

**SECOND AMENDED AND RESTATED BYLAWS  
OF  
THE CAYMAN AT TARPON COVE NEIGHBORHOOD ASSOCIATION, INC.**

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

**1. IDENTITY.** These are the Second Amended and Restated Bylaws (hereinafter “Bylaws”) of The Cayman at Tarpon Cove Neighborhood Association, Inc., a not-for-profit corporation organized under the laws of Florida for the purpose of operating The Cayman at Tarpon Cove (the “Community”) pursuant to the Florida Not-For-Profit Corporation Act, as it may be amended from time to time, and as a homeowners’ association pursuant to Florida Statute Chapter 720, as it same may be amended from time to time (the “Act”). The corporation may hereafter be referred to as the “Association.”

**1.1 Office.** 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.

**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 inscribed with the name of the Association, the year of its organization, and the words “Florida” and “not for profit.” The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law.

**1.4 Definitions.** The definitions set forth in the Second Amended and Restated Declaration of Neighborhood Covenants for The Cayman at Tarpon Cove, as amended from time to time (the “Declaration”) and the Act shall apply to terms used in these Bylaws.

**2. MEMBERS.**

**2.1 Members.** The Members of the Association shall be the record owners of fee title to the Parcels. In the case of a Parcel subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the Parcel for purposes of determining voting, Assessment and use rights.

**2.2 Qualifications.** The Members of the Association shall be the record Owners of legal title to the Living Units in the Community. Membership shall become effective upon recording in the Public Records of Collier County, Florida, a deed or other instrument evidencing legal title to a Living Unit. A copy of the recorded deed must be supplied to the Association within ten (10) days of recordation of the deed.

**2.3 Voting Interest. Voting Interest.** The Members of the Association are entitled to one (1) vote for each Living Unit or Lot owned by them. The total number of Voting Interests equals the total number of Living Unit or Lots subject to the Declaration (i.e. 69). Suspension of

Exhibit “C” to Second Amended and Restated Declaration of Neighborhood Covenants  
(Second Amended and Restated Bylaws)

voting rights shall not affect the basis for which Common Expenses are shared or Common Surplus owned. However, suspended Voting Interests shall be subtracted from the total number of votes required when calculating any required vote or quorum during the period for which said Voting Interest is suspended. If a Lot is owned by multiple individuals, such as a husband and wife, any record Owner may vote on behalf of the Lot. If a Lot is owned by a corporation, any officer may vote on behalf of said corporation. If a Lot is owned by a partnership, any general partner may vote on behalf of the partnership. If a Lot is owned in trust, any trustee of a trust shall be entitled to vote. If a Lot is owned by a limited liability company, any member, manager or officer may vote on behalf of the limited liability company. Any person with apparent authority asserting the right to vote on behalf of a Lot owned by an artificial entity shall be presumed to be entitled to vote on behalf of said Lot, unless the Lot has filed voting instructions with the Association designating some other person entitled to vote or if the Association has reasonable cause to believe such person is not eligible to vote. If multiple Owners or non-individual Owners of a Lot cannot agree on how a vote is to be cast, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary. No individual may cast a vote assigned to a Lot where the voting rights assigned to the Lot are suspended pursuant to the terms of the Neighborhood Documents and/or Florida Law. A voting interest or consent right allocated to a Lot of Members which has been suspended by the Association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under the Governing Documents and/or Florida Law.

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

**2.5 Change of Membership.** A change of membership in the Association shall be established by the new Member's membership becoming effective as provided in Article 2.2 above. At that time the membership of the prior Owner shall be terminated automatically.

**2.6 Termination of Membership.** The termination of membership in the Association does not relieve or release any former Member from liability or obligations incurred under or in any way connected with the Community during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

### **3. MEMBERS' MEETINGS; VOTING.**

**3.1 Annual Meeting.** There shall be an annual meeting of the Members in each calendar year, or at a minimum within fifteen (15) months of the prior annual meeting. Failure to hold an annual meeting does not cause a forfeiture or give cause for dissolution of the corporation, nor does such failure affect otherwise valid corporate acts, except as provided in

Section 617.1430, Florida Statutes, as amended from time to time. The annual meeting shall be held on a day, time, and at a place designated by the Board of Directors in Collier County, Florida, for the purpose of electing Directors and transacting any other such business duly authorized to be transacted by the Members.

