2836058 OR: 2869 PG: 1424

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
08/02/2001 at 10:57AM DWIGHT B. BROCK, CLERK
REC FEE 114.00

Retn:
SAMOUCE MURRELL & FRANCOEUR
800 LAUREL OAK DR #300
NAPLES FL 34108

(for use by Clerk of Court)

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly and acting President of Yacht Harbour Cove at Windstar Condominium Association, Inc., a Florida corporation not for profit, hereby certifies that at a meeting of the members held on April 26, 2001, where a quorum was present, after due notice, the resolution set forth below was approved by the affirmative vote of not less than sixty-six and two thirds percent (66 2/3%) of the voting interest of Yacht Harbour Cove at Windstar Condominium Association, Inc. and the former Yacht Harbour Cove at Windstar II Condominium Association, Inc. for the purposes of approving the Articles of Merger and amending the Bylaws of Yacht Harbour Cove at Windstar Condominium Association, Inc. attached as Exhibit "E" to the Declaration of Condominium for Yacht Harbour Cove at Windstar, a Condominium as originally recorded at O.R. Book 2183, Pages 1192 *et seq.*, Public Records of Collier County, Florida.

RESOLVED: That the Articles of Merger and Amended and Restated Bylaws are hereby approved and the Articles of Merger and Amended and Restated Bylaws are adopted in the form attached hereto, and made a part hereof.

YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC.,
Surviving Corporation of itself and Dissolved Corporation;
YACHT HARBOUR COVE AT WINDSTAR II CONDOMINIUM ASSOCIATION, INC.

Date: 6-26-01

(1) Witness
Print Name: ROBERT J. PALMITER

(2) Witness
Print Name: Diana K Anderson

By: ERIK S. FISKARS, President
Address:

(CORPORATE SEAL)

STATE OF Michigan
COUNTY OF Berrien

The foregoing instrument was acknowledged before me this 26 day of June, ~~1997~~ 2001, by ERIK S FISKARS, President of the aforenamed Corporation, on behalf of the Corporation. He is personally known to me or has produced _____ as identification.

(Print, Type or Stamp Commissioned Name of Notary Public) (Affix Notarial Seal)

Signature of Notary Public KAREN S DEEDS
COMMISSION EXPIRES: 11-16-03

This instrument prepared by Robert C. Samouce, Esq., Samouce & Murrell & Francoeur, P.A., 800 Laurel Oak Drive, Suite 308, Naples, FL 34108

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OR: 2869 PG: 1425

State of Florida

Department of State

I certify the attached is a true and correct copy of the Articles of Merger, filed on July 9, 2001, for YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC., the surviving Florida entity, as shown by the records of this office.

The document number of this entity is N94000004128.

NOT CERTIFIED COPY

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capitol, this the Thirteenth day of July, 2001

GREAT SEAL OF THE STATE OF FLORIDA · IN GOD WE TRUST ·

CR2E022 (1/99)

Katherine Harris

Katherine Harris
Secretary of State

ARTICLES OF MERGER

Article 1. The undersigned corporations, all validly and legally formed and in good standing as Florida corporations not for profit, have adopted a Plan of Merger, which is attached hereto as exhibit "A". The Plan of Merger was adopted pursuant to Sections 617.1101 and 617.1103, Florida Statutes.

Article 2. Under the Plan of Merger, the surviving corporation will be Yacht Harbour Cove at Windstar Condominium Association, Inc., a Florida corporation not for profit.

Article 3. The Plan of Merger shall become effective as and when provided therein.

Article 4. At the same time, the Articles of Incorporation of the Surviving Corporation are amended and restated in their entirety, pursuant to Section 617.1007 Florida Statutes. The Amended and Restated Articles of Incorporation are attached hereto as Exhibit "B".

Article 5. The name of the Surviving Corporation shall be **Yacht Harbour Cove at Windstar Condominium Association, Inc., a Florida corporation not for profit.**

Article 6. The undersigned certifies that these Articles of Merger, and the Exhibits hereto, were adopted and approved by at least a majority of the members of each corporation entitled to vote with respect thereto at meeting of the members held on 4/26/01, 2001, which was sufficient for approval.

6/27/01
Date

YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC.

By: _____
ERIK S. FISKARS, *President*

Attest: _____
Secretary

(CORPORATE SEAL)

01 JUL -5 AM 9:39

STATE OF FLORIDA
COUNTY OF COLLIER

This instrument was executed before me this 27th day of June, 2001, by Erik S. Fiskars, as President of YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. He is personally known to me or did produce n/a as identification.

BRIGIT BRENNAN
My Comm Exp. 6/19/04
(NOTARIAL SEAL)
Personally Known ( ) Other I.D.

_____
Signature of Notary Public

Brigit Brennan
Print name of Notary

NOT CERTIFIED COPY

For the dual purposes of indicating consent to, and executing both the foregoing Articles of Merger, and the Plan of Merger attached as Exhibit "A" the undersigned have set their signatures hereto on the date indicated.

5/25/01
Date

YACHT HARBOUR COVE AT WINDSTAR II CONDOMINIUM ASSOCIATION, INC.,
a Florida corporation not for profit

By: _____
President

Attest:
_____
Secretary

(CORPORATE SEAL)

STATE OF Florida
COUNTY OF Collier

The foregoing instrument was executed before me this 25th day of May, 2001, by Thomas _____, as President of YACHT HARBOUR COVE AT WINDSTAR II CONDOMINIUM ASSOCIATION, INC., a Florida corporation, on behalf of the corporation. He is personally known to me or did produce N/K as identification.

