

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION.
FOR PRESENT TEXT SEE EXISTING DECLARATION OF COVENANTS.**

**FOURTH AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR BERKSHIRE LAKES**

KNOW ALL MEN BY THESE PRESENTS that the original Declaration of Covenants, Conditions, Restrictions and Easements for Berkshire Lakes, was recorded in Official Record Book 1404, at Page 1389 *et seq.*, of the Public Records of Collier County, Florida (hereinafter referred to as "Original Declaration"). That Original Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety, as amended.

The land subject to this Declaration is legally described in Exhibit "A" to the original Declaration. That Exhibit is hereby incorporated by reference. No additional land is being added 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 parcel or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a parcel 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.

ARTICLE I

1. DEFINITIONS. The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.1 Assessments means a share of the funds required for the payment of common expenses which from time to time are assessed by the Association against an owner.

1.2 Articles and Bylaws as used herein means the Articles of Incorporation and the Bylaws of Berkshire Lakes Master Association, Inc., as amended from time to time. A copy of the signed Amended and Restated Articles of Incorporation and Bylaws are attached hereto as Exhibits "A" and "B" respectively and incorporated herein by reference.

1.3 Association or Master Association means Berkshire Lakes Master Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the common areas and properties at Berkshire Lakes.

1.4 Berkshire Lakes or Community shall mean and refer to the property described in Exhibit "A" to the Original Declaration and furthermore means real property that is or will be subject to this Fourth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements, which is recorded in Collier County, Florida. The term "community" includes all real property, including undeveloped phases, that is or was the subject of a development or regional-impact development order for Berkshire Lakes together with any approved modifications thereto.

1.5 Board means the Board of Directors responsible for the administration of Berkshire Lakes Master Association, Inc.

1.6 Central System shall mean and refer to any closed circuit television system, telecommunication system, master antennae system, and related ancillary services in and upon the Property subject to these covenants.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

1.7 **Commercial Property** shall mean and refer to all Tract F, Berkshire Lakes Unit 1, according to the plat recorded in Plat Book 14, pages 118 through 120, Public Records of Collier County, Florida. The commercial property is also sometimes referred to in this Declaration as Tract F, "Berkshire Commons".

1.8 **Common Property or Common Area** shall mean all real property within Exhibit "A" to the Original Declaration, including any improvements thereon, which has been conveyed to the Master Association for the common use, maintenance or enjoyment by the Association and all its members. Common Property or Common Area shall also include property and improvements as to which the Master Association has maintenance or control responsibilities, such as roadway medians and entryways to Berkshire Lakes. Common Property or Common Area also include the following:

A. The bicycle path that meanders through various parts of the property described in Exhibit "A" to that certain easement recorded on June 18, 1990 in OR Book 001900, Page 000730, Public Records of Collier County, Florida.

B. The Clubhouse, the tennis courts, the pool and pool facilities that are located within Tract G, Berkshire Lakes Unit 3, according to the plat thereof recorded in Plat Book 16, pages 15 through 17, Public Records of Collier County, Florida.

C. All lake areas and other water maintenance areas, which have been conveyed to Berkshire Lakes Master Association, Inc. or for which Berkshire Lakes Master Association, Inc. has maintenance responsibility.

D. Other areas within Berkshire Lakes for which the Berkshire Lakes Master Association, Inc. has maintenance responsibilities, including the maintenance building.

1.9 **Common Expenses** means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law. Common expenses of the Association include the costs of operating the Association, the costs of administration, maintenance, operation, repair and replacement of the common property or common areas, other expenses declared by the governing documents to be common expenses, and any other valid expenses or debts of the common property as a whole of the Association which are assessed against the parcel owners.

1.10 **Common Surplus** means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues over the common expenses.

1.11 **Declaration of Covenants** means this Declaration, as amended from time to time.

1.12 **Family or Single Family** shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit.

1.13 **Governing Documents** means and includes this Fourth Amended and Restated Declaration, the Second Amended and Restated Articles of Incorporation and Bylaws, and all recorded exhibits thereto, as amended from time to time.

1.14 **Guest** means any person who is not the owner or a lessee of a home or residence or a member of the owner's or lessee's family, who is physically present in, or occupies a home or residence on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

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1.15 Home or Residence means each one of the residences intended for residential use located upon Exhibit "A" to the Original Declaration.

1.16 Institutional Mortgage means the mortgagee (or its assignee) of a mortgage against a parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance 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 which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

1.17 Limited Common Property shall mean and refer to all real property or any property interest therein conveyed or that may be conveyed to the association for the common use, maintenance and enjoyment of some, but not all, of the owners within Berkshire Lakes. The maintenance and other expenses of limited common areas shall be paid for solely by the owners having the right to use said property and that maintenance expense shall be separately set forth in the Association's assessment. In all other aspects, limited common property shall be subject to the same provisions of this Declaration as is Common Property.

1.18 Member means and refers to those persons who are entitled to membership in the Association as provided in this Declaration and the Association's Articles of Incorporation and Bylaws.

1.19 Occupy when used in connection with a residential parcel, means the act of staying overnight in a home or residence. **Occupant** is a person who occupies a home or residence.

1.20 Owner or Parcel Owner means the record owner of legal title to a parcel, lot or residential unit.

1.21 Residential Unit means any lot, condominium unit or single family residence located upon Exhibit "A" to the Original Declaration.

1.22 Residential Unit Owner means the natural person approved for occupancy of a home, condominium or residence. When title to the home, condominium or residence is held in the name of two or more persons, by a trust, a corporation or by another entity which is not a natural person, the residential unit owner shall be the natural person designated in a voting certificate filed with the Association. When used in reference to a parcel owned in one of the forms listed above, the term residential unit owner shall be synonymous with the term owner.

1.23 Structure means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof." The term includes, without limitation, swimming pools, fences, flagpoles, antennas, playground equipment, and storage sheds.

1.24 Neighborhood Association shall mean and refer to any neighborhood association which may be heretofore or hereafter formed to manage and operate a portion of the property made subject to these Covenants. Such Neighborhood Association shall include any Homeowner Association and any Condominium Association. The words "Neighborhood Association" shall not include the Master Association.

1.25 Voting Interest means the voting rights distributed to the Association members pursuant to the Bylaws.

ARTICLE II

2. MEMBERSHIP.

2.1 Each parcel owner and residential unit owner within the property subject to these Fourth Amended and Restated Covenants shall automatically, upon recording of a deed in the public records conveying title to the owner or owners, become a member of the Association, and as such shall be subject to all Association assessments and regulations. An owner acquiring the unit or properties shall provide to the Association a copy of the recorded deed or other instruments evidencing title within sixty (60) days after the transfer of ownership has occurred.

2.2 Membership in such Association shall terminate upon conveyance by an owner of his title to any residential unit within the property subject to these covenants to another party.

2.3 Membership shall be appurtenant to, and may not be separated from ownership of a residential unit. No owner may avoid the obligations of membership during the period when he is an owner by non-use of common property or any other act of abandonment or renunciation.

