

**MARSH POINTE
HOMEOWNER'S
ASSOCIATION
OF
LEE COUNTY INC.**

**AMENDED AND
RESTATED
DECLARATION OF
CONVENANTS**

CERTIFICATE OF RECORDING
AMENDED AND RESTATED DECLARATION OF COVENANTS OF
MARSH POINTE HOMEOWNER'S ASSOCIATION OF LEE COUNTY, INC.

THE UNDERSIGNED being the President of MARSH POINTE HOMEOWNER'S ASSOCIATION OF LEE COUNTY, INC., a Florida non-profit corporation, does hereby certify that the attached Amended and Restated Declaration of Covenants of the Association were adopted by the Board of Directors at a properly noticed meeting of the Board of Directors on November 6, 2007. The original Declaration of Covenants for Marsh Pointe were recorded in Official Record Book 642, Page 1611, et seq., on the 10th day of October 1995, in the Public Records of Lee County, Florida.

INSTR # 2007000340096, Pages 42
Doc Type RES, Recorded 11/14/2007 at 12:04 PM
Charlie Green, Lee County Clerk of Circuit Court
Rec. Fee \$358.50
Deputy Clerk CMASSEY
#1

DATED THIS 6th day of November 2007.

WITNESSES:

(Sign) Jenny Petaw

(Print) Jennifer Peterson

(Sign) Cynthia A. Papp

(Print) Cynthia A. Papp

**MARSH POINTE HOMEOWNER'S
ASSOCIATION OF LEE COUNTY, INC.**

BY: [Signature]
President of the Association
John DeMant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was acknowledged before me this ____ day of November 2007, by John DeMant, as President of MARSH POINTE HOMEOWNER'S ASSOCIATION OF LEE COUNTY, INC., a Florida non-profit corporation, on behalf of said corporation. Said person is personally known to me or has produced _____ as identification and did take an oath.

My Commission Expires



DIANE LA POSTA
MY COMMISSION # GD 48899
EXPIRES: December 8, 2009
Bonded Thru Budget Notary Services

NOTARY PUBLIC:

[Signature]

Sign
DIANE E. LAPOSTA

Print

MARSH POINTE
AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION is made this 10th day of October 1995 by
SEAGO GROUP INC., a Delaware Corporation, hereinafter "DEVELOPER".

PLAN OF DEVELOPMENT

Marsh Pointe consists of two subdivisions having total of 38 living units in the following manner:

Phase I - Twenty four (24) single-family home Lots, roadways and utilities, and a fresh water lake and retention area on Tract A.

Phase II - Fourteen (14) single-family home Lots, roadways and utilities, and preservation area on Tract B.

Expenses of operation and maintenance of the common area improvements will be shared by all owners.

1. Definitions

When used hereinafter, the words set forth below shall have the following Meanings unless the text requires otherwise:

1.1. "Association" means and refers to "The Marsh Pointe Homeowners Association of Lee County, Inc.", a nonprofit Florida Corporation, its successors and Assigns.

1.2. "Board" or "Board of Directors" means and refers to the Board of Directors

of the Association as it exists from time to time.

1.3. "Common Areas" means and refers to all properties (including any and all improvements thereon) which are shown to be Common Areas on the Subdivision Plats Exhibit "B" and includes the lakes, the entrance and the roads including properties in or over which the Association or the owners have easement as well as those to which it has a fee interest.

1.4. "Institutional Lender" means and refers to a bank, savings and loan association, insurance company, mortgage company, credit union or pension fund authorized to do business in the United States of America, and agency of the United States Government, a real estate investment trust, a lender generally recognized in the Community as an institutional lender, and if the Developer holds a mortgage on one or more of the units, the Developer.

1.5. "Lot" means and refers to the real estate underlying and surrounding a unit and so designated with a number on the Subdivision Plat, but excluding any common areas.

1.6. "Owner" means and refers to the record owner (whether one or more than one person or entity) of a unit as hereinafter defined.

1.7. "Marsh Pointe" means and refers to the lands legally described in Exhibit "C" and "D" hereto.

1.8. "Unit" means and refers to a constructed dwelling unit (together with any interests in commonly or individually owned real property appurtenant thereto), which is intended to be and may be used and occupied only as a single-family residence.

2. Declaration.

2.1. General. All Units, the Marsh Pointe lands and the Common areas shall be held, conveyed, leased, mortgaged, used, occupied and improved subject to the covenants, restrictions, easements and servitudes set forth in this Declaration and the Charter, Bylaws and Rules and Regulations of the Marsh Pointe Homeowners Association of Lee County, Inc. all of which are for the purpose of uniformly enhancing and protecting the value and desirability of the Units, and which shall run with the land.

2.2. Effect and Duration. The covenants, restrictions, easements and servitudes shall run with, bind, benefit and burden all properties subject hereto, and shall benefit, burden and be enforceable by and against the Developer, the Association, the Owner of any unit, and the respective legal representatives, heirs, successors and assigns of each for a term of 25 years from their recordation in the Public Records, after which time said covenants shall be automatically renewed for successive periods of ten years unless an instrument signed by the then Owners of three-fourths of the units have been recorded, agreeing to terminate said covenants and restrictions in whole or in part; provided, however, that no such agreement shall be effective unless made and recorded three years in advance of the effective date of such termination and unless written notice of the proposed agreement is sent to every Owner at least 90 days in advance of any action taken. Termination will cause the then owners of units to become tenants in common of an equal interest in the common areas of the then existing Subdivisions as an appurtenance to their ownership of a unit.

3. The Common Areas

3.1. General. The Property located in Lee County, Florida, and which is depicted and described on the Phase I Plat as Tract A and as Tract B in Phase II, if is hereby declared to be Common Areas.

4. The Association.

4.1. Duties. The Association shall be responsible for the exclusive management, operation and maintenance of the Common Areas and the surface water management system in accordance with its Articles of Incorporation, its Bylaws and this Declaration.

4.2. Membership. Every record Owner of a Lot shall be a member of the Marsh Pointe Homeowners Association of Lee County, Inc. and of the Master Association, known as the Riverbend Homeowners Association of Lee County, Inc. Change of membership in both Associations shall be established by recording in the Public Records of Lee County, Florida, a deed or other instrument establishing a record title to a Lot in the Subdivisions and the delivery to the Associations of a photocopy of such recorded instrument. The Association may charge the new owner the cost of changing the records and providing a set of the Documents to such owner, the payment of which shall be secured by a lien as an assessment. Membership in the Associations shall be appurtenant to and inseparable from the ownership of a Unit.

4.3. Voting. Each Unit shall have one full, indivisible vote in all matters. When more than one person holds title to a Unit, all such persons shall be members, the vote for such Unit be exercisable as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Unit.

5. Property Rights in the Common Areas.

5.1. Owners' Rights and Easements. As long as this Declaration is in effect, each Owner shall have the following:

5.2. Easement of Enjoyment. All members of the Association shall, subject to the provisions herein, have a right and easement of enjoyment in and to the common areas, which shall be appurtenant and pass with title to every unit.

5.3. Easement for Repair, Maintenance and Encroachment. Each Lot and the common areas shall be subject to an easement for encroachment created by construction, settling and overhang of all buildings or portions thereof constructed by the Developer. An easement for such encroachment as well as for the repair and maintenance of the Unit improvements shall exist over and across adjoining Lots. In the event that any structure is partially or totally destroyed, then rebuilt, the owners and the Association agree that minor encroachment on adjacent Lots or on common areas due to construction shall be permitted and that easement for such encroachment and the maintenance of the structure shall exist. The Association is granted a blanket easement over common areas, Lots and units for repair and maintenance and for carrying out its responsibilities.

5.4. The Association shall maintain the storm water retention areas, the entire drainage system, easements, and all rights of way as they pertain to the storm water retention areas. This maintenance shall be consistent with the requirements for same imposed by any governmental body or authority with jurisdiction. No withdrawal of lake water for irrigation purposes shall be permitted by any Lot owner or lessee in Marsh Pointe.

