has not been deeded to the District. When a part of the Neighborhood becomes District property, the expenses of administration and maintenance shall cease to be Common Expenses. If required by law, or if deemed by the Association and the District to be in the best interests of the Association and the District, the Association shall convey to the District the legal title to any Common Area which becomes District Property. The surface water management system of the Neighborhood may be an area of common responsibility.

3.6 **Collier County Water-Sewer District.** The Collier County Water-Sewer District ("CCWSD") is the permanent water, sewer and irrigation service provider within the District. CCWSD charges impact fees for such services which must be paid at the time a building permit application is made. Should the facilities for such services not be available through CCWSD or the County for current or future resident of Pelican Marsh, the District or a developer may, but shall not be obligated to, provide interim water, wastewater and/or irrigation facilities. The impact fees charged by CCWSD or the County are in addition to any fees, charges or other levies the District or a developer may charge users for interim water, sewer, or irrigation service should it be providing such service. Any interim facility(ies) shall be discontinued when the CCWSD or the County has the ability to provide adequate water, wastewater or irrigation services within the District to current or future users.

SECTION IV – RESTRICTIONS

4.1 Use Restrictions.

(a) The Neighborhood may be used for residential purposes. No business buildings may be erected in the Neighborhood and no business may be conducted on any part thereof, nor shall any building or portion thereof be used or maintained as a professional office.

(b) No building, structure or other improvement shall be placed in or on the Neighborhood unless and until the DRC has issued its written approval. In obtaining said written approval, an Owner or any other person applying, shall comply with all the requirements and procedures of Section 12 below.

(c) Roof stacks and vents shall be placed so as not to be clearly or readily visible from the front of the Site and shall be painted to match the approved roof color.

(d) No garbage, trash or refuse containers shall be placed within the front yard of any Site or in any right-of-way or street abutting any Site and all Sites must provide for garbage, trash and refuse removal to be made from screened or enclosed Properties on the side or at the rear of the Site, provided, however, that garbage, trash and refuse removal shall be permitted to be made from the front yard if side or rear yard removal service is unavailable.

(e) No burning of any vegetation or cleared material shall be allowed in the Neighborhood. All cleared material shall be removed from the Neighborhood by Owner and disposed of properly in accordance with applicable law.

(f) Motor homes, trailers, boats, motorcycles, vans or trucks used for commercial or recreational purposes, shall not be permitted to be parked or stored in or on the Neighborhood unless kept fully enclosed inside a structure.

(g) No outside satellite receptor dish or device or any other type of electronic device more than one (1) meter in diameter, that is utilized or designed to be utilized for the transmission or reception of electronic or other type of signal, shall be allowed unless approved by the Association in writing, on a case by case basis. Regardless of the size of such satellite receptor dish or device, the Association may impose conditions for landscaping and placement of such dishes or devices for aesthetic and/or safety purposes.

4.2 Building Setback Lines, Size of Building, Building Elevation and Building Height.

(a) No Residential Unit, structure, building or privacy wall shall be erected within the building setback lines established by the PUD. Rear setbacks apply to any structure; home, pool, patio, screen enclosure, etc. No buildings or principal structures are allowed to encroach on any easement.

(b) All yards abutting a street shall be front yards. Four-sided corner Sites which are adjacent to a road shall have two front and two side yards. Four-sided corner Sites adjacent to a lake shall adhere to non-corner lot standards. Setback lines for corner Sites and odd-shaped Sites shall be as near as possible as provided above, except that variations may be authorized by the Association in writing at the time plans for buildings are approved, and a copy of such plans, including the plot plan, or a record of the determination shall be kept on file by the Association to establish the setback lines as approved.

(c) The minimum floor area per Residential Unit shall be three thousand (3,000) square feet of living area. The method of determining square foot area of proposed buildings and structures or additions and enlargement thereto shall be to multiply the outside horizontal dimensions of the building or structure at each floor level and add the sum thereof. Garages, porches, patios, terraces and other similar non-air conditioned Properties and structures shall not be taken into account in calculating the minimum area required.

(d) The minimum building elevation of the lowest habitable finished floor for a Residential Unit has been set at 14.3 N.G.V.D., or greater as indicated on the paving and drainage plans on file with the Collier County Building Department. Site conditions, including drainage, road grades and adjacent lot

grades shall be considered. Foundations with stem walls that would otherwise be visible will be required to be screened by backfilling, landscaping or other screening approved by the DRC.

(e) No building or structure of any kind shall exceed thirty-five (35) feet in height. Building height shall be the vertical distance measured from the first habitable finished floor elevation to the uppermost finished ceiling elevation of the structure.

(f) Except as otherwise specifically permitted herein or in the Design Guidelines, the design and landscape standards employed throughout all of Pelican Marsh in Naples, Florida shall establish and represent the standards for design and landscape within the Neighborhood.

4.3 **Spas, Hot Tubs and Swimming Pools, Enclosures, Fences, Walls and Gates.** Rules, regulations, restrictions and limitations regarding spas, hot tubs and swimming pools, enclosures, fences, walls and gates are set forth in the Design Guidelines which are subject to change by the Association and/or the DRC without notice.

4.4 **Landscaping.**

(a) Each Owner shall submit to the Association, for the Association's review and proposal, a conceptual master landscape and irrigation plan for its Site (including adjacent rights-of-way, and area between the property line of a Site and any abutting road or water's edge) (the "Landscape Plan"). Such Landscape Plan shall be prepared by a Florida Registered Landscape Architect, who shall utilize a plant palette and theme emphasizing Florida native plants. It is the Association's intent that the existing native vegetation be retained to the maximum extent possible. Clearing shall be done selectively, retaining wherever possible the native vegetation. Each Owner's Landscape Plan shall indicate such Owner's plan for the retention and/or clearing of any existing native vegetation, in accordance with Section 4.5 of this Declaration. The Association reserves the right to comment and require changes for individual Sites should special conditions or situations exist. Each Owner shall be solely responsible for the cost and expense to prepare the Landscape Plan, the "Final Landscape Plan," as such term is defined below, the installation of all landscape materials and irrigation and the maintenance and repair with respect thereto.

(b) Prior to making any change, variation or deviation from the approved Landscape Plan, an Owner shall first obtain the Association's written approval of the change, variation or deviation. Any additional landscaping to be installed by Owner or the Association after occupancy of any Residential Units requires approval of the Association prior to installation.

(c) Each Owner shall be responsible for the repair and replacement of all existing landscaping within the Neighborhood and which abuts the Neighborhood which is damaged or destroyed as a result of the acts of the Owner or its agents.

(d) Each Owner shall install or retain the landscape material as approved by the Association. All landscaping, trees, shrubs and lawns on a Site not maintained in common by the Association for the Neighborhood shall be maintained by Owner in good and living condition at all times.

(e) The Owner of a Site shall be responsible for maintaining and keeping in good working order the landscape irrigation system installed in or on the Owner's Site and adjacent right-of-way and areas between the property line of a Site and any abutting road or water's edge.

(f) Surface water runoff must be controlled and maintained so as not to cause any ponding, erosion or unfavorable impact on adjacent Common Properties or Sites. Sites are required to drain towards the drainage system facilities provided by the Developer and are required to meet all conditions and water management criteria of all applicable permits, including, but not limited to, those issued by the Florida Department of Environmental Protection, the South Florida Water Management District, the District and Collier County, Florida.

4.5 **Native Vegetation.** To the extent possible, Owner shall protect suitable native vegetation to be integrated into the Final Landscape Plan. The design review process and construction activities shall include these steps:

- (a) Submittal of a vegetation survey, prepared by a surveyor, which accurately locates existing trees 6" in diameter at breast height (DBH) or greater and significant shrub masses.
- (b) Site-by-site review by Owner or builder with the Association of existing native vegetation.
- (c) Review by the Association of tree-clearing plans.
- (d) Review by the Association of building placement so as to minimize disturbance and removal of existing native vegetation.
- (e) Installation of protective identification of native vegetation construction.
- (f) Transplanting of suitable trees removed from construction areas as determined by the Association.
- (g) Any substantial changes to the approved Landscape Plan following installation of the landscaping on a Site shall be resubmitted to the Association for the Association's prior written approval.

4.6 **Garage, Carports and Storage Areas.**

(a) No garage shall be erected which is separated from the Residential Unit. Each Residential Unit shall have a garage which shall accommodate no less than two (2) automobiles. Repair of vehicles shall be permitted only inside the garage. All garages must be constructed with doors that are equipped with operating, automatic door openers and closers. The garage doors shall remain closed except upon entering or exiting the garage. Overnight, vehicles shall be parked in the garage and not on the driveway when the number of vehicles a garage can accommodate is equal to or more than the number of vehicles parked. A vehicle may only be parked in the driveway overnight when a two-car garage has two cars parked inside already. No more than three vehicles of any type shall be permitted to

be parked overnight in a driveway. Those parked outside overnight must not be parked on the lawn or street.

(b) The Board of Directors of the Association is authorized to order the towing of any vehicle (at the vehicle Owner's expense) for a violation of this section.

(c) Carports shall not be permitted or erected within the Neighborhood.

(d) No unenclosed storage area shall be permitted. No enclosed storage area shall be erected which is separated from a principal structure. Fully enclosed storage facilities for garbage and trash containers shall be required for each Residential Unit.

4.7 **Water Management Areas.** Surface water management and drainage, including, but not limited to, storm water storage and capacity, shall conform to the overall water management requirements of the South Florida Water Management District, the District and meet with the approval of the Association.

4.8 **Mailboxes.** All mail boxes must be those selected for the Neighborhood and installed and maintained by the Association.

4.9 **Roofs.** Roofs shall have a minimum pitch of 6:12 and shall be constructed of flat or barrel tile, as approved in writing by the Association and as defined by common usage in Collier County. In the event that some other new, attractive material for roofing surfaces is discovered or invented, the Association may, in its sole discretion, approve or disapprove the use of such new materials. Flat roofs shall not be permitted.