2.4 Each residential unit owner, by accepting an interest in any residential unit within the property made subject to these Fourth Amended and Restated Covenants, hereby agrees to be bound by all the Covenants contained herein, and in the event of a breach, agrees to pay all costs, including all reasonable attorneys' fees incurred by the Association to enforce these Covenants. All subsequent grantees and transferees shall be similarly bound.

2.5 Voting Rights. Each member shall be entitled to one (1) vote for each residential unit owned by the member. Where more than one person holds an interest in any residential unit all such persons shall be members; however, the vote for such residential unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one residential unit. With respect to such joint ownership, if the parties themselves cannot agree as to how their vote is to be cast, such vote shall not be counted. Unless another joint owner objects, any joint owner is presumed to have the authority to vote the votes which relate to property jointly owned. The date used to ascertain ownership of residential units for purposes of assessments shall be the same date used for ascertaining voting.

2.6 Delegation of Management. The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed 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, keeping of records, enforcement of rules and maintenance, repair and replacement of the common areas with funds made available by the Association for such purposes.

2.7 Acts of the Association. Unless the approval or affirmative vote of the members is specifically made necessary by some provision of the law or the governing documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the residential unit owners. The officers and Directors of the Association have a fiduciary relationship to the residential unit owners. A residential unit owner does not have the authority to act for the Association by reason of being a residential unit owner.

2.8 Powers and Duties. The powers and duties of the Association include those set forth in Chapters 617 and 720, Florida Statutes, and in the governing documents. The Association may contract, sue, or be

sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the common areas. The Association may impose fees for the use of common areas or Association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use interests in lands or facilities for the use and enjoyment of the owners. The Board of Directors has the power to enter into bulk-rate contracts for communication services as defined in Chapter 202, Florida Statutes (such as basic cable television programming services, telephone), information services and/or internet services in bulk for the entire community, and the cost of such services shall be a common expense allocated on a per unit basis.

2.9 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

2.10 Purchase of Parcels. The Association has the power to purchase land and to hold, lease, mortgage, or convey it, such power to be exercised by the Board of Directors.

2.11 Interests in Real Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 2.10 above, the power to acquire, or convey ownership interests in real property shall be exercised by the Board of Directors only after approval by at least a majority of the voting interests of the Association, present, in person or by proxy, at a duly called meeting of the members of the Association, called for the purpose. However, the power to lease or grant easements to Association property or common areas shall be exercised solely by the Board of Directors.

2.12 Disposition of Personal Property. Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the parcel owners.

2.13 Roster. The Association shall maintain a current roster of names and mailing addresses of parcel owners, based upon information supplied by the parcel owners. A copy of the roster shall be made available to any member upon request.

ARTICLE III

3. CLOSED CIRCUIT TELEVISION SYSTEM.

3.1 Ownership. The Association has reserved and retained, and does hereby reserve and retain to itself and its designated assigns the right to own and operate a closed circuit television system, telecommunication system, master antennae system and related ancillary services (the "Central System") in and upon the properties.

3.2 Easement. The Association has reserved and does hereby reserve unto itself and its assigns a perpetual five (5) foot wide easement along and adjacent to both sides of all public rights of way within Berkshire Lakes. The five (5) foot wide easement shall extend in an outwork direction for a distance of five (5) feet from the outer boundary of all rights of way. In the event there are any public power or other utility easements adjacent to the public rights of way within Berkshire Lakes, the easement herein reserved to the Association shall be on and over a strip of land five (5) feet in width which shall be (1) adjacent to the boundary of the utility easement and (2) between the platted utility easement and the likely location on any residential unit. The aforesaid easement shall be for the installation, operation and maintenance of the

Central System, including but not limited to conduits, wires, amplifiers and related apparatuses, and shall be conclusive to the Association and its assigns, except that the owners of the property shall:

A. Have the right to use the easement areas in any way that does not unreasonable interfere with the easement rights of the Association; and

B. Have the right to grant additional utility easements within the easement area, provided that no such easement shall be granted to another cable television provider and further provided that no such additional utility easement shall unreasonable interfere with easement rights of the Association. And with the further exception that Florida Power and Light (FPL) and the local telephone service provider may cross such easement for the purpose of connecting to residential units. The Association easement described in Article 3 may not be terminated or changed in any way without the written consent of the Master Association.

ARTICLE IV

4. **ASSESSMENTS.** The provisions of this section shall govern assessments payable by all residential unit owners for the common expenses of the Association not directly attributable to one of the parcels.

4.1 **Covenant to Pay Assessments.** Each residential unit owner by the act of becoming an owner covenants and agrees, 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 the Association:

- (A) the residential unit owner's prorata share of annual assessments based on the annual budget adopted by the Association;
- (B) the residential unit owner's prorata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments; and
- (C) any charges properly levied against individual residential unit owner(s) without participation from other owners.

Assessments and charges shall be established and collected as provided herein and elsewhere in the governing documents. The residential unit owner, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 3.10 below, whenever title to a parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No residential unit owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the common areas, by abandonment, or otherwise. Except as provided elsewhere in the governing documents as to Institutional Mortgagees, no residential unit owner may be excused from the payment of assessments unless all residential unit owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No residential unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his parcel. No residential unit owner can withdraw or receive distribution of his prior payments to the common surplus or Association reserves, except as otherwise provided herein or by law.

4.2 Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the security, health, safety and general welfare of the parcel owners and residents of Berkshire Lakes; to operate, maintain, repair, improve, construct, reconstruct and preserve, on a not for profit basis the common areas owned by the Association for the benefit of its members, their guests, tenants and invitees; and to perform all other duties and responsibilities of the Association as provided in the governing documents. Common expenses also include the funds necessary to provide reserve accounts for:

- (A) renovation or major repairs to the common areas; and
- (B) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

4.3 Share of Assessments. The owners of each residential unit shall be jointly and severally liable for an undivided share of annual and special assessments. The owners of each residential unit shall also be jointly and severally liable with the prior residential unit owner(s) for all unpaid assessments that come due prior to the transfer of title.

4.4 Lien. The Association has a lien on each residential unit for unpaid past due Association assessments and charges, together with interest, late payment penalties and reasonable attorney fees incurred by the Association incident to collection of the unpaid assessment. The lien relates back to the date of recording of the Original Declaration in the Public Records of Collier County, Florida; and is perfected by recording a Claim of Lien in the public records of the county, which Claim of Lien shall state the description of the property encumbered thereby, the name of the record owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments and charges, interest, costs and attorney fees which are due and which may accrue or come due prior to and after the recording of the Claim of Lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

4.5 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments or charges by the procedures and in the same manner as is provided in Section 720.3085, Fla. Stat., as amended from time to time, for the foreclosure of a lien upon a parcel for unpaid assessments. The Association may also bring an action at law against any owner liable for unpaid charges or assessments. If final judgment is obtained, such judgment shall include interest on the assessments as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney's fees in connection with any appeal of such action.