_____
Signature of Notary Public
Brigit Brennan
Print name of Notary

(NOTARIAL SEAL)

STATE OF FLORIDA NOTARY PUBLIC
BRIGIT BRENNAN
My Comm Exp. 6/18/04
No. CC 942055
(Personally Known | | Other I.D.

NOT A CERTIFIED COPY

PLAN OF MERGER

This Plan of Merger is by and between YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, incorporated under the same name on August 23, 1994 hereinafter called the "Surviving Corporation," and the following corporation, which are hereinafter referred to as the "Dissolving Corporation."

YACHT HARBOUR COVE AT WINDSTAR II CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, incorporated under the same name on March 9, 1998.

The Surviving Corporation and the Dissolving Corporations are sometimes referred to collectively herein as the "Constituent Corporations."

1. The Constituent Corporations are both Florida corporations not for profit, organized on a non-stock basis, and are in good standing.

2. Heretofore a 28-unit residential condominium complex, including two (2) separate residential condominiums, was formed by the recording of two (2) separate Declarations of Condominium, as follows:

> *Yacht Harbour Cove at Windstar, a Condominium* consisting of 20 Units, created by Declaration of Condominium recorded May 16, 1996, in O.R. Book 2183, at Pages 1192 *et seq.*, Public Records of Collier County, Florida.
>
> *Yacht Harbour Cove at Windstar II, a Condominium* consisting of 8 Units, created by Declaration of Condominium recorded October 18, 1999, in O.R. Book 2602, at Pages 1172 *et seq.*, Public Records of Collier County, Florida.

The Surviving and Dissolving Corporations, respectively, are the two (2) condominium associations which operate the above-referenced condominiums. The condominiums themselves are not being merged.

3. **The Surviving Corporation** shall become the condominium association that operates both of the above-referenced condominiums as **"Yacht Harbour Cove at Windstar Condominium Association, Inc."**

4. **Principal Office of Surviving Corporation.** The principal office of the Surviving Corporation shall remain at the following address: 5075 Yacht Harbour Circle, Naples, FL 34112.

5. **Changes in Articles of Incorporation.** The Articles of Incorporation of the Surviving Corporation shall be the Amended and Restated Articles of Incorporation attached to the Articles of Merger as Exhibit "B".

6. **Changes in Bylaws.** The Bylaws of the Surviving Corporation shall be the Amended and Restated Bylaws as recorded in the Public Records of Collier County.

7. **Change of Name.** The name of the Surviving Corporation shall be **"Yacht Harbour Cove at Windstar Condominium Association, Inc."**

8. **Directors and Officers.** The directors and officers of the Surviving Corporation on the effective date of the merger shall be those Directors and Officers sitting or appointed at the meeting of the Organizational Board Meeting of the Surviving Corporation held immediately after the meetings of the Constituent Corporations held to approve and ratify the merger. The directors and officers of the Surviving Corporation shall serve until their successors have been duly elected or appointed.

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9. **Ratification by Members.** This Plan of Merger has been ratified and approved by the members of each of the Constituent Corporations as required by law. Execution of the Articles of Merger and this Plan of Merger by officers of each Constituent Corporation constitutes a representation and certification that such ratification and approval has been obtained.

10. **Effective Date of Merger.** This merger shall become effective on the date the Article of Merger are filed in the officers of the Secretary of State.

11. **Effect of Merger.** When the merger becomes effective, the separate existence of the Dissolving Corporation automatically ceases, except as may be required to carry out the purposes of this Plan of Merger, or as continued by statute. All of the rights, privileges, powers, franchises, assets, property causes of action, and interests of any kind whatsoever of the Dissolving Corporation, including debts due on any and all accounts, automatically become the property of the Surviving Corporation, and do not revert and are not in any way impaired by reason of the Merger. All rights of creditors and all liens upon the property of the Constituent Corporations are preserved unimpaired, and all debts, liabilities and duties of the Dissolving Corporation thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if the debts, liabilities and duties had been initially incurred or contracted by it.

12. **Execution.** The Articles of Merger and this Plan of Merger may be executed in any number of counterparts, and each counterpart shall constitute a part of the original instrument.

IN WITNESS WHEREOF, the Constituent Corporations have caused these presents to be signed by their respective officers thereunto duly authorized by the respective Boards of Directors and Members of each corporation.

6/27/01
Date

YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC.

By: _____
ERIK S. FISKARS, *President*

Attest: _____
Secretary

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

This instrument was executed before me this 27th day of June, 2001, by Erik S Fiskars, as President of YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. He is personally known to me or did produce n/a as identification.

_____
Signature of Notary

Brigit Brennan
Print name of Notary

(NOTARIAL SEAL)

STATE OF FLORIDA NOTARY PUBLIC
BRIGIT BRENNAN
My Comm Exp 6/18/04
No. CC 942055
Personally Known | | Other I.D

UNOFFICIAL DOCUMENT

Note: SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES. FOR PRESENT TEXT SEE EXISTING ARTICLES.

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC.

Pursuant to Section 617.1007, Florida Statutes, the Articles of Incorporation of The Groves Residents' Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on August 23, 1994, are hereby amended and restated in their entirety, and the name of the corporation is changed. All amendments included herein have been adopted pursuant to Section 617.1002(4), 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 Section 617.1002 and the omission of matters of historical interest. The name of the corporation remains the same. The Amended and Restated Articles of Incorporation of Yacht Harbour cove at Windstar Condominium Association, Inc., shall be as follows:

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ARTICLE I

NAME: The name of the corporation, (the "Association") shall remain **Yacht Harbour Cove at Windstar Condominium Association, Inc.**

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity for the operation of property submitted to the condominium form of ownership, located in Collier County, Florida.

