

PREPARED BY:  
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**CERTIFICATE OF AMENDMENT**  
**TO THE**  
**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS**  
**FOR**  
**WINDING CYPRESS**

THE UNDERSIGNED being the President WINDING CYPRESS HOMEOWNERS ASSOCIATION, INC., a Florida non-profit corporation, does hereby certify that the attached amendments to the Original Declaration of Covenants Conditions and Restrictions for Winding Cypress, the Articles of Incorporation for Winding Cypress Homeowners Association, Inc., and the Bylaws for Winding Cypress Homeowners Association, Inc., recorded at Official Records Book 5097, Page 2640, *et seq.*, of the Public Records of Collier County, Florida, and as amended from time to time, were duly approved, adopted and ratified by sufficient votes of the Membership at a meeting called for that purpose at which a quorum was present and held on the 5<sup>th</sup> day of February, 2024.

**WITNESSES:**

(Sign) Bonnie Lorence  
(Print) Bonnie Lorence  
(Sign) Jade McKim  
(Print) Jade McKim

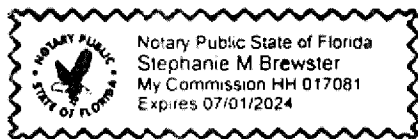
**WINDING CYPRESS HOMEOWNERS ASSOCIATION, INC.**  
  
BY: [Signature]  
**President of the Association**  
**Print Name: William Powell**

**STATE OF FLORIDA**  
**COUNTY OF COLLIER**

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization on this 1<sup>st</sup> day of February 2024 by William Powell, as President of WINDING CYPRESS HOMEOWNERS ASSOCIATION, INC., a Florida non-profit corporation, on behalf of said corporation. Said person is [] personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

**NOTARY PUBLIC:**

[Signature]  
STATE OF FLORIDA (SEAL)  
My Commission Expires: 7.1.2024



**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**FOR**

**WINDING CYPRESS**

**KNOW ALL PERSONS BY THESE PRESENTS** that on November 25, 2014, the original Declaration of Covenants Conditions and Restrictions for Winding Cypress was recorded in Official Record Book 5097, at Page 2640 *et seq.*, of the Public Records of Collier County, Florida. The Declaration, as it has been amended, is hereby further amended and restated in its entirety.

The land subject to this Declaration (hereinafter the "Property") is more particularly described on Exhibit "A", which is incorporated herein by reference and made a part hereof.

No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future Owners. The acquisition of title to a Unit or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a Unit or the Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

1. **DEFINITIONS.** The terms used in this Declaration and its recorded exhibits shall have the definitions set forth in Chapter 720, Florida Statutes (2023) (the "Act"), as amended from time-to-time hereafter:

1.1 "Assessment" shall have the meaning set forth in Section 720.301, Florida Statutes (2023).

1.2 "Architectural Reviewer " means and refers to the entity responsible for review and approval of construction and alterations to improvements, as more particularly described in Section 5 herein.

1.3 "Association" shall mean and refer to Winding Cypress Homeowners Association, Inc., a Florida corporation not for profit.

1.4 "Board of Directors" means and refers to the Board of Directors of the Association.

1.5 "Common Area" means and refers to all real property which is now or hereafter owned or leased by the Association or dedicated for use or maintenance by the Association or its Members, including, regardless of whether title has been conveyed to the Association: real property the use of which is dedicated to the Association or its Members by a recorded plat; or real property committed by this Declaration to be leased or conveyed to the Association.

1.5.1 "Common Expenses" means and refers to all expenses properly incurred by the Association in the performance of its duties.

1.5.2 "Conservation Area" means and refers to that portion of the Common Area, if any, other than a Preservation Area, which may include native habitats set aside to fulfill open space requirements, and which is intended to be maintained by the Association without specific management guidelines.

1.6 "Declaration" means and refers to this Declaration of Covenants, Conditions and Restrictions, and any amendments hereto.

1.7 "Family" or "Single Family" shall refer to one (1) natural person (as opposed to an artificial entity); or a group of two (2) or more natural persons living together each of whom is related to each of the others by blood, marriage, legal custody or adoption; or not more than two (2) persons not so related, who reside together as a single housekeeping and economic unit, along with their children, if any.

1.8 "Governing Documents" means and refers to this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, Architectural Review Guidelines and the Resolutions of the Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority stated above.

1.9 "Guest" or "Guests" means any person or persons physically present in, or occupying a Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration, or using the Common Area at the invitation of an Owner or other legally permitted occupant.

1.10 "Institutional Mortgagee" means the mortgagee or assignee of a first mortgage against a Parcel or Unit, which mortgagee or assignee is a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Parcel or Unit which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private agency engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Unit.

1.11 "Lease" means the grant by an Owner of a temporary right to occupy the Owner's Unit for valuable consideration. The term "Lease" and all its derivations includes but is not limited to any form of occupancy by a person other than the Owner of the Unit for which any form of consideration is paid by the occupant or on behalf of the occupant to any other person or entity including but not limited to occupancy pursuant to a license, transient rental agreement, barter home exchange, or raffle.

1.12 "Member" means and refers to all persons who are members of the Association as provided in the Governing Documents.

1.13 "Winding Cypress" means and refers to the planned unit development created pursuant to this Declaration.

1.14 "Owner" means and refers to any person or persons, entity or entities, who is or are the record owner(s) of the fee simple title to any Parcel in Winding Cypress, including the owners of Villa Units. The Owner of a Villa Unit is referred to herein as a "Villa Owner" in the context of provisions herein which specifically address the rights and obligations of Villa Owners, as opposed to Owners generally.

1.15 "Parcel" or "Parcels" means any platted or unplatted lot, tract, or other discrete area of real property within Winding Cypress which is capable of separate conveyance and has been subjected to this Declaration, but shall exclude: Common Area; all property dedicated or deeded to Collier County, Florida, the South Florida Water Management District ("SFWMD") or any other governmental

authority, taxing district, the CDD (as defined below) or a public or private utility, including, without limitation, roads, environmental buffers, landscape buffers, preservation and conservation areas and lakes. Wherever herein the term "Parcel" is used in this Declaration, it shall be interpreted as if followed by the words "and Unit constructed thereon" except where the context clearly requires otherwise. The term "Villa Parcel" is used herein in the context of provisions that relate specifically to Parcels upon which a Villa Unit is constructed, as opposed to Parcels generally.

1.16 "Plats" means Winding Cypress Phase One PB 57 Page 89-97, Winding Cypress Phase Two PB 60 Pages 73-84, Winding Cypress Phase 2 Replat PB 62 Pages 54-58, Winding Cypress Phase 2C PB 60 Pages 22-23 and Winding Cypress Phase 3 PB 65 Pages 23 -31 all of the public record Collier County, Florida.

1.17 "Preservation Area" means that portion of the Common Area, if any, which is intended to be preserved and maintained by the Association in its existing (or restored) natural and native condition in perpetuity.

1.18 "Primary Occupants" means the two (2) natural persons approved for occupancy, together with their Family, in accordance with Section 12 herein.

1.19 "Rules and Regulations" means and refers to the rules and regulations governing use of the Common Area, the Parcels, the Units and procedures for administering the Association and Winding Cypress, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

1.20 "Single Family Residence" means and refers to a Unit which is restricted to occupancy only by the Owner or Primary Occupants and their Family, Guests and Tenants as further provided herein.

1.21 "Stormwater Management System" means and refers to a drainage system consisting of swales, inlets, culverts, retention ponds, ditches, water control features, floodplain compensation areas, wetlands and any associated buffer areas and wetland mitigation areas, detention ponds, lakes, outfalls, storm drains and other similar and/or related improvements, and all connecting pipes and easements, to the extent that any such facilities, areas or conditions apply to Winding Cypress, which is designed and constructed or implemented to control discharges necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect quantity and quality of discharges from the system, as permitted pursuant to the permit issued by the SFWMD.

1.22 "Tenant" or "Tenants" means and refers to one who leases or rents from an Owner and holds temporary possession of a Unit.

1.23 "Unit" means and refers to any or all the residences which will be constructed on the Parcels, each intended for use and occupancy as a Single Family Residence, including attached Units that are not condominium units ("Villa Units"). The term "Villa Units" is used herein in the context of provisions that related specifically to Units that are villas, as opposed to Units generally.

1.24 "Wetland" means and refers to any area within Winding Cypress identified or designated as habitat for wetland species of plants and/or animals by the SFWMD or by Collier County, Florida, or by the United States Army Corps of Engineers, or by any other agency of the State of Florida or the United States government, whether or not such area is included within the Storm Water Management System or is an isolated area that is not connected to the Storm Water Management System.

**2. WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT; WINDING CYPRESS DEVELOPMENT OF REGIONAL IMPACT; COST SHARING AGREEMENT AND COMMERCIAL COMMON AREAS.**

**2.1 Winding Cypress Community Development District.** Winding Cypress is located within the jurisdiction of Winding Cypress Community Development District (“CDD”), which will be established pursuant to Chapter 190, Florida Statutes. The CDD will be governed by a Board of Supervisors elected by landowners pursuant to Chapter 190, Florida Statutes. The Board of Supervisors is independent from the Board of Directors of the Association. The CDD may impose and levy taxes or assessments, or both taxes and assessments on Parcels. The taxes and assessments pay the construction, operation and maintenance costs of certain public facilities and services of the CDD and are set annually by the Board of Supervisors. These taxes and assessments are in addition Collier County and other governmental taxes and assessments, and all other taxes and assessments provided for by law. The CDD has the power to issue any types of bonds permitted by Chapter 190, Florida Statutes and its uniform state created charter.

The Developer previously granted and the Association reaffirms that every Parcel and the Common Area is hereby burdened, with perpetual, non-exclusive easements to the extent reasonably necessary for ingress, egress, and access to, and installation, maintenance, repair and replacement of, property and facilities of the CDD. Any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person exercising the easement.

The Association shall have the power, and is hereby authorized, to contract with and to cooperate with the CDD in order to determine that their respective responsibilities are discharged.

Each contract for the sale of a Parcel shall include, immediately prior to the space reserved in the contract for the signature of the purchaser, the following disclosure statement in boldfaced type which is larger than the type in the remaining text of the contract:

**WINDING CYPRESS COMMUNITY DEVELOPMENT DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW.**

**2.2 Winding Cypress Development of Regional Impact.** Winding Cypress is located within the Development of Regional Impact known as “Winding Cypress”, approved by Collier County, pursuant to Development Order No. 99-4, as amended to date and as may be amended from time to time (“DO”).

**2.3 Cost Sharing Agreement.** Winding Cypress is subject to the Cost Sharing Agreement recorded in O.R. Book 5011, Page 1411, Public Records of Collier County, Florida (“CSA”). The CSA governs the rights and obligations of, the Association, and Veronawalk Homeowners Association, Inc. with respect to the “Shared Facilities” (as such term is defined in the CSA). The “Shared Costs” and “Shared Special Costs” (as such terms are defined in the CSA) are Common Expenses. Pursuant to the CSA, upon the occurrence of certain conditions: the Association shall be responsible for the operation,

maintenance, repair, insurance and replacement of the Shared Facilities; and Veronawalk Homeowners Association, Inc. shall be obligated to pay the Association thirty-one percent (31%) of the Shared Costs and Shared Special Costs.

2.4 Commercial Common Areas. Portions of the Common Areas may be designated by the Association for commercial uses. The Board of Directors shall determine the manner in which commercial portions of the Common Area are held, maintained and operated. The Association may designate another person or entity to hold, maintain and operate any commercial portions of the Common Areas for the benefit of the Association. Where advisable, income, if any, from the rental of portions of the Common Areas used in a commercial capacity, may be used to reduce the Common Expenses of the Association.

3. ASSOCIATION: MEMBERSHIP: VOTING RIGHTS. The administration, management and ownership of the Common Area shall be by the Association, which shall perform its functions pursuant to the following:

3.1 Articles of Incorporation. A copy of the Articles of Incorporation is attached as Exhibit "B".

3.2 Bylaws. A copy of the Bylaws is attached as Exhibit "C".

3.3 Delegation of Management. The Association may contract for the management and maintenance of Winding Cypress and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Area, with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Governing Documents.

3.4 Membership. Every person or entity who is an Owner shall be a Member, except that if a Parcel is subject to an agreement for deed, the purchaser in possession shall be considered the Owner for purposes of determining voting and use rights.

(A) Members. Members shall be all those Owners as defined in Section 1. Membership shall become effective upon the last to occur of the following:

(1) Recording a deed or other instrument evidencing legal title to the Parcel in the Public Records of Collier County, Florida.

(2) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

(3) Delivery to the Association, if required, of a written designation of the Primary Occupants.

The failure to comply with the prerequisites set forth in (2)-(3) above shall not release the Owner from the obligation to comply with the Governing Documents, but shall otherwise preclude such Owner from obtaining the benefits of membership, including, without limitation, the right to receive notices and the right to vote on Association matters.

Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which Membership is based.

3.5 Voting Interests. In accordance with Section 720.301(13) of the Act, the term "Voting Interest" means the voting rights distributed to the Members pursuant to the Governing Documents. The Members of the Association are entitled to one (1) vote for each Parcel they own. The total number of votes shall not exceed the total number of Parcels subject to this Declaration. The vote of a Parcel is not divisible. If a Parcel is owned by one (1) natural person, his right to vote shall be established by the record title. If a Parcel is owned jointly by two (2) or more natural persons who are not acting as trustees, that Parcel's vote may be cast by any one (1) of the record Owners. If two (2) or more Owners of a Parcel do not agree among themselves how their one (1) vote shall be cast, that vote shall not be counted for any purpose. If the Owner is a corporation, partnership, limited liability company, trust, trustee or other entity other than a natural person, the vote of that Parcel shall be cast by any officer, director, partner, manager, managing member or trustee, as the case may be.

