

**AMENDED AND RESTATED BY-LAWS  
OF  
THE SURF CLUB OF MARCO, INC.**

**1. IDENTITY.** These are the Amended and Restated By-Laws (hereinafter “By-Laws”) of The Surf Club of Marco, Inc., a Florida not-for-profit corporation formed for the purpose of administering The Surf Club of Marco Condominium (hereinafter “the Condominium”) which is located on Marco Island, Collier County, Florida, upon the lands described in the Declaration of Condominium. (The corporation may hereafter be referred to as the “Association.”)

**1.1 Office.** The office of the Association shall be at the Condominium Property, or such other location within Collier County, as may from time to time be determined by the Board of Directors.

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

**1.3 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.

**1.4 Definitions.** All terms used in these By-Laws shall have the same meaning, to the extent applicable, as set forth in the Articles of Incorporation for the Association, the Declaration of Condominium for The Surf Club of Marco, and the Florida Condominium Act, Chapter 718, Florida Statutes, all as amended from time to time.

**2. OWNERS’ MEETINGS.**

**2.1 Annual Meetings.** Annual Owners’ meetings shall be held at the resort or at such convenient location in Collier County as may be determined by the Board of Directors. The annual meeting shall be held on the date and time determined by the Board for the purpose of electing a number of Owners to the Board of Directors sufficient to fill all vacancies and to replace or re-elect Owners whose terms have expired, and for the purpose of transacting any business authorized to be transacted by the Owners.

**2.2 Special Meetings.** Special Owners' meetings shall be held whenever called by the President or by a majority of the Board of Directors, and shall be called by the President or Secretary within a reasonable time of receipt of a written notice from twenty-five percent (25%) of the voting interests of the Association. Owners' meetings to recall a member or members of the Board of Directors may be called by ten percent (10%) of the voting interests of the Association who shall give notice of the meeting, stating the purpose of the meeting, pursuant to Section 718.112(2)(j), Florida Statutes, as amended from time to time.

**2.3 Notice of Owners' Meetings.** Notice to all Owners of meetings, shall state the time, place, and purpose(s) of the meeting, and shall be sent to each Owner by United States regular mail or third party carrier mail, unless waived in writing, by a particular Owner, and then fax, email, or other electronic means may be used as determined by that Owner. Any such notice shall be sent at least fourteen (14) days prior to the annual or special. Hand delivery, email, electronic or fax is acceptable where permissible by law and approved by the Owner receiving by such means. Officers required to give notice may delegate the actual giving of notice to another person, such as an Assistant Officer or managing agent. An officer of the Association or other person providing notice shall execute an affidavit of mailing or other permitted service per Section 718.112(2)(d)(2), Florida Statutes, as amended from time to time, which shall be retained in the official records of the Association as proof of such service. The notice of the annual meeting shall include an agenda for all known substantive matters to be discussed, or have such an agenda attached to it. A copy of the notice and agenda shall be posted at a conspicuous location, currently the bulletin board at the Condominium property designated as such; or at such other location on the Condominium Property as designated from time to time by the Board.

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

**2.4 Membership.** Each Owner of a Time-share Estate shall be a member of the Association; provided however, that if more than one person owns a single Time-share Estate, voting rights shall be in the manner set forth in subsection 2.6 of this Article. An Owner will cease to be a member of the Association upon the sale, transfer or disposition of the Owner's ownership interest in the Owner's Time-share Estate, and such transfer shall be subject to the procedures set forth in the Declaration of Condominium.

**2.5 Quorum/Voting.** A quorum at Owners' meetings shall consist of persons entitled to cast one-third of the voting interests of the entire membership of the Association. Decisions made by a majority of the voting interests present and voting, in person or by proxy, at a meeting at which a quorum is present shall be binding and sufficient for all purposes except such decisions as may be Chapters 718 or 721, Florida Statutes, or the Condominium Documents require a larger percentage in which case the percentage required in Chapters 718 or 721, Florida Statutes, or the Condominium Documents shall govern. To the extent lawful, Owners may join in any action taken at a meeting of the Owners through written approval of such action executed after the meeting, and such approval shall be as though the Owner duly approved the action of the meeting in question.