4.6 Priority of Liens. Except as otherwise provided by Section 720.3085, Fla. Stat., as it presently exists or as it may be amended from time to time, the Association's lien for unpaid charges or assessments shall be subordinate and inferior to any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other lien or mortgage regardless of when recorded. Any lease of a parcel shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

4.7 Application of Payments; Failure to Pay; Interest. Assessments, charges and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest). Assessments, charges and

installments thereon shall become due, and the residential unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, late payment fees, court costs and attorney fees, and then to delinquent charges or assessments. The Association may refuse to accept a partial payment which bears a restrictive endorsement and such will be the equivalent of no payment. No payment by check is deemed received until the check has cleared.

4.8 Acceleration. If any special assessment or installment of a regular assessment as to a residential unit becomes more than thirty (30) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of the residential unit owner's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the acceleration, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid.

If a residential unit owner fails to pay in full all assessments due under a lien and said default shall continue into a new fiscal year, the Association shall have the right to accelerate the due date of the entire balance of the residential parcel's assessments for that fiscal year as well. The due date for all accelerated assessments for that fiscal year shall be the first day of that fiscal year. The right to accelerate a new fiscal year's assessments shall be exercised by sending to the delinquent owner a notice of the acceleration, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid.

4.9 Certificate as to Assessments. Within fifteen (15) days after request by a parcel owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an estoppel letter) stating whether all assessments and other monies owed to the Association by the parcel owner with respect to the parcel have been paid. Any person other than the parcel owner who relies upon such certificate shall be protected thereby.

4.10 Mortgage Foreclosure. The liability of a first mortgagee or its successor or assignees who acquire title to a residential unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title in addition to all interest, attorney's fees and paralegal fees permitted by Florida law is limited to the lesser of:

(A) The residential unit's unpaid common expenses and regular periodic or special assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or

(B) One percent (1%) of the original mortgage debt. The provisions of this paragraph 4.10 apply only if the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

ARTICLE V

5. EASEMENTS.

5.1 Appurtenant Easements. The Master Association hereby grants to each member, his guests, lessees and invitees, as an appurtenance to the ownership of the fee title interest in property subject to this Fourth Amended and Restated Declaration, a perpetual non-exclusive easement across and through all Master Association common property, such use and enjoyment to be shared in common with other members. Such easement is subject to any reasonable rule, which the Association may promulgate for such property, such as hours of operation for the clubhouse, swimming pool and tennis courts.

5.2 Utility Easements. The Master Association reserves to itself, its successors, assigns and mortgagees, a personal easement upon, over, under and across the property for the purpose of maintaining, installing, repairing, altering and operating power lines, water lines, waterworks, irrigation works, sewer works, surface water drainage improvements, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, weirs, siphons, valves, gates, pipelines, cable television services, closed circuit television systems, electronic security systems and all machinery appurtenant thereto as may be necessary or desirable for the installation and maintenance of utilities servicing the property.

5.3 Service Easements. The Master Association hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone and other utilities authorized by the Master Association, its successors or assigns, to service the property and to such other persons as the Master Association from time to time may designate, the non-exclusive perpetual right of ingress and egress over and across the Master Association property.

5.4 Right of Easements. The rights and easements of enjoyment created hereby shall be subject to and subordinate to the following: The right of the Master Association in accordance with its By-Laws, to borrow money from any lender for the purpose of improving and maintaining the Master Association Property and providing the services authorized herein and, in aid thereof, to mortgage said property.

5.5 Subordination. Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate, and will be subordinate without the necessity of any other instrument, to any existing easement covering the basic water, sewer and drainage systems installed in the common areas, and any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the common areas.

5.6 Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (A) the right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the common areas and providing the services authorized herein, and, in aid thereof, to mortgage said properties;
- (B) the right of the Association to impose rules and regulations governing the use of the common areas and Association property; and
- (C) the right of the Association to a non-exclusive easement over, across and through each parcel as necessary to meet the Association's maintenance responsibilities.

(D) the right of the Association to levy assessments on lots and units to enable the Association to pay the costs of operating and maintaining the Common Properties and other costs of the Association, and

(E) the right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, or for a period that may be determined by the Board of Directors for any violation of this Declaration, the Association's Articles, Bylaws or published rules and regulations;

(F) the right of the Association to dedicate or transfer all of any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members; provided that no such dedication or transfer, determination as to purposes or as to the conditions hereof, shall be effective unless an instrument signed by the appropriate officers of the Association certifying that at a Special or Regular Meeting of Members called for such purpose, of which thirty (30) days written notice was sent to each Member, the vote of two-thirds (2/3) of the Members present, either in person or by proxy, was obtained, agreeing to such dedication or transfer;

(G) the right of the Association to grant exclusive easements and rights-of-way over certain parts of the Common Properties to Members of the Association when the Association deems it necessary; and

(H) the right of the Association to provide, restrict or limit access across the roadways as the Board of Directors deems necessary and proper. Such limitation may include but not be limited to the stopping and questioning of visitors into and across the Berkshire Lakes' property by such means as the Board of Directors deems is necessary and proper.

(I) To the extent that the creation of any such easements created or reserved herein require the joinder of owners in separate instruments, the Master Association by its duly authorized officers may, as the agent or the attorney-in-fact for the owners, execute, acknowledge and deliver such instruments and the owners, by the acceptance of deeds to their residential units constitute and appoint the Master Association, through its duly authorized officers, as proper and legal attorneys-in-fact for such purpose.

5.7 Encroachment Easement. Any owner of a residential unit which residential unit contains a structure which encroaches upon another parcel or, the common areas shall have a valid easement for the encroachment and maintenance of same, as long as it stands and exists.

5.8 Party Walls:

Each wall, a portion of the thickness of which is included within a residential unit and the balance of the thickness of which is included within the contiguous residential unit, and which therefore is a party wall, shall be used and enjoyed as such by the Owners thereof jointly with each other. Each such residential unit shall have the benefit of and be burdened with an easement for the support and maintenance of such party wall in accordance with the following provisions of this Section:

(A) Subject to the operation and effect of the following provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(B) If any such party wall is deliberately or negligently damaged or destroyed by the act or omission of one (but not both) such Owners (or his agent, employee, invitee, family member, visitor or guest), such Owner shall promptly repair it at his expense.

(C) If any such party is damaged or destroyed in any other manner or otherwise requires maintenance, such Owners shall repair it at their joint expenses.

(D) If either surface of any such party wall is at any time exposed to the elements, the Owner of the Lot on which such surface stands shall promptly and at his expense take such action as is reasonably necessary to protect such surface against the elements.

ARTICLE VI

6. MAINTENANCE.

6.1 Maintenance and Alteration of Parcels and Residences. Each owner, lessee and occupant of a residential unit shall, at his sole cost and expense, maintain and repair all parts of the residential unit and structures located on his parcel (including but not limited to all fixtures, equipment, appliances, patios and pools) and damage caused by wildlife, including birds, keeping the same in a condition comparable to their condition at the time of their initial construction, except for ordinary wear and tear. Those residential units or Neighborhood Associations fronting on or adjacent to sidewalks within the Berkshire Lakes complex shall maintain their respective sidewalk free of mold, dirt and litter. No owner shall materially alter, or make any substantial additions to his residential unit or to the exterior of his residence without the prior written approval of the Association, as further provided in Section 6. Such additions and alterations shall include, but not be limited to, landscaping, swimming pools, decks, awnings, hurricane protection and related equipment. The residential unit's irrigation system is the responsibility of the unit owner. However, the Association shall have the right to control, maintain or repair the irrigation system on all home sites upon giving the owner or lessee 48 hours prior notice (unless an emergency repair is required) and any cost related thereto shall be charged to the unit owner.