The Association is organized and shall exist on a non-stock basis as a corporation not for profit under the laws of the State of Florida, and no income of the Association shall be distributed or inure to the private benefit of any Unit Owner, Director or officer. For the accomplishment of its purposes, the Association has all of the common law and statutory powers and duties of a corporation not for profit under the laws of the State of Florida, except as expressly limited or modified by these Articles, the Neighborhood Declaration of Covenants, Conditions and Restrictions for The Condominiums of Southpointe Yacht Club, the Declarations of Condominium for the condominiums operated by the Association, the Bylaws of the Association, or the Florida Condominium Act. The Association also has all of the powers and duties reasonably necessary to operate the condominiums pursuant to said Declarations as they may hereafter be amended, including but not limited to the following:

(A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.

(B) To protect, maintain, repair, replace and operate the condominium property and association property.

(C) To purchase insurance for the protection of the Association and its members.

(D) To reconstruct improvements after casualty and to make further improvements of the property subject to its jurisdiction.

(E) To make, amend and enforce reasonable rules and regulations governing the use of the common areas and common elements, and the operation of the Association.

(F) To approve or disapprove the transfer of ownership and leasing of units, as and to the extent provided for in the respective Declarations.

(G) To enforce the provisions of the Condominium Act, the Declarations of Condominium, the By-Laws and any Rules and Regulations of the Association.

(H) To contract for the management and maintenance of the condominium properties, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required to be exercised by the Board of Directors or the membership of the Association.

(I) To employ accountants, attorneys, engineers, architects, and other professional personnel to perform the services required for proper operation of the Association.

(J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities intended to provide enjoyment, recreation, or other use or benefit to the unit owners.

(K) To borrow money if necessary to perform its other functions hereunder.

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 Declarations of Condominium, these Articles of Incorporation and the Bylaws.

ARTICLE III

MEMBERSHIP:

(A) The members of the Association are the record owners of a fee simple interest in one or more units, as further provided in the Bylaws.

(B) The undivided share owned by each member in the funds and assets of the Association cannot be assigned or transferred in any manner, except as an appurtenance to his Unit.

(C) The owners of each Unit, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

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ARTICLE IV

TERM: The term of the Association shall be perpetual.

ARTICLE V

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

ARTICLE VI

DIRECTORS AND OFFICERS:

(A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors provided in the Bylaws, and in the absence of specification in the Bylaws shall consist of three (3) Directors from Yacht Harbour Cove at Windstar, a Condominium and one (1) Directors from Yacht Harbour Cove at Windstar II Condominium Association, Inc..

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed from office, 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 a majority of the entire Board of Directors at its first meeting after the annual meeting of the members of the Association, and shall serve at the pleasure of a majority of the Board.

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 or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests of the Association.

(B) Procedure. Upon any amendment to these Articles being so proposed by the Board or the Unit Owners, the proposed amendment shall be submitted to a vote of the members not later than ninety (90) days after the amendment has been properly proposed by the Board or the Unit Owners.

(C) Vote Required for Adoption. Except as otherwise provided by Florida law, these Articles of Incorporation may be amended by the vote of a majority of the voting interests of the Association at

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any annual or special meeting called for the purpose, or by approval in writing signed by a majority of the voting interests of the Association without a meeting. Notice of any proposed amendment must be given as required by law.

(D) Effective Date. An amendment becomes effective after proper filing with the Florida Secretary of State and recording a certified copy in the Public Records of Collier County, Florida in the same manner as required for recording an amendment to the Bylaws.

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ARTICLE VIII

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgement or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgement in its favor.

(B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.

(C) A transaction from which the Director or officer derived an improper personal benefit.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

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

AMENDED AND RESTATED BYLAWS OF YACHT HARBOUR COVE AT WINDSTAR CONDOMINIUM ASSOCIATION, INC.

1. **GENERAL.** These are the Amended and Restated Bylaws of Yacht Harbour Cove at Windstar Condominium Association, Inc. (the "Association"). The Association is Florida corporation not for profit organized for the purpose of operating the property and common facilities encompassed by the following two (2) residential Condominiums:

(A) ***Yacht Harbour Cove at Windstar, a Condominium,*** consisting of 20 Units recorded May 16, 1996, in O.R. Book 2183 at Pages 1192 *et seq.*, Public Records of Collier County, Florida;

(B) ***Yacht Harbour Cove at Windstar II, a Condominium,*** consisting of 8 Units, created by Declaration of Condominium recorded October 18, 1999, in O.R. Book 2602, at Pages 1172 *et seq.*, Public Records of Collier County, Florida;

All prior Bylaws are hereby revoked and superseded in their entirety

1.1 **Principal Office.** The principal office of the Association shall be such location within Collier County Florida as may be determined from time to time by the Board of Directors.

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

1.3 **Definitions.** The definitions set forth in Declarations of Condominium listed above, shall apply to terms used in these Bylaws, unless the context clearly requires another meaning.

2. **MEMBERS.** The members of the Association are the record owners of legal title to each of the twenty-eight (28) condominium units within Yacht Harbour Cove. If a unit is subject to an agreement for deed (a.k.a. "Land contract"), the contract purchaser in possession is considered the owner of the unit for purposes of determining use rights, and is authorized to cast the vote of the unit.