4.10 **Colors.** The Developer of the Neighborhood established a color scheme for the Neighborhood and chose six color schemes for Residential Units to promote a balance of color and prevent numerous adjacent homes from having the same exterior color. The Association desires to keep this color schemes and balance originally established by the Developer. Therefore, the exterior color of a Residential Unit may be changed, but it must be one of the six color schemes established by the Developer and which currently exist within the Neighborhood. No color changes shall be permitted to the exterior of Residential Dwellings if the requested paint color scheme is the same as the exterior paint color scheme of the homes immediately contiguous to, or the two homes directly across from, the home to be painted.

4.11 **Neighborhood Driveways.**

(a) All driveways shall be designed and constructed only in accordance with the design and with the materials as approved by the Association in writing and must be maintained in a clean, neat and attractive manner. Driveway surfaces may consist only of approved materials in accordance with the Design Guidelines. Plain or stamped concrete, asphalt or loose gravel are not acceptable.

(b) Driveways shall be constructed in such a manner so that the flare of the driveway at the adjoining street pavement does not extend beyond a straight line projection of the side lot line of the

Site by the driveway. In no event shall the driveway surface be less than seven and one-half (7.5) feet from the side Site line unless a variance is granted by the Association.

4.12 Leasing. All leases must be pursuant to a written lease agreement. Should an Owner wish to lease his Unit, he shall furnish the Association with a copy of the proposed lease and the name of the proposed tenant, as well as all proposed occupants under the lease. Any person occupying the Unit after initial lease approval shall be subject to a separate application and approval process. The Association shall have thirty (30) days from the receipt of notice and all required information within which to approve or disapprove of the proposed lease or proposed tenants and occupants. The Association shall give the Owner written notice of its decision within said period.

No lease shall be more than twelve consecutive months, nor shall there be more than one (1) lease in a twelve consecutive month period. Residential Units may be leased for any amount of time less than 12 months, but only one lease shall be permitted in a twelve consecutive month period. Leases may be renewed, subject to Board approval.

No individual rooms may be rented. "Rent-sharing" and subleasing are prohibited.

This section shall apply to all Owners, regardless of when the Residential Unit was purchased or title acquired.

(a) **Board Right of Approval.** The Board of Directors shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. No person may occupy a Residential Unit as a tenant, family member of a tenant, occupant, or otherwise without prior approval of the Board of Directors. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant and all proposed occupants as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed tenant and all proposed occupants of a Residential Unit, as a condition for approval.

(b) **Tenant Conduct; Remedies.** All leases shall be on a uniform form of lease or lease addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will provide, or be deemed to provide that the tenants have read and agreed to be bound by this Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations as the same may be amended from time to time (the "Governing Documents"). The uniform lease or addendum and other leases shall further provide or be deemed to provide that any violation of the Governing Documents shall constitute a material breach of the lease and subject the tenant to eviction as well as any other remedy afforded by the Governing Documents or Florida law. If a tenant, other Residential Unit occupant, guest or invitee fails to abide by the Governing Documents, the Owner(s) shall be responsible for the conduct of the tenants, occupants, guests and invitees and shall be subject to all remedies set forth in the Governing Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The Owner shall have the duty to bring his tenant's conduct (and that of the other unit occupants, guests and invitees) into compliance with the Governing Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Owner fails to bring the

conduct of the tenant into compliance with the Governing Documents in a manner deemed acceptable by the Association, the Association shall have the authority to act as agent of the Owner to undertake whatever action is necessary to abate the tenants' noncompliance with the Governing Documents (or the other noncompliance of other occupants, guests or invitees), including without limitation the right to institute an action for eviction against the tenant in the name of the Association in its own right, or as agent of the Owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions, from the Owner which shall be secured by a continuing lien in the same manner as assessments for common expenses as set forth in Article VII of this Declaration. Any uniform lease or lease addendum will provide, or be deemed to provide that the Association shall have the authority to direct that all rental income related to the Residential Unit be paid to the Association until all past due and current obligations of the Association have been paid in full, including but not limited to all past due Assessments, charges, other monetary obligations, late fees, interest, attorneys' fees and cost and expenses of collection.

(c) **Security Deposit.** The Board of Directors shall have the authority, as a condition of granting approval of a lease or renewal or extension thereof, to require that a prospective lessee or Owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the Common Property or Association Property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (2012) as amended from time to time.

(d) **Approval Process; Disapproval.** Any Owner intending to lease his Residential Unit shall submit a copy of the proposed lease, an application, and any other requested information and required fees at least sixty (60) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by Association and an interview (if requested by the Board), the Association shall have the duty to approve or disapprove all proposed leases within thirty (30) days of receipt of such information for approval and the completion of the tenant/occupant interview (if required), by sending written notification to the Owner within such time frame. All requests for approval not acted upon within thirty (30) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the Owner shall receive a short statement indicating the reason for the disapproval, and the lease shall not be made, renewed, or extended. The Association shall neither have a duty to provide an alternate lessee nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:

(i) The person seeking approval (which shall hereinafter include all proposed occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude or any felony;

(ii) The application for approval on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicate that the person seeking approval intends to conduct himself in a manner inconsistent with the Governing Documents. By way of example, but not limitation, a tenant taking possession of the premises prior to approval by the

Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Governing Documents and may constitute grounds for denial;

(iii) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Association as a tenant, occupant or guest;

(iv) The Owner or person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner;

(v) All assessments, fines and other charges and monetary obligations against the Residential Unit and/or Owner have not been paid in full.

(e) **Liability.** The liability of the Owner under the Governing Documents shall continue notwithstanding the fact that he may have leased or rented his interest in the Residential Unit as provided herein.

(f) **Association Fee.** The Owner or lessee seeking approval of a lease of a Residential Unit shall pay a transfer fee for each applicant in an amount determined by the Board, which unless otherwise specified, shall be the maximum amount permitted by law. No charge shall be made in connection with an extension or renewal of a lease.

4.13 **Construction.**

(a) During any construction activity within the Neighborhood, the construction area shall be maintained in a neat and orderly manner and Owner shall provide for trash and debris containment and removal. No temporary trailers shall be placed in the Neighborhood without the prior written approval of the Association. Construction vehicles shall be parked so as not to block or interfere with the use of the streets or roads within the Neighborhood. Construction vehicles shall not be stored in the Neighborhood. The construction area shall be screened to the reasonable satisfaction of the Association from the view of the neighboring parcels.

(b) Access to the Neighborhood for all construction vehicles and equipment shall be via the construction entrance on Airport-Pulling Road.

(c) If during any construction activity in the Neighborhood, or at any other time, any of the Common Properties or the Neighborhood common area(s) are damaged or destroyed, including, without limitation, street signs, sidewalks, underground utilities or irrigation lines located thereon, the Owner of the Site shall be liable for all costs incurred in repairing or replacing such Neighborhood common area(s), and the total costs thereof shall be assessed against the Owner as a Special Assessments, the lien for which may be foreclosed in the same manner as if provided for the enforcement of assessment liens as set forth in the General Declaration.

4.14 Guest Occupancy.

(a) Occupancy in Absence of Owner. If the Owner and the Owner's family who permanently reside in the Residential Unit are absent from the Unit and are not occupying it, and the Unit has not been leased, the Owner may permit the Unit to be occupied by guests only in accordance with the following:

i. Any one (1) person who is the parent, child, adult grandchild or sibling of the Owner or of the Owner's spouse, if any, may occupy the unit in the absence of the Owner for a period not to exceed fifteen (15) days. That person's spouse and children, if any, and guests, if any, may accompany him with the proviso that the family and its guests, if any, consists of no more than six (6) persons. The total number of occasions for occupancy in any unit under this paragraph shall be limited to two (2) in any one (1) calendar year, with a maximum aggregate total of thirty (30) days.

ii. House guests not included in the above are permitted for only one (1) family occupancy in the Owner's absence and then only with the proviso that the family and its guests, if any, consist of no more than six (6) persons. Such family, with guests, if any, may stay only one (1) week and the total number of occasions for this type of guest occupancy in any unit under the paragraph shall be limited to one (1) in each calendar year.

iii. An owner desiring guest occupancy shall give prior written notice to the Association as provided in the rules and regulations.

(b) Occupancy When Owner is Present. There is no restriction on the number of guests, whether related or unrelated to the Owner, who may occupy the unit together with the Owner, other than the total occupancy limited permitted by County Code.

(c) Additional Board Authority. The Board may promulgate such rules, restrictions, policies, and procedures as are necessary to implement this Section. Individuals convicted of violent felonies and/or criminal sex offenses shall be prohibited from occupying Residential Units under any circumstance. In the event that Owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as Guest occupancies, the Association may require alleged Guests to submit proof of familial relationship, an affidavit as to absence of payment for the right to occupy the premises, or other proof that the leasing provisions of Section 4.12 are not being violated.

4.15 Maintenance of Community Interests. In order to maintain a community of congenial Owners who are financially responsible, and thus protect the value of the Residential Units, the use and transfer of Residential Units by any Owner shall be subject to the following provisions as long as the community exists upon the land, which provisions each Owner covenants to observe:

(a) **Forms of Ownership:**

i. **Ownership by Individuals.** A Residential Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

ii. **Co-Ownership.** Co-ownership of Residential Units may be permitted. If the co-owners are other than husband and wife or Domestic Partners, the Board shall condition its approval upon the designation of one approved natural person as "Primary Occupant." The use of the Residential Unit by other persons shall be as if the Primary Occupant was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Governing Documents. No more than one change in Primary Occupant will be approved in any calendar year. No time share estates may be created. "Residential Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.

iii. **Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities.** A Residential Unit may be owned in trust, or by a corporation, partnership, limited liability company, or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Residential Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Residential Unit, fractional ownership, or used as Guest accommodations for employees, customers, or Guests of Residential Units owned by business entities, religious, or charitable organizations, and the like. The approval of a partnership, trustee, or corporation, limited liability company, or other entity as an Owner shall be conditioned upon designation by the Owner of one natural person to be the "Primary Occupant." The use of the Residential Unit by other persons shall be as if the Primary Occupant were the only actual Owner. The Primary Occupant shall be the person entitled to vote on behalf of the Residential Unit, and exercise rights of membership. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Governing Documents. No more than one change in designation of Primary Occupant will be approved in any twelve (12) month period.

iv. **Life Estate.** A Residential Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only Member from such Residential Unit, and occupancy of the Residential Unit shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all Assessments and Charges against the Residential Unit. Any vote, consent, or approval required by the Governing Documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

(b) **Transfers Subject to Approval.**

i. **Sale or Other Transfer.** No Owner may dispose of a Residential Unit or any interest in same by sale or other title transfer, without prior written approval of the Board of Directors. No Owner may dispose of a Residential Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option, or other similar transactions) without prior written approval by the Board of Directors.

ii. **Gift.** If any Owner is to acquire his title by gift, his ownership of his Residential Unit shall be subject to the prior approval of the Board of Directors. Notice must be given at least thirty (30) days prior to the intended closing or title transfer date.

iii. **Other Transfers.** If any Owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of such Residential Unit shall be subject to the approval of the Board of Directors. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the Residential Unit before being approved by the Board of Directors under the procedures outlined below. Transfers by devise, inheritance, and/or through other succession laws shall not be subject to approval by the Board of Directors. Nevertheless, Owners shall notify the Association when transfers by such means have occurred.

