

**AMENDED AND RESTATED BYLAWS
OF
PINEHURST AT PELICAN SOUND HOMEOWNERS ASSOCIATION, INC.**

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NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE BYLAWS. FOR PRESENT TEXT SEE EXISTING BYLAWS.

**AMENDED AND RESTATED BYLAWS
OF
PINEHURST AT PELICAN SOUND HOMEOWNERS ASSOCIATION, INC.**

1. GENERAL. These are the Amended and Restated Bylaws of Pinehurst at Pelican Sound Neighborhood Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a residential community pursuant to Chapter 720, Florida Statutes, as amended (the "Act"). All prior Bylaws are hereby revoked and superseded in their entirety. The purpose of Chapter 720, Florida Statutes is to give statutory recognition to corporations not for profit that operate residential communities in this state, to provide procedures for operating homeowners associations and to protect the rights of association members without unduly impairing the ability of such associations to perform their function.

1.1 Principal Office. The principal office of the Association shall be at such location as may be determined by the Board of Directors.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document where a seal may be required.

1.3 Definitions. The definitions for various terms used in these bylaws shall be as set forth in the Declaration of Covenants, Conditions and Restrictions for Pinehurst at Pelican Sound (the "Declaration"), as amended or restated.

2. MEMBERS' VOTING RIGHTS. Every record owner of legal title to any Lot located in the Neighborhood is a Member. If a Lot is subject to an agreement for deed, whether recorded or not, the purchaser in possession shall be treated as the owner solely for purposes of determining voting and use rights. Membership is appurtenant to, runs with, and may not be separated from, the real property interest upon which membership is based.

2.1 Voting Interests. The members of the Association are entitled to one (1) vote for each Lot owned by them. The total number of votes shall equal the total number of Lots subject to this Declaration. The vote of a Lot is not divisible. If a Lot is owned jointly by two or more natural persons, that Lot's vote may be cast by any one of the record owners. If two or more owners do not agree among themselves how their one vote shall be cast on any issue, that vote shall not be counted on that issue. If the Owner of a Lot is a corporation, partnership, limited liability company, trust or other entity other than a natural person, the vote of that Lot shall be cast by the person designated in a Voting Certificate signed by all of the Owners (or the proper corporate officer) of said property. If the Owners do not agree among themselves how their one (1) vote shall be cast, no vote for that Lot shall be counted. The Membership of any Owner in the Association shall automatically terminate when the voting Member sells or transfers his or her Lot. The Association may suspend a Member's voting rights in the event of nonpayment of assessments that are delinquent in excess of ninety (90) days.

2.2 **Approval or Disapproval of Matters.** Whenever the decision or approval of an owner is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person who could cast the vote of that owner's Lot at an Association meeting, as stated in Section 2.1 above, unless the written approval or joinder of record owners is specifically required.

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

3. MEMBERS' MEETINGS.

3.1 **Annual Meeting.** The annual meeting of the members shall be held in Lee County, Florida, each year during the first three months of each calendar year, at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members. The annual meeting is a general meeting, and unless the law or the governing documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3.2 **Special Members' Meetings.** Special members' meeting must be held whenever called by the President or by a majority of the Directors, and may also be called by members representing at least ten percent (10%) of the voting interests. Business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 **Notice of Meetings.** Notice of all Members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The notice of meeting must be mailed to each member at the address which appears on the books of the Association (which shall be the address last furnished to the Association by the Owner), or may be furnished by hand-delivery, or by electronic transmission in the manner set forth in Section 617.0141, Florida Statutes, to the extent that a member has consented to receive notices by electronic transmission and has not revoked such consent. Any such consent to receiving electronic transmissions shall be deemed revoked if the Association is unable to deliver by electronic transmission two consecutive notices given by the Association in accordance with such consent, and such inability becomes known to the Secretary, Assistant Secretary or other authorized person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action. The member is responsible for providing the Association with notice of any change of mailing address, facsimile number or electronic mail address. To the extent that a member has provided the Association with a facsimile number or electronic mail address and consented to receive notices by electronic transmission, such information shall be considered an "official record" until the member has revoked his consent. The Association is not liable for an inadvertent disclosure of an electronic mail address or facsimile number where that information is not an official record of the Association.