**3.2 Special Meetings.** Special Members' meetings shall be held whenever called by the President, by a majority of the Board of Directors, and must also be called by the President or Secretary within a reasonable time of receipt of petition of the Members, holding at least thirty percent (30%) of the entire Voting Interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

**3.3 Notice of Members' Meetings; Waiver of Notice.** Notice of all Members' meetings must state the time, date, and place of the meeting. The notice of meeting must be mailed to each Member at the address which appears on the books of the Association, or may be furnished by personal delivery or electronic transmission, as provided by law. The Member is responsible for providing the Association with notice of any change of address. The Association shall only be obligated to mail or deliver notice to one location, no matter how many persons own a Lot and no matter how many other residences such Owner may have. In the absence of written direction to the contrary, notices will be given to the address of the Lot. The Notice of Meeting must be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing or delivery shall be retained in the Association records as proof of mailing. Attendance at any meeting by a Member constitutes waiver of notice by that Member unless the Member objects to the lack of notice at the beginning of the meeting and attends solely to object to notice. A Member may waive notice of any meeting at any time, but only by written waiver or attendance. Notice to the Members of meetings of the Board, meetings of a committee for which the Act requires notice in the same manner as meetings of the Board, and annual and special meetings of the Members, may be electronically transmitted in the manner set forth in Section 617.0141, Florida Statutes, as amended from time to time. Notice by electronic transmission is effective when actually transmitted by facsimile telecommunication, if correctly directed to a facsimile number at which the Member has consented to receive notice; or when actually transmitted by electronic mail, if correctly directed to an electronic mail address at which the Member has consented to receive notice. Notice is also effective when posted on an electronic network that the Member has consented to consult, upon the later of such correct posting; or the giving of a separate notice to the Member of the fact of such specific posting; or when correctly transmitted to the Member, if by any other form of electronic transmission consented to by the Member to whom notice is given. Consent by a Member to receive notice by electronic transmission must be in writing and shall be revocable by the Member by written notice to the Association. Any such consent shall be deemed revoked if the Association is unable to deliver by electronic transmission two (2) consecutive notices given by the Association in accordance with such consent and such inability becomes known to the Secretary, Assistant Secretary or other authorized person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action. The Member is responsible for providing the Association with notice of any change of mailing address, facsimile number or electronic mail address. To the extent that a Member has provided the Association with a facsimile number or electronic mail address and

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

**3.4 Quorum.** A quorum at meetings of the Members shall be attained by the presence, either in person or by proxy, of Members entitled to cast at least twenty-five percent (25%) of the votes of the entire membership. Those Members whose voting rights are suspended pursuant to the terms of the Governing Documents and/or Florida Law shall be subtracted from the required number of votes in any calculation for purposes of determining whether a quorum is present during the period of suspension. Such Voting Interests shall likewise be subtracted from the required number of votes when calculating any required vote as set forth in the Governing Documents or the Act. After a quorum has been established at a Members’ meeting, the subsequent withdrawal of any Members, so as to reduce the number of Voting Interests represented below the number required for a quorum, shall not affect the validity of any action taken at the meeting before or after such persons leave.

**3.5 Vote Required.** The acts approved by a majority of the votes cast, in person or by proxy, at a duly called meeting of the Members at which a quorum has been attained shall be binding upon all Members for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the Governing Documents. No individual may cast a vote assigned to a Unit where the voting rights assigned to the Unit are suspended pursuant to the terms of the Governing Documents and/or Florida Law.

**3.6 Proxy Voting.** To the extent lawful, any Member entitled to attend and vote at a Members’ meeting may establish his presence and cast his vote by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. A photographic, photostatic, facsimile, electronic or equivalent reproduction of a signed proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the Owner’s intent to cast a proxy vote. The use of proxies is to be liberally construed.

**3.7 Adjourned Meetings.** Any duly called meeting of the Members may be adjourned to be reconvened at a specific later time by vote of the majority of the Voting Interests present and voting, in person or by proxy, regardless of whether a quorum has been attained. When a meeting is adjourned it shall not be necessary to give notice to all Members of the time

and place of its continuance. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum is then present, in person or by proxy.