6.2 Association Maintenance. The Association shall be responsible for the maintenance, repair, replacement and operation of all common area, including, but not limited to, water retention and water management areas, landscaping, trees, plantings, lawns, flowers, water management facilities, irrigation systems and footpaths, roadways, common driveways, parking areas and lighting.

6.3 Enforcement of Maintenance. If the owner of a residential unit fails to maintain his residential unit and/or residence as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the parcel, with or without consent of the parcel owner. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Property. Any expenses so incurred by the Association shall be billed directly to the owner of the parcel to which such services are provided, and shall be a charge against the parcel.

6.4 Negligence; Damage Caused by Condition in Parcel. Each parcel owner shall be liable for the expenses of any maintenance, repair or replacement of common areas, other residential parcels, or personal property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees.

ARTICLE VII

7. ARCHITECTURAL CONTROL TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE COMMUNITY.

7.1 No building, structure or other improvement shall be erected or altered, nor shall any grading, landscaping, excavation, change of exterior color or other work, which in any way alters the exterior appearance of any residential unit or other property, be performed without the prior written approval of the Architectural Review Board (hereinafter called the ARB). In the event improvements or changes requiring such approval are made without such approvals, the Master Association shall have the right to require that such improvement or changes be undone at the expense of the party who caused such improvements or changes to be made. The members of the ARB shall have an easement to go on all property for the purpose of ensuring compliance with these covenants and with the improvement plans approved by the ARB and, in addition, the ARB shall have an easement to remove any construction or condition that fails to comply with these covenants or the approved plans, including the removal of unauthorized signs.

ARB approvals for residential units shall be based upon the standards developed by the ARB which shall be applied uniformly. However, different standards may be developed for different types of residential units, such as condominiums, single family homes, villas, coach homes and carriage homes. The standards established by the ARB may be altered or amended by the ARB from time to time as the ARB recommends, subject to Board approval. The ARB shall have the right to approve construction that does not comply with the applicable uniform standards in any case where special circumstances exist that would make it a hardship if such construction were not approved. A construction improvement approved by the ARB shall be considered in compliance even if such improvements would not meet subsequently developed standards.

7.2 COMPOSITION, ROLE AND RESPONSIBILITY OF THE ARB

A. The ARB shall be a Committee consisting of no less than three (3) members of Berkshire Lakes Master Association, Inc.

B. Owners of residential units made subject to these covenants shall be obligated to obtain ARB approval for all architectural and landscaping aspects of any improvements or development. In connection with the ARB approval process, the ARB shall have the right to require the submission of a site plan, an elevation plan, a landscaping plan, an irrigation plan and construction plans.

C. No home, building or other improvements, sign, outside lighting, equipment, fence, hedge, pool, wall, walk, dock, road, lake or other structure of any kind or planting shall be constructed, erected, removed, planted or maintained nor shall any addition to or any change or alteration therein be made upon any property subject to these Fourth Amended and Restated Covenants until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color schedule and location of the same shall have been submitted to and approved in writing by the ARB. As part of the application process, three (3) sets of plans and specifications prepared by an architect, landscape architect, engineer or other person found to be qualified by the ARB shall be submitted for approval on such application form as may be provided or required by the ARB. The ARB shall have the right to modify the requirements for submission of plans, as the ARB deems appropriate.

D. In the event the information submitted to the ARB is, in its opinion, incomplete or insufficient in any manner, it may request the submission of additional or supplemental information.

E. The ARB shall have the right to refuse to approve any plans and specifications which are not in conformity with its standards or in conformity with the provisions of this Fourth Amended and Restated Declaration.

F. The ARB shall in all cases have the right to determine and designate building set back lines necessary to conform to the property's general development plan.

G. There is specifically reserved unto the ARB the right of entry and inspection upon any residential unit or other improvement for the purpose of determination by the ARB whether there exists any construction of any improvement which violates the terms of any approvals by the ARB or the terms of this Fourth Amended and Restated Declaration or of any other Covenants, Conditions, and Restrictions to which its deed or other instruments of conveyance makes reference. The Master Association is specifically empowered to enforce the provisions of this Declaration and the decisions of the ARB by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvements or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorneys' fees in connection herewith. The Master Association shall indemnify and hold harmless the ARB and its members from all costs, expenses and liabilities including attorneys' fees incurred by virtue of service as a member of the ARB.

H. The ARB is empowered to establish and modify from time to time, subject to Board approval, design and development standards for all matters that involve the exterior of residential units including, but not limited to, the following:

1. Architectural design of improvements;
2. Fences, walls and similar structures;
3. Exterior building materials;
4. Exterior landscaping;
5. Exterior appurtenances relating to development and utility installations;
6. Signs and graphics, mailboxes and exterior lighting;
7. Building setbacks, pools and pool decks, side yards and related height and design criteria
8. Pedestrian and bicycle ways, sidewalks and pathways; and
9. All buildings, landscaping and improvements on lands owned or controlled by the Master Association or any other Association;
10. Clothes lines;
11. Aviaries;
12. Television and components; and
13. Air conditioning components.

7.3 Roofing. Unless specifically modified by the ARB and approved by the Board, the following shall apply:

1. **Materials:**

- 1.1 Clay, cement tile, wood shingles or shakes and approved grade "timberline" shingles are the acceptable roof materials. Metal roofs (26 gauge minimum) will be considered within the standards (shingle or tile appearance) set forth by the ARB.
- 1.2 All single family lots must use minimum Timberline 30 shingles or equal (30 year/70 mph warranty).

1.3 All single family homes located in Unit 1, Berkshire Lakes, commonly known as Brentwood (i.e. that area bounded by Henley Drive and from the west end of Henley Drive down Belville to the junction with Devonshire Boulevard) will either use cement tile, metal (26 gauge minimum, with a barrel or clay tile appearance), or No. 1 grade H/S, R/S wood shake/shingles.

1.4 All roof changes/replacements require ARB approval.

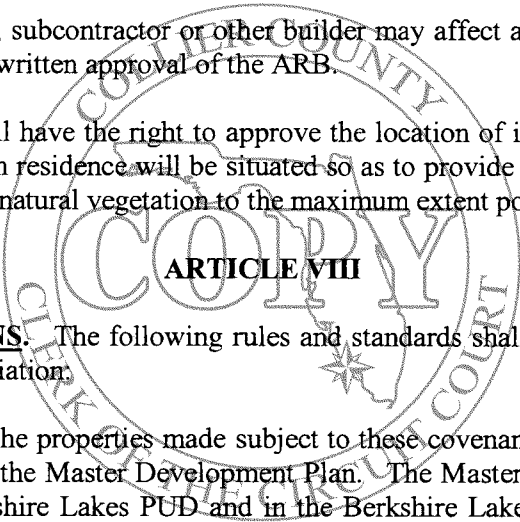
2. **Pitch:**

2.1 Main structure and garage – minimum center pitch 5 feet high to 12 feet horizontal

2.2 Lanai – if part of the original design plan, the lanai may have a flat or below the 3 ½ minimum roof pitch.

I. No contractor, subcontractor or other builder may affect any of the improvements herein discussed without the express written approval of the ARB.