The notice of meeting must be mailed, hand-delivered, or electronically transmitted at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. If ownership of a Lot is transferred after notice has been mailed, no separate notice to the new Owner is required. Attendance at any meeting by a

Member constitutes waiver of notice by that Member unless the Member objects to the lack of notice at the beginning of the meeting. A Member may waive notice of any meeting at any time, but only by written waiver.

3.4 **Quorum.** The percentage of voting interests required to constitute a quorum at a meeting of the members shall be thirty percent (30%) of the total voting interests. After a quorum has been established at a Members' meeting, the subsequent withdrawal of any Members, so as to reduce the number of voting interests represented below the number required for a quorum, shall not affect the validity of any action taken at the meeting before or after such persons leave.

3.5 **Vote Required.** The acts approved by a majority of the votes cast, in person or by proxy, at a meeting of the members at which a quorum has been attained shall be binding upon all owners for all purposes, except where a higher vote is required by law or by any provision of the Governing Documents, or when proportionate voting is required by the Club Documents regarding major financial issues and document changes.

3.6 **Proxies.** To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by a person authorized to cast the vote for the unit, and specify the date, time and place of the meeting for which it is given. A photostatic, facsimile, pdf or equivalent reproduction of a proxy is a sufficient proxy. Holders of the proxies need not be members. No proxy is valid if it names more than one person as the proxy holder, but the proxy holder has the right, if the proxy so provides, to substitute another person to hold the proxy.

Except as specifically otherwise provided herein, Members may not vote by general proxy, but may vote by limited proxy. Limited proxies and general proxies may be used to establish a quorum. General proxies shall not be used in the election of directors. General proxies may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Limited proxies shall be used for any matter for which the Governing Documents require or permit a vote of the Members and for which a general proxy is not permitted, including, without limitation, election of directors, votes taken to waive or reduce reserves; waive financial statement requirements, and amend the Governing Documents. Notwithstanding the foregoing, Members may vote in person at Members' meetings.

3.7 **Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Unless the Bylaws require otherwise, adjournment of annual or special meeting to a different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting.

3.8 **Order of Business.** The order of business at members' meetings shall be substantially as follows:

- (A) Determination of existence of quorum.
- (B) Proof of Notice of Meeting.

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- (C) Reading or waiver of reading of minutes of last members' meeting.
- (D) Reports of Officer.
- (E) Reports of Committees.
- (F) Election of Directors (annual meeting only).
- (G) Unfinished Business.
- (H) New Business.
- (I) Adjournment.

3.9 **Minutes.** Minutes of all meetings of Members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by Members or their authorized representatives and Board members at reasonable times and for a period of seven (7) years after the meeting. Minutes must be reduced to written form within a reasonable time after the meeting at which they were taken.

3.10 **Parliamentary Rules.** Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian, but the presiding officer's decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.11 **Action by Members Without Meeting.** Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of *the* voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.11, the list of owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters. The written consents used to authorize an action without a meeting shall become part of the Association's records.

3.12 **Voting Representative to Club.** In accordance with the requirements of the Club documents, the Association President shall be the Association's Voting Representative to the Club. The Voting Representative shall attend the meetings of the members of the Club, and shall cast, in a block, all votes of the members of this Association on any and all questions which may arise. The votes shall be cast in the manner directed by the Board of Directors, or absent such direction, in the manner determined by the Voting Representative.

3.13 **Polling of Members.** To the extent feasible and practical, the Association shall poll its members on questions to be decided by a vote of the members of the Club, so that this Association's votes are more likely to be cast in the manner preferred by the majority of the members. If such a poll is conducted, the Board shall instruct its Voting Representative to cast all votes of the Association in a block, supporting the point of view preferred by the majority of the members who responded to the poll. The Voting Representative may not vote by proxy at Club meetings, but if permitted by the Club, the Vice-

President or other director designated in writing by the Board may substitute if the Voting Representative cannot attend any meeting of the Club.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the members only when specifically required.