**3.8 Order of Business.** The order of business at annual Members' meetings and, as far as applicable at all other Members' meetings, shall be:

**3.8.1** Call to order by the President;

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

**3.8.3** Call of the roll or determination of quorum;

**3.8.4** Proof of Notice;

**3.8.5** Appointment by the President (or chairman) of inspectors of election (Annual Meeting);

**3.8.6** Election of Directors (Annual Meeting);

**3.8.7** Reading or disposal of minutes of the last Members' meeting;

**3.8.8** Reports of Officers;

**3.8.9** Reports of Committees;

**3.8.10** Unfinished business;

**3.8.11** New Business Designated on Agenda;

**3.8.12** Adjournment.

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

**3.9 Minutes.** Minutes of all meetings of Members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by Members or their authorized representatives and Board members at reasonable times and for a period of seven (7) years after the meeting. Minutes must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

**3.10 Parliamentary Rules.** Robert's Rules of Order (latest edition) shall be used as a general, non-binding guide in the conduct of Members' meetings, Board meetings, and

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

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

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

**4.1 Number and Terms of Service.** The number of Directors which shall constitute the whole Board of Directors shall be either three (3) or five (5). All Directors will be elected for a two (2) year term. It is the intention of these Bylaws that a staggered Directorate be maintained. To maintain a staggered Directorate, the Board may hold seats in future elections open for one or two (2) year terms, when necessary or appropriate. In any election where candidates are elected for different terms, those candidates receiving the higher number of votes shall be elected to the lengthier term. In the event that there is no election, such as in a case where there are fewer pre-qualified candidates than open seats, the Directors who are seated shall agree amongst themselves which shall serve the two-year terms and which shall serve the one-year terms. This decision shall be recorded in the minutes of a duly noticed Board of Directors' meeting. In the event the Directors cannot agree on which among them shall serve the lengthier and shorter terms, the Board shall hold a "run-off" election, wherein those receiving the most votes will be elected to a lengthier term. Directors shall be elected in accordance with the Act, these Bylaws and the election rules, if any, and process established and utilized by the Board of Directors. Not less than sixty (60) days before a scheduled election, the Association shall mail, or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, and including electronic transmission for those Members who have so consented, to each Member entitled to vote, a first notice of the date of the election. Any eligible person who nominates himself to be a candidate may do so no later than forty (40) days prior to the Annual Meeting and may also submit a resume by such deadline on one side of an 8 and 1/2" x 11" sheet of paper. Nominations from the floor shall not be accepted. Not less than fourteen (14) days prior to the Annual Meeting, the Association shall send a Second Notice of Annual Meeting to all Members, along with either an election ballot for the election of Directors, any timely submitted candidates' resumes, a proxy and any other documents in the Board's discretion. The election ballot shall contain the names of all candidates who nominated themselves in a timely manner, listed in alphabetical order by surname. If a voter

checks off the names of more candidates than the number of Directors to be elected, the election ballot shall not be counted for the election. Elections shall be determined by a plurality of the votes cast; a quorum of the Members need not cast a vote for a valid election to occur, so long as at least ten percent (10%) of the eligible Voting Interests cast a ballot. The candidates who are elected shall take office upon the adjournment of the Annual Meeting. The use of secret balloting provided for in the Act shall be followed. The Board may require all ballots to be received by the Association at some point prior to the Annual Meeting so that the votes can be tallied prior to the Annual Meeting and the results announced at the Annual Meeting. No election shall be necessary if the number of candidates is less than or equal to the number of vacancies.

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

**4.2 Qualifications.** Directors must be a Members eligible to vote. When a Unit is owned by a corporation, a partnership, limited liability company or similar entity, any eligible voter, as described in Article 2.3 of these Bylaws, shall be eligible for Board service. When a Unit is held in trust, grantors, trustees and beneficiaries of trusts (provided that the beneficiaries reside in the Unit), shall be eligible for Board membership. If a grantor, trustee or beneficiary of a trust seeks candidacy and such person is not identified on the deed to the Unit as the grantor, trustee or beneficiary of the trust, a copy of the trust document, affidavit of trust or abstract of trust prepared by a licensed attorney must be provided to the Association at least thirty-five (35) days prior to the date of the annual meeting. The trust document can be redacted to keep financial information confidential; however, the document must clearly indicate the grantor, trustee and the beneficiaries of the trust. No two individuals from the same Unit shall be eligible to serve on the Board at the same time, unless they own more than one Unit, in which case eligibility is limited to one Director per Unit. Any person who is more than ninety (90) days delinquent in the payment of any amount due to the Association may not be a candidate. Any person who has been charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property may not be appointed or elected to a position as a Director or officer. Persons who have been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, are not eligible for board membership unless that person's civil rights have been restored for at least five (5) years as of the date on which such person seeks election to the Board.