**2.6 Voting.** Owners of each Time-share Estate, except for Time-share Estates owned by the Association, whether for maintenance purposes or otherwise, as members of the Association, shall have one (1) vote for each Time-share Estate owned by such Owner(s); provided, however, in the event that a Time-share Estate is owned by more than one person, the persons owning said Time-share Estate are entitled to cast a single vote as hereinafter provided. If a Time-share Estate is owned by one person, his or her right to vote shall be established by the record title to the Time-share Estate. If a Time-share Estate is owned by more than one person, or is under lease, the person entitled to cast the vote for the Time-share Estate shall be designated by a certificate signed by all of the record Owners of the Time-share Estate and filed with the Secretary of the Association, or the managing entity, if so designated. If a Time-share Estate is owned by a corporation, the person entitled to cast the vote for the Time-share Estate shall be designated by a certificate signed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Corporation and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Time-share Estate concerned. A certificate designating the person entitled to cast the vote of a Time-share Estate may be revoked by any Owner of a Time-share Estate. If such certificate is not on file and there is a dispute as to who can vote for the Time-share Estate, the vote of such Owners shall not be considered.

For voting purposes, at least fourteen (14) days prior to a particular meeting, the Secretary shall prepare a complete list of the Owners entitled to vote, arranged numerically by Unit and Time-share Estate. Such list shall be kept until the questions to be voted upon have been determined.

Those Units owned by the Association, whether for maintenance purposes or otherwise, that are not entitled to vote, shall not be included in the total number of unit weeks for

determining a quorum or for determining the number of votes needed for or against a particular proposal.

**2.7 Proxies.** Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote, must be in writing signed by the Owner(s) or designated Owner, and must be filed with the Secretary before the appointed time of the meeting or the adjournment thereof.

**2.8 No Quorum.** If any meeting of Owners cannot be organized because a quorum is not present, or if insufficient voting interests are represented to approve a proposed item of Association business, the Owners who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

**2.9 Order of Business.** The order of business at annual Owners' meetings and, as far as applicable at all other Owners' meetings, shall be as determined by the President upon consultation with the other Board members and Management.

**2.10 Action Without a Meeting.** Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of Owners, or any action which may be taken at any annual or special meeting of such Owners, may be taken without a meeting, without prior notice, and without a vote if a consent in writing setting forth the action so taken, shall be signed by the requisite number of voting interests to approve the action. Owners may also consent in writing to action taken at a meeting, before or after the meeting, by providing a written statement to that effect and their vote shall be fully counted as though they had attended the meeting.

**2.11 Annual Statement.** The Board shall present no less often than at the annual meeting of the Association, a full and clear statement of the business and condition of the Association including a complete financial report of actual receipts and expenditures for the previous 12 months, herein called the Annual Statement. Incident to the Annual Statement, the Board shall also prepare and present the proposed annual budget of Common Expenses of the Association in the manner provided in Section 8.1 hereof.

### **3. BOARD OF DIRECTORS.**

**3.1 Number, Term, and Qualifications.** The affairs of the Association shall be governed by a Board composed of not less than three (3) Directors nor more than fifteen (15) Directors, as is determined from time to time by members of the Association. As of the date of

approval of these Amended and Restated By-Laws, the number of Directors approved by the Association is five (5). All Directors shall be members of the Association. When a Unit is owned by a corporation, all officers of the corporation shall be deemed to be members of the association so as to be eligible for Board membership. A grantor or beneficiary of a trust and the spouses of such persons, shall be considered eligible for Board membership. No more than one (1) natural person from each Unit shall be eligible to stand for election for Board membership, or serve on the Board. Persons who are convicted felons, who have not had their civil rights restored, are not eligible to serve on the Board. All Directors will be elected for a three (3) year term. It is the intention of these By-Laws that a staggered Directorate be maintained. To implement and maintain a staggered Directorate, the Board may hold seats in future elections open for one, two, or three year terms, when necessary or appropriate. In such cases, those receiving the higher number of votes shall be elected to the longer terms and when no election is held, the decision shall be made by agreement of the affected parties, or by lot. In the case of tie votes, the Directors shall decide among themselves who shall serve the longer terms. The term of each Director's service shall extend until their elected term is completed and thereafter until their successor is duly elected and qualified or until the Director is recalled in the manner provided in the Condominium Act, or resigns. Resignations of Directors are effective when received by the Association in writing, unless a later date is stated.