2.1 **Voting Interests.** The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of condominium units within Yacht Harbour Cove is twenty-eight (28), so the *"voting interests of the Association"* total twenty-eight (28) votes. When a vote of the owners in any single condominium is required, the total number of *"voting interests of that condominium"* is equal to the number of units in that condominium. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a unit is owned by one natural person or a single trustee, the record owner has the right to vote. If a unit is owned jointly by two or more natural persons or trustees, that unit's vote may be cast by any one of the record owners. If two or more owners of a unit do not agree among themselves as to how their one (1) vote will be cast on any question, the vote shall not be counted on that question. If the owner

of a unit is a corporation, the vote of that unit shall be cast by the president or any vice-president of that corporation. If the owner is a partnership, the vote may be cast by any general partner of that partnership.

2.2 Approval or Disapproval of Matters. Whenever the decision or approval of the owner(s) of a unit is required upon any matter, whether the subject of an Association meeting or not, that decision or approval may be expressed by any person authorized in Section 2.1 above to cast the vote of the unit, unless joinder of all record owners is specifically required by law, or by the governing documents.

2.3 Termination of Membership. Termination of membership in the Association does not relieve or release a former member from any liability or obligation to the Association incurred during the period of his membership, nor does it impair any rights or remedies the Association may have against the former member arising out of or in any way connected with his 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, during the first quarter of the year on a day, and at a place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

3.2 Special Members' Meetings. Special meetings of the members of the Association, or of the unit owners of any single condominium, must be held whenever called by the President or by a majority of the Board of Directors. A special meeting of the Association members may be called by members having at least ten percent (10%) of the voting interests of the Association. A special meeting of the owners from any single condominium may be called by at least ten percent (10%) of the voting interests in that Condominium. The business discussed and transacted at a special meeting shall be limited to the matters specified in the notice of meeting.

3.3 Notice of Meetings; Waiver of Notice. Notices of members' meetings must state the time, date, and place of the meeting, and shall be mailed by first class mail to each member at his address as it appears on the books of the Association, or may be furnished by personal delivery if the member signs a waiver of mailing. The member is responsible for notifying the Association of any change of the member's address. Meeting notices must be mailed or delivered at least fourteen (14) days prior to the date of the meeting. If ownership of a unit is transferred after notice has been mailed, separate notice to the new owner is not required. A member may waive notice of any meeting in writing. 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. Notice of any meeting at which non-emergency special assessments may be considered shall disclose that fact and describe the nature of the assessments.

3.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting of the members, together with an agenda, shall be posted in a conspicuous place on the Common Areas, and on the property of each Condominium operated by the Association, for at least fourteen (14) consecutive days before the annual meeting. Meeting notices must be mailed or delivered to all members at least fourteen (14) days before the date of the meeting, and a Post Office receipt or an affidavit of mailing made by the person who mailed the notices must be retained in the Association's records. Notice of the annual meeting may be delivered in person instead of by mail if a written waiver of mailing is obtained.

3.5 Quorum. A quorum at meetings of Association members shall be attained by the presence, either in person or by proxy, of at least one-third (1/3rd) of the voting interests of the Association. Whenever a vote

of the unit owners in one condominium is to be taken, a quorum for purposes of that vote is attained by the presence in person or by proxy of at least one-third (1/3rd) of the voting interests of that condominium.

3.6 **Vote Required.** The acts approved by a majority of the votes cast by eligible voters at a meeting at which a quorum has been attained shall be binding upon all unit owners for all purposes, except where a different vote requirement is imposed by law or by any provision of the governing documents. All members are entitled to vote on all issues put to a vote at a members' meeting (including the election of all Directors no matter which Condominium a Director's seat represents), except as otherwise provided in the governing documents or by law, and except that:

(A) only the owners of units within a particular condominium may vote on amending their own Declaration of Condominium;

(B) only the owners of units within a particular condominium may vote on material alterations of the property within that condominium, or on special assessments payable only by owners in that condominium or on waiving or reducing the statutory reserve requirement for that condominium.

3.7 **Proxy Voting.** To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presences and cast his vote by proxy. Proxies may not be used in electing Directors. "Limited proxies" shall be used for votes taken to waive reserves or financial statement requirements, to amend the condominium documents, and for all other matters for which the Condominium Act requires or permits a vote of the members. "General proxies" may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, but never longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by a person authorized to cast the vote for the unit, 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. No proxy shall be valid if it names more than one 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. Holders of proxies must be members.

3.8 **Adjourned Meetings.** At any duly called meeting of the members, regardless of whether a quorum has been attained, may be adjourned by vote of the majority of the voting interests present, regardless of whether a quorum has been attained, to be reconvened at a later specific time, date and place. Meeting notices must be mailed or delivered at least fourteen (14) days prior to the date of the meeting. When a meeting is so adjourned it is not necessary to give further notice of the time and place of its continuance if such are announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted when the meeting is reconvened, but only if a quorum is attained.

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

(A) Election of Directors (annual meeting only)
(B) Call of the roll or determination of the existence of a quorum.
(C) Reading or disposal of minutes of last members meeting
(D) Reports of Officers
(E) Reports of Committees

(F) Unfinished Business
(G) New Business
(H) Adjournment

3.10 Minutes. Minutes of all meetings of the members and of the Board of Directors shall be kept in a book or books in a businesslike manner, and shall be available for inspection by members or their authorized representatives at all reasonable times for at least seven (7) years after the meeting. Audio recordings of Board meetings and members' meetings shall be maintained as official records at least until the minutes of the meeting which was the subject of a recording are approved by the body authorized to approve the minutes. After approval, the recording may be discarded, but if they are purposely preserved beyond that time, they shall remain official records.

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declarations, or with the Articles and Bylaws. The presiding officer may appoint a Parliamentarian to consult on questions of procedure, but the Presiding Officer's decision on such 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.

