

**BYLAWS OF**  
**MCGREGOR RESERVE**  
**COMMUNITY ASSOCIATION, INC.**

**ARTICLE I. IDENTITY**

These are the Bylaws of **MCGREGOR RESERVE COMMUNITY ASSOCIATION, INC.** (the "Association") a corporation not for profit under the laws of the State of Florida, organized for the purpose of administering that certain development located in Lee County, Florida, and known as McGregor Reserve Community Association, Inc. ("McGregor Reserve").

1.1. **Principal Office.** The principal office of the Association shall be at 1391-4 Meadow Park Lane, Fort Myers, FL 33901, or at another place as may be designated by the Board of Administration.

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 name of the corporation, the word "Florida" , the words "corporation not for profit" and the year of incorporation.

1.4. **Definitions.** For convenience, these Bylaws shall be referred to as the "Bylaws"; the Articles of Incorporation of the Association as the "Articles"; and the Declaration of Covenants and Restrictions of McGregor Reserve as the "Declaration." The other terms used in these Bylaws shall (unless contrary to the definitions of these Bylaws, the Articles or the Declaration) have the same definition and meaning as those set forth in Chapter 617, **Florida Statutes** (the Act), as presently constituted, as well as those set forth in the Declaration and the Articles, unless provided to the contrary in these Bylaws, or unless the context otherwise requires.

**ARTICLE II. MEETINGS AND VOTING**

2.1. **Annual Meeting.** The Association shall hold a meeting of its members annually for the transaction of any and all proper business at a time, date, and place stated in these bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting.

2.2. **Special Meetings.** Special meetings must be held when called by the Board of Administration or, by at least ten per cent (10.0%) of the total voting interests of the Association. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

2.3. **Content of Notice.** Notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called. Members may waive notice of an annual meeting.

2.4. **Notice Of Budget Meeting.** The Board Of Administration shall mail a notice and a copy of the proposed annual budget to the members not less than fourteen (14) days before the meeting at which the board will consider the budget.

2.5. **Quorum.** A quorum at meetings of members shall consist of persons <sup>41 = QUORUM</sup> entitled to cast, either in person or by proxy, thirty percent (30%) of the votes of the entire membership. Absentee ballots alone, may not be counted in determining a quorum.

2.6. **Membership.** Membership and Voting Rights are set forth in Article 4 of the Declaration and are incorporated herein by this reference. In the event of any conflict between the provisions of Article 4 of the Declaration and the provisions of these Bylaws, the provisions of the Declaration shall prevail.

2.7. **Proxies, Powers Of Attorney.** Members have the right to vote in person or by proxy (both limited and general). To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. The proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires ninety (90) days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his place.

2.8. **Adjourned Meetings.** If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present. The time and place to which the meeting is adjourned shall be announced at the meeting at which the adjournment is taken, before the adjournment is taken, and a notice shall be posted in a conspicuous place within McGregor Reserve as soon thereafter as may be practical stating the time and place to which the meeting is adjourned. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Section 617.0707, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

2.9. **Secret Ballot, Proxy.** Any vote to amend the Declaration to change the percentage of ownership in the common elements or the sharing of the common expense must be conducted by secret ballot. Members wishing to vote a secret ballot by proxy must comply with Section 2.7 of these Bylaws. Provision shall be made for the secret ballot slip

to be returned to the Secretary of the Association in a sealed, unmarked envelope, separate from the proxy, which shall be placed in a larger envelope containing the sealed ballot. At the meeting at which the secret ballot is to be taken, the Secretary will present the unopened envelopes to the inspectors of election, who will then examine and verify the proxies separately from the secret ballots in a manner that will ensure the integrity of the secret vote. The inspectors of election will then tally the secret ballots of those present at the meeting together with those of the members voting by proxy and announce the results.

2.10. **Recording.** Any member may tape record or video tape meetings of the Board of Administration and meetings of the members. The Board of Administration of the Association may adopt reasonable rules governing the taping of meetings of the Board of Administration and the membership.