J. The ARB shall have the right to approve the location of improvements on all residential lots in order to insure that each residence will be situated so as to provide the maximum view to all other residences and to preserve the natural vegetation to the maximum extent possible.



ARTICLE VIII

8. **USE RESTRICTIONS.** The following rules and standards shall apply to Berkshire Lakes and shall be enforced by the Association.

8.1 **Quiet Enjoyment.** The properties made subject to these covenants shall be improved, used and developed in accordance with the Master Development Plan. The Master Development Plan shall mean the plan set forth in the Berkshire Lakes PUD and in the Berkshire Lakes DRI order issued by Collier County, as such are amended from time to time and as such are further refined by subdivision plats and this Fourth Amended and Restated Declaration of Covenants. Members shall not suffer, permit or maintain in or on their residential unit's conditions or activities which interfere with peaceful and quiet occupancy by the owners of their residential units.

8.2 **Parking.** The only vehicles allowed to be kept or parked on a residential driveway or condominium assigned parking area and on no other part of the property, except when completely enclosed within a residential garage, are the following:

1. Private passenger automobiles and law enforcement vehicles;
2. Private passenger vehicles commonly known as sports utility vehicles;
3. Private passenger vans used solely for passenger transportation, having windows completely surrounding the passenger compartment and having factory installed seats;
4. No vehicle designated or used for commercial purposes or bearing exterior advertising matter, lettering or sign shall park on a residential driveway, condominium assigned parking area or street right-of-way within the Master Association property boundaries. Such vehicles can only be parked when completely enclosed in the residential garage. Delivery and service vehicles shall park in the driveway, condominium parking area and street only for the time necessary to perform the delivery or service.
5. No vehicle of any type shall be kept or parked on Master Association property at any time except in the marked spaces of the paved parking area at the clubhouse, tennis courts and pool complex and

then only during the hours when these facilities are open for authorized use. Vehicles in violation of this are subject to being towed at the owner's expense. In addition, no boat, camper or trailer may be parked on Master Association property at any time.

6. No vehicle of any type shall be parked on any public street right-of-way between the hours of midnight and 7:00 a.m. Vehicles in violation of this are subject to being towed at the owner's expense.

7. No vehicle of any type, as well as boats, campers or trailers, may be parked on any non-solid surface (i.e. grass).

8.3 Land Elevations. Except to comply with applicable government regulations or controls, no changes in the elevation of lands shall be made which will interfere with any drainage or otherwise cause undue hardship to any adjoining property.

8.4 Trash. Garbage containers, recycle bins, lawn trimmings and trash stored for pickup shall comply with garbage and trash collection service rules for Collier County Ordinance 9147, Section 7, which states that containers must be set out after 6 PM of the day before pickup and removed the same day of pickup. Violations of this ordinance are subject to a county imposed fine. No refuse or unsightly objects shall be permitted to accumulate on or adjacent to an owner's property. Except when out for pickup, garbage containers shall be screened from view from the road and all adjoining properties.

8.5 Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot or upon any residential unit, except for cats, dogs and other household pets provided they are not kept, bred or maintained for any commercial purpose or become a nuisance to the neighborhood. No person owning or in custody of an animal shall allow it to infringe or stray upon another's lot or property without the consent of the owner of such lot or residential unit. All animal shall be on a leash when outside the owner's residential unit. Owners are responsible to insure that no fecal matter is left behind by such animals. The construction of any aviary or lanai on the outside of any residential unit, inclusive of exterior porches, is prohibited.

8.6 Offensive Activities. No noxious or offensive activity shall be carried on upon the property or upon any part or portion thereof, nor shall anything be done thereon which may be or become a nuisance.

8.7 Driveways. Driveways and off street parking shall be paved with concrete or decorative pavers. No macadam or stone shall be used.

8.8 Garage Doors. Operable garage doors must be provided for all garages and equipped with operable remote controlled electric openers. Garage doors shall be kept closed at all times, except when vehicles are entering or exiting the garage or when outdoor activities necessitate convenient garage access. Garage doors may be left open if equipped with electrically/manually operated overhead garage door screens designed to increase air circulation while shielding the garage interior from public view. The screen material must be of the "solar" type available in various colors to insure the garage interior is screened from public view while maintaining the appearance of a closed garage door. Garage door screens require ARB approval.

8.9 Water Property Rights. No docks, bulkheads, moorings, pilings or boat shelters of any kind shall be erected on or over the lakes within the common property, except such as shall be constructed as part of the Association property and with Master Association approval. The area, if any, between the rear lot line of any lot and the water's edge of any lake or other body of water within the property shall be sodded and maintained by the owner of said lot as if said area were a portion of the lot owned by said owner. No person or persons whomsoever shall be permitted upon that portion of the land lying between the rear lot line of the lot and the water's edge of any lake or other water body within the property, except the owner of said adjacent lot, his family, tenants, guests and invitees and an employee or contractor of the Association

for the sole and exclusive purpose of performing maintenance upon and within said lake or other body of water. Owners of lakeside residential units that experience demonstrable property erosion may at the Owners' expense and subject to the outlined approval of the ARB may construct a rip rap bulkhead wall as set forth in the ARB for Berkshire Lakes.

8.10 Restriction on Use of Residential Units. Each residential unit shall be used exclusively as a residential dwelling and no business or trade shall be permitted to be conducted therein or thereon. No more than two unrelated individuals may use a residential unit as a residence. Individuals related by marriage, consanguinity or adoptions may occupy a residential unit in compliance with Collier County codes, laws and ordinances as same may be amended from time to time. All rentals shall be limited to a minimum of one month and not to exceed three (3) rentals per year. Rental of less than the entire residence (i.e. rooms) is prohibited.

8.11 Maintenance of Property. Each owner, lessee and occupant shall maintain at all times in good condition and repair all interior and exterior portions of their residential units including, but not limited to, roofs, mail box posts, mail boxes and improvements made thereon including, but not limited to, lawn, landscaping and garden areas.

All areas within a residential unit or multi-family property, not covered by structures, walkways or paved parking facilities, shall be maintained as lawn or a landscaped area to the abutting street or lake. Such lawns shall be irrigated with an underground irrigation system, cut to a height of four inches (4") and replaced as necessary.

The removal of trees, major changes to landscape, structural modifications to the residence and the changing of house colors must have the approval of the ARB.

If, for any reason, a residential property is found not to be maintained in good condition consistent with this Fourth Amended and Restated Declaration of Covenants, the owner shall receive written notice of the violation requesting correction within a prescribed period of time. Failure to correct the violation after the notification may result in a fine.