**3.2 Board Vacancies.** Vacancies in the Board of Directors shall be filled by appointment by a majority vote of the remaining Directors for the remainder of the unexpired term; provided that when a Director has been recalled by the membership of the Association, the vacancy created by the Director's removal cannot be filled with the same person as has been removed from the Board, and when a majority of the Board has been recalled, vacancies shall be filled by the membership of the Association, as provided by law.

**3.3 Organizational Meeting.** The organizational meeting of each newly-elected Board of Directors to elect officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, the organizational meeting shall be held immediately following the annual meeting of the Owners.

**3.4 Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings, unless fixed by Board resolution, shall be given to each Director personally or by mail, electronic mail, telephone, facsimile, or other electronic means, at least two (2) days prior to the day named for such meeting.

**3.5 Special Meetings.** Special meetings of the Directors may be called by the

President and must be called by the Secretary at the written request of any two (2) Directors. Not less than two (2) days' notice of the meeting (except in an emergency) shall be given to each Director personally or by mail, electronic mail, telephone, facsimile, or other electronic means, which notice shall state the time, place, and purpose of the meeting.

**3.6 Waiver of Notice.** Any Director may waive notice of a meeting before, at, or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at a meeting shall constitute waiver of notice of the meeting.

**3.7 Notice to Owners of Board Meetings.** Notice of meetings, which notice shall specifically include an agenda, shall be posted conspicuously as provided in Section 2.3 of these By-Laws at least 48 continuous hours in advance of the meeting for the attention of Owners, except in an emergency.

**3.8 Owner Participation in Board Meetings.** Meetings of the Board of Directors at which a majority of the members of the Board are present, shall be open to all Owners. Owners may not designate third persons, through power of attorney or otherwise, to attend Board meetings, unless agreed to otherwise by the Board. The right to attend such meetings includes the right to speak with reference to all designated agenda items; provided, however, the Board may adopt reasonable rules governing the frequency, duration, and manner of Owner statements. Unless otherwise provided by the Board, each Owner is entitled to speak for three minutes with reference to designated agenda items. Board meetings subject to the attorney-client privilege shall not be subject to Owner observation.

**3.9 Board Meetings, Quorum, and Voting.** The designation of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested, in writing, by two Board members. Participation by any Board member may be by teleconference or similar electronic means so long as that participation is concurrent with the conduct of the meeting. Participation by such teleconference or similar electronic means shall cause that Board member to be present for quorum purposes, and make that Board member eligible to participate as though present in person at such meeting, including participation by making and seconding motions or resolutions, and voting. A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of the entire Board of Directors present at a meeting shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings (except that Directors may vote by secret ballot when electing Officers) and a vote or abstention for each director present shall be recorded in the minutes. Directors may not abstain from voting except in the case of an asserted conflict of interest. If at any meeting of the

Board there be less than a quorum present, the Director(s) present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum or counted as official vote for the Board's meeting. Directors may participate telephonically in Board meetings, as provided by law.

**3.10 Presiding Officer.** The presiding officer at Directors' meetings shall be the President, and in the President's absence, the Vice President. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

**3.11 Director Compensation.** Directors shall serve without pay but shall be entitled to reimbursement for expenses reasonably incurred, as defined by policy adopted by the Board.

**4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.** All of the powers and duties of the Association existing under the laws of Florida generally, Florida Not For Profit Corporate Statute, the Condominium Act, and the Condominium Documents, all as amended from time to time, shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees, subject only to the approval by Owners when such is specifically required. Such powers and duties of the Directors shall include, but shall not be limited to, the following:

**4.1 Assess.** The Directors shall adopt budgets and make and collect special and periodic assessments against Owners to defray the costs of the Association.

**4.2 To Spend Association Funds.** The Directors shall use the proceeds of assessments in the exercise of its powers and duties.

**4.3 To Maintain the Condominium Property.** The Directors shall maintain, repair, replace, and operate the property within the Condominium.

**4.4 To Adopt Regulations.** The Directors shall enact and may amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, and to enact rules, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration of Condominium.

**4.5 To Reconstruct After Casualty.** The Directors may reconstruct the Units, Common Elements, Limited Common Elements, and Association Property improvements after casualty and to further improve the property, as specified in the Declaration of Condominium.