5.5. Other Persons Entitled to Use. Subject to reasonable regulations by the

Association, the foregoing rights and easements of each Owner may be extended to the Members of his immediate family, his lessees, invitees and his social guests residing in the Unit.

5.6. Other Easements.

(a) Fire, law enforcement, health, sanitation and other public service personnel and their vehicles shall have a perpetual non-exclusive easement into, out of and over the Common Areas for the purpose of performing their lawful functions.

(b) Easements over the Common Areas for drainage and public utilities may be granted from time to time by the Association.

(c) There is an easement hereby granted whenever necessary to those companies furnishing utilities to the units, enabling them to place meters on an exterior wall of any of The Units. There is an easement hereby granted to such companies permitting their utility Lines to run beneath each Unit as needed.

6. Maintenance.

The Association shall be responsible for maintaining all of the Common Areas. The responsibility shall include but not necessarily be limited to the following: 6.1

Surface water drainage system.

6.2. The sewer system including the lift station, except for lines located on Individual lots, which are the responsibility of the owner.

6.3. Decorative entranceway, including landscaping, lighting and painting when Necessary.

6.4. All roads, rights-of-way and road signs.

6.5. Retention lake, including the banks designated as Tract A. Lakes and banks must be treated so as to be free of algae and noxious weeds. Grass on Tract A must be kept mowed.

6.6. Preservation area, designated as Tract B Phase II is to be kept in its natural state, free of exotic vegetation, and will not be developed. Specifically this area, and all Common Area must be maintained free of Brazilian Pepper, Melaleuca, Australian Pine or Any other vegetation, which is classified as non-native or exotic.

6.7. All grass, trees or decorative planting on any Common Area must be maintained on a high standard.

In addition to the above described responsibility of the Association, each owner shall install, maintain and keep lighted during the hours of darkness after sunset each night, A post mounted light in their front yard in a location and of a design approved by the ARB. All of the maintenance shall be ordered by a vote of a majority of the Association's Directors, who may delegate the responsibility of ordering and/or performing the maintenance to one or more management companies.

Should the Association's Directors fail to order such maintenance, any individual Association member shall have the legal right to pursue enforcement measures as may be legally allowed.

7. Insurance

7.1 Coverage

7.2 Casualty. The Association shall at all times keep the units and the Common Areas insured in the amount equal to the maximum insurable replacement value thereof. The coverage shall afford protection as may be appropriate against:

7.3. Loss or damage by fire or other hazards covered by a standard extended coverage endorsement.

7.4. Such other risks as from time to time are customarily covered with respect to improvements similar in construction, location and use to the improvements on the Common Areas including, but not limited to, vandalism and malicious mischief. All or any part of such coverage may be extended to include personal property of the Association as the Board may deem desirable. The coverage shall be written in the name of, and the proceeds shall be payable to, the Association a agent of the owners and shall adjust all losses on their behalf. The premium shall be included as part of the periodic assessments provided for in Section 9.

7.5. Association's Public Liability. The Association shall at all times maintain a policy of comprehensive liability insurance insuring the Association and its agents, the Board and the Owners against liability in connection with the Common Areas in such amounts as the Board may deem desirable, which policy shall include, if obtainable, a cross-liability endorsement. The premiums for such insurance shall be included as part of the periodic assessments provided for in Section 9.

8. Damage to the Common Areas.

The repair and reconstruction of the Common Areas after casualty shall be governed by the following provisions:

8.1. In the event of damage or destruction to the Common Areas, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause the damaged Common Areas to be repaired and reconstructed substantially as they previously

existed.

8.2. If the insurance proceeds are within \$10,000.00 of being sufficient to effect total restoration to the Common Areas, then the Association shall cause the damaged Common Areas to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as an assessment against each of the Owners in accordance with the formula set forth in Paragraph 9.5.

8.3. If the insurance proceeds are insufficient by more than \$10,000.00 to effect total restoration to the Common Areas, then by written consent or vote of a plurality of the Owners, they shall determine whether (1) to rebuild and restore damaged Common Areas in substantially the same manner as they existed prior to damage and to raise the necessary funds in excess of insurance proceeds by levying special assessments against all the Owners pursuant to the formula set forth in Paragraph 9.5.; (2) to rebuild and restore the damaged Common Areas in a manner which utilizes all available insurance proceeds, as well as an additional amount, not to exceed \$10,000.00, assessable to all the Owners as aforesaid but which is less expensive than replacing the damaged Common Areas in substantially the same manner as they existed prior to being damaged; or (3) not to restore the damaged Common Areas and to distribute the available insurance proceeds to the Owners of the Units in proportion to their assessment shares as provided in Paragraph 9.5. 8.4. Each Owner shall be liable to the Association for any damage to the Common Areas, which may be sustained by reason of the negligence or willful misconduct of such Owner or, of his tenants, family or guests. Such liability may be collectible by the Association

in the manner provided for in Section p for the collection of special assessments. The Association reserves the right to charge a special assessment equal to the increase, if any, in insurance premiums directly attributable to the practiced and damage caused by such Owner.

9. Assessments.

9.1. Covenant to Pay. Each Owner of a Unit by accepting a deed, covenants to pay to the Association, periodic and special assessments as hereinafter provided. The obligation to pay assessments shall commence initially as of the date title to the Lot is conveyed by the Developer. For the purpose of securing the payments of such assessments, the Association shall have a continuing lien on each Unit. Provided that such liens upon Units shall be inferior to a first mortgage to an institutional lender on the Unit which was made in good faith and for value and which was recorded prior to the Association filing a claim of lien against the Unit but such liens shall be superior to all other mortgages, liens and encumbrances and shall relate back to and be effective from the date this Amended Declaration is recorded in the Public Record of Lee County, Florida. Each assessment levied upon an Owner shall also constitute a personal obligation of that Owner and, except as otherwise provided herein, an obligation of his successors and assigns. The obligations of each Owner to pay assessments as herein above provided shall commence when the first closing of title to a Unit has occurred and a Certificate of Occupancy has been issued by the appropriate government authority in respect to such Owner's Unit. Every person who takes title to a unit by any means including via a foreclosure sale, shall be jointly and severally liable for all unpaid assessments due at the time of conveyance. The foregoing

provision shall not apply to the holder of a first mortgage who takes title via a foreclosure sale or deed in lieu of foreclosure.

9.2. Purpose. The Assessments imposed pursuant to Paragraph 9.1. shall be used exclusively for the operation of the Association and the operation, maintenance, restoration and improvements of the Common Areas as provided in this Declaration and the Association's Bylaws, provided that said purpose shall be liberally construed to promote effectively the welfare, safety and recreational opportunities of the Owners.

9.3. Periodic Assessments. The Board shall fix the amount of the periodic assessments for each fiscal year of the Association (or part thereof if assessments commence on other than the first day of such fiscal year) to be levied against each Owner subject to assessment at least 30 days in advance of such period. The Board may provide in its absolute discretion that the periodic assessments be payable either quarterly or annually.

9.4. Special Assessments. Special assessments may at any time be levied by the Board upon all Owners subject to periodic assessments for the following described purposes and subject to the following conditions:

9.4.1. For restoration of the Common Areas after casualty, in accordance with Section 8.

9.4.2. For capital improvements upon the Common Areas (including appurtenant or related fixtures and personality) provided that, except as provided in Paragraph 8.3., any such assessment that is in the aggregate in excess of \$10,000.00 shall also require the vote or written consent of a majority of the Owners subject to such assessment.

9.4.3. To make up deficits in operating and maintenance accounts resulting from inadequate or uncollectible periodic assessments. 11

9.4.4. A special assessment may be levied against any Unit Owner to reimburse the Association for any expense incurred by it as a result of maintenance, repairs or replacements, which were made or performed by it with respect to the Common Areas and the Units and which were caused or arose from the willful or negligent act or neglect of such Owner, his family, his guests or his invitees.