(c) **Approval by Association.** The approval of the Association that is required for the transfer of ownership of Residential Units shall be obtained in the following manner:

i. **Notice to Board of Directors.**

1. **Sale or Other Transfer.** A Owner intending to make a bona fide sale or other title transfer of his Residential Unit or any interest in it, including gifts, transfers to artificial entities, and the grant of partial estates, shall give to the Board of Directors notice of such intention, together with the name and address of the intended grantee, an executed copy of the purchase contract and its exhibits, or other documentation evidencing the transfer and such other information concerning the intended grantee and the transaction as the Board of Directors may reasonably require. The Board may require, without limitation, a criminal background investigation, past residency, personal references, and a personal interview with the purchaser(s) and all proposed Occupants.

2. **Devise or Inheritance.** An Owner who has obtained his title by devise or inheritance, or operation of succession laws, shall give to the Board of Directors notice of the acquiring of his title, and a certified copy of the instrument evidencing the Owner's title.

3. **Failure to Give Notice.** If the above required notice to the Board of Directors is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Residential Unit, the Board of Directors at its election and without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the

transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval.

ii. **Certificate of Approval.**

1. **Sale or Other Title Transfer.** If the proposed transaction is a sale or other prospective title transfer, then within ten (10) days after receipt of such notice and information, including a personal interview if requested by Board of Directors, the Board of Directors must either approve or disapprove the proposed transaction.

2. **Approval of Occupant.** If the grantee is a corporation, partnership, trust, limited liability company, some other entity, or more than one individual who are not husband and wife or Domestic Partners, the approval of ownership by the corporation, partnership, trust, other entity, or multiple persons shall be conditioned upon approval of a Primary Occupant.

(d) **Disapproval by Board of Directors.**

(i) **Disapproval for Good Cause.** Disapproval of title transfers or the continuation of ownership pursuant to this Section 4.15, shall be made by the Board of Directors. Only the following may be deemed to constitute good cause for disapproval:

1. The person seeking approval has been convicted of a felony involving violence to persons or a sexual offense of any nature;

2. The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this community or other residences as a Tenant, Occupant, Guest or Owner;

If the Board disapproves a transfer for good cause, the Association shall have no duty to purchase the Residential Unit or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Board.

(e) **Transfer Fee.** The Association may Charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction. The Association or its authorized agent may also charge a reasonable fee for the preparation of a certificate, commonly known as an estoppel certificate, stating all assessments and other monies owed to the Association by the Owner with respect to the Residential Unit. The fee for the preparation of such certificate shall be established by a written resolution of the Board or provided for in a management, bookkeeping, or maintenance contract.

(f) **Exceptions.** The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by a bank, life insurance company or savings and loan association or other mortgagee approved by the Association that acquires its title as the result of owning a purchase money first mortgage upon the Residential Unit concerned, and this

shall be so whether the title is acquired by deed from the mortgagor, or through foreclosure proceedings. However, a transferee of a first mortgagee shall be required to be approved by the Association and comply with all other terms of the Governing Documents as a condition of ownership and holding title to a Residential Unit in Serafina at Tiburon.

(g) **Unauthorized Transactions.** Any sale, lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

SECTION V – MEMBERSHIP IN ASSOCIATION

Every Owner of a Site and the Developer shall be a Member of the Association and no Owner (excluding the Developer) shall have more than one membership in the Association with respect to any Site. Memberships in the Association shall be not assignable, except to the successor-in-interest of the Owner's site and every membership of any Owner in the Association shall be appurtenant to an inseparable from ownership of such Owner's Site. Ownership of such Site shall be the sole qualification for membership of an Owner in the Association.

SECTION VI – THE ASSOCIATION

6.1 **Powers and Duties of Association**

(a) The Association, acting through the Board, shall have such powers and duties with respect to the Common Properties as are provided for in this Declaration, the Articles of Incorporation and the By-laws.

(b) The Association has the power and duty to provide for the Gate Facilities, as more particularly described in Section 11 below.

6.2 **Control of Association.** The voting rights of Members shall be as set forth in the Articles of Incorporation and the By-laws and votes shall be cast as set forth in the Articles of Incorporation and the By-laws.

SECTION VII – COVENANT FOR MAINTENANCE ASSESSMENTS

7.1 **Creation of a Lien and Personal Obligation for Assessments.** Each Owner, including any purchaser at a judicial sale, for each Site now or hereafter owned by them subject to this Declaration hereby covenant, and each successor Owner of any Site by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association (i) annual Common Assessments for Common Expenses, (ii) Special Assessments, such Assessments to be established and collected as hereinafter provided, (iii) Specific Assessments, other fees or charges, including fines, against the Owner of a specific Site for services as provided to the Site by the Association at the request of the Owner or as required to enforce the provisions in this Declaration, Articles of Incorporation, Bylaws and Rules and Regulations ("Charges"). Such assessments, together with interest, late fees, costs and reasonable attorneys' fees

for the collection thereof, shall be a charge upon and secured by a continuing lien upon the Site against which such Assessment is made. Each such Assessment, together with interest, late fees, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Site at the time when the assessment fell due. Subject to provisions of this Declaration protecting Purchase Money Mortgagees, the person obligation for delinquent assessments shall pass to, and be assumed by, the successors(s)-in-title of such Owner.

7.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, healthy, safety and welfare of the Owners and the Common Properties and in particular for the improvement and maintenance and replacement of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the Sites situated upon the Common Properties, if any are assessed, and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

7.3 **Date of Commencement of Common Properties.** The Common Assessments shall accrue in respect to each Site, subject to this Declaration, on the date of conveyance of such Sites by the Developer to the first Owner thereof (hereafter called the "Commencement Date") and shall thereafter be due on the first day of each quarter of the calendar year.

7.4 **Special Assessments.** In addition to the Common Assessments, the Board may levy, in any Assessment Year a Special Assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or unexpected repair or replacement of a capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association. The due date of any Special Assessment under this Article shall be fixed in a resolution authorizing such assessment. The Developer shall not be obligated to pay a Special Assessment levied on any Site owned by it.

7.5 **Specific Assessment.** In addition to the annual assessment and special assessments authorized above, the Association may levy from time to time specific assessments. Specific assessments are other fees or charges, including fines, against the Owner of a specific Plot for services as provided to the Plot by the Neighborhood Association at the request of the Owner or as required to enforce the provisions in this Declaration, Articles of Incorporation, Bylaws and Rules and Regulations ("Charges").

There is created by this Declaration a common law and contractual lien to secure payment for any service which the Neighborhood Association provides for an individual Owner or expenses which the Neighborhood Association incurs in regard to an Owner and which is not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must maintain, repair or replace property that is the responsibility of the Owner. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

7.6 **Resale Capital Contribution Assessment.** Each new Owner, upon acceptance of conveyance of record title to a Site in the Serafina at Tiburon Community, shall pay a one-time specific assessment to fund a working capital account for the Association in an amount not to exceed one quarterly assessment. The exact amount of this specific assessment shall be established from time to time by the Board of Directors, in its sole discretion, at a duly-called and properly-noticed meeting of the Board of Directors at which a quorum is present and shall be set forth in a written Board resolution.

7.7 **Damage to Common Properties by Owners.** Any of the foregoing maintenance, repairs or replacements within the Common Properties, Association Property, Sites, or any improvements made thereon which raise out of or is caused by the willful or negligent act of an Owner, such Owner's family, guests or invitees shall be done at such Owner's expense or a Special Assessment therefor shall be made solely against such Owner's site.

7.8 **Appointment of Assessments.** Common Assessments and Special Assessments provided for in this Declaration shall be initially apportioned among the Sites contained within the Neighborhood on an equal basis so that each Site contributes the same share toward Assessments as do all others except as otherwise set forth in Section 8.1 below. The Assessments shall be apportioned among all Owners of Sites based on the total number of Sites. In the future, if the Neighborhood is developed in a way so that different unit types, size and architecture is employed such that, in the judgment of the Board, the Owners of different types of Sites make different use of the facilities or services on the Common Properties, then the Board may vary the rate of assessments among Site types in such a way as in its judgment is fair and equitable.

7.9 **Notice of Change.** The Board shall fix the amount of the annual Common Assessment against each Site subject to assessment at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto at least thirty (30) days in advance of each Common Assessment period.

7.10 **Estoppel Certificate.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Site have been paid. A properly executed certificate of the Association as to the status of the assessments against a Site shall be binding upon the Association as of the date of its issuance.

7.11 **Annual Income and Expense Report.** The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures distributed to each Member and to each Purchase Money Mortgagee which has filed a written request for copies of the same with the Board in the manner provided in the By-laws.

7.12 **Annual Budget.** At least thirty (30) days prior to the beginning of each fiscal year, the Board shall prepare and distribute to the membership of the Association a written, itemized budget of the expenses to be incurred by the Association during such year in performing its functions under this Declaration, which may include reasonable provision for contingencies and deposits into the Common Properties Reserve Fund.

7.13 **Excess Funds.** If at the end of any fiscal year of the Association, the Board determines that there are excess funds remaining the Association's operating account over and above the amounts unused for the operation of the Common Properties, such excess funds shall be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles of Incorporation, the By-laws or in this Declaration to the contrary, if, prior to dissolution of the Association, the Association has not obtained tax exempt status from both the Federal and State government, then upon such dissolution of the Association, any amount remaining in any reserve fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual respective contributions.