**4.6 To Approve Transfers.** The Directors may approve or disapprove proposed transactions or transfers in the manner provided by the Declaration of Condominium, and to charge a preset fee, not to exceed the maximum permissible by law, in connection with such right of approval. In connection with the lease of Units, the Board may require the posting of a security deposit to protect against damages to the Common Elements or Association Property, in the manner provided by law.

**4.7 To Enforce.** The Directors may enforce by legal means the provisions of applicable laws and the Condominium Documents, and to interpret said Condominium Documents, as the final arbiter of their meaning.

**4.8 To Contract.** The Directors may contract for management, maintenance and operation of the Condominium.

**4.9 To Insure.** The Directors shall carry insurance for the protection of the Unit Owners and the Association, pursuant to requirements contained in the Declaration of Condominium and Chapter 721, Florida Statutes, both as amended from time to time.

**4.10 To Pay Utility Bills.** The Directors shall pay the cost of all utility services rendered to the Condominium and not billed to Owners of individual Units.

**4.11 To Hire and Discharge.** The Directors may employ personnel and designate other officers to be paid a reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

**4.12 To Sue and Be Sued.** The Directors may bring and defend suits.

**4.13 To Deal in Real and Personal Property and Borrow Money.** The Directors may make and execute contracts, deeds, mortgages, notes, and other evidence of indebtedness, leases, and other instruments by its officers and to purchase, own, lease, convey, and encumber real and personal property. The Directors may grant easements and licenses over the condominium property necessary or desirable for proper operation of the Condominium.

**4.14 To Enter Into Contracts for Products and Services.** All contracts for the purchase, lease, or renting of materials or equipment, or which are not to be fully performed within one year, and all contracts for services shall be in writing. As to any such contract which requires payment exceeding five percent (5%) of the gross budget (including reserves) except for contracts with employees of the Association, attorneys, accountants, architects, engineers and landscape architects, and community association managers, the Board shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within the County serving the Association. The Board need not accept the lowest bid. If a contract was awarded under the competitive bid procedures of this Section, any renewal of that contract is not subject to such competitive bid requirements if the contract contained a provision that allowed the Board to cancel a contract on thirty (30) days' notice. Materials, equipment, or services provided to a condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this Section. The Association may opt out of competitive bidding requirements, by a Unit Owner vote, in the manner provided by law.

**4.15 To Appoint Committees.** The Directors may appoint committees and delegate to such committees those powers and duties of the Association as the Board deems advisable. All committees and committee members shall serve at the pleasure of the Board. Committees of the Association, as defined in the Section 718.103(7), Florida Statutes, as amended from time to time, shall conduct their affairs in the same manner as provided in these By-Laws for Board of Director meetings.

**4.16 To Exercise Emergency Powers.** In the event of any "emergency" as defined in Section 4.16.8 below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Chapter 617, Florida Statutes, as amended from time to time.

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

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

4.16.3 During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be

given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

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

4.16.5 The Board may use reserve funds to meet Association needs.

4.16.6 Any office, director, or employee of the Association acting with a reasonable belief that his or her actions are lawful in accordance with these emergency By-Laws shall incur no liability for doing so, except in the case of willful misconduct.

4.16.7 These emergency By-Laws shall supersede any inconsistent or contrary provisions of the By-Laws during the period of the emergency.

4.16.8 For purposes of this Section only, an “emergency” exists only during a period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:

- 4.16.8.1 a state of emergency declared by local civil or law enforcement authorities; or
- 4.16.8.2 a hurricane warning; or
- 4.16.8.3 a partial or complete evacuation order; or
- 4.16.8.4 federal or state “disaster area” status; or
- 4.16.8.5 a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism; or
- 4.16.8.6 an unanticipated set of circumstances, which, if not acted upon with immediacy, is likely to cause

imminent and significant financial harm to the Association, and the Unit Owners, the condominium property, or association property.

**4.17 To Create a Flexible Use Program.** The Board shall have the power to create a Flexible Use Program for Owners electing to participate in such a program. Under the Flexible Use Program, an Owner shall be entitled to use and occupy any Time-share Estate owned by an Owner participating in the Program, subject to the Rules and Regulations adopted by the Board of Directors pursuant hereto, in lieu of the Time-share Estate owned by such Owner. An Owner participating in the Flexible Use Program waives his or her right to the exclusive use and occupancy of the Owner's Time-share Estate.