9.5. Share of Assessments. The periodic assessments provided for in Paragraph 9.3 and the special assessments provided for in Subparagraphs 9.4.1 through 9.4.3 shall be allocated and assessed against each Unit in equal shares of 1/38 per Unit.

9.6. Non-Use. No Owner may exempt himself from personal liability for periodic or special assessments levied by the Association or release his Unit from the liens imposed hereby, by his failure to use the Common Areas or abandonment of his dwelling unit.

9.7. Association's Remedies for Non-Payment.

9.8. Interest. Periodic and special assessments that are unpaid for more than ten days after the date they are due shall bear interest at the highest lawful rate (now 18% per annum) from the due date until paid. The Board in its discretion may waive the interest where it determines that circumstances warrant waiver. Such waiver in any given instance shall not affect the right of the Board to require payment on interest in any other instance.

9.9. Enforcement of Lien.

9.9.1. Reasonable attorneys' fees incurred by the Association or its agent incident to the collection of an unpaid periodic or special assessment or the enforcement of any lien provided for herein (including attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise) together with all sums advanced and paid by the Association or its agent for costs, taxes and payments on

account of superior liens or encumbrances which may be required to be advanced by the Association or its agent in order to preserve and protect its lien, shall be payable by the Owner liable for the assessment and secured by said lien.

9.9.2. In addition, the Owner of any Unit with respect to which an assessment is overdue by more than 30 days shall be required by the Board to pay the Association a late charge of \$25.00 or 5% of the amount of the delinquent installment, whichever is greater.

9.9.3. The Association may bring an action in its name to foreclose on any lien on a Unit in the manner in which mortgages of real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid periodic or special assessments without waiving any claim of lien, provided that in either case the Association must give the delinquent Owner at least 30 days written notice of its intentions, and in case of foreclosure, must file in the Public Records of Lee County, Florida, a claim of lien containing the information required by Section 718.116, Florida Statutes (2007). Upon the timely curing of any default (including the payment of fees and costs secured by the Association's lien) for which a claim of lien was filed, the Owner curing the default is entitled to have a satisfaction of lien recorded upon payment to the Association of a reasonable fee to be determined by the Association.

9.9.4. No institutional lender that acquires title to a Unit as a result of a foreclosure of a bona fide first mortgage of record thereon or that accepts a deed to a Unit in lieu of foreclosure of a bona fide first mortgage of record thereon shall be liable for the share of periodic or special assessments pertaining to the Unit or chargeable to the former Owner thereof which became due prior to the acquisition of title, unless such share is secured by a claim of lien for periodic or special assessments recorded prior to the

recording of the mortgage in question, any such shares of the assessment for which the new Owner is not liable shall be collectible by periodic or special assessments from all the Owners, including the new Owner of the Unit in question. Except as expressly provided herein above, every grantee in a voluntary conveyance of a Unit shall be jointly and severally liable for all unpaid periodic or special assessments against the grantor for his share of the assessments including purchasers at a judicial sale, shall be liable for all periodic or special assessments coming due while he is the Owner of a Unit regardless of how his title was acquired.

9.9.5. The remedies provided in this paragraph (b) shall be cumulative and not mutually exclusive.

9.10. Association's Certificate. Each Owner of a Unit and every holder of a mortgage thereon shall have the right to require from the Association a certificate showing the amount of unpaid periodic or special assessments against the Owner with respect to his Unit upon payment to the Association of a reasonable fee not exceeding \$25.00. Any person other than the Owner of the Unit in question who relies upon such a certificate shall be protected thereby.

10. Amendments

This Declaration may be amended by the Association by the affirmative vote or written consent of Owners holding not less than two-thirds of the voting interests, present in person or by proxy, and voting provided, however, that any amendment which would affect the surface water management system, including the water management portions of the common areas must have the prior approval of the South Florida Water Management District.

11. Architectural Control.

11.1. Architectural Review Board. The architectural review and control functions of the Association shall be administered and performed by the architectural Review Board ("ARB") which shall consist of not less than five (5) members of the Association, who shall be appointed by and serve at the pleasure of the Board of Directors of the Association. Directors may serve on the ARB. The Board shall endeavor to appoint at least one architect or Building Contractor to the ARB. The majority of the ARB shall constitute a quorum to transact business at any meetings. Any vacancy occurring on the ARB shall be filled by the Board of Directors.

11.2. Necessity of Architectural Review and Approval. In the interest of creating a uniform quality community, the Association reserves the right to approve or disapprove any improvement or structure of any kind including without limitation any building, fence, wall, swimming pool, tennis court, screen enclosure, mail box, boat dock, boat pilings, site lights, or any other improvement or change or modification thereto, including the color, the construction, erection, performance, or replacement of which is proposed upon any Lot in Marsh Pointe and to approve or disapprove any additions, changes, modifications, or alterations thereto including the removal of any major vegetation. The Architectural Planning Criteria of the Association, attached hereto as Exhibit "C", shall serve as a guide to development of Lots in Marsh Pointe and is not intended to limit the power or authority of the ARB and the Association To control such development. The ARB shall be permitted to employ aesthetic values in making its determinations.

11.3. Powers and Duties of the ARB. The ARB shall have the following powers and duties:

(a) To recommend from time to time to the Board of Directors of the Association modifications or amendments to the Architectural Planning Criteria. Such modifications shall be consistent with the provisions of this Declaration and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association and the Developer until all lots shall be deeded by the Developer.

(b) To require submission to the ARB of two complete sets of all plans and specifications for any improvements or structure of any kind on any Lot in Marsh Pointe, including a specific site plan showing the location of the house, other improvements, and any major vegetation to be removed. The ARB may also require submission of samples of building materials proposed for use on any Lot or any other additional information as reasonably necessary for the ARB to completely evaluate the proposed structural improvement in accordance with the Declaration and the Architectural Planning Criteria.

(c) To adopt a reasonable schedule of fees to be paid for by the submitter for processing requests and for reviewing subsequent compliance inspections by the ARB for approval of improvements. Such fees, if any shall be payable to the ARB at the time the plans and specifications are submitted to the ARB for approval. The ARB shall have the right to inspect construction which shall be done by a knowledgeable person designated by the Board of Directors of the Association, and accompanied by at least one member of the ARB. Such inspection shall take place as follows:

1) Stake out of home site, including comers and house foundation.

- 2) Completion of foundation and/or first portion of structure above grade.
- 3) Completion of first floor slab, which shall include a certified elevation survey to be provided by owner.
- 4) Completion of roof construction.
- 5) Final color and landscaping.

(d) Any person desiring approval of any plan or specifications shall submit the same addressed to the "ARCHITECTURAL REVIEW BOARD", Marsh Pointe, Suite 201, 76 Pondella Rd., North Fort Myers, Florida 33903 (or at such other address as the Board may designate, Return Receipt Requested. Approval or disapproval by the ARCHITECTURAL REVIEW BOARD shall only be evidenced by a written instrument executed by at least one member of the Board, provided, however, that should the Board fail to act upon any submission to it within thirty (30) days from the receipt thereof by the Board, such inaction shall be deemed approval of the submission. In the event that the Board disapproves any proposed structure or exterior additional change or alteration, the Board shall state with specificity the reason for the disapproval.

The ARB shall not be held responsible for approving plans that may be inconsistent with local, state or federal regulations. Any inconsistencies or discrepancies with local, state or federal permits are the responsibility of the Lot owner and homebuilder.

12. Restrictions.

12.1 There are some lots in Phase I and II, which are considered to be wetlands as defined by various governmental agencies including the U.S. Army Corps of Engineers.

Certain restrictions in the wetland areas apply which include prohibiting the removal of native vegetation and any excavation or dumping of fill material. These restrictions do not apply at the locations of the home site or driveways where the developer has mitigated wetland impacts; or to exempt or pre-authorized activities as defined by the federal code or statutory or administrative rules. A delineation of these wetlands are shown on the site plan attached hereto and identified as Exhibit "A".