4.1 Number of Terms of Service. The Board of Directors shall consist of three (3) Directors. Each Director is currently serving a three (3) year staggered term, with one director being elected every year. A Director's term of office that expires at the annual election in which a successor is to be elected. Directors shall be elected for no more than two consecutive terms, ending at the final adjournment of the annual meeting at which successors are to be duly elected, or at such time as may be provided by law. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in 4.4 below.

4.2 Qualifications. Each Director must be a Member, a Primary Occupant (in the case of Lots required to designate Primary Occupants), or the spouse of a Member or Primary Occupant. Co-owners of a Lot may not serve as board members at the same time, unless they own more than one (1) Lot. A person who is delinquent in the payment of any fee, fine or other monetary obligation to the Association for more than ninety (90) days is not eligible for Board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for Board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the Board.

4.3 Nominations and Elections. At each Annual Meeting the members shall elect as many Directors as there are regular terms of Directors expiring or vacancies to be filled according to the procedures established by the Board. The nominating committee, if any, shall submit the names of its recommended candidates for the office of Director in time to be included with the notice to the members of the annual meeting. Nothing herein shall be construed to require or prohibit the use of a secret ballot. Directors shall be elected by a plurality of the votes cast at the annual meeting. In the election of Directors, there shall be appurtenant to each Lot as many votes as there are Directors to be elected. No member may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. In any election where candidates are elected for different terms (such as an election for the remainder of a vacant term), the candidates receiving the higher number of votes shall be elected to the lengthier seat. In the event that there is no election, such as in a case where there are fewer candidates than open seats, the Directors who are seated shall agree amongst themselves which shall serve the lengthier term. This decision shall be recorded in the minutes of a duly notice Board of Directors' meeting. In the event the Directors cannot agree on which among them shall serve the lengthier and shorter seats, the Directors shall decide by drawing straws.

An Owner who needs assistance in casting the ballot due to blindness, disability, inability to read or write or other reasons set forth in Section 101.051, Florida Statutes, may obtain such assistance. The Board may utilize a nominating committee and/or solicit candidates from the owners directly. Nominations from the floor shall be accepted only if required by Florida Statutes Chapter 720 (the "Act").

At the commencement of the annual meeting, any nominations from the floor shall be accepted only if required by the Act, all election ballots not yet cast shall be collected and the polls shall then be closed. The remaining business of the annual meeting shall proceed while the ballots and proxies are counted.

4.4 **Vacancies on the Board.** If the office of any Director becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to fill the remaining unexpired term. If for any reason there shall arise circumstances in which no Directors are serving and the entire Board is vacant, or if the remaining Board members are unwilling or unable to appoint a successor, the Members shall elect successors by written ballot in the same manner as provided generally for regular annual elections, except that the election need not take place on the date of the annual meeting.

4.5 **Recall of Directors.** Any or all Directors may be removed ("recalled") with or without cause by a majority vote of the entire Membership, either by a written petition, or at any meeting called for that purpose, in the manner required by Section 720.303(10), Florida Statutes.

4.5.1 **Recall of Directors by Meeting.** A special meeting of the Members to recall a Director or Directors of the Board may be called by at least ten percent (10%) of the voting interests, giving notice of the meeting as required for any other Members' meeting, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for the purpose of a recall. If the recall is approved by a majority of the entire membership by a vote at a meeting, the recall will be effective as provided below. The Board shall duly notice and hold a Board meeting within five (5) full business days of the adjournment of the Members' recall meeting. At the Board meeting, the Board shall either certify the recall, in which case such member or members of the Board shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all Association records and property in their possession, or shall proceed as set forth in Section 4.5.3 below.

4.5.2 **Recall of Directors by Written Agreement.** If the proposed recall is by a written agreement by a majority of the entire membership, the written agreement or a copy thereof shall be served on the Association by certified mail or by personal service in the manner authorized by Chapter 48, Florida Statutes and the Florida Rules of Civil Procedure. The Board shall duly notice and hold a Board meeting within five (5) full business days after receipt of the written agreement. At the meeting, the Board shall either certify the written agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all Association records and property in their possession, or shall proceed as set forth in Section 4.5.3 below.