3.12 Action by Members Without Meeting. Except the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken by the members at a meeting of the members may be taken by mail without a meeting, if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests of the Association were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph is intended to affect the rights of members to call a special meeting of the membership, as provided for in Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.12, the list of unit owners on record with the Secretary at the time of mailing the ballots and other voting materials shall be the list of eligible voters.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association is by its Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declarations, Articles and Bylaws, shall be exercised by the Board, subject to the approval or consent of the unit owners only when expressly required. All Directors and officers have a fiduciary duty to all members of the Association, and must be a unit owner or spouse of an owner in that Condominium. No officer or Director has a higher duty to any one group of unit owners than to any another.

4.1 Number and Terms of Office. On the effective date of the merger of the Associations creating the Surviving Corporation, Yacht Harbour Cove at Windstar Condominium Association, Inc., the Board of Directors consisted of five (5) Directors. The affairs of the Surviving Corporation shall be managed by a Board of four (4) Directors. After the meetings held to approve and adopt the Surviving Merged Corporation, "Yacht Harbour Cove at Windstar Condominium Association, Inc." two of the sitting directors of the Surviving Corporation resigned and the remaining Directors appointed a Director from Yacht Harbour Cove at Windstar II, a Condominium to serve until the next annual meeting. In order to provide for continuity of experience by establishing a system of staggered terms of office, at the next annual meeting, the number of Directors to be

elected shall be four (4); three (3) from Yacht Harbour Cove at Windstar, a Condominium and one (1) from Yacht Harbour Cove at Windstar II, a Condominium. The two (2) Yacht Harbour Cove at Windstar Condominium candidates receiving the highest number of votes shall be elected for two (2) year terms. The one (1) Yacht Harbour Cove at Windstar Condominium candidate receiving the next highest number of votes and the one (1) Yacht Harbour Cove at Windstar II Condominium candidates receiving the highest number of votes shall be elected for one (1) year terms. If there are only four (4) candidates or if there are tie votes, the determination of who will serve the longer shall be made among them by agreement or by lot. Thereafter, all Directors shall be elected for two (2) year terms of office that expire at the final adjournment of the annual meeting at, or in conjunction with which, his successor is to be duly elected. At all times there shall be three (3) seats for Directors representing Yacht Harbour Cove at Windstar, a Condominium and one (1) seat for a Director representing Yacht Harbour Cove at Windstar II, a Condominium. If at any time fewer than three (3) qualified persons are willing to serve as Directors for the Yacht Harbour Cove at Windstar, a Condominium or one (1) seat for Directors representing Yacht Harbour Cove at Windstar II, a Condominium, there shall exist a vacancy as to any seat which cannot be filled as provided for below, until a qualified person can be found.

4.2 Qualifications. Each Director must be a unit owner or the spouse of a unit owner in the Condominium that he or she represents. No more than one person may represent each unit as either a candidate or Director at the same time. An owner of more than one unit may be neither a candidate nor a Director for more than one (1) Director seat at a time.

4.3 Elections. Unless Section 4.3.5 below applies, in each annual election the members shall elect by secret ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

(A) First Notice; Candidates. Not less than sixty (60) days before the election, the Association shall mail or deliver, to each unit owner entitled to vote, a first notice of the date of the election. The first notice may be given by separate Association mailing or included in another Association mailing or delivery, including regularly published newsletters. Any unit owner or other eligible person desiring to be a candidate may qualify as such by giving written notice to the Association not less than forty (40) days before the annual election. Candidates may also be nominated by any other method permitted by law.

(B) Second Notice; Candidate Information Sheets. If there are more candidates than there are Directors to be elected, balloting is required, and at least fourteen (14) days before the election, the Association shall mail or deliver a second notice of election to all unit owners entitled to vote in the contested election, together with a ballot which shall list all qualified candidates in alphabetical order, by surname. This notice may also include the notice of the annual meeting required by Section 3.3 above. Upon timely request of a candidate, the Association shall include a "candidate information sheet" (no larger than 8-1/2 inches by 11 inches, furnished by the candidate) with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.

(C) Balloting. Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one (1) vote for any candidate, it being intended that voting for Directors shall be non-cumulative. Tie votes may be broken by agreement among the candidates who are tied, or if there is no agreement, by lot or by any other method required or permitted by law.

4.3.5 **Annual Elections, Alternate Method.** To the extent allowed by the Condominium Act, and if at least a majority of the voting interests have voted to do so, elections may be conducted as follows: At each annual meeting the members shall elect as many Directors as there are regular terms of Directors expiring or vacancies to be filled. The nominating committee, if any, shall nominate its recommended candidates for the office of Director on the floor at the annual meeting, at which time any other eligible person may also be nominated as a candidate. Directors shall be elected by a plurality of the votes cast in person or by proxy at the annual meeting. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being intended that voting for Directors shall be non-cumulative. The candidates receiving the highest number of votes for the designated seats shall be elected. Tie votes may be broken by agreement among the candidates who are tied, or if there is no agreement, by a run-off election.

4.4 **Vacancies on the Board.** If there exists a vacancy in the office of any Director for any reason, a majority of the remaining Directors, even if less than a quorum, shall promptly appoint a successor.

(A) Qualifications. An appointed successor Director must be a unit owner or the spouse of a unit owner in the same Condominium as his predecessor.

(B) Term of Office of Successor. A director appointed to fill a vacancy created other than by a recall shall be appointed for the unexpired term of his predecessor in office. If vacancies occur on the Board as a result of a recall, then the vacancies shall be filled in accordance with the procedural rules adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes, Bureau of Condominiums.