### **ARTICLE III. THE BOARD OF ADMINISTRATION**

3.1. **Number and Qualifications.** The affairs of the Association shall be managed initially by a board of three Board Members selected by the Developer. When members other than the Developer are entitled to elect a majority of the Board Members, as provided in Section 3.15 herein, the Board shall be composed of any odd number of Board Members that the members may decide. The number of Board Members, however, shall never be less than three. Other than those selected by the Developer, Board Members must either be members, tenants of members residing within McGregor Reserve, officers or a corporate lot owner, or partners of a partnership lot owner. No Board Member (except those selected by the Developer) shall continue to serve on the Board after the member ceases to be a member or tenant of a member residing within McGregor Reserve.

3.2. **Election of Board of Administration Members.** Election of Board of Administration Members shall be conducted in the following manner:

3.2.1. Election of Board of Administration Members shall be held at the annual members' meeting.

3.2.2. The members of the Board of Administration shall be elected by written ballot or voting machine.

3.2.3. Except as to vacancies resulting from the removal of Board of Administration Members by Association members, vacancies on the Board of Administration occurring between annual meetings of Board Members shall be filled by the remaining Board Members, provided that all vacancies to which Board Members were appointed by the Developer pursuant to the provisions of these Bylaws shall be filled by the Developer.

3.2.4. Board of Administration Members elected or appointed by members other than a Developer shall be subject to recall by only members other than the Developer. Voting interests owned or controlled by the Developer shall not vote in the

recall. A special meeting of the members to recall a member or members of the Board of Administration may be called by ten percent (10%) of the voting interests giving notice of the meeting, as required for a meeting of members, and the notice shall state the exact purpose of the meeting.

3.2.5. Board of Administration Members elected or appointed by the Developer shall be subject to recall only by the Developer. Voting interests owned or controlled by members other than the Developer shall not vote in the recall.

3.2.6. Only the Developer may vote to fill a vacancy on the Board previously occupied by a Board Member elected or appointed by the Developer. Only members other than a Developer may vote to fill a vacancy on the Board previously occupied by a Board Member elected or appointed by members other than the Developer.

3.3. **Term.** The term of each Board Member's service shall extend until the next annual meeting of the Association members and subsequently until a successor is duly elected and qualified, or until the Board Member is removed in the manner elsewhere provided.

3.4. ✓ **Organizational Meeting.** The organizational meeting of newly-elected or appointed Board of Administration Members shall be held within ten (10) days of their election or appointment at such place and time as shall be fixed by the Board of Administration at the meeting at which they were elected or appointed.

3.5. **Regular Meetings.** Meetings of the Board of Administration and any Committee thereof at which a quorum of the members of that Committee is present shall be open to all members. However, Board Meetings are not open to all members when the meeting is between the Board and its attorney to discuss proposed or pending litigation or when the contents of the discussion would be governed by the attorney-client privilege. Any member may tape record or video tape meetings of the Board of Administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration, and manner of member statements. Adequate notice of all meetings, which notice shall specifically incorporate identification of agenda items, shall be posted conspicuously within McGregor Reserve at least forty-eight (48) continuous hours preceding the meeting, except in an emergency. If notice of a meeting cannot be posted in a conspicuous place, then notice must be mailed or delivered to each member at least seven (7) days before the meeting. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. However, written notice of any meeting at which non-emergency special assessments shall be mailed or delivered to the members and posted conspicuously within McGregor Reserve property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice shall be made by an affidavit executed by the person providing

the notice and filed among the official records of the Association. Upon notice to the members, the Board shall by duly adopted rule designate a specific location within McGregor Reserve or Association property upon which all notices of Board meetings shall be posted. If there is no Association property upon which notices can be posted, notices of Board meetings shall be mailed or delivered at least fourteen (14) days before the meeting to the members. Notice of any meeting in which regular assessments against members are to be considered for any reason shall specifically contain the statement that assessments will be considered and the nature of the assessments.

3.6. **Special Meetings.** Special meetings of the Board of Administration may be called by the President or Secretary at the written request of one-third (1/3 ) of the Board of Administration. Notice of the meeting shall be given personally or by mail, telephone or telegraph. Adequate notice of all special meetings, which notice shall specifically incorporate identification of agenda items, shall be posted conspicuously within McGregor Reserve at least forty-eight (48) continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. However, written notice of any meeting at which non-emergency special assessments will be mailed or delivered to the members and posted conspicuously within McGregor Reserve property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. Upon notice to the members the Board shall by duly adopted rule designate a specific location within McGregor Reserve upon which all notices of Board meetings shall be posted. Notice of any meeting in which regular assessments against members are to be considered for any reason shall specifically contain the statement that assessments will be considered and the nature of the assessments.