4.17.1 The Board shall maintain a list of Owners participating in the Flexible Use Program and a list of Time-share Estates subject to the Flexible Use Program.

4.17.2 The Board shall promulgate Rules and Regulations regarding this following:

4.17.2.1 Procedures to be followed in requesting a reservation of the Flexible Use Program, including, but not limited to, limitations on the right to make reservations during particularly popular time periods (such as certain holiday periods) in successive years in the event the Board deems such regulations necessary.

4.17.2.2 Fees for making and canceling reservations, in the event the Association incurs any costs in administering the Flexible Use Program. The fees promulgated hereunder shall be sufficient to pay for the entire cost to the Association to administer the Flexible Use Program. Under no circumstances shall Owners other than participants in the Flexible Use Program be liable for any costs of administering the Flexible Use Program.

4.17.2.3 Withdrawal and admission into the Flexible Use Program.

4.17.2.4 Such other matters as the Board determines in its discretion.

4.17.3 The Flexible Use Program, once adopted, shall terminate at the same time that the condominium plan of ownership is terminated in accordance with the Declaration of Condominium.

## **5. OFFICERS.**

**5.1 Executive Officers.** The executive officers of the Association shall be the President, one or more Vice Presidents, a Secretary, a Treasurer, and such assistant officers as may be desired, all of whom shall be elected annually by and from the Board of Directors, and who may be peremptorily removed by a majority vote of the Directors at any meeting. Any person may hold two or more offices, except that the President shall not also be the Secretary. Assistant officers need not be Directors.

**5.2 President - Powers and Duties.** The President shall be the chief executive officer of the Association, shall preside at all meetings of the Board of Directors and Association meetings. The President shall have general supervision over the affairs of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

**5.3 Vice-President - Powers and Duties.** The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

**5.4 Secretary - Powers and Duties.** The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the Owners and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep and have custody of the records of the Association, except those of the Treasurer. He shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

**5.5 Treasurer - Powers and Duties.** The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall

keep the assessment rolls and accounts of the members. He shall keep the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of the Treasurer of the corporation.

**5.6 Officers' Compensation.** Officers shall not be entitled to compensation for service as such, but shall be entitled to reimbursement of expenses reasonably incurred. This provision shall not preclude the Board of Directors from employing an Officer or Director as an agent of the Association.

## **6. INDEMNIFICATION.**

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

**6.2 Defense.** To the extent that a director or officer of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceedings referred to in Section 6.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

**6.3 Advances.** Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected director, officer, or committee member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by Article 6.

**6.4 Miscellaneous.** The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

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

**6.6 Amendment.** Anything to the contrary herein notwithstanding, the provisions of this Article 6 may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

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

**7. MINUTES AND INSPECTION OF RECORDS.** Minutes of all meetings of Unit Owners and of the Board of Directors shall be kept in a business-like manner. These, plus records of all receipts and expenditures and all other official records, as defined in Section 718.111(12), Florida Statutes, as amended from time to time, shall be available for inspection by Owners and Board members at all reasonable times. Provided, however, that the Directors may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and any copying.

**8. FISCAL MANAGEMENT.** Fiscal Management shall be in accordance with the following provisions:

**8.1 Budget.** The budget shall be adopted by the Board. A proposed annual

budget of common expenses shall be prepared by the Board of Directors which shall include all anticipated revenues and expenses for operation, maintenance, and administration of the Condominium. The proposed budget may also include expenses of security, in-house communications, directors and officers insurance, bulk cable or master antenna television, and interior pest control, all of which are declared to be Common Expenses under these By-Laws. The Board shall provide an itemized budget each year to all members which shall include all estimated revenue and expenses. The budget shall be in the form required by Section 721.07(5)(t), Florida Statutes, as amended from time to time, and shall be the final budget adopted by the board for the current fiscal year.

**8.2 Mailing.** A copy of a summary of the proposed annual budget shall be sent by regular or third party carrier mail or hand delivered to the Owners not less than thirty (30) days prior to the meeting of the Directors at which the budget will be adopted together with a notice of the meeting. If elected by an Owner this may be sent by fax or email or other electronic means rather than regular mail or third party carrier mail.