8.12 Subdivision of Residential Units. No residential unit shall be divided or subdivided, nor structural alteration or changes may be made to the dwelling or said residential unit without prior approval of the ARB. Any subdivision or combination of residential units shall be consistent with zoning and easement restrictions affecting the residential units

8.13 TV Antennas and Satellite Dishes. The installation of television antennas, wireless cable antennas, satellite dishes and over the air reception devices of less than one (1) meter in diameter may be installed, subject to ARB approval and all Federal Communication Commission rules and regulations.

8.14 Drying Facilities. No clothes lines, hangers or drying facilities shall be permitted or maintained on the exterior of any residential unit and no clothes, rugs, drapes, spreads or household article or goods of any sort shall be dried, aired, beaten, cleaned or dusted by hanging or extending the same from any window or door without approval of the Architectural Review Board.

8.15 Refuse Disposal. No owner may dispose of or keep refuse, trash, yard waste or garbage in or on an exterior area of the owner's residence or on the Master Association's property, except in those receptacles approved by the Master Association

8.16 Partition of Unit. No residential unit shall be the subject of a partition action that seeks to physically divide a residential unit. All owners do, by their acceptance of a conveyance of such residential unit, waive any right to maintain or bring such action.

8.17 Signage. No sign of any type shall be maintained, kept or permitted on any part of any residential unit that is made subject to this Fourth Amended and Restated Declaration of Covenants, except as follows:

- One (1) "FOR SALE" sign on a residential unit. The sign may contain the realtor's name and logo and shall be placed in the front yard of the residential unit.
- One (1) sign located in the front yard of the residential unit which identifies the name of the company providing security monitoring for the unit.
- Any sign permitted under this paragraph shall not exceed two (2) square feet
- Signs relating to construction activities are permitted on the residential unit and must be removed on or before the 7th day following the final inspection by the Collier County Building Department for said construction activity.

8.18 Use of Water. No owner shall have the right to use water from any lake or drainage ditch.

8.19 Moving of Structures. No existing building or structure shall be moved onto any residential unit without the consent of the ARB. Furthermore, no structure of any kind including, but not limited to, storage sheds and storage containers may be erected, constructed or maintained outside of a residential unit.

8.20 Garages. All garages on single family residential units shall be attached to the residences which they are designed to serve and shall be no larger than are sufficient to house three (3) vehicles.

8.21 Vacant Lots. A platted unimproved (vacant) lot must be maintained by its owner in accordance with Collier County Ordinance 91-14. As stated therein:

- (a) Any woods, high grass or vines over eighteen inches (18") in height must be removed;
- (b) Trees are permitted;
- (c) Palmetto bushes are permitted.

Failure to comply with this Ordinance is considered a violation of these Fourth Amended and Restated Covenants. If for any reason an owner of a platted unimproved (vacant) lot permits weeds, high grass or vines to exceed the height stated in Collier County Ordinance 91-14 and fails to correct the violation within five (5) days of receipt of written notification by the Master Association, the Master Association shall have the right to:

A. Contact Collier County, who may assess the vacant lot and, if appropriate, will pull out the weeds and high grass. The cost of removing the violation shall be billed to the owner and if unpaid shall be the subject of a lien; and

B. If Collier Count deems it inappropriate to address the violation, the Master Association may process the violation through its established covenant violation policies and procedures.

8.22 Lines. All telephone, electric, water, sewer, television, fuel lines and pipes or other distributors must be underground from the lot line. Air conditioning units, pool pumps, pool heaters and pool filters shall be suitably screened by means of landscaping or other screening devices from view from the road and from adjoining properties.

8.23 Motorcycles. No engine driven motor vehicles, motorcycle or moped shall be used within the Common Areas or on the bicycle/pedestrian paths, except when such vehicles are used for maintenance of the Common Areas.

8.24 Private Wells. The digging, installation and use of wells upon any single family or multi-family property for irrigation purposes is prohibited unless specific written approval is first obtained from the ARB. All applications to the ARB for approval of private wells shall include evidence that the required governmental permits for the proposed well are obtained. The ARB shall have the absolute right to deny approval for the digging, installation and use of any well unless the applicant demonstrates that the use of such water:

- a. Will not cause staining to buildings or other improvements on the property;
- b. Will not cause unpleasant odors;
- c. Will not cause unacceptable noise; and
- d. Will not adversely affect the Berkshire Lakes community in any other way.

All approvals granted by the ARB may be revoked at any time if the ARB determines that the actual operation of a well is causing staining to buildings or other improvements, is causing unpleasant odors, is creating unacceptable noises or is adversely affecting the Berkshire Lakes community.

8.25 Mailboxes. To assure compatibility within the community, the Association, through the ARB, has planned for custom designed mailboxes, posts and exterior light posts.

- Neighborhood associations and condominiums may be permitted to group mailboxes in structures approved by the Master Association's ARB
- Unit 1, also known as "Brentwood", is the only area that does not require lights on the mailbox post.
- All mailboxes and posts will be painted black.

ARTICLE IX

9. INSURANCE. In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

9.1 Association; Required Coverage. The Association shall maintain adequate property insurance covering all of the common area buildings, the common areas and all Association property. The Association shall also provide adequate general liability insurance. The amounts of coverage shall be determined annually by the Board of Directors. The insurance carried by the Association shall afford at least the following protection:

(A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard All Risk property contract.

(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 unit owners as a group to a parcel owner.

(C) **Automobile.** Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles when used for Association business, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(D) Compensation. The Association may maintain Workers' Compensation insurance and shall if required by law.

(E) Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and residential unit owners.

(F) Description of Coverages. A detailed summary of the coverage included in the policies, and copies of the policies, shall be available for inspection by residential unit owners or their authorized representatives upon request.

9.2 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the owners and their respective mortgagees in the following shares:

(A) Common Area. Proceeds on account of damage to common areas shall be held by the Association for the specific purpose of repairing damage.

(B) Mortgagee. If a mortgagee endorsement has been issued as to a residence, the shares of the mortgagee and the owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against parcel or parcels, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

9.3 Association as Agent. The Association is hereby irrevocably appointed as agent for each residence owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the common areas.

9.4 Damage to Common Area. Where insured loss or damage occurs to the common areas or Association property, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common areas, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all parcel owners for the deficiency. Such special assessments need not be approved by the parcel owners. The special assessments shall be added to the funds available for repair and restoration of the property.

ARTICLE X

10. OWNERSHIP OF A RESIDENTIAL UNIT

10.1 **Forms of ownership:**

(A) A residential unit may be owned by one natural person.

(B) Co-ownership. Co-ownership of residential units is permitted. If there are co-owners, the Board shall be entitled to require the owners to designate one (1) natural person as primary occupant. The use of the residential unit and residence by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant must be approved in advance by the Board of Directors. No more than one such change will be approved in any twelve (12) month period.

(C) Ownership by Corporations, Partnerships or Trusts. A residential unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the parcel and residence may be used as short-term transient accommodations for several individuals or families. A trustee, or corporation, partnership or other entity as a residential unit owner shall be required to place on file with the Association a voting certificate, which shall designate a natural person to vote on the residential unit's behalf for all matters coming before the Association.

(D) Life Estate. A residential unit may be subject to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be the only Association member from such residence, and occupancy of the residence shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the parcel. Any consent or approval required of members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights and shall be subject to subsection (B) above.