**SECTION VIII – EFFECT OF NON-PAYMENT OF ASSESSMENTS:
REMEDIES OF THE ASSOCIATION**

8.1 **Effect of Non-Payment of Assessments: Remedies of the Association.** Any installment of a Common Assessment, Special Assessment or Specific Assessment not paid within ten (10) days after the due date shall bear interest from the due date of such installment at the rate of eighteen (18%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Site. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of such Owner's Site. If any installment of any assessment is not paid within thirty (30) days after its due date, the Board may mail an acceleration notice to the Owner and to each Purchase Money Mortgagee of such Site which has requested a copy of the notice. The notice shall specify (i) the fact that the installment is delinquent, (ii) the section require to cure the default, (iii) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of installments of the particular assessment for the then current fiscal year and sale of the Site pursuant to foreclosure of the lien securing the unpaid assessment. The notice shall further inform the Owner of such Owner's right to cure after acceleration and to bring a court action to assert the non-existence of a sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare acceleration of all of the unpaid balance of the annual Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

8.2 **Claim of Lien.** No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Site, and a copy thereof has been recorded by the Association in the office of the Clerk of the Circuit Court of Collier County, Florida. Such claim of lien must recite a good and sufficient legal description of any such Site, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen (18%) percent per annum, late fees, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such claim of lien shall be signed and acknowledged by an officer or agent of the Association. The lien shall continue until fully paid or otherwise satisfied.

8.3 **Foreclosure Sale.** The assessment lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through duly authorized agents, shall have the power to bid on any Site at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

8.4 **Curing of Default.** Upon the timely curing of any default for which a Claim of Lien was filed by the Association, the officers thereof shall record an appropriate release of lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the cost of preparing and recording such release. A certificate executed by an officer or agent of the Association stating the indebtedness secured by the liens upon any Site created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee.

8.5 **Cumulative Remedies.** The assessment liens and the right to foreclose and sale thereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided. Additionally, the Board of Directors shall have the authority to impose such other remedies or sanctions permitted by Florida law pertaining to non-payment of monetary obligations to the Association. Without limitation, same includes suspension of use rights in Common Areas and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; denial of lease approval requests; and acceleration

8.6 **Subordination of the Lien to Mortgages.** The lien securing the assessments provided for herein shall be subordinate to the lien held by any Purchase Money Mortgagee made in good faith and for value and recorded prior to the date on which a Claim, pursuant to such lien is recorded. The sale or transfer of any Site shall not affect the assessment lien. However, the sale or transfer of any Site pursuant to the foreclosure or deed in lieu thereof of a mortgage held by a Purchase Money Mortgagee shall extinguish the lien of such assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Site from liability for any installments of assessments thereafter becoming due or from the lien thereof.

8.7 **Application of Payment.** All payments made to the Association by or on behalf of an Owner shall be applied first to interest, then to late fees, then to attorney's fees, then to costs (including, but not limited to, collection charges imposed by the management company, attorney, and Court), then to fines, then to other charges, and then to the oldest outstanding unpaid regular, special, or specific assessment. No payment by check is deemed received until the check has cleared the Bank.

8.8 **Attachment of Rental Income When Lot is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments or Charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the Tenant with copy to Owner) from Sites in default to be paid directly to the Association until all outstanding Assessments, Charges, other monetary obligations, interest, late fees,

costs, collection expenses, attorney's fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Site in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law or elsewhere in the Governing Documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

8.9 Certificate of Unpaid Assessments or Charges. Any Owner has the right to require from the Neighborhood Association a certificate showing the amount of unpaid Assessments or Charges against him with respect to his Lot. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information.

SECTION IX – MAINTENANCE AND REPAIR OBLIGATIONS

9.1 Maintenance Obligations of Owners. Except as provided in Section 9.2 below, it shall be the duty of the Owners of Sites, at each such Owner's sole cost and expense, subject to the provisions of this Declaration, to maintain, repair, replace and restore areas subject to their exclusive control, in a neat, sanitary and attractive condition. In the event any Owner shall permit any improvement, which it is such Owner's responsibility to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Association shall have the right, but not the duty or obligation, upon fifteen (15) days' prior written notice to the appropriate Owner(s), to correct such condition and to enter upon such property to make such repairs or to perform such maintenance, and the cost thereof shall be charged to such Owner(s). Such costs shall be a Special Assessment and shall create a lien upon all of the Sites affected therein, enforceable in the same manner as other assessments as set forth in this Declaration. Such Owner(s) shall promptly pay for such work and the costs and expenses of collection maybe added, at the option of the Board, to the amounts payable by such Owner(s) as Common Assessments.

9.2 Maintenance Obligations of Association. As it shall determine from time to time, the Association, may, but shall not be obligated to provide maintenance services to the Owners to be paid by Common Assessments, including by not limited to: routine scheduled landscape maintenance, repair and replacement; routine scheduled exterior building maintenance, repairs and replacements, which may include painting, pressure cleaning, pool and spa cleaning and window washing, and fountain maintenance, repair and replacement. The Association shall maintain, or provide for the maintenance of all of the Common Properties, and all improvements thereon, in good order and repair, including any and all utility facilities, and improvements on the Common Properties. In addition to the improvement maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Properties. Either the District or the Association shall further maintain, reconstruct, replace and refinish any roads and any paved surfaces in the Common Properties. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in their judgment to be appropriate.

SECTION X – PELICAN MARSH DEVELOPMENT OF REGIONAL IMPACT

Each Owner hereby acknowledges the establishment of the Pelican Marsh Development of Regional Impact (“DRI”) and the Neighborhood being subject to the Pelican Marsh DRI Development Order 95-1 adopted by the Board of County Commissioners of Collier County, Florida pursuant to Resolution No. 95-71 dated January 24, 1995. Each Owner authorizes the Declarant, its successors and assigns, to execute all agreements, documents and consents necessary to effectuate the DRI, without any further joinder, consent or participation by any Owner, including, without limitation, any amendments to the referenced Pelican Marsh DRI Development Order.

SECTION XI – GATE FACILITIES

The Association may provide for the creation, capital improvement and maintenance of privacy gates at the entrance to the Neighborhood. Such gates may be manned or unmanned, as the Association may from time to time deem to be necessary. The term “Gate Facilities” shall include, but not be limited to, the gate itself, any mechanical or electronic mechanisms necessary to automate the gate, any guard’s shack, and the costs to provide for any guard(s). The expenses of the Gate Facilities shall be Common Assessments or Special Assessments, as the case may be. The Association may promulgate rules and regulations governing the use of the Gate Facilities.

SECTION XII – ARCHITECTURAL AND AESTHETIC CONTROL

12.1 Design Review Committee. The Association shall establish a Design Review Committee (the “DRC”) which shall have responsibility for enforcing the design review standards and procedures with the Neighborhood. The DRC shall have jurisdiction over all construction, modifications, alterations, repairs or reconstruction to any structures located in the Neighborhood. The Association shall appoint the members of the DRC, who shall serve and may be removed as provided in the By-laws of the Association. In the event the Board of Directors determines, in its sole discretion, that the DRC is not acting or may not act in the future in the best interests of the Owners or cannot properly or effectively discharge its responsibilities, the Board of Directors may elect to assume the rights and responsibilities of the DRC, either temporarily or permanently. Such election shall be made through a Board resolution stating when, how long and under what conditions it shall assume the rights and responsibilities of the DRC.

12.2 Review and Approval. No staking, excavation, grading and other site work, construction, exterior alterations, modifications, repairs or reconstruction of existing structures shall take place, nor shall any landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Residential Unit, or Common Area be performed, without the prior written approval of the DRC. All modifications of structures any portion of the Neighborhood shall be designed by and built in accordance with the plans and specifications of a licensed architect and/or DRC approved designer. The DRC may delegate, permanently or temporarily, all or any portion of its design review obligations to a third party.

12.3 Design Review Standards and Procedures. The Association will establish and the Association and/or the DRC may, from time to time, modify design review standards, timetables and procedures, outlining the process by which each Owner must have the plans and specifications for all construction, exterior alterations, modifications, repairs or reconstruction on such Owner's property approved. The DRC may establish reasonable fees to be charged for review of applications hereunder, and may require such fees be paid in full prior to review of any application. It shall make the standards and procedures available to Owners, builders, and developers who see to engage in development of or construction upon all or any portion of the Neighborhood. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of any exterior modifications, alterations, repairs or reconstructions shall be submitted to the DRC for approval as to quality of workmanship and design as to harmony of external design with existing structures, location in relation to surrounding structures, topography, finished grade elevation, and common architectural theme.

12.4 Approvals. The DRC may, in its reasonable discretion, grant, grant with conditions, withhold or deny its consent. All consents, approvals and permissions, which are required by the DRC in this Declaration must be in writing and must be given before the commencement of the activity for which such consent, etc. is required. The approval of the DRC of any proposals, plans and specifications or drawings for any work done or proposed, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent. Nor shall the failure or delay of DRC to object to any exterior modifications, alterations, repairs or reconstructions which were done without DRC's consent constitute a waiver of any right to consent to any similar activities in the future.

12.5 Variances. The DRC may authorize variances from compliance with any of its standards and procedures when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations require.

12.6 Compliance; Inspections; Sanctions. If the exterior of any structure is modified, altered, repaired or reconstructed without the prior written approval of the DRC, the Owner shall, upon demand of the Board, cause such work to be removed, revised or restored in order to comply with the requirements of this Section. Any member of the DRC or its agents shall have the right, during reasonable hours and after reasonable notice, to enter upon any portion of the Neighborhood to inspect for the purposes of ascertaining whether or not these restrictive covenants have been or are being satisfied. Such persons shall not be deemed guilty of trespass by reason of such entry. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the standards and procedures promulgated by the DRC is subject to any enforcement procedures, including fines, as set forth in the Governing Documents.

12.7 No Liability. Review and approval of any application pursuant to this Section is made on the basis of aesthetic considerations and neither the Association nor the DRC shall bear any responsibility for ensuring the marketability, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association nor the DRC shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit or other

structure, and shall be indemnified and held harmless by the Owner from any and all damages resulting therefrom, including, but not limited to, court costs and reasonable attorney's fees.