(C) Entire Board Vacant. If for any reason there shall arise circumstances in which no Directors are serving and the entire Board is vacant, a special election shall be held on at least ten (10) days notice to the members, in which election the members shall elect successors to serve only until the next annual meeting.

4.5 **Recall of Directors.** Any Director may be recalled, with or without cause, by a majority of the voting interests either by a written petition or by a vote taken at any meeting called for that purpose. If a meeting is held or petitions are filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be recalled. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall as provided for by law, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days after the date of mailing of the notice of the meeting.

4.6 **Organizational Meeting.** An organizational meeting of the Board of Directors shall be held within ten (10) days after every election by the members of one or more Directors.

4.7 **Other Board Meetings.** Meetings of the Board may be held at such times and places in Collier County, Florida, as may be determined from time to time by the President or by 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 before the meeting.

4.8 **Notices to Owners of Board Meetings.** Meetings of the Board of Directors shall be open to attendance by the members. Notice of all meetings, including an agenda, must be posted conspicuously on the condominium property and common area at least 48 continuous hours preceding the meeting, except in an emergency.

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(A) Agenda; Emergency Action. Notice of any Board meeting at which assessments against units may be considered for any reason shall specifically contain a statement that assessments may be considered, and disclose the nature and possible amounts of the assessments. Any business matter not included on the posted agenda may be taken up at a Board meeting only on an emergency basis, by vote of one more than a majority of the total number of Directors present. Such emergency action shall be included on the agenda of the next regular Board meeting to be ratified by the Board.

(B) 14-Day Written Notice to Members Required. Written notice of any Board meeting at which a non-emergency special assessment, or at which amendments to rules regarding unit use will be considered, must be mailed or delivered to the unit owners, and posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with this 14 day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association.

(C) Meetings with Association Legal Counsel. Meetings between either the Board or a committee, and Association legal counsel, regarding proposed, impending or ongoing litigation, to the extent the meeting is held for the purpose of seeking or rendering legal advice regarding that litigation, may be held without notice to unit owners and may be closed.

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

4.10 Quorum of Directors. A quorum at a Board meeting exists only when at least four (4) Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative equipment, whereby all persons present can hear and be heard by all other persons. Participation by that means is equivalent to presence in person at a meeting. Directors may not vote or participate in Board meetings by proxy.

4.11 Vote Required. The acts approved by a majority of the Directors present and voting at a meeting when 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.

4.12 Presumption of Assent. A Director who is present at a meeting of the Board is deemed to have voted in favor of the prevailing point of view on every question voted on, unless he expressly voted against that point of view or abstained from voting on that question because of an asserted conflict of interest. The minutes shall clearly indicate how each Director present voted, on every issue voted upon. Directors may not vote by secret ballot, except in the election of officers.

4.13 Adjourned Meetings. The majority of the Directors present at any duly called meeting of the Board, regardless of whether a quorum is present, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business that might have been transacted at the meeting as originally called may be transacted.

4.14 Location of Posted Notices of Board Meetings. Upon notice to the unit owners, the Board shall by duly adopted rule designate a specific location on the condominium property or association property and the common area upon which all notices of board meetings shall be posted.

4.15 Presiding Officer. The President of the Association shall preside at all meetings of the Board of Directors. In the absence of the President, the Vice-President shall preside. If neither is present, the presiding officer shall be selected by majority vote of the Directors present.

4.16 Compensation of Directors and Officers. Neither Directors nor officers shall be paid for their services as such, unless such compensation is first approved by at least a majority of the voting interests of the Association. Directors and officers are entitled to reimbursement, after review and approval by the Board, for out-of-pocket expenses they may incur incident to the discharge of their respective duties.

4.17 Committees. The Board of Directors may appoint any standing or temporary committee it may deem necessary or convenient for the efficient and effective operation of the Association. A committee shall have only the powers and duties assigned to it in the resolution creating the committee. To the extent required by the Condominium Act, committees that are exercising delegated authority of the Board of Directors, or preparing a proposed budget, shall conduct all meetings and keep minutes with the same formalities as are required for Board meetings. Meetings of a committee for the purpose of taking final action on behalf of the Board, or to make recommendations to the Board regarding a budget, must be noticed and conducted with the same formalities as are required for Board meetings in Section 718.112(2)(c), Florida Statutes. To the greatest extent permitted by law, meetings of all other committees are exempt from this requirement.

4.18 Emergency Powers. In the event of an "emergency" as defined in Paragraph 4.18(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes, as amended from time to time.

(A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

(C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

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

(F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) For purposes of this Section only, an "emergency" exists only during a period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:

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(1) a state of emergency declared by local civil or law enforcement authorities;

(2) a hurricane warning;

(3) a partial or complete evacuation order

(4) federal or state "disaster area" status; or

(5) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

An "emergency" also exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence of a catastrophic event, such as a hurricane, earthquake, act of war or terrorism, or other similar event. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

5. OFFICERS AND THEIR ELECTION. The executive officers of the Association are a President, and a Vice-President, who must be Directors, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board at the organizational Board meeting by vote of a majority of the Directors. Secret ballots may be used in the Election. An officer may be removed from office, with or without cause, by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. If the Board so determines, there may be more than one Vice-President. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. Any officer may resign at any time by giving written notice to the Corporation and unless otherwise specified therein, the resignation shall become effective upon receipt.

5.1 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, may be *ex officio* a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring 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.

5.2 Vice-Presidents. The Vice-Presidents, in order of their ranking 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.

5.3 Secretary. The Secretary shall attend meetings of the Board of Directors and 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. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board, or the President in an emergency. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.