**8.3 Maintenance Fees.** The annual share of the Owners of the common expenses shall be made payable in advance and shall become due on the first day of each fiscal year.

**8.4 Special Assessments.** Assessments for common expenses which are not provided for and funded in the budget or an amendment to the budget may be made by the Board of Directors, and the time of payment shall likewise be determined by them. Notice of the Board meeting at which such assessments shall be considered shall be posted and mailed (or delivered by other means to an Owner as set forth in 8.2 if so elected by that Owner) to each Owner as provided in the Florida Condominium Act, except in the event of an emergency. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the Board, either be returned to the Owners or applied as a credit toward future assessments. The Board shall set due dates for payment of any Special Assessments, and shall impose the same late fees and interest on amounts unpaid by said date as exist for annual maintenance assessments.

**8.5 Charges.** Any expenses other than common expenses classified as "Assessments", which arise directly or indirectly as a result of the use of a Time-share Estate, whether by the Owner of such Time-share Estate, the Owner's invitees, licensees, tenants or otherwise, shall be the obligation of the Owner(s) of such Time-share Estate. Charges shall include, but not be limited to, ad valorem taxes, special assessments, personal property taxes,

charges incurred as a result of the use of the facilities, at the Condominium or otherwise made available to Owners or Owners' guests, charges for extraordinary repairs or maintenance, and any departure charge.

**8.6 Liability for Assessments and Charges.** An Owner shall be liable for all assessments and charges coming due while the Owner of a Time-share Estate, and such Owner and Owner's grantees or successors after a voluntary conveyance or other acquisition of title shall be jointly and severally liable for all unpaid assessments and charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any common elements or Association property or by abandonment of the Time-share Estate for which the assessments are due. Where a mortgagee holding a first mortgage of record obtains title to a Unit by foreclosure, such mortgagee and its successors and assigns shall only be liable for such Time-share Estate's assessments, charges, or share of the common expenses which became due prior to acquisition of title as provided in Chapter 721, Florida Statutes, as amended from time to time.

**8.7 Liens for Assessments.** The unpaid portion of an assessment, together with all costs, interest, late fees, and reasonable attorney's fees for collection, including appeals, shall be secured by a continuing lien upon the Time-share Estate.

**8.8 Lien for Charges.** Unpaid charges due to the Association together with costs, interest, late fees, and reasonable attorney's fees shall be secured by a common law and contractual lien upon the Time-share Estate and all appurtenances thereto when a notice claiming the lien has been recorded by the Association.

**8.9 Collection - Interest; Administrative Late Fee; Application of Payments.** Assessments or charges paid on or before thirty (30) days after the date due shall not bear interest, but all sums not paid on or before thirty (30) days may bear interest at the highest rate permitted by law from the date due until paid in accordance with the policy then in effect, as established by the Board. In addition to such interest, the Association may charge an administrative late fee in an amount set by the Board from time to time for each delinquent assessment for which payment is late, or the maximum late fee permissible by law. All payments upon account shall be first applied to interest, then the late fee, then to any costs and reasonable attorney's incurred, and then to the assessment payment first due.

**8.10 Collection - Suit.** The Association, at its option, may enforce collection of delinquent assessments or charges by suit at law, by foreclosure of the lien securing the assessments or charges, or by any other remedy available under the laws of the State of Florida,

and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment, or decree, together with those which have become due by acceleration or which have thereafter become due, plus interest thereon, and all costs incident to the collection and the proceedings, including reasonable attorney's fees, incurred before trial, at trial, and on appeal.

**8.11 Accounts.** All sums collected from assessments or charges shall be credited to accounts from which shall be paid the expenses for which the respective assessments or charges are made.

**8.12 Association Depository.** The Depository of the Association in which the funds of the Association shall be deposited, shall be financial institutions authorized to do business in Florida which carry FDIC insurance or equivalent private insurance such as insurance placed through the Society Investor Protection Corporation (SIPC), as shall be designated by the Board of Directors. Alternatively, the Association may deposit funds with brokerage houses and institutions which are members of the National Association of Securities Dealers, Inc. and insured by SIPC or equivalent industry insurance. Principal of association funds, whether reserves or operating funds, may not be placed at risk for investment purposes. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those person as are authorized by the Directors.