3.7. **Voting of Board of Administration Members.** Board of Administration Members may not vote by proxy or by secret ballot, except a secret ballot may be used when electing officers.

3.8. Meeting Requirements for Board of Administration Members also apply to meetings of any committee, including any architectural board of the Association.

3.9. **Waiver of Notice.** Any Board Member may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the giving of notice. Attendance by any Board Member at a meeting shall constitute a waiver of notice of the meeting, except when that Board Member's attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

3.10. **Quorum.** A quorum at Board of Administration meetings shall consist of a majority of the entire Board of Administration. The acts approved by a majority of

those present at a meeting at which a quorum is present shall constitute the acts of the Board of Administration, except when approval by a greater number of Board of Administration Members is required by the Declaration, the Articles or these By-Laws.

3.11. **Adjourned Meetings.** If, at any meeting of the Board of Administration there is less than a quorum present, the majority of those present may adjourn the meeting.

3.12. **Joinder in Meeting by Approval of Minutes.** The joinder of a Board Member in the action of a meeting by signing a joinder concurring in the minutes of that meeting shall not constitute the presence of that Board Member for the purpose of determining a quorum.

3.13. **Presiding Officer.** The presiding officer of the Board of Administration meetings shall be the Chairman of the Board if such an officer has been elected; and if none, the President shall preside. In the absence of the presiding officer, the Board Members present may designate anyone to preside.

3.14. **Order of Business.** The order of business at Board of Administration meetings shall be:

- (a) Calling of roll;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading and disposal of any unapproved minutes;
- (d) Reports of officers and committees;
- (e) Election of officers;
- (f) Unfinished business;
- (g) New business;
- (h) Adjournment;

The order may be waived.

3.15. **Minutes of Meetings.** The minutes of all meetings of the Board of Administration shall be in written form and kept in a book available for inspection by members or their authorized representatives and Board Members at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years. The vote of each Board of Administration Member or abstention, on each issue, must be recorded in the minutes.

3.16. **Proviso.** Notwithstanding anything to the contrary contained in Section 3, the Board shall consist of three (3) Board of Administration Members during the period that the Developer is entitled to appoint a majority of the Board of Administration Members, as hereinafter provided. The Developer shall have the right to appoint the members of the Board of Administration until the earlier of the following occurs: (1) Three months after ninety percent (90%) of the lots within McGregor Reserve have been conveyed

to members; or (2) such other percentage or date or event has occurred as prescribed herein in order to comply with the requirements of governmental chartered entities such as a bank, FNMA, FHLMC, VA, FHA, for mortgage financing of lots. In addition, Developer shall have the right to elect at least one Board of Administration Member as long as Developer owns at least five percent (5%) of the lots for sale in the course of business. After Developer relinquishes control of the Association, Developer may vote a Developer-owned voting interest in the same manner as any other member except for the purpose of reacquiring control of the Association or electing a majority of the Board of Administration.

**3.17. Power of the Board of Administration.** All of the powers and duties of the Association existing under the Act, the Declaration, the Articles and these Bylaws shall be exercised exclusively by the Board Of Administration, or its duly authorized agents, contractors or employees, subject only to the approval by members when that approval is specifically required. The powers and duties of the Board shall include, but shall not be limited to, the following:

**3.17.1. Maintenance, Management And Operation Of The Association Property and Common Areas.**

**3.17.2. Right Of Access To Lots.** The Association has the irrevocable right of access to each lot during reasonable hours as necessary for the maintenance, repair or replacement of any Common Areas or for making repairs necessary to prevent damage to the Common Areas.

**3.17.3. Make And Collect Assessments.**

**3.17.4. Lease, Maintain, Repair And Replace The Common Areas.**

**3.17.5. Lien and Foreclosure For Unpaid Assessments.** The Association has a lien on each lot for any unpaid assessments with interest and for reasonable attorney's fees incurred in the collection of the assessment or enforcement of the lien. It also has the power to purchase the lot at the foreclosure sale and to hold, lease, mortgage or convey it.

**3.17.6. Purchase Lots.** In addition to its right to purchase lots at a lien foreclosure sale, the Association generally has the power to purchase lots in McGregor Reserve and to acquire, hold, lease, mortgage and convey them.