3.6 Approval or Disapproval of Matters. Whenever the decision or approval of the Owner of a Parcel is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person authorized to cast the vote of such Parcel at an Association meeting as stated in Section 3.5 above, unless the joinder of all Owners is specifically required.

3.7 Change of Membership. A change of membership shall be established as provided in Section 3.4 above; and the membership of the prior Owner shall thereby be automatically terminated.

3.8 Termination of Membership. The 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 which the Association may have against any former Owner or Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3.9 Association As Owner of Parcels. The Association has the power to purchase Parcels and Units, and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors.

3.10 Membership Roster. The Association shall maintain a current roster of names and mailing addresses of Owners and Primary Occupants. A copy of the up to date roster shall be available to any Owner upon request, subject to the exclusion of information that is protected from disclosure pursuant to the Act.

3.11 Limitation on Liability. Notwithstanding the duty of the Association to maintain and repair the Common Area, the Association shall not be liable to Owners for property damage other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Owners or other persons.

3.12 Board of Directors. Except as otherwise provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the Members shall be required. The Officers and Directors of the Association have a fiduciary relationship to the Members. An Owner does not have the authority to act for the Association by virtue of being an Owner.

3.13 Powers and Duties. The powers and duties of the Association include those set forth in the Governing Documents.

#### 4. COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS.

4.1 Creation of Lien and Personal Obligation for Assessments and Charges. Subject to the limitations on assessment liability set forth elsewhere in this Declaration, the Owner of each Parcel within Winding Cypress, hereby covenants, and each subsequent Owner of any Parcel (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(A) the Parcel's pro rata share of annual Assessments based on the annual budget adopted by the Association. The annual Assessments shall include the Association's share of expenses provided for in the CSA;

(B) the Parcel's pro rata share of special Assessments for Association expenditures not provided for by annual Assessments ;

(C) any charges against less than all of the Parcels specifically authorized in this Declaration or the Bylaws;

(D) Resale capital assessments, as authorized pursuant to Section 4.7 below ("Resale Capital Assessments"); and

(E) Assessments for the costs of the Association maintaining, repairing and replacing lawns and landscaping (including irrigation equipment), as set forth in Section 7.1 below ("Landscaping Assessments"). Landscaping Assessments shall be considered Assessments, except that Landscaping Assessments may vary by amount based upon the size of Parcels and will be shared solely by the Owners of Parcels of the same size.

(F) The Food and Beverage Minimum Assessment, as set forth in Section 4.9 below.

(G) Assessments levied solely against Villa Parcels and Villa Owners ("Villa Assessments"), including:

(1) each Villa Parcel's pro rata share of annual Villa Assessments based on the annual budget adopted by the Association; and

(2) each Villa Parcel's pro rata share of special assessments for Association expenditures relating solely to Villa Parcels not provided for by annual Villa Assessments;

Villa Parcels, Villa Owners and purchasers of Villa Parcels are also subject to all Assessments, charges, and Resale Assessments that are applicable to Parcels, Owners and purchasers generally, as described in this Section 4 and elsewhere in the Governing Documents.

Assessments and charges shall be established and collected as provided herein and in the Bylaws. The Assessments and charges, together with interest, costs, and reasonable attorneys' fees shall bind such property in the hands of the Owner, his or her heirs, devisees, personal representatives, successors and assigns. In any conveyance, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid Assessments and charges coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor the amounts



paid by the transferee. Except as provided elsewhere in this Declaration as to Institutional Mortgagees, no Owner may be excused from the payment of Assessments unless all Owners are similarly excused.

4.2 Share of Assessments. Except as otherwise provided as to Institutional Mortgagees, each Parcel (and the Owner thereof) which has been submitted to the terms of this Declaration and which contains a Unit for which a final certificate of occupancy has been issued, shall be liable for its pro rata share of all Assessments. A Parcel which has been submitted to the terms of this Declaration containing land or improvements for which a certificate of occupancy has not been issued, shall pay Assessments equal to five (5) percent (5%) of the Assessments which are payable by Parcels containing a Unit for which a final certificate of occupancy has been issued. All Common Area, and any property dedicated to and accepted by any governmental authority, taxing district, SFWMD, the CDD or public or private utility shall be exempt from payment of Assessments and charges.

4.3 Establishment of Liens. Any and all Assessments and charges levied by the Association or collected on behalf of in accordance with the provisions of the Governing Documents, together with interest at the highest rate allowed by law, late fees, and costs of collection (including, but not limited to reasonable attorneys' fees) are hereby declared to be a charge and continuing lien upon the Parcel against which such Assessment(s) or charge(s) are made, and shall also be the personal obligation of the Owner of such Parcel. This lien is superior to any homestead rights the Owner may acquire. No Owner may exempt himself or herself from personal liability for Assessments and charges, or release his Parcel from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area, or by abandonment of his Parcel. The continuing lien may be perfected by the Association recording a Claim of Lien in the Public Records of Collier County, Florida, setting forth the description of the Parcel, the name of the Owner, the name and address of the Association and the amount and due date of each unpaid Assessment and charge as of the date the Claim of Lien is recorded. The Claim of Lien may be executed by either an officer of the Association or its legal counsel. The effectiveness of the Claim of Lien shall relate back to the date the original Declaration was recorded in the Public Records of Collier County, Florida. However, with respect to Institutional Mortgages of record, the Association's lien is effective from and after recording of a Claim of Lien in the Public Records of Collier County, Florida. A Claim of Lien shall secure payment of all Assessments and charges due at the time of recording (including interest, late fees, costs and attorneys' fees as provided above), as well as all Assessments, interest, late fees, costs and attorneys' fees coming due subsequently, until the Claim of Lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by that Claim of Lien, the party making payment is entitled to a Satisfaction of Lien.

4.4 Priority of Liens. The foregoing notwithstanding, the Association's lien for unpaid Assessments and charges shall be subordinate and inferior to the lien of ad valorem property taxes and the lien of any recorded Institutional Mortgage, unless the Association's Claim of Lien was recorded prior to the Institutional Mortgage, but shall be superior to, and take priority over any other mortgage or lien regardless of when recorded. Any lease of a Unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee shall hold title subject to the liability and lien of any Assessment and charges coming due after foreclosure or conveyance in lieu of foreclosure. When an Institutional Mortgagee or its successor or assignee as a subsequent holder of the Institutional Mortgage obtains title to a Parcel as a result of a foreclosure of its Institutional Mortgage in which it sues the Owner and initially joins the Association in the mortgage foreclosure action, or obtains title to a Parcel as a result of a deed in lieu of foreclosure, such Institutional Mortgagee or its successor or assignee as a subsequent holder of the Institutional Mortgage which

acquires title shall be liable for unpaid Assessments and charges except as may be limited by the Act as it now exists and as it may be amended from time to time, plus interest, late fees, collection costs and attorneys' fees and costs incurred by the Association. Any Assessments and charges that such Institutional Mortgagee or its successor or assignee as a subsequent holder of the Institutional Mortgage which acquires title to a Parcel not obligated to pay the Association pursuant to the Act shall be deemed to be Common Expenses collectible from Owners of all of the Parcels in Winding Cypress, including such acquirer, its successors and assigns. However, if the Association's Claim of Lien was recorded prior to the Institutional Mortgage, the Institutional Mortgagee or its successor or assignee as a subsequent holder of the Institutional Mortgage which obtains title shall be liable for all unpaid Assessments and charges plus interest, late fees, collection costs and attorneys' fees.

4.5 Collection of Assessments and Charges. If any Owner fails to pay any Assessment or charge, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

(A) To charge interest on such Assessment or charge, from the date it becomes due until paid at the highest rate allowed by law, as well as to impose a late fee not to exceed the greater of Twenty- Five Dollars (\$25.00) or five percent (5%) of the amount of each Assessment installment that is paid past the due date. The late fee shall not be considered a fine as provided for in Section 11.3, and the procedural requirements for levying fines set forth therein shall not apply.

(B) To deny Association approval of any proposed lease of the Owner's Unit.

(C) To file an action in equity to foreclose its lien. The lien may be foreclosed by an action in the name of the Association in the manner set forth in the Act.

(D) To bring an action at law for a money judgment against the Owner without waiving its right to foreclose its lien.

4.6 Certificate. Within ten (10) business days after the date on which a request for an estoppel certificate is received from an Owner or mortgagee, or his or her designee, the Association shall provide a certificate signed by an officer or authorized agent of the Association stating all Assessments and other moneys owed to the Association by the Owner or mortgagee with respect to the Parcel. The Association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate. Any person other than an Owner who relies upon a certificate receives the benefits and protection thereof.

4.7 Resale Capital Assessments. Unless otherwise prohibited by FNMA, VA, HUD, FHA, FHLMC, or other similar governmental or quasi-governmental agency, a Resale Capital Assessment shall be due and payable to the Association by the transferee upon the conveyance of title to a Parcel by an Owner. The Board of Directors shall determine the amount of the Resale Capital Assessment for a particular calendar year. The Board of Directors may increase the Resale Capital Assessment in subsequent calendar years, but the amount shall not increase by more than ten percent (10%) over the previous calendar year. The Resale Capital Assessment will be collected at closing and, upon payment, may be used to pay any Common Expenses. Payment of the Resale Capital Assessment shall be the legal obligation of the transferee of the Parcel. For the purposes of this Section 4.9, the term "conveyance" shall mean the transfer of title to a Parcel by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed, transfer of an interest in a land trust or similar

conveyance of a beneficial interest. If the Owner is a corporation, limited liability company or other business entity, then the term "conveyance" shall include the sale, issuance or transfer of any voting capital stock or interest of the Owner or of any corporate entity which directly or indirectly controls the Owner which shall result in a change in the voting control of the Owner or the legal entity or persons who control the Owner. If the Owner is a partnership, then the sale, issuance or transfer of a majority interest therein, or the transfer of a majority interest in or a change in the voting control of any partnership which directly or indirectly controls the Owner, or the transfer of any portion of any general partnership or managing partnership interest which shall result in a change of control over the Owner, shall be deemed a "conveyance" within the meaning of this Section 4.9. Notwithstanding the foregoing, the following conveyances shall be exempt from payment of the Resale Capital Assessment: (a) to any person who was a co-Owner immediately prior to such conveyance; (b) to the Owner's estate, surviving spouse or other heirs, resulting from the death of the Owner; (c) to a trustee or the Owner's current spouse, solely for bona fide estate planning or tax reasons; and (d) to an Institutional first Mortgagee or the Association pursuant to a Final Judgment of Foreclosure or deed in lieu of foreclosure. Provided, however that upon a conveyance that occurs following the exempt transfers described in (a) through (d) above, the Resale Capital Assessment shall be due and payable.

**4.8 Enforcement Against Tenants.** Subject to the procedures and limitations set forth in Section 720.3085(8) of the Act, if a Parcel is occupied by a Tenant and the Owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the Tenant pay the subsequent rental payments and continue to make such payments until all monetary obligations of the Owner related to the Parcel have been paid in full to the Association. The Tenant must pay the monetary obligations to the Association until the Association releases the Tenant or the Tenant discontinues tenancy in the Parcel. The Association may evict the Tenant if the Tenant fails to make a required payment to the Association.

In the event that Section 720.3085(8) is removed from the Act, the remainder of this Section 4.8 shall be applicable to the Association's ability to collect rent from a Tenant. If an Owner has leased his Parcel and the Owner becomes delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the Tenant pay to the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Owner related to the Parcel have been paid in full to the Association. The Tenant must pay the monetary obligations to the Association until the Association releases the Tenant or the Tenant discontinues tenancy in the Parcel. If the Tenant paid rent to the Owner for a given rental period before receiving the demand from the Association and provides written evidence to the Association of having paid the rent within fourteen (14) days after receiving the demand, the Tenant shall begin making rental payments to the Association for the following rental period and shall continue making rental payments to the Association to be credited against the monetary obligations of the Owner until the Association releases the Tenant or the Tenant discontinues tenancy in the Parcel. The liability of the Tenant may not exceed the amount due from the Tenant to the Owner. The Owner shall provide the Tenant a credit against rents due to the Owner in the amount of moneys paid to the Association. The Association may evict the Tenant if the Tenant fails to make a required payment to the Association. However, the Association shall not be considered a landlord under Chapter 83, Florida Statutes. The Tenant shall not, by virtue of payment of monetary obligations to the Association, have any of the rights of an Owner. The Board shall have the authority as a condition of approving a lease to require that the Tenant and the Owner enter into a lease addendum that provides that all lease payments shall be paid to the Association during such time as the Owner is delinquent in paying any monetary obligation owed to the Association. Alternatively, the Association may require that such language be included in the lease.

**4.9 Food and Beverage Minimum Assessment.** Effective January 1, 2022 each Parcel and

the Owner thereof shall pay a Food and Beverage Minimum Assessments in the amount of \$600.00 per fiscal year, which shall be due and payable in full at the same time as the first installment of the regular Assessments is due and payable. For example, if the first installment of the regular Assessment is due and payable on January 1<sup>st</sup>. The Board of Directors may increase or decrease the Food and Beverage Minimum Assessment in subsequent fiscal years, but the amount shall not increase by more than ten percent (10%) over the previous fiscal year. The Food and Beverage Minimum Assessment must be used in full by the end of the fiscal year. Therefore, no unused Food and Beverage Minimum within the fiscal year shall be reimbursed or carried over to the following fiscal year. The Food and Beverage Minimum Assessment shall be a Common Expense.