**8.13 Commingling of Funds.** All funds shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes, as amended from time to time, no agent, employee, officer, or Director of the Association shall commingle any Association funds with his or her funds or with the funds of any other time-share plan or component site, as provided by law.

**8.14 Audited Financial Statements.** Audited Financial statements shall be prepared annually which shall comply with Chapter 721, Florida Statutes, as amended from time to time.

**8.15 Fidelity Bonding.** The Association shall obtain and maintain adequate fidelity bonding in the minimum principal sum set forth in Section 718.111(11)(h), Florida Statutes, as amended from time to time, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer. The Association shall bear the cost of bonding. In the case of a licensed manager, the cost of bonding may be reimbursed by the Association as the parties may agree. All persons providing management

services to the Association, or otherwise having the authority to control or disburse association funds, shall provide the Association with a certificate of insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy.

**9. PARLIAMENTARY RULES.** Robert's Rules of Order (latest edition) shall be used as a guide in the conduct of members' meetings, Board meetings, and committee meetings to ensure fairness, impartiality and respect for minority views without unduly burdening majority rights. Meetings shall also be conducted in accordance with these By-Laws and the procedures established by the Board from time to time, including the form of voting documents to be used. The ruling of the Chair of the meeting unless he or the Board of directors designates a third person, as Parliamentarian, shall be binding unless contrary to law.

**10. BY-LAW AMENDMENTS.** Amendments to the By-Laws shall be adopted in the following manner:

**10.1 Proposal of Amendments.** An amendment may be proposed by either a majority of the Directors or by twenty-five percent (25%) of the entire voting interests.

**10.2 Proposed Amendment Format.** Proposals to amend existing By-Laws shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BY-LAWS. SEE BY-LAW NUMBER \_\_\_\_ FOR PRESENT TEXT."

**10.3 Notice.** Copies of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

**10.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of sixty-six and two-thirds percent (66 2/3%) of the voting interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present. In other words, if a quorum is present and voting, the voting shall be valid, and the amendment shall carry if two-thirds (2/3rds) of those voting have voted in favor of the amendment. If at any time, Florida law mandates a vote by a higher percentage of the voting interests, that law shall control for so long as it is in effect. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership voting.

**10.5 Effective Date.** An amendment when adopted shall become affective after being recorded in the Collier County Public Records according to law.

**10.6 Automatic Amendment.** These By-Laws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium or the Articles of Incorporation. Whenever Chapter 721, Florida Statutes, Chapter 718, Florida Statutes, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these By-Laws, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the Owners, may adopt by majority vote, amendments to these By-Laws as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, 718 and 721 of the Florida Statutes, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**10.7 Proviso.** Provided, however, that no amendment shall change the configuration of any Time-share Estate or the share in the common elements appurtenant to it, or increase the Owner's share of the common expenses, unless the record Owner of the Time-share Estate concerned and all record Owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Time-share Estate Owners approve the amendment.

In the event of a grievance of an Owner against the Association, the Board of Directors, or a member thereof, written notice in detail of the grievance shall be given the Directors prior to the institution of litigation, (including but not limited to arbitration) and they shall be allowed a period of thirty (30) days in which to resolved the grievance.

**11. MISCELLANEOUS.** The following miscellaneous provisions shall apply to these By-Laws and the Condominium Documents.

**11.1 Conflicts.** The term "Condominium Documents," as used in these By-Laws and elsewhere shall include the Declaration of Condominium, Articles of Incorporation, these By-Laws, the Rules and Regulations of the Association, the Plats, Surveys, Plot Plans, and graphic descriptions of improvements of record, and all other exhibits to the original Declaration of Condominium. In the event of a conflict between the language in the Declaration of Condominium and the graphic descriptions of record, the graphic description of record shall control. In the event of a conflict between language in any of the other Condominium Documents, the following priorities shall control:

1. Declaration of Condominium;
2. Articles of Incorporation;
3. By-Laws; and
4. Rules and Regulations.

**11.2 Gender.** The use of the term “he,” “she,” “his,” “hers,” “their,” “theirs” and other similar pronouns should be construed to include all genders and encompass the plural as well as the singular.

**11.3 Severability.** In the event that any provisions of these By-Laws are deemed invalid, the remaining provisions shall be deemed in full force and effect.