12.2 Under an agreement with the South Florida Water Management District and various other governmental agencies, the developer has agreed to remove certain non-native trees and plants, specifically Brazilian Pepper, Melaleuca, and Australian Pine. It shall be each lot owners responsibility should any re-growth appear to have such species removed. It shall be the responsibility of the Association to remove any such species in right of ways or common areas. This agreement may not be modified or rescinded without the express approval of the South Florida Water Management District.

12.3 There are building restrictions which may affect Lots 1 through 8 and Lots 21 through 24. These restrictions deal with an abandoned eagles nest, which existed on Lot 4 during the nesting season of 1992-1993. Any buyer of the above referenced lots should check with the County regarding these restrictions.

12.4. Antenna No aerial or antenna shall be placed or erected upon any Lot or affixed in any manner to the exterior of any building in Marsh Pointe without the written approval of the ARB, it being the intent that such service shall be provided by cable television or Satellite service.

12.5. Boats and Motor Vehicles. Passenger automobiles and vans and mini-trucks (used for personal transportation and not commercially) are permitted. No boats, boat

trailers, commercial vehicles, full sized trucks, campers, motor homes, trailers, motorcycles or other non-passenger motor vehicles shall be placed, parked, or stored upon any portion of a Lot except in a garage.

12.6. Trees. No tree or shrub, the trunk of which exceeds four inches in diameter shall be cut down or otherwise destroyed without the prior expressed written consent of the ARB.

12.7. Owners of waterfront lots shall be responsible for protecting their lots from eroding into the creek. Rip-rap or sod to the waters edge is acceptable. No docks or structures in the water, which impair navigation, will be allowed. All dock construction must be approved by the ARB prior to obtaining required governmental permits.

12.8. Artificial Vegetation. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot.

12.9. Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on a Lot or behind a screened area to be approved by the ARB.

12.10. Landscaping. A basic landscaping plan for each home must be submitted to and approved by the ARB. All shrubs, trees, grass and planting of every kind shall be kept well maintained, properly cultivated, and free of trash and other unsightly material. Landscaping as approved by the ARB shall be installed upon the issuance of the Certificate of Occupancy or the completion of any building, whichever occurs first. All portions of Lots not improved with structures or paving shall be kept as lawns or grass, except those areas planted with trees, shrubs, bushes and other plantings. In addition,

all lands forming portions of a public right-of-way, between the boundary of the Lot and the pavement installed within the right-of-way, shall be grassed by the adjacent and abutting Owner and maintained by him as a portion of his lawn. Rock or gravel yards are prohibited.

12.11 Parking and Garage Areas. Adequate off-street parking must be provided for all residential units. Single-family residential units must provide at least a two (2) car garage (so designed that the garage doors face the side, and not the front, of the house or the street upon which the house faces) plus additional off-street parking areas for at least two (2) automobiles unless otherwise approved by the ARB. Passenger vehicles shall only be parked on paved driveways. Overnight parking in the right-of-way is prohibited. As used herein the term "overnight" means the period that begins each day at 9:00 P.M. and ends at 7:00 A.M. the following day.

12.12 Service, Screening, Storage Areas. Garbage and refuse shall be placed in suitable containers which shall be concealed and contained within the buildings or shall be concealed by means of a screening wall or materials similar to and compatible with that of the building or buildings on the Lot or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year. Unless specifically approved by the ARB, no materials, supplies, or equipment shall be stored on any Lot except inside a closed building or behind a visual barrier which shall screen such areas so that they are not visible from neighboring streets or Lots or common Areas.

12.13. Storage Tanks. No above ground storage tanks, including but not limited to, those used for storage of water, gasoline, oil, or other liquid or gas shall be permitted on the Lot outside of the building except as approved by the ARB.

12.14. Signs. No commercial signs of any kind including "For Rent" or "For Sale" may be erected on any Lot without written approval of the ARB or as may be required by legal proceedings, and it being understood that the ARB will not grant permission for any signs larger than six (6) square feet unless their erection is necessary to avert serious hardship to Owners.

12.15. Exterior Material and Colors. Finish building materials shall be applied to all sides of the exterior of the buildings. Color should be harmonious and compatible with the colors of natural surrounding and other adjacent buildings. The ARB shall have the sole right to approve or disapprove materials and colors so controlled and may make such decisions on purely aesthetic grounds, based solely on its own judgment.

12.16. Nuisances. No unsightly growth shall be permitted to grow or remain upon any Lot and no refuse pile or other unsightly object shall be allowed to be placed or remain anywhere thereon. In the event any Owner shall fail or refuse after a thirty (30) day notice mailed to his last known address to keep his Lot free of such unsightly growths or objects, then the Association may enter upon said Lot and remove the same at the expense of the Owner and such entries shall not be deemed a trespass. Said expense shall be added to and become part of the assessment to which said Lot is subject.

12.17. Mineral Exploration. The properties shall not be used in any manner to explore for or use commercially any water or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other such substances located in or on the ground.

12.18. Building Exterior. All windows, porches, balconies, and exteriors of all buildings on any Lot shall at all times be maintained in a neat and orderly manner.

Exterior of all homes and other structures must be completed within one (1) year after construction is commenced, except where such completion would result in great hardship to the Owner due to strikes, fires, or natural calamities. No hurricane or storm shutters shall be installed except as approved by the ARB.

12.19. Motor Boats and All Terrain Vehicles. In order to preserve the tranquility of the community, there shall be no riding or driving of ATV's any where in the Subdivision, including on privately owned Lots, and no boats, including model and toy boats allowed in the lake. This provision shall not apply to boats used to maintain the lake area.

12.20. Filling of Lots. No Lot which abuts any waterway or Common Area shall be altered in size by filling nor excavating of such waterway or Common Area, No fill may be placed on any Lot without prior approval of the ARB.

12.21 Docks. Small fishing dock areas no larger than 100 square feet may be constructed on Lots 16, 23 and 24 with the approval of the ARB, the intent of this provision being to preserve the aesthetic qualities of the lake front properties by precluding construction of large dock structures which would be out of the scale with the overall design of the properties.

12.22. Multiple Lots and Subdividing. Two more adjacent Lots may be used as a single building site with the approval of the ARB. provided annual and special assessments will be continued to be paid for each original lot.

12.23. Minimum Building Elevation. The first living floor of any building shall be at the minimum requirement to conform with the then existing Federal Flood Insurance Regulations, but not less than 8.0 feet above mean sea level. Buildings will be elevated on

suitable substructure compatible with the design of the home and the ARB shall have the authority to restrict the height above sea level to which the ridge vents of the roof or any element of the building excluding chimneys, flues, and vents on the particular Lots may extend. The purpose of such height restriction is to preserve views and aesthetics for the overall benefit of the community. All second floor rooms shall be within the normal single story roof enclosure. No structure shall exceed thirty-five (35) feet above the finished first floor.

12.24. Utilities and Easements. A six (6) foot easement and right of way is expressly reserved along the side Lot lines for all Lots to permit the construction and maintenance by the Developer, its successors and assigns and/or public utility companies of water, gas, drainage, telephone and other services of like nature.

Owner may not grant easement on their Lots without written consent and approval of the Developer or the Association.

12.25. Commencement of Construction and Completion. An owner shall commence construction on his Lot within two (2) years from the date of closing. If an original owner resells his Lot within the initial two (2) year period, the new owner(s) will be required to commence construction within two (2) years of the date of the closing between the Developer and the original owner. If the owner does not commence construction within that period of time, then the Developer or the Association shall have the right to purchase the Lot from the owner at one hundred percent (100%) of the original purchase price.

When the construction is once begun, work thereon must be prosecuted diligently and completed within one (1) year. If, for any reason, the work is discontinued and there is no

substantial progress toward completion for a continuous three (3) month period, then the Association shall have the right to notify the owner of record of the premises of its intentions herein, invade the premises, and take such steps as may be required to correct an undesirable appearance, specifically including the right to demolish a partially completed structure and remove the debris from the Lot; the reason for such correction shall be solely in the discretion of the Association and may include, but not be limited to, purely aesthetic grounds. The owner in fact of the property shall be liable for all costs incurred in any such action. The total cost thereof will be a lien on his property, which lien may be foreclosed in the manner provided for in these Covenants and the By-Laws.