SECTION XIII – COMPLIANCE AND ENFORCEMENT

13.1 **Compliance.** The Governing Documents shall apply to all Owners, as well as to any other person occupying or using any Unit or Common Area by permission or invitation of the Owner or his tenants (express or implied). Failure of an Owner to notify any person of the existence of the provisions of the Governing Documents shall not limit the rights or power to enforce these provisions. Each Owner shall be responsible for any violations by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants.

13.2 **Enforcement: Association.** The Association shall have primary responsibility for the enforcement of the restrictions set forth in Section 4 above and may, in its sole discretion, enforce any covenants and perform such duties and responsibilities thereunder, including any and all maintenance provisions, and shall be entitled to recover the costs and expenses (including, reasonable attorney's fees) of such enforcement or maintenance as a charge. Failure by the Association to enforce any of the covenants contained in this Declaration, the Articles of Incorporation or in the By-laws shall in no event be deemed a waiver of its rights to do so thereafter. A breach of the covenants, conditions or restrictions contained in this Declaration or in the By-laws, shall not affect or impair the lien held by any Purchase Money Mortgagee made in good faith and for value on any Site, provided, however, that any subsequent Owner of such Site shall be bound by said covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

13.3 **Damages and Attorneys' Fees.** Damages shall not be conclusively deemed adequate relief for any breach or violation of the Governing Documents. Any person or entity entitled to enforce any provision thereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity. The prevailing party in a proceeding to enforce any provision of this Declaration and the other Governing Documents to enjoin the breach of any provision hereof, and recover damages on account of such breach, shall be entitled to recover reasonable attorneys' fees and court costs (including those resulting from appellate proceedings), as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. The remedies herein provided for breach of the covenants contained in this Declaration, the Articles of Incorporation or in the By-laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

SECTION XIV – ASSOCIATION'S RIGHTS

14.1 **Cable and Telecommunications Systems.** The Association reserves and shall have the right to enter into contracts for the exclusive provision of cable television and other systems of telecommunication services by bulk contracts with third parties as the Association shall deem, in its sole and exclusive discretion, to be in the best interests of the Association. All costs and expenses association with all such bulk contracts shall be considered a Common Expense of the Association assessable to all Owners. Cable and/or telecommunications shall include receiving and distributing systems and electronic surveillance systems, emergency, medical and surveillance monitoring, or alarm systems (all or any part of which shall be referred to herein collectively as the "Systems"), the exact description,

location and nature of which may or may not have been fixed or determined. The Association reserves and shall have the right to grant easements and rights-of-way for installation, construction and maintenance of the Systems (the scope, extent, size and location of which over, across, upon and through any portion of the Neighborhood, including, without the limitation, the Common Areas, shall be determined solely by the Association), it being the intention that the Association shall have the authority to grant a blanket access easement to any bulk cable television and/or telecommunications service over and across any of the any portion of the Neighborhood, including, without limitation, the Common Areas, without the joinder or consent of any Owner, for the purpose of installing, constructing, inspecting, maintaining, altering, moving, improving or replacing the facilities and the equipment constituting the Systems, including without limitation, conduits, wires, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute the services of the Systems, including, without limitation, television and radio signals, electronic banking, surveillance, fire, police and emergency medical protection.

14.2 Transportation Systems or Services. The Association may, but shall not be obligated to, provide transportation systems or services between various portions of the Neighborhood. The Association shall have the right to enter into an agreement with other parties to provide such transportation services to the Owners, their guests, tenants, and invitees.

SECTION XV – NON-LIABILITY OF ASSOCIATION

EACH MEMBER, OWNER AND OCCUPANT OF ANY RESIDENTIAL UNIT ACKNOWLEDGES THAT THE ASSOCIATION IS NOT AN INSURER OF THEIR SAFETY AND SECURITY. THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE NEIGHBORHOOD NOR HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OR SECURITY MEASURES UNDERTAKEN, IF ANY. EACH OWNER AND OCCUPANT OF ANY UNIT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO SUCH PROPERTY, AND TO THE CONTENTS THEREOF.

ALL OWNERS AND OCCUPANTS OF ANY RESIDENTIAL UNIT AND TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT ANY PRIVACY GATE AND WALL, FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM MAY BE COMPROMISED OR CIRCUMVENTED AND MAY NOT PROVIDE THE PRIVACY, DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

NO PERSONS, INCLUDING EMPLOYEES, AGENTS, BROKERS, OR ANY OTHER PERSONS AFFILIATED WITH THE ASSOCIATION IS AUTHORIZED TO MAKE ANY ORAL REPRESENTATIONS OR WARRANTIES, NOR IS ANY OWNER OR OCCUPANT AUTHORIZED TO RELY UPON ANY ORAL REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ANY PRIVACY GATE AND WALL, AND FIRE AND/OR BURGLER ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE NEIGHBORHOOD.

SECTION XVI – GENERAL PROVISIONS

16.1 **Use of the Words “Pelican Marsh” and “Tiburon”.** No person shall use the words “Pelican Marsh”, “Tiburon” or any derivative thereof in any printed or promotional material without the prior written consent of the Association. However, the Developer may use the words “Pelican Marsh” and “Tiburon” in printed or promotional matter when such term is used solely to specify that particular property is located within the Pelican Marsh and Tiburon developments.

16.2 **Severability.** If any section, subsection, sentence, clause, phrase, portion, term or provision of this Declaration is, for any reason, held to be invalid, unenforceable or unconstitutional in whole or in part by any court of competent jurisdiction, such provision shall be deemed to be a separate, distinct and independent provision and such holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect, and such holding shall be limited to its most narrow application.

16.3 **Gender.** Whenever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of one gender shall be deemed to include the other gender.

16.4 **Notices.**

(a) **To the Association.** Notice to the Association, or requests for approval of plans, specifications and location of structures, buildings, signs or other improvements shall be in writing and delivered or mailed to the Association at its principal place of business as shown by the records of the Florida Department of State, or at any other location designated by the Association.

(b) **To Owner.** Notice to any Owner of a violation of any of these restrictions, or any other notice as may be required herein, shall be in writing and delivered or mailed to the Owner at the address shown on the tax rolls of the County, or to the address of the Owner as shown on the deed recorded in the Public Records of County. If an Owner is a corporation, notices may be sent to its principal place of business as shown by the records in the Department of State of the State of Florida, or in the records of the state of its corporation.

16.5 **Construction.** The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general plan for development of the Neighborhood and Tiburon Estates and the purposes set for herein.

16.6 **Amendment.** This Declaration may be amended upon the affirmative vote of a majority of the Voting Interests of the Association.

16.7 **Declaration Runs with the Land.** The covenants, conditions, restrictions and other provisions under this Declaration shall run with the land and bind the property within the Neighborhood and shall inure to the benefit of, and be enforceable by, the Association, an Owner, as well as their respective legal representatives, heirs, successors and assigns, to the extent set forth herein, for a term

of thirty (30) years from the date this Declaration is recorded, after which time these provisions shall automatically be extended for successive periods of ten (10) years. Any time after the initial thirty (30) year period provided for in this Section 16.8, these provisions may be terminated or modified in whole or in part by the recordation of a written instrument providing for the termination or modifications executed by the Owners of two-thirds (2/3rds) of the Sites agreeing to the termination of modifications.

16.8 **Waiver.** No provisions contained in the Governing Documents shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

16.9 **Easement for Golf Course.** The Sites, the Residential Units and the Common Properties are burdened with a perpetual, non-exclusive easement permitting golf balls unintentionally to come upon the Sites, the Residential Units and the Common Properties from the golf course(s) adjacent to Sites, the Residential Units and the Common Properties, if any, and for golfers at reasonable times and in a reasonable manner to come upon the Sites and the Common Properties to retrieve errant golf balls; provided, however, if any portion of the Sites, the Residential Units and the Common Properties is fenced or walled, the golfer will seek Owner's permission before entry. The location of a Site, a Residential Unit and/or a portion of the Common Properties may result in nuisances or hazards to a Site, a Residential Unit and/or a portion of the Common Properties as a result of operations of the golf course(s) adjacent to such Site, Residential Unit and/or a portion of the Common Properties. Each Owner, by acceptance of a deed to a Site or a Residential Unit, covenants for itself, its successors, successors in title, and assigns that it shall assume all risks associated with such location, including, but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to golf course activities and shall indemnify and hold harmless the owners of the golf course(s) from any liability, claims or expenses, including attorneys' fees, arising from such property damage or personal injury. The Association reserves the right to impose upon all or certain of the Sites, the Residential Units and/or all or a portion of the Common Properties such other easements as are required for the operation of the golf course(s).

SECTION XVII – CLUB MEMBERSHIP

17.1 **Ownership of Club Facilities.** The Club Facilities are owned solely by the Club and will be operated by the Club or its agents. The Club Facilities are privately owned and operated and are not Common Properties, District Property or the property of any other common interest association within Pelican Marsh. No Owner or any other person has any right, easement or other use or ownership interest in the Club or the Club Facilities as the result of owning any Site, Residential Unit or other property within Pelican Marsh. The Club Facilities are currently operated as a semi-private membership club in accordance with the Membership Plan. The Club has the sole and absolute right to determine how and by whom the Club Facilities may be utilized and to determine the fees, dues and other charges imposed for use of the Club Facilities.

17.2 **Membership Plan.** As of the date of this Declaration, the Club is currently operated in accordance with the Membership Plan. Pursuant to the Membership Plan, two categories of non-proprietary membership to use the Club Facilities are offered: (a) golfing membership referred to as "Medallion Membership" and (b) social and limited golfing memberships, referred to as "Signature

Membership". Eligibility to acquire, and the membership fee required to be paid for each categories of membership, shall be as set forth in the Membership Plan or Schedule of Dues, Fees and Charges, as the same exists from time to time.