**3.17.7. Modify Easements.** The Association, without the joinder of any members, may modify or move any easement for ingress or egress or for utility purposes if the easement constitutes part of or crosses the Common Areas.

**3.17.8. Authorize Certain Amendments.** If it appears that through a drafter's error in the Declaration that the Common Areas, common expenses, or common

surplus has been stated or distributed improperly, an amendment to the Declaration correcting that error may be approved by the Board Of Administration or a majority of the members. No member except those directly affected shall be required to join in the execution of the amendment.

3.17.9. **Adopt Rules And Regulations.** The Association may adopt reasonable rules and regulations for the use of the Common Areas.

3.17.10. **Maintain Accounting Records.**

3.17.11. **Obtain Insurance.** The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association and the common elements.

3.17.12. **Furnish Annual Financial Reports To Members.**

3.17.13. **Give Notice Of Liability Exposure.** If the Association may be exposed to liability in excess of insurance coverage in any legal action, it shall give notice of the exposure to all members, who shall have the right to intervene and defend.

3.17.14. **Provide Certificate Of Unpaid Assessment.** Any member, mortgagee, or other record lienholder has the right to require from the Association a certificate showing the amount of unpaid assessments respecting the lot.

3.17.15. **Contract For Maintenance And Management Of The Common Areas.**

3.17.16. **Pay Taxes Or Assessments Against The Common Areas Or Association Property.**

3.17.17. **Pay Costs Of Utilities Services Rendered To The Common Areas And Association Property And Not Billed Directly To Individual Lot Owners.**

3.17.18. **Employ Personnel.** The Association may employ and dismiss personnel as necessary for the maintenance and operation of the Common Areas and may retain those professional services that are required for those purposes.

3.17.19. **Repair or Reconstruct Improvements After Casualty.**

3.17.20. No member shall have the authority to act for or on behalf of the Association solely by virtue of being a member.



3.17.21. Appoint an Advisory Committee. The Board of Administration shall have the authority to appoint committees, including an advisory committee, to advise the Board concerning any matters the Board deems necessary.

#### ARTICLE IV. OFFICERS

4.1. Executive Officers. The executive officers of the Association shall be a President, who shall be a Board of Administration Member, a Vice President, who shall be a Board of Administration Member, a Treasurer, a Secretary and an Assistant Secretary. The officers shall be elected annually by the Board Of Administration and may be removed without cause at any meeting by a vote of a majority of all the Board of Administration Members. A person may hold more than one (1) office except the President may not also be the Secretary or Assistant Secretary. No personnel shall sign an instrument nor perform an act in the capacity of more than one office. The Board Of Administration from time to time shall elect other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

4.2. President. The President shall be the chief executive officer of the Association. The President shall have all of the powers and duties that usually are vested in the office of President of an Association, including but not limited to the power to appoint committees from among the members to assist in the conduct of the affairs of the Association as he in his discretion may determine appropriate. The President shall preside at all meetings of the Board.

4.3. Vice President. The Vice President shall exercise the powers and perform the duties of the President in the absence of the President. The Vice President shall also assist the President and exercise other powers and perform other duties as shall be prescribed by the Board of Administration.

4.4. Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and members. The Secretary shall attend to the serving of all notices to the members and Directors and other notice required by law. The Secretary shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an Association and as may be required by the Board or the President.

4.5. Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. The Treasurer shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board Of Administration for examination at reasonable times. The Treasurer shall submit a Treasurer's report to the Board at reasonable intervals and shall perform all other duties incident to the office of Treasurer. All money and other valuable effects shall be kept for

the benefit of the Association in depositories as may be designated by a majority of the Board.

4.6. **Compensation.** The compensation, if any, of all officers and other employees of the Association shall be fixed by the Board Of Administration. This provision shall not preclude the Board from employing a Board Member as an employee of the Association or preclude the contracting with a Board Member for the management of the Association.

#### **ARTICLE V. FISCAL MANAGEMENT**

5.1. **Board Adoption Of Budget.** The Board Of Administration shall adopt a budget for the common expenses of the Association in advance of each fiscal year at a special meeting of the Board called for that purpose at least forty five (45) days before the end of the fiscal year.