4.5.3 **Recall Arbitration.** If the Board determines not to certify the recall, the Board shall, within five (5) full business days after its meeting, file with the Florida Division of Condominiums a Petition for Arbitration pursuant to the procedures set forth in the Act. For the purposes of this section, the members who voted at the meeting or who executed the written agreement shall constitute one party under the Petition for Arbitration. If the Arbitrator certifies the recall as to any member or members of the Board, the recall will be effective upon mailing of the final order of arbitration to the Association. Any member or members so recalled shall deliver to the Board any and all Association records in their possession within five (5) full business days of the effective date of the recall.

4.5.4 **Failure of Board to Hold Board Meeting.** If the Board fails to duly notice and hold a Board meeting within five (5) full business days of service of a written recall agreement or within five

(5) full business days of the adjournment of the Members' recall meeting, the recall shall be deemed effective and the Board members so recalled shall immediately turn over to the Board any and all Association records and property in their possession.

4.5.5 Filling Vacancies Caused by Recall. If a vacancy occurs on the Board as a result of a recall and less than a majority of the Directors are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors. If for any reason, the remaining Board members are unwilling or unable to appoint a successor, the members shall elect successors by written ballot in the same manner as provided generally for regular annual elections, except that the election need not take place on the date of the annual meeting. If vacancies occur on the Board as a result of a recall and a majority or more of the Directors are removed, the vacancies shall be filled in accordance with administrative rules of the Florida Division of Condominiums.

4.5.6 Administrative Rules of the Division. The recall of one or more Directors shall occur in accordance with Rules 61B-23.0027 and 23.0028, Florida Administrative Code.

4.6 Board Meetings. A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board must be open to all members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege; personnel matters; or those meetings permitted to be closed by the Act. Notices of all Board meetings must be posted in a conspicuous place in the Neighborhood at least forty-eight (48) hours in advance of every meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the Neighborhood, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessment. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. Any owner may tape-record or videotape meetings of the Board of Directors and meetings of the members. The Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership. Members have the right to speak, for at least three (3) minutes, on any matter that is placed on the Board meeting agenda by petition of the membership pursuant to Section 720.303(2)(d) of the Act. The Association may adopt reasonable, written Rules and Regulations expanding the rights of Members to speak and governing the frequency, duration, and other manner of Member statements, (including a sign-up sheet requirement), which Rules and Regulations must be consistent with the minimum requirements of Section 720.303(2)(b) of the Act.

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

4.8 Quorum of Directors. A quorum at a Board meeting shall exist only when a majority of all Directors are present in person. Directors may participate in any meeting of the Board, or meeting of an executive or other committee by means of a conference telephone call or other similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy at Board meetings.

4.9 **Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. When the meeting is reconvened, provided a quorum is then present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

4.10 **Presiding Officer.** The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.

4.11 **Vote Required.** The acts approved by a majority of those Directors who are present and voting at a Board meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Governing Documents or by law. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of the point of view that prevails on any question, unless he voted against such action or abstained from voting because of an asserted conflict of interest.

4.12 **Directors' Fees and Reimbursement of Expenses.** No compensation or fees shall be paid to Directors for their service as Directors. Directors may be reimbursed for all actual and proper out-of-pocket expenses related to the proper discharge of their respective duties.

4.13 **Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Neighborhood. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. The meetings of any committee or similar body, vested with the power to either make a final decision regarding the expenditure of Association funds or to approve or disapprove architectural decisions with respect to a specific Lot owned by a member of the Association, must be conducted with the same formalities as required for meetings of the Board. All other committees shall be exempt from those requirements. However, committee meetings between the committee and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege; personnel matters; or other meetings permitted to be closed under the Act may not be open to attendance by Members.

4.14 **Order of Business/Agenda.** The order of business and agenda at all regular meetings of the Board of Directors shall be as follows:

- (A) Call to Order.
- (B) Call of the Roll or certification of quorum.
- (C) Proof of Notice and Posting.
- (D) Reading or disposal of any unapproved minutes.
- (E) Reports of officers and manager.
- (F) Reports of committees.
- (G) Unfinished business.
- (H) New business (with the items to be voted on specifically listed in the agenda).
- (I) Adjournment.