**4.3 Vacancies on the Board.** If the office of any Director becomes vacant for any reason, other than recall of a majority of the Board by the Members, a majority of the remaining Directors or the sole remaining Director, though less than a quorum, may choose a successor to serve for the remainder of the unexpired term. If the Association fails to fill vacancies on the Board sufficient to constitute a quorum, or if no Director remains on the Board, the vacancy may be filled by the Members (via a special meeting of the Membership which may be called by a single Member) or any Member may apply to the Circuit Court for the appointment of a receiver to manage the Association's affairs, in the manner provided by law.

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

**4.5 Organizational Meeting.** The organizational meeting of newly-elected Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors. Notice of the organizational meeting shall be posted at the designated location on the Community property at least 48 continuous hours in advance of the meeting.

**4.6 Regular Meetings.** Except for meetings with the Association's attorney which are subject to the attorney-client privilege, or meetings held for the purpose of discussing personnel matters, as provided by law, meetings of the Board of Directors shall be open to all Unit Owners. Conspicuous notice of such meetings shall be posted at a designated location in the Community at least forty-eight (48) continuous hours in advance for the attention of the Members of the Association, except in the event of an emergency. Conspicuous written notice of any meeting at which a Special Assessment, or at which rules regarding Parcel use, will be considered, shall be provided to the Unit Owners via one of the methods set forth in Section 3.3 of these Bylaws and posted at a designated location in the Community not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by affidavit by the person providing the notice, and filed among the official records of the Association. At least one (1) regular meeting shall be held each quarter during the fiscal year. Notice of meetings shall be given to each Director, personally or by mail, telephone, electronic transmission or telegram at least forty-eight (48) hours prior to the time of such meeting.

**4.7 Special Meetings.** Special meetings of the Directors may be called by the President, or Vice President, and must be called by the President or Secretary at the written request of two (2) directors. Special meetings of the Board of Directors shall be noticed and conducted in the same manner as provided herein for regular meetings. Parcel Owners may petition for an item of business to be discussed at a board meeting pursuant to Section 720.303(2)(d), Florida Statutes, as amended from time to time. Each member shall have the right to speak for at least three (3) minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the board is not obligated to take any other action requested by the petition.

**4.8 Notice to Owners.** A meeting of the Board of Directors occurs whenever a quorum of the Board simultaneously gathers (in person, by telephone, or video conferencing, or

any combination thereof) to conduct Association business. All meetings of the Board of Directors shall be open to Members except for (a) meetings between the Board and the Association's attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege; (b) meeting regarding personnel matters; (c) such other meetings permitted to be closed by the Act. Notices of all Board meetings shall be posted conspicuously in the Community for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. In the alternative to the posting requirements discussed above, notice of each Board meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Members have the right to speak, for at least three (3) minutes, on any matter that is placed on the Board meeting agenda or is considered by the Board at a meeting. The Board may adopt reasonable, written rules governing the rights of Members to speak and governing the frequency, duration, and other manner of Member statements, which rule must be consistent with the minimum requirements of Section 720.303(2)(b) of the Act. Any Owner may tape-record or videotape meetings of the Board and meetings of the members, but may not post such recordings on any website or other media which can readily be viewed by persons who are not Members of the Association. The Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.

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

**4.10 Quorum of Directors.** A quorum at a Board meeting shall exist when at least a majority of all Directors are present at a duly called meeting. Directors may participate in any Board meeting by a conference telephone call, video conference or similar communicative arrangement whereby all persons present can hear all other persons. Participation by such means shall be deemed equivalent to presence in person at a Board meeting.

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

**4.12 Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific date, time and place. No further notice needs to be given to Directors or Members. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**4.13 The Presiding Officer.** The President, or in his absence, a Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of the Directors present; provided however, that the Board may designate agents of the Association (including but not limited to association legal counsel or the association's manager) as Chairman.

**4.14 Compensation of Directors and Officers.** Neither Directors nor Officers shall receive compensation for their services as such. Directors and Officers may be reimbursed for actual and appropriate out-of-pocket expenses relating to the proper discharge of their respective duties, subject to any procedures adopted by the Board with respect to reimbursement.