17.3 Acquisition and Transfer of Memberships. Each initial purchaser of a Residential Unit, other than any builder who acquires a Site to construct a Residential Unit thereon for the sole purpose of resale shall be obligated to acquire a Signature Membership at the closing of the purchase of the Residential Unit. In the case of a builder, the purchaser of the Residential Unit from the builder shall be obligated to acquire a Signature Membership. The Signature Membership may not thereafter be separated from the Residential Unit unless it has been resigned or terminated. The resale purchaser of a Residential Unit should follow the procedure hereafter set forth and contact the Club to assure themselves a Signature Membership is available for the Residential Unit without payment of a membership fee.

The number of Medallion Memberships is limited and the Club will reserve Medallion Memberships for initial retail purchasers within certain portions of Pelican Marsh for a limited period of time as set forth in the purchaser's real estate sales contract. Any purchaser of a Residential Unit, other than an initial retail purchaser of a Residential Unit, should consider written inquiry to the Club to determine if the Club has available and unreserved Medallion Memberships. Owners of Residential Units who are Medallion Members may arrange for the purchaser of the Residential Unit to acquire their Medallion Membership upon application, approval of the purchaser's application and the purchaser's payment of the required membership fee. Such transfers are subject to any and all requirements of the Membership Plan. In this event, the Medallion Membership will receive refund of all or a portion of the membership fee as provided in the Membership Plan and their Membership Application. If a Medallion Member who owns a Residential Unit sells his Residential Unit and does not arrange to transfer their Medallion Membership to the purchaser of their Membership Unit, they may resign their Medallion Membership, in which event it will be resold in accordance with the Membership Plan. The above paragraph is a summary of the terms of the Membership Plan, and the Membership Plan shall control over conflicting provisions of this Declaration.

Until the Membership Plan is terminated or amended to the contrary, Signature Memberships issued to Owners of Residential Units shall be transferable to the subsequent purchaser or transferee of the Residential Unit. Such transfer may occur only under the following conditions: (a) the selling or transferring Owner must be current on all obligations owed to the Club and in good standing (i.e., not be under suspension on the date of closing of the transfer or sale or have had their Signature Membership involuntarily resigned or terminated), (b) the selling or transferring Owner must resign their Signature Membership effective as of the date of sale or transfer of the Residential Unit, (c) the purchasing owner must apply for a transfer of Signature Membership a minimum of thirty (30) days prior to the date of closing of the sale of transfer of the Residential Unit, and (d) the purchasing or transferring owner must be approved for a transfer of Signature Membership. Upon such a transfer, the purchaser or transferee shall not be required to pay the then current membership fee for a Signature Membership and the selling Signature Membership shall not be entitled to any refund of the membership fee previously paid for Signature Membership. In the event an Owner who is selling or is transferring their Residential Unit does not arrange to transfer their Signature Membership to the purchaser or transferee of their Residential Unit as described above, the Signature Membership shall be deemed resigned as of the date

of the closing of the sale or transfer of their Residential Unit and the member shall not be entitled to a refund of the membership fee, dues or other fees paid to the Club.

SECTION XVIII – SUPREMACY OF PUD

In the event of any conflict or ambiguity between this Declaration and the PUD, the terms and provisions of the PUD shall prevail. Under no circumstances shall any term or provision contained herein be construed to reduce or lessen the impact or effect of any limitation or constraint provided for, or contemplated by, the terms of the PUD. No term or provision provided for, or contemplated, herein shall be construed or have the effect of granting or providing a greater right than provided for by the terms of the PUD.

NOT A CERTIFIED COPY

**AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
SERAFINA AT TIBURON HOMEOWNERS' ASSOCIATION, INC.**

**SUBSTANTIAL REWORDING OF ARTICLES OF INCORPORATION. SEE PRIOR ARTICLES OF
INCORPORATION FOR PREVIOUS TEXT.**

ARTICLE I

The name of the corporation is SERAFINA AT TIBURON HOMEOWNERS' ASSOCIATION, INC., sometimes hereinafter referred to as the "Association". THIS ASSOCIATION IS NOT A CONDOMINIUM ASSOCIATION, pursuant to Chapter 718, Florida Statutes.

ARTICLE II

The office of the Association shall be at such location within Collier County, as may from time to time be determined by the Board of Directors.

ARTICLE III

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

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

ARTICLE IV

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

ARTICLE V

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

ARTICLE VI

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

ARTICLE VII

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

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

The amendment must be approved by a vote of a majority of the Voting Interests of the Association.

B. Effective Date. An amendment shall become effective upon filing with the Secretary of State of Florida and recording a certified copy in the Public Records of Collier County, Florida.

C. Conflict. In the event of a conflict between the provisions of these Articles and the provisions of the Declaration, the provisions of the Declaration shall prevail.

ARTICLE VIII

A. The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws of the Association.

B. Directors of the Association shall be elected by the members in the manner determined by the Bylaws of the Association. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws of the Association.

C. The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting and shall serve at the pleasure of the Board.

ARTICLE IX

The Association shall indemnify every Director and every officer of the Association against all expenses and liabilities including attorney's fees (at all trial and appellate levels), actually and reasonably incurred by or imposed on such person or persons in connection with any claim, legal proceeding (or settlement or appeal of such proceeding) to which such person may be a party as a result of being or having been a Director or officer of the Association. The foregoing provisions for indemnification shall apply whether

or not such person is a Director or officer at the time such expenses are incurred. The foregoing right of indemnification shall not apply to:

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

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

The foregoing right of indemnification shall be in addition to, and not exclusive of, all other rights to which such Director or officer may be entitled.

ARTICLE XI

The registered office address and the name of the registered agent of the corporation shall be as determined by the Board of Directors from time to time.

**AMENDED AND RESTATED BY-LAWS
OF
SERAFINA AT TIBURON HOMEOWNERS' ASSOCIATION, INC.**

SUBSTANTIAL REWORDING OF BY-LAWS. SEE PRIOR BY-LAWS FOR PREVIOUS TEXT.

1. GENERAL. These are the By-laws of Serafina at Tiburon Homeowners Association, Inc. (the "Association"), a corporation not for profit organized under the laws of the State of Florida. This is a Homeowners' Association as defined by Section 617.301, Florida Statutes.

1.1 Principal Office. The principal office of the Association shall be at such location within Collier County, as may from time to time be determined by the Board of Directors.

1.2 Seal. The corporate seal of the Association shall be adopted and may be changed by the Board of Directors and shall bear the name or abbreviated name of the Association, the word "Florida," the year of establishment, and shall identify the Association as a not-for-profit corporation. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law.

1.3 Fiscal Year. The fiscal year of the Association shall be the calendar year, unless otherwise determined by the Board of Directors.

2. DEFINITIONS. All terms used in these Bylaws shall have the same meaning, to the extent applicable, as set forth in the Articles of Incorporation for the Association, and the Declaration of Neighborhood Covenants, Conditions and Restrictions for Serafina at Tiburon, as amended from time to time.

3. MEMBERSHIP.

3.1 Qualifications. Every Owner of a Residential Unit shall be a Member of the Association and no Owner shall have more than one membership in the Association with respect to any Residential Unit. Memberships in the Association shall not be an assignable, except to the successor-in-interest of the Owner's Residential Unit and every membership of any Owner in the Association shall be appurtenant to and inseparable from ownership of such Owner's Residential Unit. Ownership of a Residential Unit shall be the sole qualification for membership of an Owner in the Association.

3.2 Voting Interests. When a vote of the Members is required herein or by law, each Member shall be entitled to one (1) vote in the affairs of the Association for each Residential Unit owned. The term "a majority of the voting interests" in cases of Membership votes shall mean the number of votes equal to one-half of the total votes at any Members' meeting in which there is a quorum, plus one vote.

3.3 Members' Meeting: Voting.

A. Annual Meeting. There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each year at a day, place and time designated by the Board, for the purpose of electing Directors and transacting any other business duly organized to be transacted by the Members.

B. Special Members' Meeting. Special Members' meetings must be held whenever called by the President or by a majority of the Board and may also be called by Members having at least forty percent (40%) of the votes of the entire membership. Such request shall be in writing, shall state the purpose or purposes of the meeting, and shall be signed by all the Members making the request. Business at any special meeting shall be limited to the items specified in the request and contained in the note of meeting.

C. Notice of Meetings. Notice of all Members' meetings must state the time, date, and place of the meeting and shall incorporate an identification of agenda items. The notice must be mailed to each Member at the address which appears on the books of the Association, or may be furnished by personal delivery. The Member bears the responsibility for notifying the Association of any change of address. The notice must be mailed or delivered at least fourteen (14) days prior to the date of the meeting. Notice of any meeting may be waived in writing by any Member.

D. Quorum. A quorum at a Members' meeting shall be attained by the presence, either in person or by proxy, of persons representing at least 30 percent of the total Voting Interests.

E. Vote Required. The acts approved by a majority of the votes cast at a meeting in which a quorum has been attained shall be binding upon all Owners for all purposes, except where a higher vote is required by law.

F. Proxy Votes. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy shall be 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 the original must be delivered to the Secretary at least forty-eight (48) hours before the appointed time of the meeting or adjournment thereof. 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.

G. Adjourned Meeting. Any duly called meeting of the Members may be adjourned to a later time by vote of the majority of the voting interest present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

H. Order of Business. The order of business at Members' meetings shall be substantially as follows:

1. Call of the Roll or Determination of Quorum;
2. Reading or Disposal of Minutes of Last Members' Meeting;
3. Reports of Officers;
4. Reports of Committees;
5. Election of Directors (Annual Meeting Only);
6. Unfinished Business;
7. New Business;
8. Adjournment.

I. Minutes. Minutes of all meetings of Members and of the Board shall be kept in a businesslike manner and available for inspection by Members or the authorized representatives and Board Members at all reasonable times and for a period of seven (7) years after the meeting.

J. Parliamentary Rules. "Roberts' Rules of Order" (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these By-laws. The presiding officer may appoint a Parliamentarian whose decision or questions of parliamentary procedure shall be final. Any questions or point of order not raised at the meeting to which it relates shall be deemed waived.

K. Member's Participation. Members shall have the right to participate in meetings of Members with reference to all designated agenda items. However, the Association shall adopt reasonable rules governing the frequency, duration, and manner of Member participation. Any Member may tape record or videotape a meeting of the Members, subject to reasonable rules to be followed.