## 5. ARCHITECTURAL AND AESTHETIC CONTROL

5.1 Necessity of Architectural Review and Approval. No Owner shall make or permit the making of any alterations or additions to his or her Parcel, or in any manner change the exterior appearance of any portion of the Unit, without first obtaining the written approval of the Architectural Reviewer, which approval may be denied if the Architectural Reviewer determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, Winding Cypress, in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the Unit, are subject to regulation by the Architectural Reviewer. The installation of hurricane shutters shall be subject to regulation by the Architectural Reviewer. No review or approval by the Architectural Reviewer shall imply or be deemed to constitute an opinion by the Architectural Reviewer, nor impose upon the Architectural Reviewer, the Association, the Board of Directors, nor any other party, any liability for the design or construction of building elements, including, but not limited to, structural integrity, design, quality of materials, and compliance with building code or life and safety requirements. The scope of any such review and approval by the Architectural Reviewer is limited solely to whether the respective plans or work meet certain requirements, standards, and guidelines relating to aesthetics and the harmony and compatibility of proposed improvements in Winding Cypress.

5.2 Architectural Review. The architectural review and control functions of the Association shall be administered and performed by the Architectural Reviewer. The Association shall be the Architectural Reviewer, whether through the Board of Directors or an Architectural Review Committee.

5.3 Powers and Duties of Architectural Reviewer. The Architectural Reviewer shall have the following powers and duties:

(A) To enact modifications and/or amendments to the Architectural Review Guidelines. Any modification or amendment to the Architectural Review Guidelines shall be consistent with the provisions of this Declaration. Notice of any modification or amendment to the Architectural Review Guidelines, including a verbatim copy of such change or modification, shall be delivered to each Member; provided that the delivery of a copy of the modification or amendment to the Architectural Review Guidelines shall not constitute a condition precedent to the effectiveness or validity of such change or modification.

(B) To require submission of one (1) complete set of all plans and specifications for any improvement or structure of any kind, including without limitation, any building, fence, wall, sign, site paving, grading, pool, parking and building additions, alteration, screen enclosure, sewer, drain, disposal system, decorative building, landscaping, landscape device or object or other improvement, the construction of placement of which is proposed upon any Parcel in Winding Cypress, together with

a copy of any required governmental permits. The Architectural Reviewer may also require submission of samples of building materials and colors proposed for use on any Parcel and may require such additional information as reasonably may be necessary for the Architectural Reviewer to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Review Guidelines. Upon request by the Architectural Reviewer, the proposed contractor(s) shall supply a copy of all required business licenses and evidence of insurance with such coverages and amounts as the Architectural Reviewer may reasonably require. Reviews shall be coordinated with required governmental approvals. The Architectural Reviewer shall have sixty (60) days to respond once a complete set of plans and specifications have been submitted. Failure to respond within said sixty (60) days shall be deemed an approval.

(C) To approve or disapprove any improvement or structure of any kind, including without limitation, any building, fence, wall, sign, site paving, grading, pools, parking and building additions, alterations, screen enclosure, sewer, drain, disposal system, decorative building landscaping, landscape device or object, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Parcel in Winding Cypress and to approve or disapprove any exterior additions, changes, modifications or alterations (including, but not limited to, changes in exterior colors, finishes and materials) therein or thereon. All decisions of the Architectural Reviewer shall be in writing and may, but need not be made by a certificate in recordable form.

(D) To approve or disapprove any change, modification or alteration to any improvement or structure as hereinabove described, and the plans and specifications if any upon which such change modification or alteration is based, prior to commencement of construction of such change, modification or alteration. If any improvement or structure as aforesaid shall be changed, modified or altered without prior approval of the Architectural Reviewer of such change, modification or alteration, and the plans and specifications therefore, if any, then the Owner shall upon demand, cause the improvement or structure to be restored to comply with the plans and specifications, originally approved by the Architectural Reviewer and shall bear all costs and expenses of such restoration, including costs and reasonable attorneys' fees of the Architectural Reviewer or the Association. The Architectural Reviewer shall be specifically empowered to grant variances from the covenants, conditions and restrictions as contained herein and as are deemed reasonable, required or necessary to meet the needs of the particular building site.

(E) To adopt a schedule of reasonable fees and security deposits for processing requests for approval or proposed improvements. Such fees and security deposit(s), if any, shall be payable to the Association by check or money order at the time that plans and specifications are submitted to the Architectural Reviewer and subsequently if the Architectural Reviewer requires. In the event such fees and security deposit(s), as well as any other costs or expenses of the Architectural Reviewer pursuant to any other provisions of this Article are not paid by the Owner and the contractor who will perform the work, such fees, security deposit(s), costs and expenses shall become a lien on the Owner's Parcel. The Architectural Reviewer may, as a condition to issuing approval, require the Owner to pay the Association a security deposit in the amount of up to Five Thousand Dollars (\$5,000.00) and require the contractor who will perform the work to pay the Association an additional security deposit in an amount determined by the Architectural Reviewer. The security deposit(s) shall cover damage to the Common Area caused by or related to any work performed or ordered to be performed by the Owner, costs, attorneys' and professional fees the Association incurs as a result of violations of the Governing Documents or defective work. Upon satisfactory completion of the work in accordance with the approved plans and specifications, the Association shall return the security deposit(s) to the Owner and the contractor, as applicable, less any damage to the Common Area and costs, attorneys' and

professional fees the Association has incurred. In the event the amount of damage, costs, attorneys' and professional fees exceeds the sum of Five Thousand Dollars (\$5,000.00) plus any additional security deposits the Association requires the contractor to pay, the Association may collect such amount in the same manner as unpaid Assessments.

(F) To monitor construction to verify compliance with the provisions hereof and any approvals and conditions of the Architectural Reviewer.

5.4 Garages. No garages shall be converted to residential use or use other than as originally designed. Garages shall not be used as a "woodshop" or other uses that generate unusual amounts of noise and dust unless the garage door is kept closed, provided that in no case shall such use create a nuisance.

5.5 Sight Distance. Landscaping and other improvements located at street intersections shall be installed and maintained so as to permit safe sight across street corners.

5.6 Other Approvals Required. Each Owner is responsible for obtaining all necessary governmental approvals prior to commencement of any work.

## 6. PROPERTY RIGHTS: EASEMENTS.

6.1 Use of Common Area. Every Owner and his or her Tenants, Guests and invitees shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the sidewalks, walkways and private roads, if any, which may be contained within the Common Area for use in common with all other Owners, their Tenants, Guests and invitees. Notwithstanding Reservation #6 on the plat of Winding Cypress Phase One, as recorded in Plat Book 57, Page 89, Public Records of Collier County, Florida, Tracts "G" and "H" are Common Area. Upon request by the CDD, the Association shall convey to the CDD, for nominal consideration, any real property which has not been improved by a structure intended for recreational purposes. Except as otherwise limited in the Governing Documents, the portions of the Common Area in addition to those used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the Owners and each Owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as in such manner as may be regulated by the Association. These easements shall be appurtenant to and shall pass with the title to every Unit subject to the following:

(A) The right and duty of the Association to levy Assessments against each Parcel for the upkeep, maintenance, repair or betterment of the Common Area and improvements thereon.

(B) The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board of Directors. No such easement shall materially interfere with the rights of the Owner to use the Common Area for the purposes intended.

(C) The right of an Owner to the use and enjoyment of the Common Area and facilities thereon shall extend to the members of his or her Family who reside with him or her, and to his or her Tenants, Guests and invitees, except as otherwise provided in the Governing Documents.

THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR ANY RECREATION AREAS. ANY INDIVIDUAL USING A RECREATION AREA SHALL DO SO AT HIS OR HER

OWN RISK AND HEREBY HOLDS THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO MAINTAIN OR SUPPORT ACTIVITIES WITHIN WINDING CYPRESS DESIGNED TO MAKE WINDING CYPRESS SAFER THAN IT MIGHT OTHERWISE BE. THE ASSOCIATION DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE SECURITY OF WINDING CYPRESS OR THE EFFECTIVENESS OF ANY SUCH ACTIVITIES. ALL OWNERS AND OCCUPANTS IN WINDING CYPRESS AGREE TO SAVE AND HOLD THE ASSOCIATION, ITS OFFICERS AND DIRECTORS HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN WINDING CYPRESS.

6.2 Easements. The Association shall have the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, cable television or other easements, and to relocate any existing easement in any portion of Winding Cypress and to grant access easements and to relocate any existing access easements in any portion of Winding Cypress as the Association shall deem necessary or desirable, including, without limitation, for the following purposes: operation and maintenance of Winding Cypress, or any portion thereof; the general health or welfare of the Owners; to carry out any provisions of the Governing Documents; and to fulfill the Association's obligations to any governmental authority, taxing district, the CDD, a public or private utility or SFWMD. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the use of the Parcels and Units. Each Parcel shall be subject to an easement in favor of all other portions of Winding Cypress for the location of utilities and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of public or private utility lines and other similar or related facilities serving other Parcels and portions of Winding Cypress. In addition, if, by reason of original construction, shifting, settlement or movement, any Unit encroaches upon the Common Area or upon any other Parcel (including, without limitation, roof overhangs and related drainage gutters) then an easement shall exist to the extent of that encroachment as long as the encroachment exists, including an easement for continued maintenance and repair of original construction encroachments. In the event that any structure is partially or totally destroyed, then rebuilt, then the Owners and the Association agree that encroachments on adjacent Parcels or on Common Area due to construction shall be permitted and that an easement for such encroachments (including, without limitation, roof overhangs and related drainage gutters) and the continued maintenance and repair of such encroachments, and the maintenance of the structure shall exist, but such encroachments shall be to the extent permitted by the original construction, shifting, settlement or movement. The Association and its vendors, contractors and employees, are granted a blanket easement over the Common Area and Parcels for repair and maintenance and for carrying out the Association's responsibilities pursuant to this Declaration. Each Parcel shall be subject to an access easement in favor of the adjoining Owner(s) and their contractors and agents for purposes of bringing materials and construction equipment to the rear or side of the Parcel for construction of pools or other structures. The adjoining Owner shall restore the Parcel to its previous condition following completion of such construction.

6.3 Partition: Separation of Interest. There shall be no judicial partition of the Common Area, except as expressly provided elsewhere herein, nor shall any Owner or any other person acquiring any interest in Winding Cypress, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Parcel and Unit owned on cotenancy. The ownership of any Parcel and the ownership of the Unit constructed thereon may not be separated or separately

conveyed; nor may any person who does not have an ownership interest in at least one (1) Parcel hold membership in the Association.

6.4 Additional Easements. Winding Cypress (including the Parcels) shall be subject to and benefited by any and all easements which are set forth in the Governing Documents or any plat or other recorded instrument (including the Cost Sharing Agreement) encumbering all or a portion of Winding Cypress, including, without limitation, utility easements for the installation, maintenance and repair by any utility company and drainage easements. Winding Cypress (including the Parcels) shall also be subject to a public service easement for police protection, fire protection, emergency services, postal services and meter reading. The Association shall have such easements across Winding Cypress and all Parcels as are necessary to fulfill its obligations as set forth in the Governing Documents.

6.5 Polling Place Requirement. Accommodation shall be made for future use of a portion of the Common Areas for purposes of an electoral polling place in the event such requirement is imposed by Collier County or the CDD.

## 7. MAINTENANCE OF COMMON AREA, PARCELS AND UNITS.

7.1 Association Maintenance. The Association shall, pursuant to this Declaration, be responsible for the management, maintenance, insurance and operation of the Common Area, including, without limitation, the Storm Management System, except for portions to be maintained by Owners. The Association shall be responsible for the maintenance, repair and replacement of the lawns and landscaping (including irrigation equipment) located on Parcels as installed as part of the original construction of the Unit. The Association shall be responsible for the maintenance, repair and replacement of perimeter walls, if any. All maintenance, repair and replacement which is the responsibility of the Association shall be a Common Expense, unless the Association undertakes maintenance, repair or replacement of a Parcel and Unit due to an Owner's failure to undertake the maintenance, repair or replacement.

a. Owner Maintenance. Owners shall maintain, repair and replace their Parcels, Units and any other improvements, modifications and additions thereto in a safe, clean, orderly and attractive condition, except for those portions to be maintained, repaired and replaced by the Association. Whenever an Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Parcel or Unit, whether with or without approval from the Architectural Reviewer, such Owner shall be deemed to have warranted to the Association and its Members that his contractor is properly licensed and fully insured and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance. Owners shall keep the sidewalks located on their Parcels clean (including by pressure washing as necessary) and free from impediments to pedestrian traffic.

### 7.2 Villa Units

Each building containing Villa Units shall contain common structural elements, which include but are not limited to:

(A) Utility Lines. All Utility lines, ducts, conduits, pipes, fire sprinklers, wires and other utility fixtures and appurtenances which are located on or within each building and which directly or indirectly in any way service more than one Villa Unit in such building.



(B) Party Walls. All division walls ("Party Walls") between and shared by two (2) Villa Units. The Villa Owners adjacent to a Party Wall shall own such Party Wall as tenants in common.

(C) Bearing Walls. Any and all walls or columns necessary to support the roof structure.

(D) Exterior Finish. Any and all siding, finish, trim, exterior sheathings and other exterior materials and appurtenances on the exterior of each building.

(E) Foundation. The entire concrete floor slab and all foundational and support structures and appurtenances thereto.

7.2.1 Utility Easements. Each Villa Owner grants to the other Villa Owner in the same building a perpetual utility easement for drainage, water, sewer, power, telephone, internet, and other utility and service company lines and systems installed beneath or within the Villa Unit. Any expense caused by the necessary access of authorized personnel of the utility or service company to service lines affecting all Villa Units within a building and which are located beneath or within the building shall be shared equally by each of the Villa Owners in the building affected; provided, however, that where the necessary access by authorized personnel of the utility or service company is required because of the intentional or negligent misuse of the utility or service company line or system by a Villa Owner, his Family member, Guest, Tenant, invitee or agent, any expense arising therefrom shall be borne solely by such Villa Owner. Any expense caused by the necessary access of authorized personnel of the utility or service company to service lines affecting only one Villa Unit within a building shall be shared solely by the Owner of such Villa Unit.