4.15 **Powers and Duties of the Board of Directors.** All of the powers and duties of the Association existing under the Chapter 617, Florida Statutes, Chapter 720, Florida Statutes, the Declaration, the Articles of Incorporation, these By-Laws and the Rules and Regulations shall be exercised exclusively

by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by Members when such is specifically required. Such powers and duties of the Directors shall include, but not be limited to, the following:

4.15.1 To adopt budgets, borrow money and levy and collect assessments and fees from and against owners and users to defray the expenses of the Association.

4.15.2 To use and expend the assessments collected for the purpose stated in the Declaration and to maintain, operate, lease, care for and preserve the Common Property.

4.15.3 To purchase the necessary equipment required in the maintenance, care and preservation referred to above.

4.15.4 To enter into and upon the Lots when necessary, with as little inconvenience to the Owners as possible, in connection with said maintenance, care and preservation.

4.15.5 To insure and keep insured said Common Property against loss from fire and/or other casualty and the Owners against public liability, and to purchase such other insurance as the Board may deem advisable.

4.15.6 To reconstruct common improvements after casualty and the further improvement of the property.

4.15.7 To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin and/or seek damages from the Members for violations of these By-Laws, the Articles of Incorporation, the Declaration, and the Rules and Regulations promulgated by the Board.

4.15.8 To employ and compensate such personnel as may be required for the maintenance and preservation of the Common Property.

4.15.9 To enact rules and regulations concerning the use and operation of the property within Neighborhood.

4.15.10 To acquire, rent or lease Lots and/or portions of the Common Property in the name of the Association or a designee.

4.15.11 To contract for the management of the Common Property and to delegate to such other party all powers and duties of the Association except those specifically required by the Declaration to have the specific approval of the Board or the Members.

4.15.12 To grant easements and licenses over the Common Property as necessary or desirable for proper operation of the Community. To carry out the obligations of the Association under any easements, restrictions or covenants covered by the Declaration.

4.15.13 To approve or disapprove the renting or the transfer of ownership of Lots in the manner provided in the Declaration and these By-Laws.

4.15.14 The maintenance, repair, replacement, operation and improvement of the Common Property.

4.15.15 To bring and defend suits, make and execute contracts, deeds, mortgage, leases, licenses and other instruments by its officers and to purchase, own, lease, convey and encumber real and personal property.

4.15.16 To Levy Fines. The Directors may, pursuant to Florida Statutes Section 720.305 and Section 8.1 hereof, impose fines or impose suspension of use rights for failure to comply with the provisions of the Governing Documents, including the Rules and Regulations, by owners, occupants, licensees, tenants and invitees.

4.16 **Emergency Powers.** In the event of any "emergency" as defined in Section 4.14(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes, as amended from time to time.

- (A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.
- (B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.
- (C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.
- (D) Corporate action taken in good faith during an emergency under this Section 14.4 to further the ordinary affairs of the Association shall bind the Association, and shall have the rebuttable presumption of being reasonable and necessary.
- (E) Any officer, director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.
- (F) These emergency Bylaws shall supersede any inconsistent or contrary provision of the Bylaws during the period of the emergency.
- (G) For purposes of this Section 14.4, an "emergency" exists only during a period of time during which the Neighborhood, or the immediate geographic area in which the Neighborhood is located, is subjected to:
 - (1) a state of emergency declared by law enforcement authorities;
 - (2) a hurricane warning;

- (3) a partial or complete evacuation order;
- (4) designation by federal or state government as a "disaster area;" or
- (5) a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Neighborhood, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

5. OFFICERS. Officers are elected by majority vote of the entire Board and serve at the pleasure of the Board. The executive officers of the Association shall be a President, and a Vice-President, who must be Directors, and a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board of Directors shall appoint, from time to time, such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President. An officer more than ninety (90) days delinquent in the payment of regular Assessments shall be deemed to have abandoned the office, creating a vacancy to be filled according to law.

5.1 President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association. He shall serve as the Neighborhood Voting Representative to the Club.

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

5.3 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall be responsible for the recording of all votes, and the minutes of all proceedings, in a book to be kept for the purpose, and shall perform like duties for standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Governing Documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is designated.