12.26 Resale Capital Assessment. The Association shall require the purchaser of each lot, at the time of closing the conveyance from seller to purchaser, to pay the Association a resale capital assessment. The amount of any such resale capital assessment shall be determined by the Board of Directors of the Association annually. The applicable Amount of the resale capital assessment shall be the amount in effect when the bona fide purchase contract is fully executed and no change in the resale capital assessment shall apply to bona fide purchase contracts entered into before a change in the amount. The funds derived from the resale capital assessment shall be used at the sole discretion of the Board of Directors as needed to meet necessary and proper Association expenses. The Resale Capital assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the purchaser of the lot and shall also be a charge against the Lot secured by a continuing lien upon the Lot. Said Lien may be foreclosed in the same manner as provided herein for an assessment lien. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot by deed or other authorized means of conveyance.

with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from a foreclosure of a lien, or death of the transferee, nor to a transfer of title to the transferor's spouse without changing occupancy, solely for estate planning or tax reasons.

13. Miscellaneous Provisions.

13.1. Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered, or mailed, first class postpaid, to the last known address of the person who appears as the Owner on the records of the Association at the time of such mailing.

13.2. Condition and Appearance of Units. While it is the responsibility of each Unit Owner to maintain, replace and repair at his own expense his unit and all appurtenances thereto, including without limitation the roof, air conditioner, sidewalk, stoops, screen porch, pool enclosure, and driveway, the overall appearance and condition of the buildings has a direct effect upon the value of all Units and the desirability of Marsh Pointe as a residence. Each Unit Owner shall, therefore, maintain his Unit in a good, safe and presentable condition at all times. Failure to do so shall be grounds for the Association to perform the necessary work at the expense of the offending Owners and to secure payment as a special assessment.

13.3. Enforcement. These covenants and restrictions may be enforced by the Association or any owner by any proceeding at law or in equity against any person or persons including lessees and guests violating or attempting to violate any covenant or restriction, either to restrain the violation, to enjoin compliance, or to recover damages,

and against the Units to enforce any lien created by these covenants; and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party shall recover costs and reasonable attorneys' fees at all trial and appellate levels.

13.4. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in said property.

13.5. Topical Headings. The topical headings of the provisions herein are not a part of this Declaration, but are for convenience only, and do not define, enlarge, limit or construe any of the provisions thereof.

13.6. Invalid Provisions. The invalidity of one or more provisions of this Declaration shall not affect the remaining portions thereof.

13.7. Binding Effect. This Amended and Restated Declaration and any further amendments shall be binding upon the Owners, their successors and assigns, whether immediate or remote.

DONE this ____ day of _____, 2007

Signed, sealed and delivered
in the presence of:

EXHIBIT "E"
ARCHITECTURAL PLANNING CRITERIA

These criteria may be amended from time to time by the Board of Directors with advice from the Architectural Review Board (ARB).

- I. Building Construction; No building shall be erected, altered, placed or permitted to remain on any lot in Marsh Pointe other than one detached single family dwelling containing not less than 2,500 square feet of livable enclosed floor area, exclusive of garages, terraces, decks or porches. This size limitation may be raised or lowered as deemed necessary with approval of the ARB.
 - A. All buildings shall be constructed of new and durable materials.
 - B. Roof material shall be of 26 or 28 gauge galvanized steel or aluminum, or painted, raised seam roofing panels or 5-v crimp. The minimum pitch on any structure or portion thereof shall be 6/12 unless otherwise specifically approved by the ARB. Flat or shed roofs shall not be permitted unless approved by the ARB. Such areas where flat roofs may be permitted are Florida rooms, porches or patios. There shall be no flat roof on the entire main body of the building. Solar collectors must be approved by the ARB. Collectors shall be thin, roll type mounted flush with the exterior roof unless otherwise specifically approved by the ARB. Exposed plumbing shall be minimized and run in straight lines parallel to or perpendicular with the fascia and roof ridgelines. All exposed plumbing must be painted to match the color of the adjacent surface. The exterior of all homes shall be of wooden lap siding, vinyl lap siding or other lap siding approved by the ARB.
 - C. All homes shall have a covered front porch.
 - E. All homes must have a minimum of a two (2) car garage so designed that the garage doors face the side, and not the front of the house or the street upon which the house faces plus additional off-street parking areas for at least two (2) automobiles.
 - F. The ARB shall have final approval of all exterior color plans and each owner must submit to the ARB a color plan showing the color of all exterior surfaces. The ARB shall determine whether the color plan is consistent with the homes in the surrounding areas and the color plan conforms to the color scheme of Marsh Pointe. The color plan must be submitted prior to construction.

2. All Dwellings shall have a paved driveway and parking area of stable and permanent construction of either stamped concrete, brick pavers or paving bricks.
3. Games and Play Structures: All fixed games and play structures shall be located at the rear of the dwelling or on the inside portion of the corner lots within the set back lines. Basketball goals will not be permitted. No platform or other play structure shall be constructed on any part of a lot located in front of the rear line of the residence constructed thereon and any such structure must have prior approval of the ARB. Doghouses play houses and pre-manufactured sheds are not permitted.
4. Fences and Walls: The composition, location and height of any fence or wall to be constructed on any lot shall be subject to approval of the ARB. The ARB shall require the composition of any fence or wall to be consistent with the material of the surrounding homes and other fences, if any. Chain link fences are prohibited. No fence, wall, fence, tree, or shrub, except existing natural vegetation, which obstruct sight lines shall be constructed or planted closer than 25 feet to the existing lake bank or waterway. No fence or wall which unduly restrict sight lines shall be constructed within 25 feet of the waters edge.
5. Landscaping: The basic landscaping plan for each lot must be submitted and approved by the ARB no later than the dry wall stage of construction. For each lot in Marsh Pointe, the landscape plan shall include a minimum expenditure of \$5,000 at builder's actual cost, excluding the cost of sod. All existing trees should be preserved where possible.
6. Swimming Pools: Any swimming pool, spa, or hot tub to be constructed on any lot shall be subject to the requirement of the ARB which include but are not limited to the following:
 - A. Composition to be of material thoroughly tested and accepted by the industry for such construction. All pools must be of the below ground level type.
 - B. The outside edge of any pool wall cannot be closer than 4 feet of a line extended and aligned with the side wall of the dwelling unless approved by the ARB.
 - C. Pool cages must be set back twenty (20) feet from lake or waterway edge or lot line, unless approved by the ARB.
 - D. No screen of a pool area may stand behind a line extended and aligned with the sidewalls of the dwelling unless approved by the ARB.
 - E. Pool screening may not be visible from the street in front of the dwelling unless approved by the ARB.

- F. Any lighting of a pool or other recreational area shall be designed so as to buffer the surrounding residences from the lighting.
 - G. If one owner decides to purchase two adjoining lots and use one for recreation purposes, the lot used for recreation purposes must be adequately screened by landscaping and/or walls or fences on both front and side as required by the ARB. It shall be the intent of the ARB that any such area be screened from public view.
7. Garbage and Trash Containers: All containers shall be kept within an enclosure, which the ARB shall require to be constructed with each dwelling behind landscaping, or within the main building.
 8. Removal of Trees: In order that the natural beauty of the property may be preserved, no living tree having a caliper measurement or diameter of 4 inches or more than 4 feet above the ground shall be destroyed or removed from the property unless approved by the ARB in connection with its approval on the plans and specifications for the construction of improvements on the property or otherwise except with the prior written consent of the ARB, as provided in paragraph 12 herein. In the event of a violation of this paragraph the ARB., the Association and their respective representatives may at their option cause any tree so removed or destroyed to be replaced with another similar tree and the owner shall reimburse, the ARB, or the Association for all expenses incurred. The Association may assess and collect such reimbursement in the same manner as assessments pursuant to the Covenants and Restriction.
 9. Filling of Lots: No fill may be placed on any lot on Marsh Pointe until the ARB has approved the site plan for any improvement on any lot.
 10. Window Air Conditioning Units: No window or wall air conditioning units shall be permitted.
 11. Mailboxes: No mailbox or paper box or other receptacle of any kind for the delivery of mail or newspapers shall be erected on any Lot unless and until size, location, design, and type shall have been approved by the ARB. Mailbox design must be submitted no later that drywall stage of construction. It is the intent of the Developer to provide for standardized design of mailboxes throughout the community.
 12. Sight Distances at Intersections: No fence, wall, hedge or shrub planting which obstruct sight lines and elevations between two and six feet above the roadway shall be placed or permitted to remain on any corner or lot nor shall trees be permitted to remain within such distances of intersections unless the foliage is maintained as sufficient height to prevent obstruction of sight lines.