7.2.2 Party Walls. The center line of a Party Wall is the common boundary of the adjoining Villa Units. Each Villa Owner shall have the right to use the Party Wall jointly with the adjoining Villa Owner. The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the original concrete or other material forming the Party Wall. The cost of maintaining each side of the Party Wall shall be borne by the Villa Owner using said side, except as otherwise provided herein.

7.2.3 Roof. The entire roof of a building, any and all roof structure support, and any and all related improvements, including without limitation, the roof covering, roof trim, and roof drainage fixtures, shall be collectively referred to as "Shared Roofing". Each Villa Owner shall have the right to use the Shared Roofing jointly with the other Villa Owner in the same building. The term "use" shall and does include normal usage but prohibits any form of alteration which would change the aesthetic or structure of the Shared Roofing.

7.2.4 Casualty Damage. If a Villa Unit is damaged through an act of God or other casualty, the affected Villa Owner shall promptly have his portion of the Villa Unit repaired and rebuilt substantially in accordance with the architectural plans and specifications of the building. In the event damage or destruction of a Party Wall or Shared Roofing is caused solely by the negligence of a Villa Owner, any expense incidental to the repair or reconstruction of the Party Wall or Shared Roofing shall be borne solely by that Villa Owner. If that Villa Owner refuses or fails to pay the cost of such repair or reconstruction, the Association shall have the right, but not the obligation, to complete such repair and reconstruction substantially in accordance with the original plans and specifications of the affected building, and the Association shall thereafter have the right to impose a charge against said Villa Owner and his Villa Parcel for the costs of such repair and reconstruction.

7.2.5 Maintenance and Repair of Villa Units. Each Villa Owner shall at all times be responsible for the maintenance, repair and replacement of his or her Villa Unit, except as

otherwise provided in this Declaration. The Association may, but shall have no obligation, to maintain and repair Villa Units. No Villa Owner shall authorize the painting, refurbishing or modification of the exterior surfaces or shared roofing of his or her Villa Unit without the consent of the Architectural Reviewer. If a Villa Owner refuses or fails to maintain or repair his or her Villa Unit, the Association shall have the right, but not the obligation, to complete such maintenance or repair, and the Association shall thereafter have a charge against said Villa Owner and Villa Parcel for the costs of such maintenance or repair.

**7.2.6 Casualty Insurance.** Each Villa Owner shall maintain casualty insurance for his or her Villa Unit in an amount equal to the replacement value thereof. The Association may, but is not obligated to, require that each Villa Owner provide proof of insurance. Should any Villa Owner fail to provide proof of insurance upon request, the Association may purchase the required insurance, and the cost of such insurance shall be a special charge against the Villa Owner and the Villa Parcel. The Association shall have no liability to any Villa Owner for failure to request proof of insurance or for failure to purchase insurance on behalf of the Villa Owner.

**7.2.7 Party Fences.** Walls or fences which are constructed between two adjoining Villa Parcels and are to be shared by the Owners of such adjoining Villa Parcels are "Party Fences". Party Fences shall be the joint maintenance obligation of the Owners of the Villa Parcels bordering the Party Fences. Each Villa Owner shall have the right to full use of the Party Fence subject to the limitation that such use shall not infringe on the rights of the adjacent Villa Owner or in any manner impair the value of the Party Fence. Each Villa Owner shall have the right and duty to maintain and to perform superficial repairs to that portion of a Party Fence which faces such Villa Owner's Parcel. The cost of said maintenance and superficial repairs shall be borne solely by said Villa Owner. In the event of damage or destruction of the Party Fence from any cause whatsoever, other than negligence or willful misconduct of one of the adjacent Villa Owners, the adjacent Villa Owners shall, at their joint expense, repair and rebuild said fence within 30 days. In the event it is necessary to repair or rebuild a Party Fence, the Villa Owners shall agree on the cost of such repairs or rebuilding, and shall agree on the person or entity to perform such repairs, provided however, all such repairs must be performed by a qualified contractor. If the Villa Owners cannot agree on the cost of such repairs or on the person or entity to perform such repairs, each Villa Owner shall choose a Director of the Association to act as their arbiter. The Directors so chosen shall agree upon and choose a third Director to act as an additional arbiter. All of these Directors shall thereafter choose the person or entity to perform the repairs and shall assess the costs of such repairs in equal shares to the Villa Owners. Whenever any Party Fence or any part thereof shall be rebuilt, it shall be erected in the same manner and be of the same size and of the same or similar materials and of like quality and color and at the same location where it was initially constructed unless otherwise agreed to by the Owners of the Party Fence. If such maintenance, repair or construction is brought about solely by the neglect or the willful misconduct of one Villa Owner, any expense incidental thereto shall be borne solely by such Villa Owner. If the Villa Owner shall refuse to repair or reconstruct the fence within 30 days, and to pay for the repair or reconstruction, the Association may have the Party Fence repaired or reconstructed and shall be entitled to a charge against the Villa Parcel of the Villa Owner so failing to pay for the amount of such defaulting Villa Owner's share of the repair or replacement. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Villa Parcels shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner, and consent is hereby given to enter on the adjacent Villa Parcels to effect necessary repairs and reconstruction.

**7.3. Alterations and Additions to Common Area.** Material alterations or substantial additions to the Common Area may be undertaken and funds necessary levied as special Assessments by the Association only upon approval by a majority of the Board of Directors.

**7.4 Enforcement of Maintenance.** In the event that an Owner fails or refuses to comply with

these provisions, after fourteen (14) days' notice and demand from the Association and the Owner's failure to comply, the Association shall have the authority (but not the obligation) to take whatever action is reasonably necessary in its judgment to bring the Parcel and Unit into conformity and the expenses of doing so shall be an obligation of the Owner collectable as a Special Assessment against that Parcel. The Association is granted an easement upon the Parcel and its improvements for these purposes. In the alternative, the Association may institute legal proceedings to compel the Owner to observe his obligations set forth in the Governing Documents.

**7.5 Negligence: Damage Caused by Condition in Unit.** The Owner of each Unit shall be liable for the expenses of any maintenance, repair or replacement of Common Area, other Units, or personal property made necessary by his or her act or negligence, or by that of any member of his or her Family or his or her Guests, employees, agents, or Tenants. Each Owner has a duty to maintain his or her Unit and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the Common Area or the property of other Owners and residents. If any condition, defect or malfunction, resulting from the Owner's failure to perform this duty causes damage to other Units, the Common Area or property within other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. The Association may, but is not obligated to repair the damage and hold the responsible party liable for all costs, secured by a lien against the applicable Parcel, which lien may be foreclosed in the same manner as the Association's Claim of Lien.

**7.6 Stormwater Management System.** The permit issued by SFWMD as of this date is incorporated herein as Exhibit "D" ("Permit"). Copies of the Permit and any future SFWMD actions shall be maintained by the Association and/or its registered agent for the Association's benefit. The Association shall maintain and operate the Stormwater Management System within Winding Cypress (except for such portions that are within each Owner's maintenance responsibility) in accordance with the permit(s) and regulations of SFWMD and/or its successor, and shall allocate sufficient funds in its annual budget for such obligations. To the extent required by the Permit, it shall be the Association's responsibility to successfully meet and complete all Permit conditions associated with any Wetland mitigation, success criteria, maintenance and monitoring. The Association shall allocate sufficient funds in its annual budget for such mitigation, maintenance and monitoring of Wetland mitigation area(s) each year until SFWMD determines that the area(s) is successful in accordance with the Permit. Operation, maintenance and reinspection reporting shall be performed in accordance with the terms and conditions of the Permit. SFWMD has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the Stormwater Management System or in any mitigation or conservation areas under the responsibility or control of the Association. No construction activities may be conducted relative to any portion of the Stormwater Management System. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Stormwater Management System facilities. If Winding Cypress includes a Wetland mitigation area or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from SFWMD. Construction and maintenance activities which are consistent with the design and Permit conditions approved by SFWMD in the Permit may be conducted without specific written approval from SFWMD. Neither the Association, nor any Owner shall take any action which modifies the Stormwater Management System in a manner which changes the flow or drainage of surface water. Any amendment which would affect the Stormwater Management System and conservation areas or easements, including the water management portions of the Common Area must have the prior approval

of SFWMD, Collier County and any other governmental authority with jurisdiction. The Association may reconfigure the size and location of the lakes, but only to the extent permitted by SFWMD. The Association shall have an easement over Winding Cypress for purposes of accessing the lakes and ancillary drainage facilities. The lakes shall not be available for use by Owners or the Association, nor shall they in any manner interfere with or alter the Stormwater Management System or interfere with the access rights of any entity responsible for its maintenance. ALL OWNERS ACKNOWLEDGE THAT DUE TO GROUND WATER ELEVATIONS, PRIORITIES ESTABLISHED BY GOVERNMENTAL AUTHORITIES, AND OTHER CAUSES OUTSIDE OF THE CONTROL OF SFWMD, AND THE ASSOCIATION, LAKE WATER LEVELS MAY FLUCTUATE AT CERTAIN TIMES DURING THE YEAR AND SUCH FLUCTUATIONS MAY BE MATERIAL. NONE OF THE ENTITIES MENTIONED IN THE PRECEDING SENTENCE SHALL HAVE ANY LIABILITY FOR AESTHETIC CONDITIONS, OBJECTIONABLE ODORS, DAMAGE TO PLANTINGS OR DIRECT OR CONSEQUENTIAL DAMAGES OF ANY NATURE CAUSED BY THE FLUCTUATION OF WATER LEVELS OR WATER QUALITY. THE ASSOCIATION MAKES NO REPRESENTATIONS WITH RESPECT TO LAKE WATER LEVELS.

If the Association ceases to exist, all of the Owners shall be jointly and severally responsible for the operation and maintenance of the Stormwater Management System facilities in accordance with the requirements of the Permit, unless and until an alternate entity assumes responsibility, as more particularly set forth in Article III of the Articles of Incorporation.

The Association shall allocate sufficient funds in its budget for monitoring and maintenance of any wetland mitigation area(s) each year until the District determines that the area(s) is/are successful in accordance with the Permit.

There may have been established natural vegetative buffers between the Parcels and any jurisdictional Wetland preserve and/or conservation tract as may be required by the SFWMD, which buffers shall not be located within the boundaries of a Parcel unless otherwise approved by the SFWMD. Such buffers shall be platted as a separate tract or created as an easement over an expanded limit of the preserve tracts, which would be dedicated as preserve/drainage tracts, to include the buffer within the preserve tract. If the buffer is located within a separate tract, the tract shall be dedicated on the plat to the Association along with all maintenance responsibilities and, if necessary, to any governmental or quasi-governmental entities with no maintenance responsibilities. All Owners shall comply with the requirements of all governmental or quasi-governmental agencies or authority having jurisdiction.

There are within the geographic area shown on a plat, drainage canals, lakes and drainage retention/detention lakes or ponds. These drainage structures are part of the overall drainage plan for Winding Cypress. There may exist conservation easements encumbering all or part of the Common Area, and/or portions of the Parcels conveyed to Owners to preserve the natural condition of wetlands, uplands or buffer areas. The Association shall have unobstructed ingress to and egress from all retention/detention lakes or ponds and lakes as well as all conservation easements at all reasonable times to maintain said lakes or ponds, lakes and conservation easements in a manner consistent with its responsibilities. No Owner shall cause or permit any interference with such access and maintenance. No Owner shall utilize, in any way, any of the Winding Cypress drainage facilities without the express prior written consent of the Association. Further, where an Owner's Parcel is contiguous to any of the drainage facilities of Winding Cypress, such Owner shall keep his or her Parcel so that the utilization of such Owner's Parcel will not adversely affect the drainage facilities and structures and so as to be aesthetically compatible with such drainage facilities and structures.

The Association shall maintain, as part of the Common Area, drainage structures for Winding Cypress, the Preservation Areas, Conservation Areas and other environmentally significant Common Area, and comply with conditions of the Permit, Department of Environmental Protection, and U.S. Army Corps of Engineers for the Stormwater Management System, Preservation Areas, Conservation Areas, or other environmentally significant Common Area, including, without limitation, perpetual maintenance of all signage required by the permit. All such areas shall be defined, identified, and described as such on all Plats of Winding Cypress, or may be granted by separate easements recorded in the public records of the County. No Owner shall (i) undertake or perform any activity in preserved wetlands, upland buffers to wetlands, archeological sites, and wetland compensation areas with the Preservation Areas and Conservation Areas described in all approved permits and Plats of Winding Cypress, or (ii) remove native non-nuisance vegetation that becomes established within the wet detention lakes or ponds, without prior written consent of the Board of Directors of the Association, the County, and the applicable permitting agencies. Prohibited activities within such areas include removal of native vegetation (by dredging, application of herbicide or cutting); excavation; placement or dumping of soil, trash, land clearing or landscaping debris; and construction or maintenance of any building, residence, or structure. It shall be the responsibility of all Owners to comply with the construction plans for the Stormwater Management System approved by the applicable permitting agencies. The Association shall, accept transfer of SFWMD permits applicable to Winding Cypress. The conditions of SFWMD permits include monitoring and record keeping schedules and maintenance.