10.2 **Transfers.**

(A) Sale or Gift. No parcel owner may dispose of a parcel or any ownership interest in a parcel by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any parcel owner acquires his title by devise or inheritance, his right to occupy or use the parcel shall be subject to the approval of the Board of Directors under Section 9.3 (A)(2) below. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse or non-spouse companion at the time of death, or was related to the owner by blood or adoption within the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the parcel and residence before being approved by the Board of Directors under the procedures outlined in Section 10.3 below.

(D) Committee Approval. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an *ad hoc* committee, which shall consist of at least three (3) members. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

10.3 Procedures.

(A) Notice to Association.

(1) Sale or Gift. An owner of a residential unit intending to make a sale or gift of his or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse or non-spouse companion, if any, as a pre-condition to approval.

(2) Devise, Inheritance or Other Transfers. The transferee of a residential unit must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the parcel following the procedures in this Section or Section 11.

(3) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any residential unit owner fails to obtain the Association's approval prior to selling an interest in a residential unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

(B) Board Action. Within twenty (20) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or the Vice-President of the Association in recordable form and delivered to the transferee of the residential unit. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) Disapproval. Approval of the Association shall be withheld or denied only for good cause, and then only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:

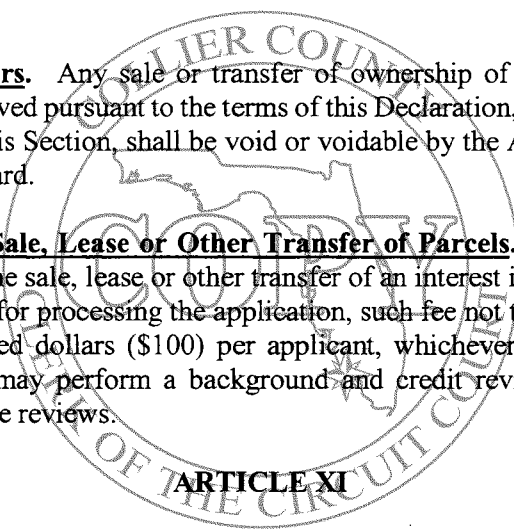
- (1) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (2) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (3) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the property;

- (4) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
- (5) The person seeking approval has evidenced an attitude of disregard for Association rules by his conduct as a tenant, parcel owner or occupant of a residence;
- (6) The parties to the proposed transfer have failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or
- (7) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

10.4 Exception. The provisions of Sections 10.2 and 10.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

10.5 Unapproved Transfers. Any sale or transfer of ownership of a residential unit which is not approved, or which is disapproved pursuant to the terms of this Declaration, shall not be concluded; and if it is concluded in disregard of this Section, shall be void or voidable by the Association unless subsequently approved in writing by the Board.

10.6 Fees Related to the Sale, Lease or Other Transfer of Parcels. Whenever herein the Board's approval is required to allow the sale, lease or other transfer of an interest in a Parcel, the Association may charge the Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law or one hundred dollars (\$100) per applicant, whichever is greater. In addition to the transfer fee, the Association may perform a background and credit review and the applicant shall be responsible for the cost of those reviews.



ARTICLE XI

11. LEASING OF A RESIDENTIAL UNIT. In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of parcels and residences by their owners shall be restricted as provided in this section. All leases of parcels and residences must be in writing. An owner may lease only his entire parcel and residence, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person. The legal responsibility for paying Association assessments may not be delegated to the lessee. If the residential unit is occupied by a tenant and the residential unit owner is delinquent in paying any monetary obligation due to the Association, the Association may demand by notice as provided by Statute that the tenant pay to the Association the subsequent rental payments and continue to make such payments until all the monetary obligations of the residential unit owner related to the residential unit have been paid in full to the Association and the Association releases the tenant or until the tenant discontinues tenancy in the residential unit. A tenant is immune from any claim by the residential unit owner related to the rent timely paid to the Association after the Association has made written demand. If the tenant paid rent to the landlord or parcel 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 residential unit owner until the association releases the tenant or the tenant discontinues tenancy in the unit. The Association shall, upon request, provide the tenant with written receipts for payments made. The Association shall mail written notice to the residential unit owner of the Association's demand that the tenant pay monetary obligations to the Association. The liability of the

tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant shall be given a credit against rents due to the landlord in the amount of assessments paid to the Association. The Association may issue notice under s. 83.56, Florida Statutes, and may sue for eviction under ss. 83.59-83.625, Florida Statutes, as if the Association were a landlord under part II of chapter 83 if the tenant fails to pay a monetary obligation. However, the Association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under s. 83.51. The tenant does not, by virtue of payment of monetary obligations, have any of the rights of a parcel owner to vote in any election or to examine the books and records of the Association.

11.1 Procedures.

(A) Notice by the Owner. An owner intending to lease his parcel and residence shall give to the Board of Directors or its designee, written notice of such intention at least ten (10) days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require. The Board may require a personal interview with any lessee and his or her spouse or non-spouse companion, if any, as a pre-condition to approval.

(B) Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have ten (10) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

(C) Disapproval. A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:

- (1) the residence owner is delinquent in the payment of assessments at the time the application is considered;
- (2) the residence owner has a history of leasing his parcel without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his parcel;
- (3) the real estate company or rental agent handling the leasing transaction on behalf of the owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
- (4) the application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the property;
- (5) the prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (6) the prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
- (7) the prospective lessee evidences a strong probability of financial irresponsibility;

- (8) the lessee, during previous occupancy, has evidenced an attitude of disregard for the Association rules;
- (9) the prospective lessee gives false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid; or
- (10) the parcel owner fails to give proper notice of his intention to lease his parcel and residence to the Board of Directors.

(D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the parcel and owner.

(E) Applications; Assessments. Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The legal responsibility for paying Association assessments may not be delegated to the lessee.

(F) Committee Approval. To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an *ad hoc* committee, which shall consist of at least three (3) members.

11.2 Occupancy By Guests. There is no restriction on the length of stay of guests, whether related or unrelated to the tenant of a parcel and residence, so long as the Tenant is occupying the parcel. The number of occupants shall not exceed the maximum number as recognized by Collier County Ordinance 2010-02(6).

11.3 Regulation by Association. All of the provisions of the governing documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a parcel and residence as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the governing documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

ARTICLE XII

12. AMENDMENTS; TERMINATION.

12.1 Duration. The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said Declaration shall automatically be renewed and extended for successive periods of ten (10) years. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided however, and subject to existing laws and ordinances, 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, at least two-thirds (2/3rds) of the owners of residences affirmatively vote at a duly held meeting of the members of the Association 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 to terminate this Declaration is to be considered,

setting forth the fact that such a proposal will be considered, be given at least forty-five (45) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, 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.

12.2 Amendments by Members. Except as otherwise provided herein or by law, this Declaration may be amended at any time by affirmative vote of at least forty percent (40%) of the members, in person or by proxy, at a duly called meeting of the members of the Association, called for the purpose. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the 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 and copy of the amendment are recorded in the Public Records of Collier County, Florida.