5.4 **Treasurer**. The Treasurer shall be responsible for Association funds and securities and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall see to the deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, 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.

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

6.1 **Depository**. The Association shall keep its funds in federally insured accounts at financial institutions doing business in the State of Florida. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles, as chosen by the Board in the prudent exercise of its good business judgment and fiduciary duties.

6.2 **Budgets**. The Board shall adopt a separate annual budget of common expenses for each Condominium operated by the Association, as well as one for the Association. The minutes of the Association must reflect the adoption of each budget, and copies of both the proposed and adopted budgets for each year shall be maintained as part of the financial records of the association. Each budget shall:

(A) State the estimated common expenses or expenditures on at least an annual basis.

(B) Disclose the beginning and ending dates of the period covered by the budget.

(C) Show the total assessment for each unit on a monthly basis, or for any other period for which assessments will be due.

(D) Include a schedule stating each reserve account for capital expenditures and deferred maintenance required by Section 718.112(2)(f), Florida Statutes as a separate line item, as further provided in Section 6.5 below.

(E) Include all estimated common expenses or expenditures, including the categories set forth in Section 718.504(20)(c), Florida Statutes. If the estimated common expense for any category set forth in the statute is not applicable, the category must still be listed, followed by an indication that the expense is not applicable.

(F) Provide in the budget of each condominium for the expenses specific to that Condominium, such as the cost, of property insurance, utilities metered to the separate Condominium, and maintenance, repair or replacement of the common elements of the Condominium.

(G) Provide in the Association budget for common expenses not specific to any particular Condominium, such as the costs of maintaining the Common Areas, premiums for liability insurance, utilities commonly metered to the Properties, management fees, and reserves for capital expenditures and deferred maintenance of association property. the maintenance, deferred maintenance or

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replacement of the property serving more than one Condominium. The Association may determine from time to time that other property of a particular Condominium is available for the use or tangible economic benefit of all members of the Association and therefor the cost of maintaining same may be a common expense of the Association.

(H) Show each Condominium's share of the common expenses of the Association.

6.3 Economic Self-determination for Individual Condominiums. It is intended that to the greatest extent practical and possible, the unit owners in each Condominium should have the right to control budgeting decisions for their own Condominium when those decisions do not have a significant impact on other Condominiums. Accordingly, to preserve some local autonomy in the budgeting process, one (1) Director representing Yacht Harbour Cove at Windstar, a Condominium along with the Association's treasurer shall be responsible for preparing the proposed annual budget of common expenses for Yacht Harbour Cove at Windstar, a Condominium and one (1) Director representing Yacht Harbour Cove at Windstar II, a Condominium along with the Association's treasurer shall be responsible for preparing the proposed annual budget of common expenses for Yacht Harbour Cove at Windstar II, a Condominium and timely submitting them to the Board, in the form, and using the expense and income classifications, specified by the Board. Although the ultimate responsibility for adopting each Condominium's budget still lies, by law, with the Board of Directors, the Board shall not adopt a Condominium budget that calls for any decrease in total expenditures, or in the amount budgeted for any single line item, from what is included in the proposed budget prepared by the Condominium's Director/representatives unless approved by at least all (4) of the Directors. This limitation applies only to expenses paid entirely by assessments against the units in that Condominium only. The Board may increase any line item, and has complete control over the budgeting of all expenditures which have a material and significant impact on the other Condominiums or are shared by all Association members.

6.4 Individual Condominium Control over Reserve, Contingency or Material Alteration Expenditures. In order to fully realize the benefits of the preceding paragraph, the individual Condominiums must have the right to use the funds they have budgeted and contributed on their own for reserves, contingency, or for material alteration projects. Accordingly majority representatives from any Condominium, have the authority to make any expenditure of funds contributed only by Owners in their own Condominium for reserve, contingency, or material alteration purposes.

6.5 Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to operating expenses, the proposed budgets for each Condominium, and for the Association, must also include provisions for reserves for capital expenditures and deferred maintenance as required by law. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing. No vote to waive or reduce funding may occur before a copy of the proposed annual budgets for their Condominium and for the Association have been mailed to owners.

(A) Amounts to be reserved. The amount to be reserved shall be computed by a formula based upon the remaining estimated useful life and the replacement cost of each item. Expenditure of unallocated interest income earned on reserve funds is restricted to any of the capital expenditures, deferred maintenance or other items for which reserve accounts are established.

(B) Waiver of Funding. Reserves shall be fully funded, unless those voting interests subject to assessment to fund them subsequently determine, by majority vote of those who are present in person or by proxy at a meeting called for the purpose, decide to fund no reserves, or less than adequate reserves for a fiscal year. When unit owners in two or more condominiums are operated by the same association, no waiver or reduction of funding is permitted as to any particular condominium unless

conducted at a meeting at which a majority of the voting interests of that condominium are present, in person or by proxy, and a majority of those present in person or by proxy vote to waive or reduce the funding. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required by law. If a meeting of the members is called to vote on whether to fund no reserves, or less than adequate reserves for a fiscal year, and such result is not obtained or a quorum is not attained, the reserves as included in the budget shall go into effect, and be fully funded for the year.

(C) Use of Reserve Funds for Other Purposes. Reserves funded under this Section 6.3 shall be used only for the purposes for which they were reserved, unless their use for other purposes is first approved by the owners of at least a majority of Yacht Harbour Cove at Windstar, a Condominium owners, who are present and voting, in person or by proxy, with respect to the reserves of Yacht Harbour Cove at Windstar, a Condominium, or approved by the owners of at least a majority of Yacht Harbour Cove at Windstar II, a Condominium owners, who are present and voting, in person or by proxy, with respect to the reserves of Yacht Harbour Cove at Windstar II, a Condominium, at a meeting called for the purpose.