L. Action by Members Without Meeting. Except for the holding of the annual meeting and the election of Directors and unless otherwise provided herein, 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, or sixty percent (60%) of the total votes of the entire membership, whichever is greater, unless a lesser vote is required by law. If the requisite number of written consents are received by the Secretary within thirty (30) days of mailing notice of the proposed action to the Members, a resolution passed by the Board on the action so authorized shall be of full force and effect as if a full membership meeting had been held. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all Members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of Members' rights to call a special meeting of the membership, as elsewhere provided in derogation of Members' rights to call a special meeting of the membership, as elsewhere provided in these By-laws. If the vote is obtained by polling the Owners by mail, the Owners list on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

4. BOARD OF DIRECTORS

4.1 Number of Directors and Terms of Service. The Association shall be governed by a Board of five (5) Directors. 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 implement and maintain a staggered directorate, the Board may hold seats in future elections open for one or two year terms, when necessary or appropriate.

At the annual meeting of the Members following the adoption of these Bylaws, all five positions on the Board shall be open for election. The three (3) candidates receiving the highest number of votes shall serve two year terms. The two (2) remaining candidates shall serve one year terms with their seats coming up for election at the following annual meeting. Every director elected thereafter shall serve a two-year term.

If only five or fewer members are put forth as candidates for the Board, no election shall be required and all such candidates shall be deemed directors and will take office at the annual meeting. The five Directors shall determine by lot which three of them shall serve two-year terms and which two of them shall serve the one-year terms. Thereafter, all Directors shall be elected for two-year terms. The Directors of the Association shall have a fiduciary relationship to the Members. The term of each Director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and taken office, or until he is removed in the manner elsewhere provided.

4.2 Selection of Directors. All Members of the Association in good standing shall be eligible to serve on the Board. The Board may utilize a nominating committee and/or solicit candidates from the owners directly in advance of the annual meeting. Only owners who notify the Association in advance of the annual meeting will be considered eligible candidates. The Directors must be elected by a plurality of the votes cast by the eligible voters.

4.3 Organizational Meeting of Directors. The annual organizational meeting of the Board shall be held immediately after the annual meeting of the members, at which time the newly-designated Directors shall elect officers and conduct such other business as they may deem appropriate. At the organizational meeting the Board may adopt a resolution authorizing the President or other executive officer to spend Association funds during the summer months and shall place reasonable limitations on that authority. Written notice of the annual organizational meeting shall be sent to each Member at least fourteen (14) days in advance of the annual organizational meeting.

4.4 Regular Meetings. Regular meetings of the Board may be held according to a prearranged schedule at such time and place in Collier County, Florida, as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, at least seven (7) days prior to the day named for such meeting.

4.5 Special Meetings. Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of at least two (2) Directors. Not less than forty-eight (48) hours' notice, except in an emergency, of a special meeting shall be given to each Director, personally or by telephone or telegram, which notice shall state the time, date, place and purpose of the meeting. Business conducted as special meetings shall be limited to matters stated in the notice of meeting.

4.6 Notice to Association. All meetings of the Board shall be open to attendance by all Members of the Association and notices of all Board meetings shall be posted in a conspicuous place on the Common Properties at least forty-eight (48) hours in advance, except in an emergency. Notice shall include a general outline of the agenda for the meeting. Notice of any Board meeting where assessments are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of the assessments. In the alternative, if notice is not posted in a conspicuous place, notice of each board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. The right to attend does not include the right to participate unless permitted by the Board.

4.7 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.

4.8 Quorum of Directors. A quorum at a Board meeting shall be attained by the presence in person of at least a majority of the Directors. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting.

4.9 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board, except as otherwise provided below. Directors may not vote by proxy at Board meetings.

4.10 Presumption of Assent. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest.

4.11 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum has been attained, may adjourn the meeting from time to time.

4.12 Removal, Filling of Vacancies. Any Director may be removed with or without cause by the Members in accordance with applicable Florida Statutes. All vacancies shall be filled by the Board of the Association. Only eligible candidates who have been in good standing with the Association for the preceding 90-day period may be appointed to fill vacancies on the Board.

4.13 Resignation. Any Director may resign by written notice to the Association, which resignation shall take effect upon receipt, unless another date is specified in the notice. Any Director who is absent from three (3) consecutive meetings of the Board shall be deemed to have tendered his

resignation as of the date of the third meeting. The replacement shall not be the same person who was just removed.

4.14 Powers. The property and business of the Association shall be governed by the Board, which may exercise all corporate powers not prohibited by law, the Articles, the Declaration or these By-laws. The powers of the Board shall specifically include, but not be limited to, the following:

A. To levy and collect fees and assessments in accordance with the provisions of the Declaration, the Articles, and these By-laws, and to establish the time and manner within which payment of same are due;

B. To use and expend the fees and assessments collected for those purposes set forth in the Articles, the Declaration and as may be permitted by law;

C. To perform all functions set forth in the Declaration, the Articles, and as may be permitted by law, and in conjunction with the foregoing, to purchase the necessary equipment, furnishings, fixtures, accessories and tools necessary or incidental to the maintenance of the Common Properties;

D. To collect delinquent fees and assessments by suit or otherwise;

E. To employ such personnel as may be necessary or incidental in order to carry out the purposes and functions of the Association;

F. To enter into such contracts and bind the Association thereby as the Board may deem reasonable in order to carry out the powers and functions by the Board, including the power to borrow money.

G. To make reasonable rules and regulations for the use of the Common Properties and for the operation of the Association;

H. To grant easements across the Common Properties for access, support, air space, encroachments, utilities, and such other easements or actions as the Association deems necessary.

4.15 Limitation on Powers. The Board may not purchase any land, nor make any material alterations of or substantial additions to the Common Properties or the facilities located thereon costing more than \$50,000.00 in the aggregate in any twelve month period, without the prior written approval of the Members. However, if work necessary to insure, protect, maintain, repair or replace the Common Properties also constitutes a material alteration or substantial addition, the foregoing limitation shall not apply.

4.16 Compensation. Directors and officers shall not receive compensation for their services as such, but may, at the discretion of the Board, receive reimbursement for so-called "out-of-pocket" expenses incurred in the actual performance of their duties.

4.17 Order of Business. The order of business at all meetings of the Board shall be substantially as follows:

- A. Roll call;
- B. Proof of Notice of Meeting or Waiver of Notice;
- C. Reading of minutes of last meeting;
- D. Reports of officers;
- E. Reports of committees;
- F. Unfinished business;
- G. New business;
- H. Adjournment.

4.18 Committees. The Board may, by resolution designate such standing or temporary committees as it may deem advisable or as may be required herein. Each such committee shall have such authority as shall be specified in the resolution designating such committee. Committee members must be Members of the Association and in good standing for the 90-day period immediately preceding appointment to the committee. The Board shall have the power at any time to remove any individual serving on any such committee or committees, with or without cause, and to fill vacancies in and to dissolve such committee or committees. Each committee designated by the Board shall keep regular minutes of its meetings and shall report the same to the Board when required. The designation of any committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual executive Director of any responsibilities imposed by law.

4.19 Minutes and Inspection. Minutes of all meetings of the Board shall be kept in a business-like manner in written form and shall be available for inspection by Member or their authorized representatives, and by Board Members at reasonable times. A vote or absenteeism from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes. The Association shall retain these minutes for at least seven (7) years.

4.20 Assessments. 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.

5. OFFICERS. The officers of the Association shall be a President, and one or more Vice Presidents, all of whom must be Directors of the Board. All officers must be Owners or spouses of Owners, and any two of said offices may be held by one person, except that the President shall not hold any other office. The Board may appoint such other officers as it shall deem necessary that shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The officers of the Association have a fiduciary duty to the Members.

5.1 Tenure of Officers. All officers of the Association shall hold office until their successors are elected and qualified. Any officer elected or appointed by the Board may be removed at any time, with or without cause, by the affirmative vote of the majority of the Directors. Any officer may resign at any time by giving written notice to the Association and unless otherwise specified therein, the

resignation shall become effective upon receipt. Any vacancy occurring in any office of the Association shall be filled by the Board.

5.2 The President.

A. The President shall preside at all meetings of the Directors. Such officer shall (i) have general and active management of the business of the Association, (ii) see that all orders and resolutions of the Board are carried into effect, and (iii) execute bonds, mortgages and other contracts requiring a seal, under the seal of the Association, except where required or permitted by statute to be otherwise signed and executed, and where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Association;

B. Such officer shall oversee the disbursement of funds of the Association, take proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all transactions and of the financial condition of the Association;

C. Such officer shall be the chairman of the Budget Committee, if any;

D. Such officer may be required to give the Association a bond in a sum and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of such office, and the restoration of the Association in case of such officer's death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in such officer's possession belonging to the Association. The Association shall pay all premiums for issuance of the bond, and

E. In general, such officer shall perform all duties incident to the office of Treasurer and such other duties as from time to time may be prescribed by the President of the Board.

6. ASSESSMENTS AND FEES.

6.1 Method of Establishing Assessments. In accordance with Section 10.5 below, before the first day of December of each year, the Board shall consider and adopt an annual operating budget in amounts believed to be sufficient to enable the Association to perform its functions for the ensuing year, including any necessary expenses associated with the Master Association. Based upon the amount of monies determined to be needed for the operation of the Association, the Board shall assess against each Owner its proportionate share of the budget. Each Residential Unit shall bear a proportional share of the expenses and assessments described herein, which proportional share is equal to a fraction where the numerator is one (1) and the denominator is a number equal to the then total number of Residential Units within the property.

6.2 Payment of Annual Assessments. Annual assessments shall be billed in quarterly installments payable in advance on the first day of January, April, July and October of each year.

6.3 Limitation on Change of Assessments. The Board shall not increase a Member's annual assessment by more than twenty percent (20%) over and above the respective Member's annual assessments for the preceding year without the unanimous approval of the Board.