**4.15 Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board deem necessary and convenient for the efficient and effective operation of the Association. The Board of Directors in its sole and absolute discretion may remove members of any committee at any time, with or without cause. The committees shall act only as advisory to the Board of Directors, and the committees and the individual members thereof shall have no power or authority to act on behalf of the Board of the The Cayman at Tarpon Cove Association, unless the Board of Directors authorizes any such committee to have specific powers and duties assigned to it by a resolution or motion creating the committee. Where required by the Act, committee meetings shall be open to attendance by any Member, and notice of those committee meetings shall be posted in the same manner as required in Article 4.8 above. All other committees may meet and conduct their affairs in private without prior notice or Owner participation, unless otherwise directed by the Board of Directors.

**4.16 Emergency Powers.** In the event of an "emergency" as defined in Article 4.16.7 below, the Board of Directors may exercise the following emergency powers, and any other emergency powers authorized by Section 617.0207, Florida Statutes, as may be amended from time to time:

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

**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 meeting shall constitute a quorum.

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

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

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

**4.16.7** For purposes of this Article 4.15, an “emergency” exists only while the Community, or the immediate geographic area in which the Community is located, is subjected to:

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

**4.16.7.2** a hurricane warning;

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

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

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

## **5. OFFICERS.**

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

**5.2 President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Members and Directors, shall be ex-officio a member of all standing committees. He shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect.

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

**5.4 Secretary.** The Secretary shall attend or provide for proper documentation of all meetings of the Board of Directors and all meetings of the Members and shall cause all votes and

the minutes of all proceedings to be kept. He shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated, or the Association's attorney, manager, or management company.

**5.5 Treasurer.** The Treasurer shall be responsible for Association funds, the keeping of full and accurate amounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of the funds of the Association, and shall render to the Directors, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated, or the Association's accountant, manager or management company.

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

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

**6.1 Fiscal Year.** The fiscal year of the Association shall commence upon the first day of January and conclude on the thirty-first day of December.

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

**6.3 Expenses.** The receipts and expenditures of the Association may be credited and charged to accounts as the Board of Directors may determine, in accordance with good accounting practices.

**6.4 Budget.** The Treasurer shall prepare and the Board of Directors shall adopt a budget of Association estimated revenues and expenses for each coming fiscal year. Once adopted, the Association shall provide to each Member a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Member. The

proposed budget shall be detailed and shall show the amounts budgeted by accounts and revenue and expense classifications. The estimated surplus or deficit as of the current year shall be shown and all fees or charges for recreational amenities shall be set out separately.

**6.5 Reserves.** The Board may establish in the budget one (1) or more restricted reserve accounts for capital expenditures, deferred maintenance or contingencies. Board adopted reserve funds may be spent for any purpose approved by the Board except in cases where the use of reserves are restricted by the Act. The annual amounts proposed to be reserved shall be shown in the annual budget.

**6.6 Contingency Funds.** In addition to the reserves provided in Article 7.5 above, or in place of them, the Board may establish one or more “contingency funds” for contingencies and operating expenses for the Association. The purpose of these contingency funds is to provide financial stability and to minimize the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget as a line item in the operating portion of the budget.

**6.7 Assessments.** Regular Annual Assessments based on the adopted budget shall be paid either monthly, quarterly or annually, as determined by the Board. Failure to send or receive notice of Assessments shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last installment and shall be continued at such rate until a new budget is adopted and Assessments are calculated, at which time any overage or shortage shall be added to or subtracted from each unit’s next installment due.

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

**6.9 Fidelity Bonds.** The Association shall, to the extent available at a reasonable cost, obtain and maintain adequate fidelity bonding, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The Association shall bear the cost of bonding of Directors and Officers. In the case of a community association manager or management firm, the cost of bonding may be allocated as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse Association funds, shall provide the Association with a certificate of insurance

evidencing compliance with this paragraph, naming the Association as an insured under said policy. The Association may opt out of this requirement as provided in the Act.

**6.10 Financial Reporting.** A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with Section 720.303(7), Florida Statutes, as amended from time to time. The Association shall provide each Member with a copy of the financial report or a written notice that a copy of the financial report is available upon request at no charge to the Member.