5.4 Treasurer. The Treasurer shall be responsible for the safekeeping of Association funds and assets, budget preparation and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all

his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

5.5 **Compensation of Officers.** No compensation shall be paid to any member for services as an officer of the Association. This provision does not preclude the Board of Directors from employing officers in other capacities as employees of the Association.

5.6 **Resignation of Officer.** Any Director or officer may resign his office at any time, in writing, and such resignation shall take effect from the time of its receipt by the Association, unless some later time be fixed in the resignation, and then from that date.

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

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

6.1 **Depository.** The Association shall maintain its funds in accounts in such federally insured accounts at financial institutions as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

6.2 **Accounts and Accounting Procedures.** The financial and accounting records of the Association must be kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and accounting records must include:

- (A) Accurate, itemized, and detailed records of all receipts and expenditures.
- (B) A current account and a period statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
- (C) All tax returns, financial statements, and financial reports of the Association.
- (D) Any other records that identify, measure, record or communicate financial information.

6.3 **Budget.** The Board of Directors shall adopt in advance an annual budget of common expenses for each fiscal year. The budget must reflect the estimated revenues and expenses for the next fiscal year, and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, or another person. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will

be considered shall be mailed to or served on each owner not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income accounts and expense classifications. The minutes of the Association shall reflect the adoption of the budget, and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the Association. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and payments shall be continued at such rate until a budget is adopted and new quarterly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each Lot's next due quarterly installment.

6.4 **Reserves.** The Board may establish one or more reserve accounts for contingencies, cash flow shortfalls, capital expenditures, and deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

6.5 **Assessments.** Regular annual assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installments shall be sent to all Members at least ten (10) days prior to the due date. Failure to send or receive such notice does not excuse the obligation to pay.

6.6 **Special Assessments.** Special assessments may be imposed by the Board of Directors whenever necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. Written notice of any Board meeting at which a non-emergency special or regular Assessment, will be considered, must be mailed, hand-delivered, or electronically transmitted (in the latter case, to those Lot Owners who have so consented) to all Owners and posted conspicuously in the Neighborhood at least fourteen (14) days in advance, which notice shall state that Assessments will be considered and the nature, estimated cost and description of the purposes for such Assessments. The notice to Owners that any special Assessment has been levied must contain a statement of the purpose(s) of the Assessment, and the funds collected must be spent for the stated purpose(s). The funds collected must be spent for the stated purpose(s) or credited back to the members' accounts.

6.7 **Fidelity Bonds.** The President, Secretary, Treasurer, and any persons who are authorized to sign checks, shall be bonded in such amount as may be required by law or by the Board of Directors. The premiums on such bonds shall be a common expense.

6.8 **Financial Reporting.** Within ninety (90) days after the end of the fiscal year, the Association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within twenty-one (21) days after the final financial report is completed by the Association or received from the third party, the Association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The Association's financial statement requirement shall be based upon the Association's total annual revenues as set forth in Florida Statutes Section 720.303(7).

If approved by a majority of the voting interests present at a duly called meeting of the Members, the Association shall prepare or cause to be prepared:

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- (A) A report of cash receipts and expenditures in lieu of compiled, reviewed, or audited financial statements;
- (B) a report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
- (C) a report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

6.9 **Audit.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all owners.

6.10 **Application of Payments.** All payments on account by an owner shall be applied first to interest, then to late payment fees, then to attorney's fees and costs, then to other charges, and finally to unpaid regular and special assessments, in the order they first came due.

6.11 **Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each year, unless modified by the Board of Directors in accordance with IRS regulations.

7. RULES AND REGULATIONS; USE AND RESTRICTIONS. The Board of Directors, from time to time, may adopt and amend reasonable rules and regulations governing the operation, use, maintenance, management and control of the Neighborhood Common Areas and the operation of the Association. Copies of such rules and regulations shall be furnished to each owner. The Board shall have the power to impose fines and suspensions of common area use privileges, as further provided in the Declaration, or violations of the rules and regulations. The Rules and Regulations may not conflict with the rights of Owners as provided in the Declaration or reasonably inferable therefrom. Rules and Regulations regarding Lot use shall be adopted by the Board of Directors in accordance with the notice requirements set forth in these Bylaws. Rules and Regulations may, but need not be, recorded in the Public Records of Lee County, Florida.