6.6 **Operating Reserves**. The Board may establish other reserve accounts in any of the operating budgets for contingencies, unanticipated operating expenses, cash flow shortages, or other similar purposes. The purpose of such reserves is to provide financial stability and to avoid the need for special assessments. The amounts proposed to be so reserved shall be shown in the proposed annual budget(s) each year. Funds so reserved may be spent for any purpose approved by the Board.

6.7 **Regular Assessments**. Regular annual assessments based on adopted budgets shall be payable in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment should be sent to the members at least fifteen (15) days prior to the due date. Failure to send or receive the notice does not excuse the obligation to pay. The quarterly installments shall be equal in size, except that if an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and payments shall be continued at such rate until a budget has been adopted and pro rata assessments are calculated, at which time any overage or shortage shall be added or subtracted from each unit's remaining installments for the year.

6.8 **Special Assessments**. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. A special assessment payable only by the unit owners in one Condominium shall not be imposed unless it is first approved by at least a majority of the Director representatives of the Condominium in addition to approval by a majority of the full Board of Directors. Special assessments are due on the day specified in the resolution of the Board approving such assessment, which must be the same day for all units subject to the assessment. The total of all special assessments uniformly payable by all units coming due in any fiscal year shall not exceed fifteen percent (15%) of the total Association budget for that fiscal year (including the cost of funding statutory reserves for that year) unless a majority of the voting interests of the Association first consent. The notice to owners of the imposition of any special assessment must state the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the members as provided for by law.

6.9 **Fidelity Bonds**. The President, Treasurer, Secretary, and all other officers who are authorized to sign checks, and all other persons having access to or control of Association funds, shall be bonded in such amounts as may be required by law or otherwise determined by the Board of Directors. The premiums on such bonds shall be a common expense of the Association.

6.10 Financial Statements. Not later than ninety (90) days after the close of each fiscal year, the Association shall prepare or cause to be prepared and then distribute financial statements as required in Section 718.111(13) of the Condominium Act, showing in reasonable detail the financial condition of the Association and each Condominium separately as of the close of the fiscal year, and an income and expense statement for the year, detailed by accounts. The financial statements required by Section 718.111(13), Florida Statutes, may be presented on a combined basis as long as the financial statements, notes, or supplementary information disclose the revenues, expenses, and changes in fund balances for each Condominium. The financial statements, notes, or supplementary information shall also disclose the revenues and expenses of the Association not directly associated with specific condominiums, and the method used to allocate such expenses among the condominiums. The reserve disclosures required by law, and by the Florida Administrative Code, shall be presented separately for each Condominium and for any Association reserves not specifically identified with individual condominiums. Copies of this report, or notice of availability of the report, shall be mailed to each member not more than twenty one (21) days after being provided to the Association. A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Directors, shall be made by a certified public accountant, and a copy of the audit report made available to all members.

6.11 Application of Payments. All payments on account by a unit owner shall be applied as to interest, late payment fees, costs and attorney's fees, and past due assessments, in such order and manner as is provided by law.

6.12 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year.

7. RULES AND REGULATIONS. The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the operation of the Association and the use, maintenance, management and control of the Common Areas and the common elements of each Condominium. Copies of such rules and regulations shall be available upon request at no charge to each unit owner and the occupants of each unit. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the members and even-handedly applied and enforced. No rule or regulation may contravene any express right granted by a Declaration, or any right reasonably inferable therefrom.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in the Declarations of Condominium, the following shall apply:

8.1 Fines. To the extent permitted by law the Board of Directors may levy reasonable fines against units whose owners commit violations of the provisions of the governing documents or Association rules and regulations, or condone such violations by their family members, guests or lessees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amount allowed by law. The procedure for imposing such fines shall be as follows:

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

(1) A statement of the date, time and place of the hearing;

(2) A statement of the provisions of the Declaration, Bylaws or rules which have allegedly been violated; and,

(3) A short and plain statement of the matters asserted by the Association.

(4) The amount of any proposed fine.

(B) The party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association.

8.2 **Mandatory Non-Binding Arbitration.** In the event of any dispute as defined in Section 718.1255(1) of the Condominium Act, between a unit owner and the Association arising from the operation of a Condominium by vote of the majority of the voting interests present, regardless of whether a quorum has been attained, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes prior to filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

8.3 **Availability of Remedies.** Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of any 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 to enable it to operate on a businesslike basis, to collect those monies due it and to preserve the rights of the majority to enjoy the condominium property free from unreasonable disruptions and annoyance by the minority.

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

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

9.2 **Procedure.** If any amendments are so proposed, the proposed amendments shall be submitted to a vote of the members not later than ninety (90) days after the amendment has been properly proposed by the Board or the Unit Owners.

9.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the governing documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association present in person or by proxy and voting at any annual or special meeting of the members duly called for the purpose.

9.4 **Recording; Effective Date.** A copy of each amendment that is adopted shall be attached to a certificate of amendment reciting that the amendment was duly adopted, which certificate shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment is effective when the certificate and copy of the amendment are properly recorded in the Public Records of Collier County, Florida. The certificate must identify the locations in the Public Records where the Declaration of Covenants, and all declarations of condominium for the condominiums operated by the Association, are recorded.

NOT OFFICIAL RECORD

10. MISCELLANEOUS.

10.1 Number and 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.

10.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, between the provisions of these Bylaws and any of the other governing documents, the other governing documents shall prevail over the provisions of these Bylaws.

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