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

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

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

**8.1 Obligations of Members; Remedies at Law or In Equity; Levy of Fines and Suspension of Use Rights.**

**8.1.1** Each Member and the Member's family members, tenants, guests and invitees, are governed by, and must comply with all laws, and the Governing Documents. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with the law or the Governing Documents may be brought by the Association or by any Members against:

**8.1.1.1** The Association;

**8.1.1.2** A Member;

**8.1.1.3** Any Director or officer who willfully and knowingly fails to comply with the provisions of law or the Governing Documents; and

**8.1.1.4** Any tenants, guests, or invitees occupying a Lot.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Article does not deprive any person of any other available right or remedy. Disputes subject to presuit mediation under the Act shall not include the collection of any

assessment, fine, or other financial obligation, including attorney's fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. In any dispute subject to presuit mediation where emergency relief is required, a motion for temporary injunctive relief may be filed with a court without first complying with the presuit mediation requirements of the Act. An aggrieved party shall serve on the responding party a written demand to participate in presuit mediation pursuant to the Act.

**8.1.2** The Association may levy reasonable fines against or suspend the use right of an Owner, in those cases in which the Owner commits violations of law or the provisions of the Governing Documents, or where such violations are committed by his family members, tenants, guests or invitees. The Association may also fine or suspend any Member's family members, tenant, guest, or invitee for their failure to comply with any provision of the Governing Documents or law. The fines shall be in an amount deemed necessary by the Board to deter future violations. Subject to the Board, fines up to \$100.00 per day accruing to a maximum of \$1,000.00 may be levied. Fines may be secured by a lien against a Lot as permitted by the Act. Should the Association be required to initiate legal proceedings to collect a duly levied fine, or enforce a duly imposed suspension, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining and/or suspension hearings), at trial, and on appeal. Members shall be jointly and severally liable for the payment of fines levied against and/or suspension imposed upon tenants, guests, invitees, or other occupants of a Living Unit. A suspension shall be levied and enforceable for a reasonable amount of time, as determined by the Board of Directors. The procedure for imposing such fines and/or suspension shall be as follows:

**8.1.2.1** A fine and/or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined and/or suspended and opportunity for hearing before a committee of at least three (3) Members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee, and the notice shall include:

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

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

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

**8.1.2.2** The party against whom the fine and/or suspension may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The Member shall be the party ultimately jointly and severally responsible for payment of a fine, regardless of whether the fine relates to conduct by a family member, tenant, guest or invitee and/or is imposed on such parties.

**8.1.2.3** If the Committee, by majority vote, does not approve the fine and/or suspension, it may not be imposed.

**8.1.3** The Association may suspend the voting rights of a Member for the nonpayment of any monetary obligation due to the Association that is delinquent in excess of ninety (90) days as provided in the Act. Those Members whose voting rights are suspended pursuant to the terms of the Governing Documents and/or Florida Law shall be subtracted from the required number of votes in any calculation for purposes of determining whether a quorum is present during the period of suspension and such Voting Interests shall likewise be subtracted from the required number of votes when calculating any required vote as set forth in the Governing Documents or the Act.

**8.2 Availability of Remedies.** Each Member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all Members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the community free from nuisances or unreasonable annoyance.

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

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

**9.2 Proposed Amendment Format.** Proposals to amend existing Bylaws 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 BYLAWS. SEE BYLAW NUMBER \_\_\_ FOR PRESENT TEXT."

**9.3 Notice.** The subject matter 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.

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

**9.5 Effective Date.** An amendment when adopted shall become effective after being recorded in the Collier County Public Records.

## **10. INDEMNIFICATION.**

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

**10.2** To the extent that a director, officer, or committee member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 11.1 above, or in defense of any claim, issue, or matter therein, they shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by them in connection therewith.

**10.3** 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 they are not entitled to be indemnified by the Association as authorized by this Article 11.

**10.4** The indemnification provided by this Article 12 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, or committee member and shall inure to the benefit of the heirs and personal representatives of such person.

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

## **11. BOOKS AND RECORDS.**

**11.1 Inspection by Members.** The Association's official records shall be made available for copying and inspection in accordance with the Act, as amended from time to time.

**11.2 Rules for Inspection.** The Association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, manner of inspections, and may impose fees to cover the costs of providing copies of the official records, as permitted by the Act, as amended from time to time.

## **12. MISCELLANEOUS.**

**12.1 Gender.** Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

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

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

**12.4 Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these Bylaws or the intent of any provision hereof.

**12.5 Validity.** If any Bylaw, rule or regulation is adjudicated to be invalid, such fact shall not affect the validity of any other Bylaw, rule or regulation.

ACTIVE: 9920458\_1