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

8.1 **Fines.** The Board of Directors may levy reasonable fines against any Member, or suspend the use rights of, any Member's tenant, guest, or invitee for the failure of the Owner, occupant, licensee or invitee to comply with the provisions of the Governing Documents. No fine may exceed \$100 per violation or the maximum allowed by law. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that a fine may not exceed \$1000 in the aggregate. A fine of less than \$1,000 may not become a lien against a Lot. In any action to recover a fine, the prevailing party is entitled to reasonable attorney's fees and costs from the nonprevailing party as determined by the court. The procedure for imposing such fines shall be as follows:

- (A) The party against whom the fine or suspension is sought to be levied shall be afforded an opportunity for hearing before a committee of at least Members who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The party shall

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receive reasonable notice of not less than fourteen (14) days, and the notice shall include:

- (1) A statement of the date, time and place of the hearing;
 - (2) A statement of the provisions of the Governing Documents which have allegedly been violated; and
 - (3) A short and plain statement of the matters asserted by the Association.
- (B) The party against whom the fine or suspension may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The Owner shall be the party ultimately responsible for payment of a fine, regardless of whether the fine relates to conduct by a tenant, family member, invitee or guest. If the committee does not agree with the fine or suspension, the fine or suspension may not be levied.
- (C) Exceptions to Hearing and Notice Requirements. The notice and hearing requirements of this Section 8.1 do not apply to the imposition of suspensions or fines against a Lot Owner or Occupant because of failing to pay any amounts due the Association. If such a fine or suspension is imposed, the Association must levy the fine or impose a reasonable suspension at a properly noticed Board meeting, and after the imposition of such fine or suspension, the Association must notify the Lot Owner and, if applicable, the Lot Occupant, licensee or invitee by mail or hand delivery.

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

9. **AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner.

9.1 Proposal. Amendments to these Bylaws may be proposed by a majority of the Board or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests.

9.2 Vote Required. Except as otherwise provided by law, or by specific provision of the Governing Documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association present and voting at any annual or special meeting called for the purpose, provided that the full text of any proposed amendment has been given to the members with notice of the meeting. The Bylaws shall be deemed amended by virtue of revisions to laws, regulations and statutes which control over conflicting provisions of the Bylaws. The Board of Directors shall have the authority to amend the Bylaws in order to conform the provisions

thereof with such revisions to laws, regulations and statutes. In addition, the Board of Directors may amend the Bylaws to correct author's errors or omissions, and amend and restate the Bylaws in order to consolidate into one document amendments previously adopted by the members or the Board. Amendments adopted by the Board shall occur at a duly noticed Board meeting (with adoption of the amendments set forth on the agenda).

9.3 **Effective Date, Recording.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida. The certificate must identify the book and page of the Public Records where the Declaration was originally recorded.

10. OFFICIAL RECORDS.

10.1 **Maintenance of Official Records.** The Association shall maintain all of the following items, when applicable, that are required to be maintained as "official records" pursuant to Section 720.303, Florida Statutes, including the following:

- (A) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair, or replace.
- (B) A copy of the recorded Declaration and Bylaws; a certified copy of the Articles of Incorporation; and a copy of all amendments to the foregoing documents.
- (C) A copy of the current Rules and Regulations.
- (D) A book or books that contain the minutes of all meetings of the Association members, and the Board of Directors, which minutes must be retained for at least (7) years.
- (E) A current roster of all Owners and their mailing addresses, parcel identifications, and, if known, telephone numbers. The Association shall also maintain the electronic mailing addresses and facsimile numbers of Owners consenting to receive notice by electronic transmission. The electronic mailing addresses and facsimile numbers provided by Owners to receive notice by electronic transmission are not accessible to members if consent to receive notice by electronic transmission is not provided in accordance with Section 10.3(E) below. However, the Association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.
- (F) All of the Association's insurance policies or a copy thereof, which policies must be retained for at least 7 years.
- (G) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the

association for work to be performed must also be considered official records and must be kept for a period of 1 year.