Within any Preservation Area or any wet detention lake or pond (as such lakes or ponds are designated by the SFWMD), no Member shall remove any native vegetation (including cattails) that may become established therein. The prohibition against removal of native vegetation shall not be construed to prevent the removal of exotic vegetation in accordance with a governmentally approved maintenance plan. It shall be the Association's responsibility to successfully meet and complete all conditions associated with annual exotic nuisance plant species maintenance and monitoring. The Association shall allocate sufficient funds as a line item in its annual budget for such maintenance and monitoring.

Water quality data for the water discharged from Winding Cypress or into the surface waters of the state shall be submitted to SFWMD as required. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by American Public Health Association of Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the Association shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total monthly discharge from Winding Cypress or into surface waters of the state.

The Association agrees to operate and maintain the Stormwater Management System and has sufficient ownership so that it has control over all water management facilities authorized.

The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permit, as required by SFWMD. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by SFWMD rules.

The Association specifically agrees to allow authorized SFWMD personnel, upon presentation of credentials or other documents as may be required by law, access to Winding Cypress, at reasonable times, where the permitted activity is located or conducted; for the purposes of inspection and testing

to determine compliance with the permit and SFWMD regulations, such as: having access to and copying any records that must be kept under the conditions of the permit; inspecting the facility, equipment, practices, or operations regulated or required under the permit; sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the permit or SFWMD rules; and gathering of data and information. Reasonable time may depend on the nature of the concern being investigated.

Establishment and survival of littoral areas provided for storm water quality treatment in wet detention systems shall be assured by proper and continuing maintenance procedures designed to promote viable wetlands plant growth of natural diversity and character. Following as-built approval, perpetual maintenance shall be provided for the permitted system.

The Association shall submit inspection reports, if required by the SFWMD, in the form required by SFWMD, in accordance with the permit application.

Owners are hereby notified that certain Parcels may include, or be adjacent to wet detention lakes or ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements. It is the Owner's responsibility not to remove native vegetation (including cattails) that becomes established within the wet detention lakes or ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements abutting the Owner's Parcel. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp.

No Owner of a Parcel within Winding Cypress may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, wetland mitigation areas, buffer areas, upland conservation areas, wet detention lakes or ponds, jurisdictional wetlands, designated mitigation areas or designated drainage or conservation easements described in the approved permit and recorded plats of Winding Cypress.

The Association shall not have any liability whatsoever to any Owner for claims or damages alleged by an Owner due to water levels in the lakes being below or above normal or otherwise unacceptable to the Owner. Recreational use and aesthetic appearance of the lakes is secondary to their intended drainage function, and during periods of prolonged drought or other unusual weather events water levels in the Lakes may fluctuate, and the Association shall not have any liability for such conditions.

8. INSURANCE: The Association shall obtain and maintain adequate insurance for the Common Area (with provisions for deductibles) as follows:

(A) Casualty. To the extent that there is Common Area containing any improvements, the coverage shall afford protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, and such other risks as are customarily covered with respect to improvements on the Common Area, including, but not limited to, flood (if required by law), vandalism, or malicious mischief. All or any part of such coverage may be extended to include the Association's personal property as the Board of Directors may deem desirable. The Association shall act as agent of the Owners and shall adjust all losses on their behalf with respect to the Common Area.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Owners as a group to an Owner, if obtainable at reasonable cost.

## 9. USE RESTRICTIONS.

9.1 Residential Purposes. No Parcel shall be used for other than Single-Family residential purposes. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements; (c) the business activity involves only telephone calls and correspondence to and from the Unit and does not involve persons coming into Winding Cypress who do not reside in Winding Cypress or door-to-door solicitation of occupants of Winding Cypress; and (d) the business activity is consistent with the residential character of Winding Cypress and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other occupants of Units. The use of a Unit as a public lodging establishment shall be deemed a business or trade use. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

9.2 Signs. No sign or advertisement of any kind, including, without limitation, those of realtors, contractors and subcontractors, shall be erected within Winding Cypress without the prior written consent of the Board of Directors or in accordance with the Rules and Regulations and Architectural Review Guidelines or as may be required to be allowed by law. Signs which are permitted within Winding Cypress may be restricted as to the size, color, lettering, materials and location of such signs. The Board of Directors, shall have the right to erect signs as the Board of Directors, in its discretion, deem appropriate. Under no circumstances shall signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted inside or outside of Winding Cypress be permitted within Winding Cypress without the express written consent of the Board of Directors. No sign shall be nailed or otherwise attached to trees.

9.3 Nuisance. Nothing shall be done upon any Parcel or in the Common Area which may be or may become an annoyance or nuisance to any person. No obnoxious, unpleasant or offensive activity shall be carried on, nor shall anything be done which can be reasonably construed to constitute a nuisance, public or private in nature. All residents shall observe the vehicular speed limits and any rules posted on signs in the Common Area.

9.4 Underground Utility Lines and Services. All electric, telephone, gas and other utility lines shall be installed underground, except for temporary lines as required during construction or if required by law.

9.5 Common Area. No Owner shall make use of the Common Area in such a manner as to abridge the equal rights of the other Owners to their use and enjoyment thereof nor shall any Owner remove, prune, cut, damage or injure any trees or other landscaping located in the Common Area. Except as otherwise stated in this Declaration and its exhibits, any portion of the Common Area which is deemed open space shall be owned by the Association and preserved and maintained by it and shall not be destroyed.

9.6 Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Parcel, except that dogs, cats and other usual and non-exotic household pets (not to exceed

a total of three (3) pets, excluding tropical fish) may be kept (except for pit bulls, "wolf hybrids", or other dogs prone to or exhibiting aggressive behavior), provided they are not kept, bred or maintained for any commercial purposes. All animals shall be contained on the Owner's Parcel and shall not be permitted to run freely. When outside the Owner's Unit, all pets must be carried or secured with a hand held leash. The Owner or other owner of a permitted pet must pick up all solid waste and deposit it in an appropriate trash container. The Board of Directors may in its sole and exclusive discretion order the animal it deems to be a threat to the health, safety or welfare of the residents in Winding Cypress to be removed or require other actions to occur such as but not limited to requiring the animal to be muzzled when outside of the Unit.

**9.7 Trucks, Commercial Vehicles, Recreation Vehicles, Mobile Homes, Boats, Campers and Trailers.**

(A) Vans, pick-up trucks, passenger cars and sport utility vehicles shall be considered to be automobiles and may be parked on driveways if the vehicle is used for the primary purpose of transportation of passengers and their personal goods. Such vehicles may be parked on driveways overnight. If the vehicle is used primarily for the transportation of goods then it shall be considered to be a commercial vehicle. Law enforcement vehicles may be parked on driveways and in parking spaces if the driver is a law enforcement officer. All other vehicles (i.e. all motorized and non-motorized vehicles except operable automobiles) including, without limitation, the following: inoperable automobiles, golf carts, commercial vehicles, recreational vehicles, all-terrain vehicles, ambulances, hearses, motorcycles, motorbikes, bicycles, watercraft, aircraft, house trailers, camping trailers, other trailers, vehicles with commercial markings, racks or tools in the bed and tractors shall be kept within an enclosed garage. Overnight parking in the roadways or other Common Areas is prohibited. Bicycle racks are permitted on non-commercial vehicles. Garage doors must be kept closed except when a vehicle must enter or exit the garage or for reasonable periods of time while the Unit's occupant(s) use the garage for typical uses associated with a residential dwelling which are not in conflict with the Governing Documents. Any use of a motorcycle is limited to providing ingress/egress to a Parcel over roadways. All motorcycles shall be equipped with effective sound muffling devices and must be parked in a garage when not in use.

(B) No commercial vendor vehicle of any kind shall be permitted to be parked on a residential Parcel for a period of more than twelve (12) daylight hours unless such vehicle is necessary and being used in the actual construction or repair of a structure or for grounds maintenance. Commercial vendor vehicles may not be parked in the Common Areas overnight.

(C) None of the foregoing restrictions shall apply to commercial vehicles or other vehicles which may be utilized by: the Association, its vendors and employees; and any governmental authority, taxing district, private or public utility, the CDD or SFWMD.

**9.8 Exterior Colors.** No exterior colors on any structure, nor the colors of driveways and walkways shall be permitted that, in the sole judgment of the Architectural Reviewer, would be inharmonious or incongruous with the remainder of Winding Cypress. Any future color changes, as described above, desired by Owners must be first approved in writing by the Architectural Reviewer.

**9.9 Landscaping.** All areas not covered by structures, walkways, paved parking facilities or areas approved by the Association to be left in their natural state shall be maintained as lawn or landscape areas to the pavement edge of any abutting streets or driveways, as applicable, and to the waterline of any abutting lakes, canals or surface water management areas. All lawn and landscaped



areas shall be kept in good and living condition.

9.10 Driveways and Parking Areas. All driveways shall be constructed of concrete or paverstone. The Owner shall be obligated to keep his driveway clean and well maintained.

9.11 Antennas and Flagpoles. Antennas and satellite dishes are prohibited, except that (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one (1) meter or less in diameter (b) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one (1) meter or less in diameter; or (c) antennas or satellite dishes designed to receive television broadcast signals, ("Reception Device") shall be permitted, provided that the Reception Device is located so as not to be visible from outside the Unit, or is located on the side or rear yard of the Parcel. The Architectural Reviewer may require that a Reception Device be painted or screened by landscaping in order to blend into the Unit and removed from view from the street and other Units. A flagpole shall not be used as an antenna. The installation and display of flagpoles and flags shall be subject to regulation by the Architectural Reviewer, but no Owner shall be prevented from displaying those flags that are permitted by Chapter 720 Florida Statutes as amended from time-to-time hereafter.. The permitted flags shall not exceed 4.5' x 6'. Notwithstanding the foregoing, no one shall be permitted to display the United States flag in a manner that violates: (i) Federal law or any rule or custom as to the proper display or use of the United States flag; or (ii) any reasonable restriction pertaining to the time, place and manner of displaying the flag. The restriction must be necessary to protect a substantial interest of the Association.

9.12 Outdoor Equipment. All oil tanks, bottled gas tanks, swimming pool equipment, housing and sprinkler pumps and other such outdoor equipment must be walled-in or placed in sight-screened or fenced-in areas so that they shall not be readily visible from any adjacent streets or Units. Otherwise, adequate landscaping shall be installed and maintained around these facilities. Party Walls are permitted for Villa Units. All trash containers shall be stored in the garage except on trash "pick up" days. Winding Cypress shall be equipped with dual water lines, one (1) of which shall be designated to utilize non-potable water. All underground irrigation systems must be connected to the non-potable water line and all spigots on the exterior portion of a structure shall be connected to the potable water line.

9.13 Air Conditioning and Heating Equipment. All air conditioning and heating units shall be shielded and hidden so that they shall not be readily visible from any adjacent streets or Units. Window or wall air conditioning units are prohibited.

9.14 Solar Collectors. The Architectural Reviewer must approve the location of the materials used in the construction of solar collectors.

9.15 Walls, Fences, Window Coverings and Hurricane Shutters. Except as otherwise provided in Section 9.12 and walls installed as part of the original construction of the Unit, no wall shall be constructed on any Parcel. However, Party Walls are permitted for Villa Units. Owners may install fences, subject to specifications adopted by the Architectural Reviewer, provided that each Villa Unit shall have Party Fence. Owners may install hurricane shutters, subject to specifications adopted by the Architectural Reviewer. The Architectural Reviewer shall have the authority to adopt hurricane shutter specifications, which may include color, style, time periods in which shutters may be kept closed, and other factors deemed relevant by the Architectural Reviewer. Laminated glass and window film architecturally designed to function as hurricane protection which complies with the applicable building code, may be used in place of hurricane shutters, except that reflective window coverings are prohibited.

9.16 Lighting. Except for seasonal decorative lights, the exterior lighting of a Parcel shall be accomplished in accordance with a lighting plan approved in writing by the Architectural Reviewer. Seasonal decorative lights may be displayed between the day after Thanksgiving and January 10<sup>th</sup> only.

9.17 Clothes Drying Area/Clotheslines. No outdoor clothes drying area or clotheslines are permitted.

9.18 Pools. Above ground pools are prohibited.

9.19 Subdivision of Parcels. Parcels shall not be further subdivided or separated by any Owner. However, the preceding sentence shall not prevent corrective deeds or deeds to resolve boundary disputes.

9.20 Hurricane Season. An Owner who intends to be absent from his or her Unit during the hurricane season (June 1<sup>st</sup> through November 30<sup>th</sup> of each year) shall prepare his Unit prior to his or her departure by: removing all furniture, potted plants, and other movable objects from his yard; and designating a person or firm, satisfactory to the Association, to care for his Unit should it suffer hurricane damage. Such person or firm shall contact the Association for permission to install temporary hurricane shutters, which may not be installed more than seventy-two (72) hours in advance of a hurricane and must be removed within seventy-two (72) hours after the hurricane has passed. At no time shall hurricane shutters be installed, without the prior written consent of the Architectural Reviewer.

9.21 Golf Carts. Owners may keep golf carts only within an enclosed garage, except for the temporary parking of golf carts in the driveway of a Parcel or in such portion of the Common Areas specifically designated for golf cart parking. No golf cart may be driven by any person that does not have a current valid driver's license. No golf cart shall be driven outside the entrance area or boundaries of Winding Cypress. Each Owner who uses or permits his or her golf cart to be used in Winding Cypress shall provide the Association, on an annual basis, with proof of liability insurance in connection with the operation of his or her golf cart, and such insurance shall have such limits as shall be approved by the Association in its sole discretion. Each such insurance policy shall name the Association as an additional insured, and shall provide the Association with thirty (30) days' notice prior to its cancellation. An Owner shall be held fully responsible for any and all damage (whether to persons or property) resulting from the negligent use of a golf cart by the Owner, his or her Family members, Tenants, Guests, invitees or others using the Owner's golf cart; the Owner shall reimburse the Association for any and all damage (including attorneys' fees and costs) the Association may sustain by reason of such misuse. Such damage shall be collectible from the Owner and Parcel pursuant to Section 4 of this Declaration. Owners and all others using golf carts in Winding Cypress agree to save and hold Association, and its directors, officers, members, employees and agents harmless for and from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising out of or resulting from golf cart usage. Golf carts must be registered with the Association and display the sticker issued by the Association in the located determined by the Association.