6.4 Collection of Assessments. The Board shall be authorized to adopt and promulgate rules and regulations for the collection of all assessments, and the determination and collection of assessments against the Members shall be subject to the following provisions:

A. Late Assessments. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid. Assessments and installments thereof paid on or before ten (10) days after the date due shall not bear interest, but there shall be a late charge not to exceed the greater of \$25.00 or 5 percent of the assessment for any sums not paid within then (10) days of the date due. The Association has a lien on each Residential Unit and/or Site for any unpaid Assessments of such Residential Unit and/or Site with interest, and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien is effective as of the date of the recording of the Declaration and shall be evidenced by the recording of a claim of lien in the Public Records of Collier County, Florida, stating the description of the Residential Unit and/or Site, the name of the record owner, the name and address of the Association, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien.

B. No Member may exempt itself from liability for its assessment hereunder by waiver of the use and enjoyment of any of the Common Properties.

C. Enforcement of Assessments. In the event an Assessment is not paid within ten (10) days of the date same shall be due and payable, the Association, through the Board, may proceed to enforce and collect said Assessments from the delinquent Owner in any manner provided for by Section 617.301, et. seq., Florida Statutes, the Declaration and these By-laws. Each Owner shall be individually responsible for the payment of Assessments against such Owner's Residential Unit and/or Site and for the payment of reasonable attorneys' fees and costs incurred by the Association in the collection of sums due and enforcement of any lien held by the Association.

7. USE RESTRICTIONS.

7.1 Declaration. The Declaration shall govern the use of the Common Properties and the conduct of the Members of the Association and their respective Owners, occupants and/or guests.

7.2 Promulgation of Rules. In addition to the Declaration's reasonable regulations concerning the use of Common Properties may be made and amended from time to time by the Board. Copies of such regulations and amendments thereto shall be made available to all Owners in Serafina at Tiburon.

8. INSURANCE.

8.1 Required Coverage. The Board shall obtain and maintain at all times the insurance listed below. The named insured on all insurance policies upon the Common Properties shall be the Association individually and as agent for each Member and their respective Owners, without naming them.

A. Liability Insurance: Public liability insurance covering all of the Common Properties and insuring the Association, the Members, and their respective Owners as their interests appear, in such amounts as the Board may determine from time to time, provided that their minimum amount of coverage shall be ONE MILLION and No/100 DOLLARS. Premiums for such insurance shall be chargeable as an expense of the Association and shall be assessed against and paid by each of the Members as provided for in Section 6 hereof. The Association shall not be responsible for purchasing liability insurance to cover accidents occurring outside the Common Properties;

B. Property Insurance: Insurance against vandalism, malicious mischief, fire, windstorm and other perils normally covered by a standard "all-risk" property contract, insuring all of the insurable improvements upon the land owned and to be owned by the Association and all personal property included as Common Properties, for a minimum of eighty percent (80%) of the full replacement value, together with such other insurance as the Association may deem necessary. Premiums for such insurance shall be chargeable as an expense of the Association and shall be assessed against and paid by each of the Members as provided for in Section 6 hereof. The Association shall annually make an analysis to determine replacement costs for insurance purposed for all of the then existing improvements for the ensuing year. Said insurance shall not insure against damage to property other than Common Properties;

C. Such other insurance as the Board shall determine from time to time to be desirable. Premiums for such insurance shall be an expense of the Association and shall be assessed against and paid by each of the Members as provided for in Section 6 hereof.

8.2 Distribution of Proceeds. If a loss occurs for which the proceeds of insurance policies are received, payments under the policies shall be disbursed and expended in the following manner:

A. To the officers of the Association responsible for the conduct of the Association's financial affairs. Said officer shall be bonded at the Association's expense, at least to the full extent of the insurance proceeds and other funds on hand, and all such payees shall endorse the insurance company's check payable to the Association;

B. If the damage for which proceeds are paid is to be repaired or reconstructed, the Association shall pay the proceeds to defray the costs thereof as elsewhere provided. Any proceeds remaining after the defraying of such costs shall be distributed to the Association to be used for the benefit of the Members;

C. If it is determined in the manner elsewhere provided that tile damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the Members.

8.3 Site and Homes. Each Owner shall obtain insurance coverage at their own expense upon their own property and for their own personal liability.

8.4 Reconstruction or Repair After Casualty. If any part of the Common Properties shall be damaged by casualty, a decision as to whether or not it shall be reconstructed or repaired shall be made by the Board in accordance with the provisions of Article 12 of the Declaration. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair, and if the Board has determined to proceed to reconstruct and repair, the Board may make a special assessment against each Owner in order to obtain the funds sufficient for the payment of such costs. Such special assessments shall be assessed against each Owner as provided for in Section 6 above.

9. NOTICES.

9.1 Method. Except as otherwise required, notices to Directors and each Member shall be in writing and delivered personally or mailed to the Directors and each Member at their addresses appearing on the records of the Association. Notice by mail shall be deemed to be given at the time when the same shall be deposited properly addressed with sufficient first class postage in the U.S. mails. Notice to Directors may also be given by telegram, telephone, or in person.

9.2 Waiver. Whenever any notice is required to be given, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

10. FINANCES.

10.1 Fiscal Year. The Association shall operate on a fiscal year beginning on the first day of January and ending on the 31st day of December each year. The Board is expressly authorized to change to a different fiscal year basis whenever deemed expedient for the best interest of the Association.

10.2 Checks. All checks or demands for money and notes of the Association shall bear two signatures, and may be signed by any of the following officers: President, Vice President, Secretary or Treasurer or by such officer or such other person or persons as the Board may from time to time designate.

10.3 Annual Financial Statement. The Board shall provide an Annual Financial Report prepared by an independent certified public accountant to the Board and each member within one hundred twenty (120) days after the end of each fiscal year as to the total fees and assessments and other income and as to the method of disbursement of said funds. The financial report must consist of either:

- (a) Financial Statements printed in conformity with generally accepted accounting principles; or
- (b) A financial report of actual receipts and expenditures, cash basis, which report must show:
 - (1) The amount of receipts and expenditures by classification; and
 - (2) The beginning and ending cash balances of the Association.

10.4 Depository. The Association shall maintain its accounts in such financial institutions in the State of Florida 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 may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

10.5 Budget. The Treasurer shall prepare or cause to be submitted to the Board, not later than November 1 each year, a proposed budget for the next year. The proposed budget shall be detailed and shall show the amounts budgeted for income and expense by accounts. The Board shall, not later than November 30 of each year, adopt an annual budget for the next fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting at which the budget will be considered shall be mailed to or served on each Director not less than fourteen (14) days prior to that meeting.

10.6 Reserves. In addition to the operating expenses provided in the Budget, the Board may establish one or more reserve accounts for contingencies, operating expenses, repairs, improvements or deferred maintenance. The purpose of the reserves is to provide financial stability and to minimize the need for special assessments. The amounts proposed to be so reserved shall be shown in the annual budget. These funds may be spent for any purpose approved by the Board.

10.7 Special Assessments. Special assessments may be imposed by the Board when necessary to meet unusual, unexpected, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Articles or these By-laws. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The notice of any assessments must contain a statement of purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or credited to the Members.

11. OFFICIAL RECORDS. From the inception of the Association, the Association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the Association:

- (a) The plans, permits, warranties, and other items related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair, or replace.
- (b) A photocopy of the recorded Declaration and all amendments thereto;
- (c) A photocopy of the recorded By-laws and all amendments thereto;
- (d) A certified copy of the Articles or other documents creating the Association and all amendments thereto;
- (e) A copy of the current Rules and Regulations of the Association;
- (f) A book or books containing the minutes of all meetings of the Association; of the Board, and the Owners, which minutes shall be retained for a period of not less than seven (7) years.
- (g) A current roster of the Owners, their mailing addresses, Site identifications, voting certifications, and if known, telephone numbers.
- (h) All current insurance policies of the Association; which must be maintained for seven (7) years.
- (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Owners have an obligation or responsibility, bids received by the association for work to be performed;
- (j) Bills of sale or transfer for all property owned by the Association;
- (k) Accounting records for the Association according to good accounting practices. All accounting records shall be maintained for a period of not less than seven (7) years. The accounting records shall include, but not be limited to:
 - (i) Accurate, itemized, and detailed records for all receipts and expenditures.
 - (ii) A current account and a quarterly statement of the account for each Residential Unit and/or Site designating the name of the Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
 - (iii) All audits, review, accounting statements, and financial reports of the Association.
 - (iv) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year.

(l) Ballots, sign-in sheets, voting proxies and all other papers relating to elections, which shall be maintained for a period of one (1) year from the date of the meeting to which the document relates.

(m) All other records of the Association not specifically included in the foregoing which are related to the operation of the Association.

The official records of the Association shall initially be maintained in Lee County, Florida.

The official records of the Association shall be open to inspection by any Association member or the authorized representative of such member at all reasonable times. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover minimum damages for the Association's willful failure to comply as set by Section 617.303, Florida Statutes, as it may be amended from time to time. The right to inspect the records includes the right to make or obtain copies, at a reasonable expense, if any of the Association member.

12. AMENDMENT OF BY-LAWS. Amendments to these By-laws shall be proposed and adopted in the following manner:

12.1 Proposal. Amendments to these By-laws may be proposed by the President or by any two (2) Directors, or by twenty-five percent (25%) of the Voting Interests.

12.2 Notice of Proposed Amendment(s). Upon any amendment or amendments to these By-laws being proposed, the appropriate notices and copies of the text of the proposed amendments shall be mailed to all Directors with notice of meeting at which the proposed amendments will be voted on.

12.3 Vote Required. Except as otherwise provided, these By-laws may be amended by concurrence of at least two-thirds (2/3rds) of the Voting Interests of the Association at a duly noticed meeting at which a quorum is present. The text of any proposed amendment shall be contained in the notice of such meeting. Prior to turnover, amendments may be only adopted by Directors.

12.4 Certificate: Recording. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

13. COMPLIANCE AND DEFAULT; REMEDIES. In addition to any other remedies provided by law, pursuant to Section 617.305(2), Florida Statutes, the Board may levy reasonable fines against Members or against Associations whose Owners commit violations or the rules and regulations, or condone such violations by their family Members, guests, tenants or invitees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed \$100.00 per violation, not exceeding \$10,000.00 in the aggregate.

14. MISCELLANEOUS.

14.1 Gender. Whenever the masculine or singular form of the pronoun is used in these By-laws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

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

14.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these By-laws and the Articles, the provision of the Articles shall prevail over the provisions of the By-laws.

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