- (H) Financial and accounting records of the Association, which must be maintained for at least seven (7) years. The accounting records shall include, but are not limited to:
 - (1) Accurate, itemized and detailed records of all receipts and expenditures.
 - (2) A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - (3) All tax returns, financial statements, and financial reports of the Association.
 - (4) Any other records that identify, measure, record, or communicate financial information.
- (I) A copy of the disclosure summary described in Section 720.401(1), Florida Statutes.
- (J) All other written records of the Association not specifically included in the foregoing which are related to the operation of the Association.

10.2 **Access to Official Records.** The Association's official records are open to inspection by any member or the authorized representative of such member at all reasonable times within 10 business days after receipt of a written request for access. The Association may comply with this requirement by having a copy of the official records available for inspection or copying in the community. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The Board may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The Association may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association's failure to provide the records within ten (10) working days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this Section. An Owner who is denied access to official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this Section. The minimum damages shall be \$50 per calendar day up to ten (10) days, the calculation to begin on the 11th business day after receipt of the written request. The Association shall maintain an adequate number of copies of the recorded governing documents to ensure their availability to Owners and prospective purchasers.

10.3 **Official Records Exempt from Inspection and Copying.** The following records shall not be accessible to Owners:

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- (A) Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes; and any record protected by the work-product privilege, including any record prepared by an Association attorney or prepared at the attorney's express direction; which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.
- (B) Information obtained by the Association in connection with the approval of the lease, sale or other transfer of a Lot.
- (C) Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-paragraph, the term "personnel records" does not include written employment agreements with an Association employee or management company, or budgetary or financial records that indicate the compensation paid to an Association employee.
- (D) Medical records of Lot Owners.
- (E) Social Security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, any addresses of Owner other than as provided to fulfill the Association's Notice requirements under the Governing Documents and/or the Act, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the Association to fulfill the Association's notice requirements. However, an owner may consent in writing to the disclosure of protected information described in this sub-paragraph. The Association is not liable for the inadvertent disclosure of information that is protected under this sub-paragraph if the information is included in an official record of the Association and is voluntarily provided by an Owner and not requested by the Association.
- (F) Any electronic security measure that is used by the Association to safeguard data, including passwords.
- (G) The software and operating system used by the Association which allows manipulation of data, even if the Owner owns a copy of the same software used by the Association. The data is part of the official records of the Association.

11. MISCELLANEOUS.

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

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

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

Instrument prepared by and after
recording return to:
Ashley D. Lupo, Esq.
Roetzel & Andress
850 Park Shore Drive
Naples, FL 34103
(239) 649-6200

INSTR # 2013000125228, Pages 63
Doc Type RES, Recorded 05/29/2013 at 04:11 PM,
Linda Doggett, Lee County Clerk of Circuit Court
Rec. Fee \$537.00
Deputy Clerk LTALONE
#1

(Space above line for recording information)

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly elected and acting President of Pinehurst at Pelican Sound Neighborhood Association, Inc., a Florida corporation, not for profit, does hereby certify that at the duly noticed annual members' meeting held on March 7, 2013, at which a quorum was established, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pinehurst at Pelican Sound Neighborhood and the Amended and Restated Bylaws of Pinehurst at Pelican Sound Neighborhood Association, Inc. set forth in Exhibits "A" and "B" respectively and attached hereto, were approved and adopted by the required vote of the membership. The original Declaration of Covenants, Conditions and Restrictions for Pinehurst at Pelican Sound Neighborhood was recorded at O.R. Book 3036 at Page 1416, et. seq., Public Records of Lee County, Florida.

PINEHURST AT PELICAN SOUND
NEIGHBORHOOD ASSOCIATION, INC.

(SEAL)

Joyce Lenart
Name: Joyce Lenart
Its: President

J. Ann Lupton
Witness:
Print Name: JOAN LUPTON

Denise West
Witness:
Print Name: Denise West

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 25 day of March, 2013, by Joyce Lenart, as President of Pinehurst at Pelican Sound Neighborhood Association, Inc., the corporation described in the foregoing instrument and who is (☒) personally known to me or who has produced _____ as identification and acknowledged executing the same under authority vested in him/her by said corporation and the seal affixed thereto is the seal of said corporation.



Denise West
Notary Public
Print Name: Denise West
My Commission Expires: 4-11-13