13. Exterior Lighting: All residences shall include an exterior light on a photocell it being the intent that such lighting shall provide for uniform lighting throughout the subdivision. Design of such exterior lighting shall be compatible with the exterior design of the building and must be approved by the ARB.
14. Temporary Structures: No structure of a temporary nature, trailer, tent, shack, garage, barn, or other out building shall be used on any lot at any times as a residence either temporarily or permanently.
15. Utility Connections: Building connections for all utilities, including but not limited to water, sewer, electricity, telephone and television shall be run underground from the proper connecting points to the building structure in such a manner to be acceptable to the governing utility.
16. Setbacks: In order to insure that the location of houses will be staggered where practical and appropriate to provide the maximum amount of view and breeze to each house and that the structure will be located with regard to the topography of each individual lot the location of large trees and similar considerations, the Developer reserves until itself, its successors and assigns and, after all lots are sold and closed, to the Association, the right to control absolutely and solely the precise site and location of any house or dwelling or other structure upon any Lot. Provided, however, that such location shall be determined after a reasonable opportunity is afforded the lot owner to recommend a specific site. Such location shall in all cases conform to the following requirements:
 - A. No structural improvement of any type will be placed forward of the building set back line established by Lee County.
 - B. Houses including overhang shall no be located closer than 10 feet to the side Lot line unless two contiguous Lots are used as one building site, unless approved by ARB.
 - C. The road right of way line shall be considered the front lot line and the owners of corner lots shall designate one side as fronting on the road.
 - D. When a parcel of two or more Lots is used by the owners as a building site the outside lines of the parcel shall for easement and set back regulation purposes be deemed the lot lines of the building site.
17. Storage Tanks: No above ground storage tank shall be allowed under any circumstance on any Lot.
18. Sidewalks: All lots in the development must have a four foot (4') wide sidewalk of poured concrete the entire length of the front of the property. Approved driveways extending to the road right-of-way may be considered as sidewalk.

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EXHIBIT "F"

BY-LAWS

OF

MARSH POINTE HOMEOWNERS ASSOCIATION OF LEE COUNTY, INC.

1. IDENTITY - These are the By-Laws of Marsh Pointe Homeowners Association of Lee County, Inc., a non-profit Florida Corporation formed for the purpose of administering Marsh Pointe Subdivisions, which are located at North Fort Myers, Lee County, Florida, upon the lands described in the Declaration Of Covenants and Restrictions. (The corporation shall hereafter be referred to as the "Association")

1.1 OFFICE - The Office of the Association shall be at the Development, or at such other location in the County as may be determined by the Board of Directors.

1.2. FISCAL YEAR - The Fiscal year of the association shall be the calendar year.

1.3 SEAL - The Seal of the Association shall bear the abbreviated name of the Association, the words "not for profit", the word "Florida" and the year of establishment (1995).

2. MEMBERS' MEETINGS.

2.1. ANNUAL MEMBERS MEETING shall be held at the Development or some other convenient location as may be determined by the Directors, during the last week of January as determined by the Directors each year, for the purpose of electing Directors and transacting any business authorized to be transacted by the Members. SPECIAL MEMBERS' MEETINGS shall be held whenever called by the President, Vice President or by a majority of the Board of Directors and when called by written notice from ten percent (10%) of the Association voting interests.

2.2. NOTICE OF MEMBERS' MEETINGS - Notice of the annual meeting shall be sent to each unit owner by United States mail, unless waived by attendance or in writing, at least 14 days prior to the annual meeting. An officer of the Association shall execute an affidavit of mailing per which shall be retained in the Official Records of the Association as proof of such mailing. Written notice of the meeting shall also be posted in a conspicuous place on the property at least 14 days prior to the annual meeting.

- 36 2.3. Unit owners may waive notice of specific meetings, may later join in
37 consent to action taken at meetings, and may take action by written agreement
38 without meetings provided that no such practice may preclude nominations from the
39 floor for the election of Directors.
- 40 2.4. Notice of other special meetings not covered above shall be in writing
41 and delivered or mailed to each member first class, postage prepaid not less than 10
42 days prior to the meeting.
- 43 2.5. All notices of meetings shall state clearly and particularly the time,
44 place, and purpose or purposes of the meeting.
- 45 2.6. A QUORUM at members meetings shall consist of Thirty percent (30%) of the
46 voting interests of the entire membership. Decisions made by a majority of the voting
47 interests represented at a meeting at which a quorum is present in person or by proxy
48 shall be binding and sufficient for all purposes except such decisions as may by Statute
49 or the documents require a larger percentage in which case the percentage required in
50 the documents or the Statute shall govern.
- 51 2.7. EACH UNIT SHALL have one indivisible vote. If multiple owners cannot agree on a
52 vote, the vote shall not be counted. Voting certificates are not authorized.
- 53 2.8. PROXIES – Votes may be cast in person or by proxy. Proxies shall be in writing,
54 signed and dated and shall be valid only for the particular meeting designated therein
55 or an adjournment thereof and must be filed with the Secretary before or at the
56 meeting. Restricted proxies may be used which direct the proxy holder how to vote on
57 issues. Only members of the Association or the Board of Directors may hold proxies.
58 Provided, however, that a member of a unit owner's immediate family holding a
59 power of attorney from the owner shall be entitled to cast that unit's vote. Immediate
60 family is defined to mean a unit owner's mother, father, sister, brother, son or
61 daughter.
- 62 2.9. If any meeting of member cannot be organized because a quorum has not attended, the
63 members who are present, either in person or by proxy, may adjourn the meeting from
64 time to time until a quorum is present. The members may also act by written
65 agreement without meeting when desired.
- 66

67 3. BOARD OF DIRECTORS.

68 3.1. NUMBER, TERMS, AND QUALIFICATIONS. The Corporation shall be governed
69 by a Board composed of three or five persons, as determined by the Board from time
70 to time. All Directors shall be Members, except that a spouse of a member may be a
71 Director. One officer of a corporation, trust, partnership or other such ownership
72 entity shall be deemed to be a member so as to be eligible for Board membership.
73 Directors shall be elected by a plurality of the voting interest at the annual meeting.
74 All Directors shall be elected for two year terms. In addition to elected Directors, the
75 Immediate Past President shall be an Ex-Officio Board member for one year, with a
76 voice but without a vote, if not serving as an elected member of the Board.

77 3.2 The term of each Director's service shall extend until their elected term is completed
78 and thereafter until their successor is duly elected and qualified or until the Director is
79 removed. Any Director except Developer appointed Directors may be removed with
80 or without cause by concurrence of a majority of voting interests of the Association,
81 either by written agreement or at a special meeting of the members called for that
82 purpose only either by a majority of the Board of Directors or by forty percent (40%)
83 of the voting interests.

84 3.3 Vacancies provide by resignation or the removal of Directors by the voting interests,
85 vacancies in the Board of Directors occurring between annual meetings of members,
86 shall be filled by appointment by a majority vote of the remaining Directors.

87 3.4 THE ORGANIZATION MEETING of each newly elected Board of Directors shall be
88 held at such place and time as shall be fixed by the Directors, provided that a quorum
89 shall be present. Unless otherwise noticed, it shall be held immediately following the
90 annual meeting.