5.2. **Budget Requirements.** The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, when applicable, but not limited to:

5.2.1. Administration of the Association;

5.2.2. Management fees;

5.2.3. Maintenance;

5.2.4. Taxes On Association Property;

5.2.5. Insurance;

5.2.6. Security provisions;

5.2.7. Other expenses;

5.2.8. Operating capital;

5.2.9. Fees payable to the division;

5.2.10. Reserve accounts for capital expenditures and deferred maintenance, including but not limited to payment of resurfacing. Reserves may be removed from the final budget if by vote of the majority of the members present at a duly called meeting of the Association they shall determine for a fiscal year to provide no reserves or reserves less adequate.

5.3. **Notice Of Budget Meeting.** The Board Of Administration shall mail a meeting notice and copies of the proposed annual budget to the members not less than fourteen (14) days before the meeting at which the budget will be considered. The meeting shall be open to all members.

5.4. **Accounting Records And Reports.** The Association shall maintain accounting records in Lee County, according to good accounting practices. The records shall be open to inspection by members or their authorized representatives within ten (10) days of receipt by the association of a written request. The records shall include, but are not limited to:

5.4.1. A record of all receipts and expenditures; and

5.4.2. An account for each member, designating the name and current mailing address of the member, the amount of each assessment, the dates and amounts in which the assessments come due, the amount paid on the account and the balance due.

5.4.3. Within sixty (60) days after the end of each fiscal year, the Board Of Administration shall mail or furnish by personal delivery to each member an annual financial report of actual receipts and expenditures for the previous twelve (12) months.

5.4.4. All members shall be provided with a copy or a notice that a copy of the budget is available upon request at no charge.

5.5. **Depository.** The depository of the Association shall be those banks or savings and loan associations, state and federal located in Florida, as shall be designated from time to time by the Board Of Administration and in which the money for the Association shall be deposited. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Board of Administration.

5.6. **Fidelity Bond.** The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association. As used in this section, the term "persons who control or disburse funds of the Association" means those individuals authorized to sign checks, and the President, Secretary and Treasurer of the Association. If the Association's annual gross receipts do not exceed \$100,000.00, the bond shall be in the principal sum of not less than \$10,000.00 for each such person. If the Association's annual gross receipts exceed \$100,000.00, but do not exceed \$300,000.00, the bond shall be in the principal sum of \$30,000.00 for each person. If the Association's annual gross receipts exceed \$300,000.00, the bond shall be in the principal sum of not less than \$50,000.00 for each person. The Association shall bear the cost of bonding.

5.7. **Annual Election Of Income Reporting Method.** The Board Of Administration shall make a determination annually, based on competent advice, whether

it shall cause the association's income to be reported to the Internal Revenue Service by the "regular" method (Federal Tax Form 1120) or the "alternative" method (Federal Tax Form 1120H), according to which method of reporting shall best serve the interests of the Association for the reporting period under consideration.

#### **ARTICLE VI. ASSESSMENTS AND COLLECTION**

**Assessments, Generally.** The making and collection of assessments shall be governed by Article 7 of the Declaration, the provisions of which are incorporated herein by this reference. In the event of any conflict between these Bylaws and the provisions of Article 6 of the Declaration, the provisions of the Declaration shall prevail.

#### **ARTICLE VII. ASSOCIATION CONTRACTS, GENERALLY**

7.1. **Fair And Reasonable Cancellation.** Any contract made by the Association before the members assume control from the Developer must be fair and reasonable. All contracts for the operation, maintenance or management of the Association or property serving the members, made by the Association, whether before or after assumption of control of the Association by the members, must not be in conflict with the powers and duties of the Association or the rights of the members. Contracts made by the Association before the members assume control may be cancelled by the members upon an affirmative vote of seventy five percent (75%) of the members.

7.2. **Escalation Clauses In Management Contracts Prohibited.** No management contract entered into by the Association shall contain an escalation clause, since they have been declared to be against the public policy of the State of Florida.

7.3. **Requirements For Maintenance And Management Control.** Written contracts for operation, maintenance and management entered into by the Association must contain certain elements in order to be valid and enforceable. These include, but are not limited to:

7.3.1. Specification of the services, obligations and responsibilities of the service provider;

7.3.2. Specification of costs for services performed;

7.3.3. An indication of frequency of performance of services;

7.3.4. Specification of minimum number of personnel to provide the services contracted for;

7.3.5. The disclosure of any financial or ownership interest that the Developer has in the service provided, if the Developer is in control of the Association.