10. ASSOCIATION'S EXCULPATION. The Association may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without incurring liability of any nature to the Owners or any other person for any reason whatsoever. Any permission or approval granted shall be binding upon all persons.

11. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS. Every Owner

and the Owner's Family members; Tenants, Guests and invitees shall at all times comply with all the covenants, conditions and restrictions of the Governing Documents. All violations of the Governing Documents shall be reported immediately to the Association's property manager, a member of the Board of Directors or the Board of Directors. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors, whose interpretation and/or whose remedial action shall control. If any person, firm or entity subject to the Governing Documents fails to abide by them, as they are interpreted by the Board of Directors, then the Association or any Member shall have the ability to take any action to compel compliance as set forth below.

11.1 Legal Action. Judicial enforcement of the Governing Documents shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate the Governing Documents, to restrain violation and/or to recover damages, or against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If such action is instituted, the prevailing party shall, in addition, be entitled to recover its costs and attorneys' fees incurred in enforcing the Governing Documents. Certain disputes must be submitted to dispute resolution procedures as more particularly set forth in Section 720.311 of the Act as amended from time-to-time hereafter.

11.2 Entry by Association. Violation of any conditions or restrictions, or breach of any covenant, herein contained or in any of the Governing Documents, shall also give the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the Parcel where such violation or breach exists and in the event of an emergency, summarily abate and remove, at the expense of the Owner any construction or other violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

11.3 Fines. The Board of Directors may impose a fine or fines against an Owner for failure of the Owner, his or her Family, Guests, invitees, Tenants, or agents of any of the foregoing, to comply with any covenant, restriction, rule, or regulation contained herein or promulgated pursuant to the Governing Documents. Fines shall be secured by a lien against the Parcel, as permitted by the Act.

12. LEASING, CONVEYANCE, DISPOSITION. In order to maintain a community of congenial, financially responsible residents with the objectives of inhibiting transiency, protecting the value of the Units and facilitating the development of a stable, quiet community and peace of mind for all residents, the lease, and transfer of ownership of a Parcel by an Owner shall be subject to the following restrictions, which each Owner covenants to observe (except for the exceptions set forth in Section 12.5 below): (Note this Section 12 applies to the renewal of existing leases and to all occupants not approved as part of the original lease.)

12.1 Forms of Ownership:

(A) A Parcel may be owned by one (1) natural person who has qualified and been approved as elsewhere provided herein.

(B) Co-Ownership. Co-ownership of Parcels may be permitted. If the proposed co-Owners

are other than husband and wife or two (2) individuals who reside together as a single housekeeping unit, they shall designate two (2) individuals as the "Primary Occupants". The use of the Parcel by persons other than the Primary Occupants shall be as though the Primary Occupants were the only actual Owners. The intent of this provision is to permit multiple Owners, but to prohibit short term, transient use by several individuals or families. Any change in the Primary Occupants shall be treated as a transfer of ownership by sale or gift, subject to all of the provisions of this Section. No more than one (1) such change may be made in any twelve (12) month period.

(C) Ownership by Corporations, Partnerships or Trusts. A Parcel may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers or title. However, the intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Parcel may be used as short term transient accommodations for several individuals or families. A trust, corporation or other entity shall designate two (2) individuals as the "Primary Occupants". The use of the Parcel by persons other than the Primary Occupants shall be as though the Primary Occupants were the only actual Owners. Any change in the Primary Occupants shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 12. No more than one (1) such change may be made in any twelve (12) month period.

(D) Life Estate. A Parcel may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant shall be the only Member from such Parcel, and occupancy of the Parcel shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant and holders of the remainder interest shall be jointly and severally liable for all Assessments and charges against the Parcel. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. Except in the case where such a transfer has been made, if the consent or approval of the Owner is required for any purpose, that consent or approval of the holders of the remainder interest shall not be required.

12.2 Transfers. Prior to the conveyance or transfer of title to a Parcel or lease of a Unit, it shall be the Owner's responsibility to provide the purchaser or Tenant with the complete set of Governing Documents and any other documents required by law.

(A) Lease, Sale or Gift. No Owner may effectively convey or transfer title to a Parcel or any interest therein by sale or gift without notification to the Association. In addition, no Owner may effectively lease a Unit without the prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any Owner acquires his or her title by devise or inheritance, he or she shall provide the Association with written notice as set forth in Section 12.3 herein.

### 12.3 Procedures.

#### (A) Notice to Association.

(1) Lease, Sale or Gift. An Owner intending to lease his or her Unit or sell or make a gift of his Parcel or any interest therein, shall give to the Board of Directors or its designee, written notice of such intention at least twenty (20) days prior to first date of occupancy pursuant to the proposed lease or the date of closing, together with a copy of the purchase and sale agreement or lease, and the name, and address of the proposed Tenant, purchaser or donee and such other information as the Board of

Directors may reasonably require. The Association may charge a transfer fee in connection with processing each application.

(2) Devise or Inheritance. The transferee must notify the Association of his ownership and submit to the Association a certified copy of the instrument evidencing his ownership and such other information as the Board of Directors may reasonably require. The transferee shall have no occupancy right unless approved by the Board of Directors, but may sell or lease the Parcel in accordance with the procedures provided in this Declaration.

(3) Failure to give Notice. If no notice is given, the Association at its election may approve or disapprove the lease without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board of Directors with the required notice and request reconsideration. The Association shall not have the authority to disapprove a proposed conveyance or other transfer.

(B) Within twenty (20) days of receipt of the required notice and all information requested, the Board of Directors shall approve or disapprove the lease, and shall approve the conveyance or transfer. The Board may delegate its approval authority to an officer, director, agent or committee. When the conveyance, transfer or lease is approved, the approval shall be stated in a Certificate of Approval executed by the President, Vice-President or managing agent of the Association (in recordable form for a conveyance or transfer) and delivered to the purchaser, transferee or Tenant. If the Board of Directors neither approves or disapproves within twenty (20) days, such failure to act shall be deemed the equivalent of approval, and on demand the Board of Directors shall issue a Certificate of Approval to the Owner, purchaser or transferee.

(C) Disapproval of Leases.

(1) The Board of Directors may disapprove a proposed lease only if a majority of the whole Board of Directors votes to disapprove the lease. A lease may only be disapproved for good cause. In determining good cause the Board must consider mitigating factors such as the recency of the event and the detrimental impact on the community of Winding Cypress. Good cause shall include but not be limited to the following:

(a) The person seeking approval or any proposed occupant has been convicted of a felony involving violence to persons or property, a felony demonstrating dishonesty or moral turpitude, or is a registered sexual offender or predator or the equivalent in the jurisdiction in which Winding Cypress is located or any other jurisdiction;

(b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(c) The application for approval on its face indicates that the person seeking approval or any proposed occupant intends to conduct himself or herself in a manner inconsistent with the Governing Documents and any other covenants and restrictions applicable to Winding Cypress;

(d) The person seeking approval or any proposed occupant has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other social organizations or associations, or by his or her conduct as a Tenant, Owner or occupant of a Unit;  
or

(e) The person seeking approval or any proposed occupant failed to provide the information and appearance required to process the application in a timely manner.

(f) The Owner is delinquent in the payment of Assessments and/or other sums owed to the Association at the time of application.

(g) The Owner has outstanding uncorrected violations of the Governing Documents.

12.4 Leasing. Only entire Units may be leased. The minimum leasing period is thirty (30) continuous days and the maximum leasing period is one (1) year. No new lease can begin until at least thirty (30) days have elapsed since the first day of the last lease. No Unit may be leased more than three (3) times in any one (1) calendar year. For purposes of this restriction, the first day of occupancy under the lease shall conclusively determine in which year the lease occurs. No Unit may be used on a "time share" basis. All leases must and shall be deemed to contain the agreement of the Tenant(s) to abide by all of the restrictions contained in the Governing Documents and shall be deemed to provide that a violation thereof is grounds for damages, termination and eviction and that the Tenant(s) and the Owner agree that the Association may proceed against either the Owner or the Tenant(s) and that the Owner or the Tenant shall be responsible for the Association's costs and expenses, including attorneys' fees and costs, secured by a lien against the Parcel. No Unit may be offered or advertised for lease for a lease term of less than thirty (30) continuous days.

12.5 Exception. The provisions of Section 12 do not require notification to the Association with respect to the acquisition of title by judicial sale, nor by an Institutional Mortgagee who acquires title through the Institutional Mortgage, whether by foreclosure or deed in lieu of foreclosure.

12.6 Unapproved Leases. Any lease which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board of Directors.

12.7 No Discrimination. The Association is an equal opportunity provider of housing and shall not disapprove a lease for an illegal discriminatory reason.

### 13. DURATION OF COVENANTS: AMENDMENT OF DECLARATION:

13.1 Duration of Covenants. The covenants, conditions and restrictions of this Declaration shall run with and bind Winding Cypress, and shall inure to the benefit of and be enforceable by the Association, and any Owner, their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the thirtieth (30<sup>th</sup>) anniversary of the date of recordation of this Declaration (as amended to that date by the Members as provided elsewhere herein). Upon the expiration of the initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, ninety percent (90%) of Voting Interests, at a duly held meeting of Members, vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Members vote to terminate this Declaration, the President or Vice President of the Association shall execute a certificate with the formalities of a deed, which shall set forth the Book and Page of the Public Records of Collier County, Florida in which this Declaration is

recorded, the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

13.2 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by one-fourth (1/4) of the Voting Interests. If by petition, the proposed amendments must be submitted to a vote of the Owners not later than the next annual meeting.

13.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Governing Documents, this Declaration may be amended if, at an Association meeting where a quorum has been obtained, the following conditions are met: (1) at least a majority of the Voting Interests must vote either in person, via proxy, or electronically and (2) the proposed amendment is approved by at least a majority of the Voting Interests who are present and voting either in person, by proxy, or electronically, provided that the text of each proposed amendment has been given to the Members with notice of the meeting.

13.4 Certificate; Recording. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to this Declaration, which certificate shall identify the Book and Page of the Public Records in which this Declaration is recorded and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate is recorded in the Public Records of Collier County, Florida.

13.5 Limitation on Amendments. No amendment shall be effective which alters the rights and privileges of the SFWMD, any governmental authority, taxing district, the CDD or a public or private utility, unless such party shall first provide its written consent and joinder. Any amendment proposed to the Governing Documents which would affect the Surface Water Management System, and any other conservation or mitigation areas shall be submitted to SFWMD for a determination of whether the amendment necessitates a modification of the SFWMD permit. If a modification is necessary, SFWMD will so advise the permittee. Any amendment to any of the provisions governing the following shall also require approval of fifty-one percent (51%) of the Eligible Mortgage Holders holding mortgages on Parcels in Winding Cypress: hazard or fidelity insurance requirements; restoration or repair of any Common Area (after damage or partial condemnation) in a manner other than that specified in this Declaration; and any provisions that expressly benefit mortgage holders, insurers or guarantors. An "Eligible Mortgage Holder" is an Institutional Mortgagee that provides a written request to the Association to be considered an Eligible Mortgage Holder (such request to state the name and address of such holder, insurer, or guarantor and the Parcel), and such Institutional Mortgagee shall therefore become an Eligible Mortgage Holder. An Eligible Mortgage Holder will be entitled to timely written notice of: any condemnation loss or any casualty loss which affects a material portion of Winding Cypress or which affects any Parcel on which there is an Institutional Mortgage held, insured, or guaranteed by such eligible holder; any delinquency in the payment of Assessments or charges owed by an Owner of a Parcel subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days, provided, however, notwithstanding this provision, any holder of an Institutional Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Parcel of any obligation under the Governing Documents which is not cured within sixty (60) days; any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders. No amendment shall materially or

adversely alter the proportionate voting interest appurtenant to a Parcel or increase the proportion or percentage by which a Parcel shares in the liability for Assessments unless the Owner and all record owners of liens on the Parcels join in the execution of the amendment. A change in the quorum requirement is not an alteration of voting interests. No amendment shall convert a Parcel into Common Area or redefine a Parcel's boundaries unless the Association obtains the prior written consent and joinder, in recordable form, of that Owner and all holders of a lien against that Parcel.

#### 14. GENERAL PROVISIONS.

14.1 Waiver. Any waiver by the Board of Directors of the breach of any provision of this Declaration must be in writing and shall not operate or be construed as a waiver of any other provision or any subsequent breach.

14.2 Severability. If any section, subsection, sentence, clause, phrase or portion of this Declaration or any of its recorded exhibits is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions.

14.3 Headings. The headings of the Sections herein are for convenience only, and shall not affect the meaning or interpretation of contents thereof.

14.4 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, or electronically sent for those Owners that have consented to electronic notice, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing. The Owner bears the responsibility for notifying the Association of any change of address.

14.5 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

15. **HURRICANE VULNERABILITY ZONE.** Winding Cypress is located in a hurricane vulnerability zone. The hurricane evacuation time in Collier County, Florida is high, and hurricane shelter space is limited.