91 3.5 REGULAR MEETINGS OF THE BOARD OF DIRECTORS may Be held at such
92 time and place as shall be determined from time to time by a majority of the Directors.
93 Notice of regular meetings shall be given to each Director personally or by mail,
94 telephone or telegraph at least forty-eight (48) hours prior to the meeting. Any
95 meeting of the Board at which a special assessment is to be considered or rules
96 affecting the use of a parcel, must be noticed at least fourteen (14) days in advance by
97 posting and mailing the notice.

- 98 3.5. SPECIAL MEETINGS OF THE DIRECTORS may be called by the President and
99 must be called by the Secretary at the written request of a majority of the Directors.
00 Not less than 48 hours notice of the meeting (except in an emergency) shall be given
01 personally or by mail, telephone or telegraph, which notice shall state the time, place
02 and purpose of the meeting.
- 03 3.6. WAIVER OF NOTICE – Any Director may waive notice of a meeting before, at (by
04 attendance) or after the meeting and such waiver shall be deemed equivalent of the
05 giving of notice.
- 06 3.7. MEETINGS OF THE BOARD OF DIRECTORS shall be open to all unit owners to
07 attend and listen but not be heard or participate (unless a majority of the Directors
08 consent thereto) and notice of meetings shall be posted conspicuously on the
09 Subdivision property 48 hours in advance for the attention of unit owners, except in an
10 emergency. Meetings at which an assessment is to be considered shall contain a
11 statement of such and its nature.
- 12 3.8. A QUORUM AT DIRECTORS' MEETINGS shall consist of a majority of the
13 Directors. The acts approved by a majority of the Directors present at a meeting shall
14 constitute the acts of the Board. If at any meeting of the Board there is less than a
15 quorum present, the Director(s) present may adjourn the meeting from time to time
16 until a quorum is present. At any adjourned meeting, any business which might have
17 been transacted at the meeting as originally called, may be transacted upon further
18 notice. Absent Directors may later sign written joinders in Board actions, but such
19 joinders may not be used for the purposes of creating a quorum.
- 20 3.9. THE PRESIDING OFFICER at Directors' meetings shall be the President if such an
21 officer has been elected; and if none, then the Vice President shall preside. In the
22 absence of the presiding officer, the Directors present shall designate one of their
23 number to preside.
- 24 3.10. DIRECTORS SHALL SERVE WITHOUT PAY, but shall be eligible for
25 reimbursement for expenses reasonably incurred.
- 26 3.11. The Board of Directors shall also mail copies of the proposed annual budget of
27 common expenses to the unit owners no less than 14 days prior to the meeting at
28 which the budget will be considered.

29 4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

30 All of the powers and duties of the Association existing under Florida Corporate
31 Law, the Declaration of Covenants and Restrictions, the Association Charter and these
32 by-laws shall be exercised exclusively by the Board of Directors, or its duly
33 authorized agents, contractors, or employees subject only to the approval by unit
34 owners when such is specifically required, Such powers and duties of the Directors
35 shall include, but shall not be limited to, the following:

- 36 4.1. TO MAKE AND COLLECT ASSESSMENTS AGAINST members to defray the
37 costs of the development.
- 38 4.2. TO USE THE PROCEEDS OF ASSESSMENTS in the exercise of its powers and
39 duties.
- 40 4.3. THE MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION of the
41 common areas, lots and units as provided in the Declaration.
- 42 4.4. TO MAKE, AMEND AND ENFORCE RULES AND REGULATIONS concerning
43 the use of the common areas and the units.
- 44 4.5. THE RECONSTRUCION OF IMPROVEMENTS AFTER CASUALTY and the
45 further improvements of the property.
- 46 4.6. TO APPROVE OR DISAPPROVE PROPOSED RECONSTRUCTION,
47 ADDITIONS AND ALTERATIONS in the manner provided by the Declaration.
- 48 4.7. TO ENFORCE by legal means the provisions of applicable laws and the Documents.
- 49 4.8. TO CONTRACT FOR MANAGEMENT of the Development.
- 50 4.9. TO CARRY INSURANCE for the protection of the unit owners an the Association.
- 51 4.10. TO PAY THE COST OF ALL UTILITY SERVICES rendered to the Development
52 and not billed to owners of individual units.
- 53 4.11. TO EMPLOY PERSONNEL for reasonable compensation and grant
54 them such duties as seem appropriate for the proper administration of the purposes of
55 the Association.
- 56 4.12. TO BRING AND DEFEND SUITS, MAKE AND EXECUTE CONTRACTS,
57 DEEDS, MORTGAGES, LEASES and other instruments by its officers and to
58 purchase, own, lease, convey and encumber real and personal property. To grant

59 easements and licenses over the development property necessary or desirable for
60 proper operation of the project.

61 4.13. THE DIRECTORS MAY, pursuant to Chapter 720 F.S., impose fines not to exceed
62 \$100.00 for each violation, for violation of the Documents, including the Rules and
63 Regulations by owners or their tenants, guests or lessees. Each day of violation shall
64 be a separate violation.

65 4.14. The party against whom the fine is sought to be levied shall be afforded an
66 opportunity for hearing after reasonable notice of not less than fourteen (14) days
67 and said notice shall include:

- 68 1. A statement of the date, time and place of the hearing;
- 69 2. A statement of the provisions of the declaration, association
70 charter, by-laws, or association rules which have allegedly been
71 violated; and
- 72 3. A short and plain statement of the matter asserted by the Association.

73
74 4.15. The party against whom the fine may be levied shall have an opportunity to respond,
75 to present evidence, and to provide written and oral argument on all issues involved
76 and shall have an opportunity at the hearing to review, challenge and respond to any
77 material considered by the association.

78 4.16. TO APPOINT COMMITTEES including nominating, executive and architectural
79 control. All committees and members shall serve at the pleasure of the Board.

180 5. OFFICERS

181 5.1. THE EXECUTIVE OFFICERS of the Associations shall be the President, a Vice
182 President a Secretary and a Treasurer, all of whom shall be elected annually by and
183 from the Board of Directors and who may be peremptorily removed by a majority
184 vote of the Directors at any meeting. Any person may hold two offices except
185 that the president shall not also be the Secretary. In addition, the Board may appoint
186 such other assistant officers as they shall decide.

187 5.2. THE PRESIDENT shall be the chief executive of the Association and shall have all
188 the powers and duties which are usually vested in the office of President of a
189 corporation.

- 190 5.3 THE VICE PRESIDENT shall, in the absence or disability of the President, exercise
191 the powers and perform the duties of the President. The Vice President shall also
192 generally assist the President and exercise such other powers and perform such other
193 duties as shall be prescribed by the Directors.
- 194 5.4. THE SECRETARY shall keep the minutes of all proceedings of the Directors and the
195 members; shall attend to the giving and serving of all notices to the members and
196 Directors and other notices required by law; shall have custody of the seal of the
197 Association and affix the same to instruments requiring a seal when duly signed; shall
198 keep and have custody of the records of the Association, except those of the
199 Treasurer; and shall perform all other duties incident to the office of Secretary of the
200 Association and as may be required by the Directors or the President. The Assistant
201 secretary will perform the duties of the Secretary when the Secretary is absent
- 202 5.5. THE TREASURER shall have custody of all property of the Association, including
203 funds, securities and evidence of indebtedness; shall keep the assessment rolls and
204 accounts of the members; shall keep the books of the Association in accordance with
205 good accounting practices; and shall perform all other duties incident to the office of
206 Treasurer of a corporation.
- 207 5.6. THE COMPENSATION of all employees of the Association shall be fixed by the
208 Directors.
- 209 5.7. INDEMNIFICATION - Every Director and every officer of the Association shall be
210 indemnified by the Association against all expenses and liabilities, including
211 attorney's fees through all trial and appellate levels, reasonably incurred by or
212 imposed in connection with any proceeding, arbitration, or settlement to which
213 such person may be a party, or in which they may become involved, by reason of
214 being or having been a Director or officer of the Association, whether or not such
215 person is a Director or officer at such time such expenses are incurred,
216 Notwithstanding the foregoing, in the event of a settlement, the indemnification
217 provision herein shall not be automatic and shall apply only when the Board approves
218 such settlement. Notwithstanding anything contained herein to the contrary in
219 instances where the Director or officer admits or is adjudged guilty by a court of
220 competent jurisdiction of willful misfeasance in the performance of their duties, the

221 indemnification provisions contained herein shall not apply. Otherwise, the foregoing
222 right of indemnification shall be in addition to and not exclusive of any and all rights
223 of indemnification to which such Director or officer may be entitled to by common
224 law or statute.