## **ARTICLE VIII. ROSTER OF LOT OWNERS (MEMBERS) AND MORTGAGEES**

Each lot owner shall file with the Association, a copy of the deed or other instrument showing ownership of the lot, together with a copy of any mortgage on the lot and any satisfaction of that mortgage. The Association shall maintain these documents in a suitable binder for reference as required in the exercise of its powers and duties. The Association may rely upon the accuracy of those instruments for all purposes unless and until notified in writing of changes. Only members who are owners of record on the date notice of any meeting requiring their vote is given shall be entitled to vote at a meeting unless prior to the meeting the member produces adequate evidence as provided above, of their interest and shall waive in writing, notice of the meeting.

## **ARTICLE IX. COMPLIANCE AND DEFAULT**

9.1. **Remedies Available Against Members for Noncompliance:** In addition to other remedies provided by law and equity and by the Declaration, in the case of a member's noncompliance with the Act, the Declaration, the Articles, these Bylaws or the Rules and Regulations, the following remedies are available:

9.1.1. Actions at law and in equity by the Association or by any member against: (a) the Association; (b) a member; (c) any Board of Administration Member or officer of the Association who knowingly and willfully fails to comply; or (d) any tenants, guests or invitees occupying a lot or using the Common Areas.

9.2. The Association may suspend a member, the member's tenant, guests or invitees from the right to use Common Areas and facilities and may levy reasonable fines, not to exceed \$50.00 per violation. Any suspension of use of the Common Areas shall not impair the owner's right to have a vehicle and pedestrian ingress and egress from the owner's lot or the owner's right to vote as a member.

9.3. **Attorneys' Fees.** In any action brought pursuant to the provisions of Section 9.1, the prevailing party is entitled to recover reasonable attorneys' fees from the non-prevailing party.

9.4. **No Waiver Of Rights.** Neither a member nor the Association may waive a provision of the Act if that waiver would adversely affect the rights of a member or the purposes of the provision, except that members or Board Members may waive notice of specific meetings in writing.

## **ARTICLE X. ARBITRATION, INTERNAL DISPUTES**

Prior to the institution of litigation, the parties to a dispute shall petition to the Division for non-binding arbitration. Arbitration shall be conducted according to the rules promulgated by the Division. The filing of a petition for arbitration shall toll the

applicable statute of limitations. At the request of any party to the arbitration, such arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence and any party on whose behalf the subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law. The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in Lee County. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party may be awarded the costs of the arbitration, reasonable attorneys' fees, or both, in an amount determined in the discretion of the arbitrator. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition a court of competent jurisdiction in Lee County. A petition may not be granted unless the time for appeal by the filing of a complaint for trial a de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award. In the event of any conflict between the provisions of this Article X of the Bylaws and Article 10 of the Declaration, the provisions of the Declaration shall prevail.

#### **ARTICLE XI. LIABILITY SURVIVES MEMBERSHIP TERMINATION**

Termination of membership in the Association shall not relieve or release a former member from any liability or obligation incurred with respect to the member during the period of membership, nor impair any rights or remedies that the Association may have against the former member arising out of his membership and his covenants and obligations incident to that membership.

#### **ARTICLE XII. LIMITATIONS ON MEMBER LIABILITY FOR USE OF COMMON ELEMENTS**

Each member may be personally liable for the acts or omissions of the Association relating to the use of the common elements. That liability shall be shared with other members in the same percentages as their respective interests in the Common Areas. No individual member's liability shall exceed the value of that member's lot.

#### **ARTICLE XIII. PARLIAMENTARY RULES**

ROBERTS' RULES OF ORDER (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Act, the Declaration, the Articles or these Bylaws.

#### **ARTICLE XIV. RULES AND REGULATIONS**

14.1. **Board May Adopt.** The Board Of Administration may adopt and amend, from time to time, reasonable rules and regulations governing the details of the use and operation of the Common Areas.

14.2. **Posting And Furnishing Copies.** A copy of the rules and regulations adopted from time to time by the Board Of Administration, and any amendments to existing rules and regulations, shall be posted in a conspicuous place within McGregor Reserve and a copy furnished to each member. No rule, regulation or amendment shall become effective until thirty (30) days after posting, except in the case of an emergency, in which case, the rule, regulation or amendment shall become effective immediately on posting.

14.3. **Reasonableness Test.** Any rule or regulation created and imposed by the Board Of Administration must be reasonably related to the promotion of the health, happiness and peace of mind of the members and uniformly applied and enforced.