16. **USE OF THE TERM WINDING CYPRESS.** No person shall use the term "Winding Cypress" or any derivative thereof or logo in any printed, electronic or promotional material, website, or Facebook page or similar platform without the prior written consent of the Association. However, Owners may use the term "Winding Cypress" in printed or promotional material where such term is used solely to specify the particular property is located within Winding Cypress for the purpose of selling or leasing the property or in personal communications to family members and friends.



**LIST OF EXHIBITS**

Exhibit "A" Land Submitted to Declaration. Winding Cypress Phase One PB 57 Page 89-97, Winding Cypress Phase Two PB 60 Pages 73-84, Winding Cypress Phase 2 Replat PB 62 Pages 54-58, Winding Cypress Phase 2C PB 60 Pages 22-23 and Winding Cypress Phase 3 PB 65 Pages 23 -31 all of the public records Collier County, Florida.

Exhibit "B" Articles of Incorporation

Exhibit "C" Bylaws

Exhibit "D" SFWMD Permit (Not attached but incorporated herein by reference as amended).

**EXHIBIT "A"**

Land Submitted to Declaration. Winding Cypress Phase One PB 57 Page 89-97, Winding Cypress Phase Two PB 60 Pages 73-84, Winding Cypress Phase 2 Replat PB 62 Pages 54-58, Winding Cypress Phase 2C PB 60 Pages 22-23 and Winding Cypress Phase 3 PB 65 Pages 23 -31 all of the public records Collier County, Florida.

**AMENDED AND RESTATED ARTICLES OF INCORPORATION OF  
WINDING CYPRESS HOMEOWNERS ASSOCIATION, INC.**

Pursuant to Chapter 617, Florida Statutes, these Articles of Incorporation of Winding Cypress Homeowners Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on, January 30, 2014 are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Chapter 617, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments, adopted pursuant to Chapter 617, Florida Statutes, and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Winding Cypress Homeowners Association, Inc., shall henceforth be as follows:

**ARTICLE I**

**NAME:** The name of the corporation is Winding Cypress Homeowners Association, Inc., sometimes hereinafter referred to as the "Association".

**ARTICLE II**

**PRINCIPAL OFFICE:** The principal office of the corporation presently is as otherwise listed with the Florida Department of State Division of Corporations.

**ARTICLE III**

**PURPOSE AND POWERS:** This Association will not permit pecuniary gain or profit nor distribution of its income to its members, officers, or Directors. It is a nonprofit corporation formed for the purpose of operating a corporate residential community homeowners' association which, subject to a Declaration of Covenants recorded in the public records of Collier County, Florida. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Articles, the Bylaws of the corporation, and with said Declaration and shall have all of the powers and authority reasonably necessary or appropriate for the operation and regulation of a residential community, subject to said recorded Declaration, as it may from time to time be amended, including but not limited to the power:

(A) to fix, levy, collect and enforce payment by any lawful means all charges, assessments, or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property or the corporation;

(B) to make, amend and enforce reasonable rules and regulations governing the use of the Common Areas, Parcels, Units and the operation of the Association;

- (C) to sue and be sued, and to enforce the provisions of the Declaration, the Articles, the Bylaws, and the reasonable rules of the Association;
- (D) to contract for the management and maintenance of the Common Areas and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;
- (E) to employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the properties;
- (F) to dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless first approved by two-thirds (2/3rds) of the voting interests, present and voting, in person or by proxy at a duly called meeting of the membership.
- (G) to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property or assessment authority as security for money borrowed or debts incurred if first approved by Board;
- (H) to maintain, repair, replace and provide insurance for the Common Areas;
- (I) to acquire, (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the corporation;
- (J) to grant, rescind, modify, or move easements.
- (K) to exercise any and all powers, rights and privileges which a corporation organized under Chapters 617 and 720 of Florida Statutes may now or hereafter have or exercise; subject always to the Declaration as amended from time to time.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration, these Articles of Incorporation, and the Bylaws.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS: Membership and Voting Rights shall be as set forth in the Bylaws of the Association.

ARTICLE V

TERM; DISSOLUTION: The term of the Association shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3rds) of total voting

interests of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was formed. In the event there is a refusal to accept such dedication, then such assets shall be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization which is devoted to purposes similar to those of this Association.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

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

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board of Directors or upon a written petition signed by one-fourth (1/4) of the Voting Interests. If by petition, the proposed amendments must be submitted to a vote of the Members not later than the next annual meeting.

(B) Vote Required: A proposed amendment to these Articles shall be adopted if, at an Association meeting where quorum has been obtained, the following conditions are met: (1) at least a majority of the Voting Interests votes either in person, via proxy, or electronically and (2) the proposed amendment is approved by at least a majority of the Voting Interests who are present and voting either in person, by proxy, or electronically, provided that notice of the proposed amendment has been given to the Members in accordance with law.

(C) Effective Date: An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records Collier County, Florida with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE VIII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors. Directors are required to meet all qualifications imposed by the Bylaws.

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board.

## ARTICLE IX

### INDEMNIFICATION:

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

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

(C) Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding on behalf of the affected Director, officer, or committee member. The Director, officer or committee member shall repay such amount if it shall ultimately be determined that said Director, officer or committee member is not entitled to be indemnified by the Association as authorized by this Article IX.

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

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

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

**AMENDED AND RESTATED BYLAWS**

**WINDING CYPRESS HOMEOWNERS ASSOCIATION, INC.**

1. **GENERAL:** These are the Bylaws of Winding Cypress Homeowners Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating Winding Cypress pursuant to the Florida Not-For-Profit Corporation Act.

1.1 **Principal Office.** The principal office of the Association is as listed with the Florida Department of State Division of Corporations.

1.2 **Definitions.** The definitions set forth in the Declaration and the Act shall apply to terms used in these Bylaws.

2. **MEMBERS:**

2.1 **Qualifications.** The Members shall be the record owners of legal title to the Parcels in Winding Cypress. In the case of a Parcel subject to an agreement for deed, the purchaser in possession shall be deemed the Owner of the Parcel for purposes of determining voting and use rights. Membership shall become effective upon the last to occur of the following:

(A) Recording a deed or other instrument evidencing legal title to the Parcel in the Public Records of Collier County, Florida.

(B) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

(C) Delivery to the Association, if required, of a written designation of the Primary Occupants.

The failure to comply with the prerequisites set forth in (B)-(C) above shall not release the Member from the obligation to comply with the Governing Documents, but shall otherwise preclude such Member from obtaining the benefits of membership, including, without limitation, the right to receive notices and the right to vote on Association matters.

2.2 **Voting Interest.** The Members are entitled to one (1) vote for each Parcel they own. The total number of votes shall not exceed the total number of Parcels subject to the Declaration.. The vote of a Parcel is not divisible. If a Parcel is owned by one (1) natural person, his or her right to vote shall be established by the record title to the Parcel. If a Parcel is owned jointly by two (2) or more natural persons that are not acting as trustees, that Parcel's vote may be cast by any one (1) of the Owners. If two (2) or more Owners do not agree among themselves how their one (1) vote shall be cast, that vote shall not be counted for any purpose. If the Owner is a corporation, partnership, limited liability company, trust, trustee or other entity other than a natural person, the vote of that Parcel shall be cast by any officer, director, partner, manager, managing member or trustee, as the case may be.

2.3 **Approval or Disapproval of Matters.** Whenever the decision or approval of the Owner of a Parcel is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person authorized to cast the vote of such Parcel at an Association meeting as stated in Section 2.2 above, unless the joinder of all Owners is specifically required.

2.4 **Change of Membership.** A change of membership shall be established as provided in Section 2.1 above; and the membership of the prior Owner shall thereby be automatically terminated.

2.5 **Termination of Membership.** The 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 which the Association may have against any former Owner or Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

### 3. MEMBERS' MEETINGS: VOTING:

3.1 Annual Meeting. There shall be an Annual meeting of the Members in each calendar year. The Annual meeting shall be held in Collier County, Florida, each year at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any business duly authorized to be transacted by the Members.

3.2 Special Members' Meetings. Special Members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by Members having at least twenty-five percent (25%) of the Voting Interests. The business at any Special Members' meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings: Waiver of Notice. 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 sent to each Member at the address which appears on the books of the Association, or may be furnished by personal delivery. The Member is responsible for providing the Association with notice of any change of address. The Notice of Meeting must be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Attendance at any meeting by a Member constitutes waiver of notice by that Member unless the Member objects to the lack of notice at the beginning of the meeting. A Member may waive notice of any meeting at any time, but only by written waiver. Notice to the Members of meetings of the Board of Directors, meetings of a committee requiring notice in the same manner as meetings of the Board of Directors, and Annual and Special meetings of the Members, may be electronically transmitted in the manner set forth in Section 617.0141, F.S. (except as limited by the Act and these Bylaws). Notice by electronic transmission is effective: when actually transmitted by facsimile telecommunication, if correctly directed to a number at which the Member has consented to receive notice; when actually transmitted by electronic mail, if correctly directed to an electronic mail address at which the Member has consented to receive notice. Notice is also effective when posted on an electronic network that the Member has consented to consult, upon the later of: such correct posting; or the giving of a separate notice to the Member of the fact of such specific posting; or when correctly transmitted to the Member, if by any other form of electronic transmission consented to by the Member to whom notice is given. Consent by a Member to receive notice by electronic transmission shall be revocable by the Member by written notice to the Association. Any such consent shall be deemed revoked if: the Association is unable to deliver by electronic transmission two (2) consecutive notices given by the Association in accordance with such consent; and such inability becomes known to the Secretary, Assistant Secretary or other authorized person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action. The Member is responsible for providing the Association with notice of any change of mailing address, facsimile number or electronic mail address. As used in these Bylaws, the term "electronic transmission" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmission of images, and text that is sent via electronic mail between computers. An affidavit of the Secretary, an Assistant Secretary, or other authorized agent of the Association that the notice has been given by a form of electronic transmission is, in the absence of fraud, prima facie evidence of the facts stated in the notice.

3.4 Quorum. Except as set forth in Section 9.3 below, a quorum at a Members' meeting shall be attained by the presence, either in person or by proxy, of Members entitled to cast at least thirty percent (30%) of the 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 at a duly called meeting of the Members at which a quorum has been attained shall be binding upon all Members for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the Governing Documents.

3.6 Proxy Voting. To the extent lawful, any Member entitled to attend and vote at a Members meeting may establish his presence and cast his vote by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the votes, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies must be Members. No proxy shall be valid if it names more than one (1) person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

3.7 Adjourned Meetings. Any duly called meeting of the Members may be adjourned to be reconvened at a specific later time by vote of the majority of the Voting Interests present in person or by proxy, regardless of whether a quorum has been attained. The adjournment to a date, time and place must be announced at that meeting before the adjournment is taken, or notice must be given to all Members of the date, time and place of its reconvening. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum is then present, in person or by proxy.

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

- (A) Call of the roll or determination of quorum
- (B) Reading or disposal of minutes of the last Members' meeting
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Unfinished Business
- (F) Election if Necessary
- (G) New Business
- (H) 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 Directors at reasonable times and for a period of seven (7) years after the meeting. Minutes must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each Director present at a Board of Directors meeting must be recorded in the minutes.

3.10 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall guide 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 whose 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 Participation at Meeting by Remote Communication. Unless prohibited by the Chapter 720, F.S., if authorized by the Board of Directors as provided in Section 617.0721 F.S., and subject to such guidelines and procedures as the Board of Directors may adopt, members and proxy holders who are not physically present at a meeting may, by means of remote communication:

- (A) Participate in the meeting.
- (B) Be deemed to be present in person and vote at the meeting if:

1. The Association implements reasonable means to verify that each person deemed present and authorized to vote by means of remote communication is a member or proxy holder; and

2. The Association implements reasonable measures to provide such members or proxy holders with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrent with the proceedings.

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

4.1 **Number and Terms of Service; Elections.** The number of Directors which shall constitute the whole Board of Directors shall be five (5) Directors shall be elected by secret ballot (using a double envelope system) in accordance with the Act and these Bylaws.

The Association shall mail, hand-deliver or electronically transmit a First Notice of the Annual Meeting and Election at least sixty (60) days prior to the meeting. Any eligible person may place his or her name in nomination in advance of the Annual Meeting by returning a notice of intent to be a candidate within forty (40) days prior to the meeting and, in accordance with those procedures established by the Board of Directors. Any person indicating his or her desire to qualify as a candidate may also return a separate information sheet, no larger than 8 1/2" by 11", which describes the candidate's background, education and qualifications for office, and any other information deemed relevant by the candidate, which information sheet must be furnished by the candidate by within thirty-five (35) days prior to the Annual Meeting. Notices shall be deemed effective when physically received by the Association at the designated location for delivery. The Association has no liability for the contents of the information sheets prepared by the candidates. If the number of candidates exceeds the number of seats to be filled, an election shall be required.

The Association shall mail, hand-deliver or electronically transmit a Second Notice, together with any candidate information sheets, a ballot which shall list all candidates in alphabetical order by surname, and (unless the Second Notice is electronically transmitted), "inner" and "outer envelopes", at least fourteen (14) days in advance of the meeting; provided, however, that if the number of candidates does not exceed the number of vacancies, no election shall be required, and the candidates become members of the Board of Directors effective upon the adjournment of the meeting. Directors shall be elected by a plurality of the ballots cast. A Member shall not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. In the election of Directors, there shall be apurtenant to each Parcel as many votes for Directors as there are Directors to be elected, but no Parcel may cast more than one (1) vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative.