225 5.8. To the extent permitted by law the powers and duties of the directors and officers
226 may be delegated for the purpose of management.

227 6. MINUTES OF ALL MEETINGS AND UNIT OWNERS

228 and of the Board of Directors shall be kept in a businesslike manner and shall be
229 reduced to written form within thirty (30) days and these, plus records of all receipts
230 and expenditures and all other official records, as defined in Chapter 720, F.S. shall be
231 available for inspection by unit owners and Board members at all reasonable times.

232 7. FISCAL MANAGEMENT - shall be in accordance with the following provisions:

233 7.1. BUDGET - A proposed annual budget of common expenses shall be prepared and
234 adopted by the Board of Directors not less than 30 days prior to the beginning of the
235 fiscal year and which shall include all anticipated expenses for operation maintenance
236 and administration of the Development including but not limited to insurance,
237 management fees, if any, and which may accrue a reserve. It will contain a reasonable
238 allowance for contingencies and provide funds for all unpaid operating expense
239 previously incurred. If at any time a budget shall prove insufficient, it may be
240 amended by the Board of Directors for the remaining portion of the fiscal year.
241 Provided, however, that the Board shall appoint a Finance Committee of members to
242 give advice on the financial operation of the Association and the budget and shall
243 meet with the committee prior to preparing the proposed budget.

244 7.2. A copy of the proposed annual budget shall be mailed to the unit owners not less than
245 14 days prior to the meeting of the directors at which time the budget will be adopted
246 together with notice of the meeting.

247 7.3. ASSESSMENTS - The shares of the unit owners of the common expenses shall be
248 made payable annually and shall become due on the first day of each year. The
249 Association shall have the right to impose a late charge not to exceed the greater of
250 \$25.00 or 5% of the installments due upon an owner delinquent in the payment of
251 common expenses.

- 152 7.4. SPECIAL ASSESSMENTS - Assessments for expenses which cannot be paid from
153 the operating account shall be made by the Boars of Directors, and the time of
154 payment shall likewise be determined by them.
- 155 7.5. ASSESSMENT ROLL - The assessments for common expenses according to the
156 budget shall be set forth upon a roll of the units which shall be available for inspection
157 at all reasonable times by unit owners. Such roll shall indicate for each unit the name
158 and address of the owner, the assessments paid and unpaid. A certificate made by a
159 duly authorized representative or the Directors as to the status of a unit's account may
160 be relied upon for all purposes for any person for whom made.
- 161 7.6. LIABILITY FOR ASSESSMENTS - A unit owner shall be liable for all assessments
162 coming due while the owner of a unit, and such owner and owner's grantees after a
163 voluntary conveyance shall be jointly and severally liable for all unpaid assessments
164 due and payable up to the time of such voluntary conveyance. Except as otherwise
165 provided by law, bona fide institutional lender first mortgage who acquires title by
166 foreclosure or deed in lieu of foreclosure shall not be liable for unpaid assessments of
167 prior owners. Liability may not be avoided by waiver of the use or enjoyment of any
168 common elements or by abandonment of the unit for which the assessments are made.
- 169 7.7. LIENS FOR ASSESSMENTS AND CHARGES - The unpaid portion of an
170 assessment or charge which is due, together with costs, interest and reasonable
171 attorney's fees for collection, shall be secured by a lien upon:
- 172 7.8. THE UNIT and all appurtenances thereto when a notice claiming the lien has been
173 recorded by the Association in accordance with the requirements of Florida Statute
174 718.116. Such lien shall be subordinate to any prior recorded first mortgage on the
175 unit, except to the extent otherwise provided by law
- 176 7.9. COLLECTION INTEREST: APPLICATION OF PAYMENTS
177 Assessments or charges paid on or before teen days after the date due shall nor bear
178 interest, but all sums not paid on or before ten days shall bear interest at the highest
179 lawful rate (now 18% per annum) from the date due until paid. All payments upon
180 account shall first be applied to interest, cost and fees and then to the assessment
181 payment first due.

82 7.10 COLLECTION - SUIT - The Association, at its option, may enforce collection of
83 delinquent assessments or charges by suit at law, by foreclosure of the lien securing
84 the assessments or charges, or by any other remedy available under the law.

85 8. COMPLIANCE AND DEFAULT

86 8.1. Each lot owner shall be governed by, and shall comply with the terms of the Marsh
87 Pointe Declaration of Covenants and Restrictions, Articles of Incorporation, By-laws,
88 Architectural Requirements and Rules and Regulations, adopted pursuant thereto, and
89 said documents and regulations as they may be amended from time to time. Failure of
90 lot owners to comply therewith shall entitle the Association and the lot owners to the
91 following relief in addition to the remedies provided by the Marsh Pointe
92 Homeowners Association of Lee County, Inc.

93 8.2. NEGLIGENCE – A lot owner shall be liable for the expense of any maintenance,
94 repair or replacement rendered necessary by his act, neglect or carelessness or by the
95 of any member of his family or his or their guests, employees, agents or lessees, but
96 only to the extent that such expense is not met by the proceeds of insurance carried by
97 the Association.

98 8.3. COSTS AND ATTORNEYS' FEES – In any proceeding arising because of an
99 alleged failure of a lot owner to comply with the terms of the Marsh Pointe
100 Declaration of Covenants and Restrictions, Articles of Incorporation, by-laws,
101 Architectural Requirements and Rules and Regulations adopted pursuant thereto, and
102 said documents and regulations as they may be amended from time to time, the
103 prevailing party shall be entitled to recover the cost of the proceeding and such
104 reasonable attorneys' fees as may be awarded by the court.

105 8.4. NO WAIVER OF RIGHTS – The failure of the Association or any lot owner to
106 enforce any covenant, restriction or other provision of the Marsh Pointe Declaration of
107 Covenants and Restrictions, Articles of Incorporation, By-Laws, Architectural
108 Requirements and Rules and Regulations adopted pursuant thereto, shall not constitute
109 a waiver of the rights to do so thereafter.

110 9. AMENDMENTS

111 9.1. Amendments to these By-Laws shall be made in the following manner:

of the subject matter of a proposed amendment shall be included in the
any meeting at which a proposed amendment is considered.

RESOLUTION adopting a proposed amendment must receive approval of two-
thirds of the voting interests of the Association, present and voting in
person or by proxy.

INITIATION – An amendment may be proposed by either a majority of the Directors
or by 40% of the voting interests.

EFFECTIVE DATE – An amendment when adopted shall become effective only after
being recorded in the Public Records of the County.


9.6. THESE BY-LAWS shall be deemed amended, if necessary, so as to make the
consistent with the provisions of the Declaration or the Association Charter.

9.7. PROPOSAL TO AMEND EXISTING BY-LAWS shall contain the full text of the
By-Laws 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-LAW, SEE BY-LAW NUMBER _____ FOR PRESENT
TEXT."

10. IN THE EVENT THE DIRECTORS DEEM IT NECESSARY to do so, they and the owners
may set by written agreement without meeting, which written agreement may be
executed in counterparts. In addition, the Directors may make decision by telephone
provided they are ratified at subsequent Board meetings.

The foregoing were adopted as the by-laws of the Association

on this 6TH day of NOVEMBER, 2007



PRESIDENT