#### **ARTICLE XV. RESTRICTIONS ON AND REQUIREMENTS FOR USE, MAINTENANCE AND APPEARANCE OF THE LOTS**

15.1. **Where Contained.** Restrictions on the use, maintenance and appearance of the individual lots shall be as stated in the Declaration and no amendments or additions shall be contained elsewhere than in the Declaration as adopted by a vote of the members in the manner prescribed elsewhere in these Bylaws.

15.2. **Tests For Validity Of Restrictions.** Restrictions contained in the Declaration and any amendments duly adopted by a vote of the members shall be valid and in the nature of covenants running with the land, unless it is shown that they:

15.2.1. Are wholly arbitrary in their application;

15.2.2. Are in violation of public policy; or

15.2.3. Abrogate some fundamental constitutional rights.

#### **ARTICLE XVI. BYLAWS DEEMED AMENDED**

These Bylaws shall be deemed amended in those particulars as may be required to make them consistent with the provisions of the Act, as it may be amended from time to time.

**ARTICLE XVII. PRIORITIES IN CASE OF CONFLICT**

In the event of conflict between or among the provisions of any of the following, the order of priorities shall be, from highest priority to lowest:

- 17.1. The Act
- 17.2. The Declaration
- 17.3. The Articles
- 17.4. The Bylaws
- 17.5. The Rules and Regulations

**ARTICLE XVIII. INDEMNIFICATION**

Every officer and Board Of Administration member of the Association shall be indemnified by the Association against all expenses and liabilities, including reasonable attorneys' fees incurred and imposed in connection with any proceedings to which he may be a party, in which he may become involved by reason of his being or having been an officer or director of the Association, whether or not he is an officer or director at the time the expenses and liabilities are incurred. The officer or director shall not be indemnified if he is adjudged guilty of gross negligence or willful misconduct or shall have breached his fiduciary duty to the members of the Association. The Association shall not be liable, however, for payment of a voluntary settlement unless it is first approved by the Board Of Administration. The foregoing rights shall be in addition to and not exclusive of all other rights to which the directors or officer may be entitled.

**ARTICLE XX. DEFECTIVE ASSOCIATION DOCUMENTS, CURATIVE PROVISIONS**

The Association or a member may petition the Circuit Court of Lee County to correct an error or omission in the Declaration or any other documents required to establish the Association, affecting its valid existence, and which errors or omissions are not correctable by the amendment procedures in the Declaration or the Act. In any case, after three (3) years from the filing of the Declaration, it shall be deemed to be effective under the Act to create a Homeowner's Association, whether in fact it substantially complies with the mandatory requirements of the Act or not.

**ARTICLE XXI. AMENDMENTS**

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



21.1. **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

21.2. **Adoption.** An amendment may be proposed either by a majority of the Board of Administration or by not less than one-third (1/3) of the members of the Association. The amendment shall be adopted if it is approved either by:

21.2.1. Not less than a majority of the votes of the entire membership of the Association and by not less than two-thirds (2/3) of the Board of Administration; or

21.2.2. By not less than seventy five percent (75%) of the votes of the entire membership of the Association.

21.3. **Limitation.** No amendment shall be made that is in conflict with the Act or the Declaration, nor shall any amendment abridge, alter or amend the rights of the Developer or mortgagees of lots without their consent.

21.4. **Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and Bylaws. The certificate shall be executed by the President or Vice President and attested by the Secretary or assistant Secretary of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida.

21.5. **Format.** Proposals to amend existing Bylaws shall contain the full text of the Bylaws 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 amendments saying "SUBSTANTIAL REWORDING OF BYLAW. SEE BYLAW NUMBER \_\_\_\_ FOR PRESENT TEXT."

## **ARTICLE XXII. CONSTRUCTION**

Whenever the context permits or requires, the singular shall include the plural, the plural shall include the singular and the use of any gender shall be deemed to include all genders. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws or the intent of any provisions herein.

The foregoing was adopted as the Bylaws of McGregor Reserve Community Association, Inc. on this 4<sup>th</sup> day of February, 1997.

**MCGREGOR RESERVE COMMUNITY  
ASSOCIATION, INC.**

By: David G. Malt  
David G. Malt, Its President

ATTEST:

\_\_\_\_\_  
As Secretary (SEAL)