After indicating the name(s) of the candidate(s) for which the Member has voted, the ballot must be placed in an inner envelope with no identifying markings and mailed or delivered to the Association in an outer envelope bearing identifying information reflecting the name of the Member, the Member's address in Winding Cypress and the signature of the Member casting that ballot. If the eligibility of the Member to vote is confirmed and no other ballot has been submitted for that Parcel, the inner envelope shall be removed from the outer envelope bearing the identification information, placed with the ballots which were personally cast, and opened when the ballots are counted. Nominations from the floor are prohibited and there shall not be a nominating committee. If more than one (1) ballot is submitted for a Parcel, the ballots for that Parcel shall be disqualified. Upon receipt by the Association, no ballot may be rescinded or changed. Any vote by ballot received after the closing of the balloting may not be considered.

Directors shall serve two (2) year terms and the preestablished system of staggered terms will be maintained. A Director's term will end at the annual election at which his or her successor is to be duly elected,

unless he sooner resigns, or is recalled as provided in 4.4 below.

4.2 Qualifications. Directors elected by the Members must be a Member or the spouse, of a Member. If a Parcel is owned by a corporation, partnership, limited liability company or trust, any officer, director, partner, manager, managing member, or trustee, as the case may be, shall be eligible to serve as a Director. A person who is delinquent in the payment of any fee, fine, assessment or any other monetary obligation to the Association on the last day to submit his or her name to be a candidate is not eligible to run for the Board. After being appointed or elected to serve on the Board, a person who is delinquent in the payment of any fee, fine, assessment or any other monetary obligation for more than ninety (90) days is automatically removed from Board membership and a vacancy shall exist. A person who has been convicted of any felony in Florida 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 Florida, is not eligible for Board membership unless such felon's civil rights have been fully restored for at least five (5) years as of the date on which such person seeks election to the Board of Directors. The validity of any action by the Board of Directors is not affected if it is later determined that a Director is ineligible for Board of Directors membership. A Director or officer charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property is removed from office. The Board of Directors shall fill the vacancy according to general law until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director or officer shall be reinstated for any remainder of his or her term of office. A Member who has such criminal charges pending may not be appointed or elected to a position as a Director or officer. Within ninety (90) days after being elected or appointed to the Board of Directors, each Director shall certify in writing to the Secretary that he or she has read the Declaration, Articles of Incorporation, Bylaws and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Members. Within ninety (90) days after being elected or appointed to the Board of Directors, in lieu of such written certification, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved education provider within one year before or ninety (90) days after the date of election or appointment. The written certification or educational certificate is valid for the uninterrupted tenure of the Director on the Board of Directors. A Director who does not timely file the written certification or educational certificate shall be suspended from the Board of Directors until he or she complies with the requirements set forth above. The Board of Directors may temporarily fill the vacancy during the period of suspension. The Association shall retain each Director's written certification or educational certificate for inspection by the Members for five (5) years after the Director's election. However, the failure to have such written certification or educational certificate on file does not affect the validity of any Board of Directors' action.

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

4.4 Removal of Directors. Directors may be removed with or without cause by a majority of the Voting Interests, by a written agreement in the manner required by the Act as amended from time-to-time hereafter.

4.5 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election. The organizational meeting may be held immediately following the election, in which case noticing of the meeting may be effectuated by the Board of Directors existing prior to the election.

4.6 Other Meetings. Meetings of the Board of Directors may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least forty-eight (48) hours prior

to the day named for such meeting.

4.7 Notice to Owners. A meeting of the Board of Directors occurs whenever a quorum of the Board of Directors gathers to conduct Association business. All meetings of the Board of Directors shall be open to Members except for meetings between the Board of Directors 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; or meetings of the Board of Directors held for the purpose of discussing personnel matters. Notices of all Board of Directors meetings shall be posted conspicuously in Winding Cypress for at least forty-eight (48) continuous hours in advance of each Board of Directors meeting, except in an emergency. In the event of an emergency meeting, any action taken shall be noticed and ratified at the next regular meeting of the Board of Directors. In the alternative to the posting requirements discussed above, notice of each Board of Directors 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 of Directors meeting unless the notice of the meeting includes a statement that Assessments will be considered and the nature of the Assessments. Members have the right to speak with reference to any matter that is placed on the Board of Directors meeting agenda. The Association may adopt reasonable, written rules 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 must be consistent with the minimum requirements of the Act.

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

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

4.10 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Governing Documents or by applicable statutes. Directors may not vote by proxy or by secret ballot at Board of Directors meetings, except that secret ballots may be used in the election of officers.

4.11 Adjourned Meetings. The majority of the Directors present at any meeting of the Board of Directors, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date.

4.12 The Presiding Officer. The President of the Association, or in his or her 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 the Directors present.

4.13 Compensation of Directors and Officers, and Committee Members. Directors, officers and Members of a committee shall receive no compensation for their services as such. Directors and officers and committee members may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

4.14 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board of Directors deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If required by law, committee meetings shall be open to attendance by any Member, and notice of committee meetings shall be posted in the same manner as required in Section 4.7 above for Board of Directors meetings, except for such 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 or a meeting to discuss a personnel matter.

## 5. OFFICERS:

5.1 Officers and Elections. The executive officers of the Association shall be a President and Vice President (both of whom must be Directors), 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 may hold two (2) or more offices. The Board of Directors may, from time to time, appoint such other officers, and designate their powers and duties, as the Board of Directors shall find to be required to manage the affairs of the Association. If the Board of Directors so determines, there may be more than one (1) Vice-President.

5.2 President. The President shall be the chief executive officer of the Association; he or she 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 of Directors are carried into effect. He or she shall execute bonds, mortgages and other contracts requiring 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.

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

5.4 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He or she 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 of Directors or the President. He or she shall keep in safe custody the seal of the Association and, when authorized by the Board of Directors, 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 (1) has been designated, or the Association's manager/management company.

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

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 such financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board of Directors. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board of Directors.

6.2 Budget. The Board of Directors shall adopt a budget of Common Expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board of Directors at which the budget will be adopted shall be mailed to each Member not less than fourteen (14) days prior to that meeting. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association or another person, if any.

6.3 Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses,

the proposed budget may include reserve accounts for capital expenditures and deferred maintenance with respect to the Common Area. If the Association's budget includes reserve accounts established by the Members pursuant to Section 720.303 of the Act, such Statutory reserves shall be determined, maintained, and waived in the manner provided therein. Once the Members of the Association provide for reserve accounts, the Association shall thereafter determine, maintain, and waive reserves in compliance with the Act, provided that this does not preclude the termination of a reserve account upon approval of a majority of the Voting Interests. Upon such approval, the terminating reserve account shall be removed from the budget. If reserve accounts are established by the Members, the budget must designate the components for which the reserve accounts may be used. The Members may elect to establish reserves upon the affirmative approval of a majority of the Voting Interests such approval may be obtained by vote of the Members at a duly called Members' meeting or by the written consent of a majority of the Voting Interests. The approval action of the Members must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the Members, the Board of Directors shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in Section 720.303 of the Act, the reserve accounts must be funded or maintained or have their funding waived in the manner provided therein. The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item. Funding formulas for reserves authorized by this section must be based on a separate analysis of each of the required assets or a pooled analysis of two or more of the required assets. Reserves established by the Board of Directors are "non-statutory" reserves and are therefore not subject to Section 720.303 of the Act.

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

6.5 Special Assessments. Special Assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special Assessment may be levied against all Owners and Parcels or against less than all Owners as provided in Section 7.5 of the Declaration. Special Assessments are due on the day specified in the resolution of the Board of Directors approving such Assessments. Except as provided below a special Assessment shall not be levied unless it is first approved by two-thirds (2/3) of the Voting Interests who are obligated to pay the special Assessment. Provided however, membership approval shall not be required for a special Assessment that relates to the necessary maintenance, repair, insurance or replacement of Common Area, or if the special Assessment is required for the Board of Directors to comply with any law, regulation or order of any municipal, state or federal agency. An Assessment (whether annual or special) may not be levied at a Board of Directors meeting unless a written notice of the meeting is provided to each Member at least fourteen (14) days before the meeting, which notice includes a statement that Assessments will be considered at the meeting and the nature of the Assessments. Written notice of any meeting at which special Assessments will be considered must be mailed, delivered, or electronically transmitted (to the extent permitted by law) to the Members and posted conspicuously in Winding Cypress or broadcast on closed-circuit television not less than fourteen (14) days before the meeting.

6.6 Fidelity Bonds. The Association shall maintain insurance or a fidelity bond for all persons who control or disburse Association funds. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this Section 6.6, the term "persons who control or disburse Association funds" includes, but is not limited to, persons who are authorized to sign checks on behalf of the Association, and the President, Secretary and Treasurer. The Association shall bear the cost of any insurance or bond.

6.7 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 report is completed by the Association or received from the third party, but not later than one hundred twenty (120) days after the end of the fiscal year, the Association shall mail or hand deliver to each Member a copy of such report or a written notice that a copy of the report is available upon request at no charge to the Member. The financial report shall be prepared in accordance with Section 720.303(7) of the Act. If approved by a majority of the Voting Interests present at a properly called members' meeting, the Association shall prepare or cause to be prepared a financial report that is less rigorous than otherwise required by the Act. If approved by a majority of the Voting Interests, the Association shall prepare or cause to be prepared a financial report that is more rigorous than otherwise required by the Act.

6.8 Fiscal Year. The fiscal year shall be the calendar year, unless modified by the Board of Directors.

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

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

8.1 Obligations Of Members: Remedies At Law Or In Equity: Levy of Fines and Suspension Of Use Rights.

(A) Each Member and the Member's Tenants, Guests and invitees, are governed by, and must comply with the Act and the Governing Documents. Actions at law or in equity, or both, to redress the alleged failure or refusal to comply with the Governing Documents may be brought by the Association or by any Member against:

- (1) The Association;
- (2) A Member;
- (3) Any Director or officer who willfully and knowingly fails to comply with the provisions of the Act and the Governing Documents; and
- (4) Any Tenants, Guests, or invitees occupying a Parcel or using the Common Area.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This section does not deprive any person of any other available right or remedy.

(B) The Association may levy reasonable fines against any Member or any Member's Tenant, Guest or invitee for the failure of the Owner of a Parcel or its occupant, licensee, or invitee to comply with any provision of the Governing Documents. The fine shall be in an amount deemed necessary by the Board of Directors to deter future violations, but in no event shall any fine exceed the maximum amounts allowed by law. Fines shall be secured by a lien against a Parcel unless prohibited by the Act.

(C) The Association may suspend, for a reasonable amount of time, the right of a Member, or a Member's Tenant, Guest or invitee, to use the Common Area and facilities, for the failure of the Owner of the Parcel or its occupant, licensee or invitee to comply with any provision of the Governing Documents. Suspension of such use rights does not prohibit the right of an Owner or Tenant of a Parcel to have vehicular and pedestrian ingress to and egress from the Parcel, including, but not limited to, the right to park. However, the Association may deactivate an Owner's gate transponder or other entry mechanism and require that the Owner, his or her Family members, Tenants and Guests gain entry to Winding Cypress through a guest entrance.



(D) A fine or suspension pursuant to (B) and (C) above may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and for a hearing before a committee of at least three Members appointed by the Board of Directors who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, Director or employee. If the committee, by majority vote, does not approve the fine or suspension, it may not be imposed.

(E) If a Member is more than ninety (90) days delinquent in paying a monetary obligation due to the Association, the Association may suspend the rights of the Member, or the Member's Tenant, Guest, or invitee, to use the Common Area and facilities until the monetary obligation is paid in full. The foregoing does not apply to that portion of the Common Area use to provide access or utility services to the Parcel, and does not impair the right of an Owner or Tenant of a Parcel to have vehicular and pedestrian ingress to and egress from the Parcel, including, but not limited to, the right to park. However, the Association may deactivate an Owner's gate transponder or other entry mechanism and require that the Owner, his Family members, Tenants and Guests gain entry to Winding Cypress through a guest entrance. The notice and hearing requirements under subsection (D) above do not apply to a suspension imposed under this subsection (E).

(F) The Association may suspend the voting rights of a Parcel or Member for the nonpayment of any monetary obligation due to the Association that is more than ninety (90) days delinquent. The suspension ends upon full payment of all obligations currently due or overdue the Association. A Voting Interest or consent right allocated to a Parcel or Member which has been suspended by the Association may not be counted towards the total number of Voting Interests for any purpose, including but not limited to, the number of Voting Interests necessary to constitute a quorum, the number of Voting Interests required to conduct an election, or the number of Voting Interests required to approve an action under the Act or pursuant to the Governing Documents. The notice and hearing requirements under subsection (D) above do not apply to a suspension imposed under this subsection (F).

(G) All suspensions imposed pursuant to subsections (E) and (F) above must be approved at a properly noticed meeting of the Board of Directors. Upon approval, the Association must notify the Owner, and, if applicable, the Parcel's occupant, licensee or invitee by mail or hand-delivery.

8.2 Availability of Remedies. Each Member, for himself, herself, his or her heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all Members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the community free from 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 the Board of Directors or by a written petition to the Board of Directors, signed by at least one-fourth (1/4) of the Voting Interests.

9.2 Procedure. Upon any amendment or amendments to these Bylaws being proposed by the Board of Directors or the Members, such proposed amendment or amendments shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can still be given.

9.3 Vote Required. A proposed amendment to these Bylaws shall be adopted if, at an Association meeting where quorum has been obtained, the following conditions are met: (1) at least a majority of the Voting Interests votes either in person, via proxy, or electronically and (2) the proposed amendment is approved by at least a majority of the Voting Interests who are present and voting either in person, by proxy, or electronically, provided that notice of the proposed amendment has been given to the Members in accordance with law.

9.4 Certificate: Recording. A copy of each adopted amendment shall be attached to a certificate that the

amendment was duly adopted as an amendment to the Bylaws, which certificate shall be in the form required by law and shall be executed by the President or Vice-President 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 Collier County, Florida.

10. MISCELLANEOUS:

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

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