ARTICLE XIII

13. ENFORCEMENT; GENERAL PROVISIONS.

13.1 Enforcement. Enforcement of these covenants, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any parcel to enforce any lien created by these covenants. Failure of the Association or any owner to enforce any covenant, condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

13.2 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and all persons to whom a member has delegated his right of use in and to the common areas, as well as to any other person occupying any residence under lease from the owner or by permission or invitation of the owner or his tenants (express or implied), and their licensees, invitees or guests. Failure of an owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each residential parcel owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants, at any time.

13.3 Litigation. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the governing documents or Association rules, may be brought, but shall not be required to be brought, by the Association or by a unit owner against:

- (A) the Association;
- (B) a parcel owner;
- (C) anyone who occupies or is a tenant or guest of a residential parcel; or

(D) any officer or Director of the Association who willfully and knowingly fails to comply with these provisions.

13.4 Attorney Fees and Other Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, residential parcel owner, officer, Director or the Association to comply with the requirements of the law, or the governing documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney fees, paralegal fees, and expert fees as may be awarded by the court.

13.5 No Election of Remedies. All rights, remedies and privileges granted to the Association or owners under the law and the governing documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

13.6 Notices. Any notice required to be sent to any member under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed to the last known address of the owner appearing in the records of the Association, or to the address of the member's residence. Notice to one of two or more co-owners of a parcel shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any change of address.

13.7 Severability. Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

13.8 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 that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

13.9 Non-Profit Status. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

13.10 Use of Singular and Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

13.11 Headings. The headings used in the governing documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

DATED this 27th day of June, 2016.

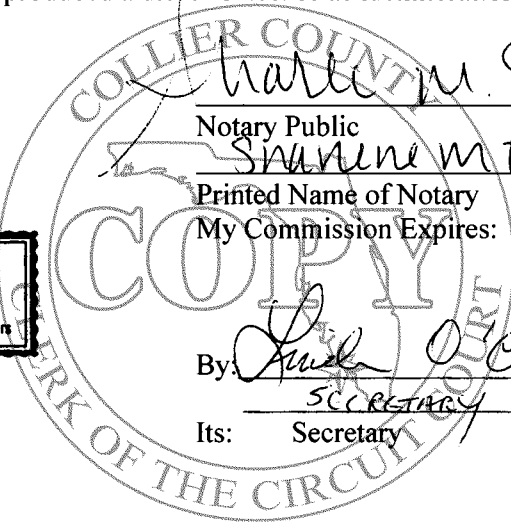
BERKSHIRE LAKES MASTER ASSOCIATION, INC.

By: Robert Luparello
PRESIDENT
Its: President

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 27th day of June, 2016 by _____ as Vice-President of Berkshire Lakes Master Association, Inc., [] who is personally known or [] has produced a driver's license as identification.

[Notary Seal]



Sharlene M. Thompson
Notary Public
Sharlene M Thompson
Printed Name of Notary
My Commission Expires:

By: Paul O'Connor
SECRETARY
Its: Secretary

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 27th day of June, 2016 by _____ as Secretary of Berkshire Lakes Master Association, Inc., [] who is personally known or [] has produced a driver's license as identification.

[Notary Seal]



Sharlene M. Thompson
Notary Public
Sharlene M Thompson
Printed Name of Notary
My Commission Expires: 10/17/18

NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES OF INCORPORATION.

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
BERKSHIRE LAKES MASTER ASSOCIATION, INC.**

Pursuant to Chapter 617, Florida Statutes, the Articles of Incorporation of Berkshire Lakes Master Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on January 29, 1998 are hereby amended, and restated in their entirety as amended. 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 Second 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 Second Amended and Restated Articles of Incorporation of Berkshire Lakes Master Association, Inc., shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation (herein called the "Association") is Berkshire Lakes Master Association, Inc., and its address is 495 Belville Boulevard, Naples, Florida 34104.

ARTICLE II

PRINCIPAL OFFICE: The principal office of the corporation shall be located at 495 Belville Boulevard, Naples, Florida 34104.

ARTICLE III

PURPOSE AND POWERS: 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 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 establishing a corporate residential community homeowners' association which has been subject to a Third Amended and Restated Declaration of Covenants, Conditions and Restrictions originally recorded in the Public Records of Collier County, Florida, at O.R. Book 2761 at Pages 2408 through 2428 has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Second Amended and Restated Articles, the Second Amended and Restated Bylaws of the corporation, and with said Fourth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easement (the "Declaration") and shall have all of the powers and authority reasonably necessary or appropriate to 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 and the operation of the Association;
- (C) To sue and be sued, and to enforce the provisions of the Declaration, these Articles, and the Bylaws as same may be amended from time to time 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 an instrument has been signed by forty percent (40%) of the voting interests agreeing to such dedication, sale or transfer or where such action has been approved by forty percent (40%) of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose;
- (G) To borrow money, and with the prior approval of forty percent (40%) of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (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 exercise any and all powers, rights and privileges which a corporation organized under Chapters 720 and 617 of Florida Statutes may now or hereafter have or exercise; subject always to the Declaration as amended from time to time; and

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 the voting interests. 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

DIRECTORS AND OFFICERS:

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined 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 each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VIII

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

- (A) Proposal. Amendments to these Articles shall be proposed by a majority of the Board or upon petition of one-fourth (1/4th) of the voting interests, and shall be submitted to a vote of the members not later than the next annual meeting.
- (B) Vote Required. Except as otherwise required by Florida law, these Articles of Incorporation may be amended if the proposed amendment is approved by at least forty percent (40%) of all members at any annual or special meeting provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains a fair statement of the proposed amendment.
- (C) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida with

the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE IX

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 attorney's 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 apply to:

- (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.
- (D) Wrongful conduct by Directors or officers, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors approves the 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.

DATED this 27th day of June, 2016.

BERKSHIRE LAKES MASTER ASSOCIATION, INC.

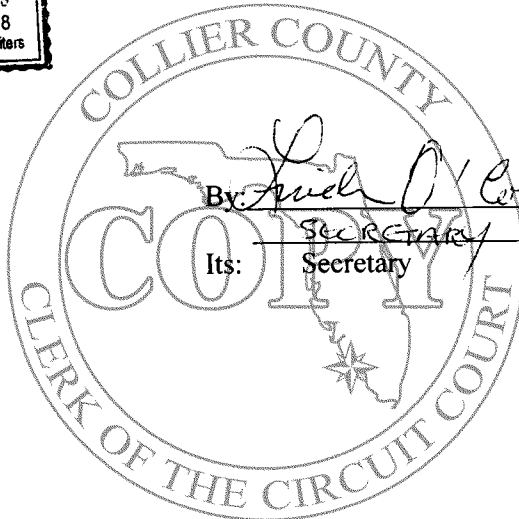
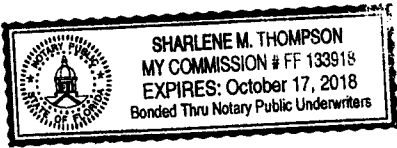
By: Robert Luparello
PRESIDENT
 Its: President

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 27th day of June, 2016 by _____ as Vice-President of Berkshire Lakes Master Association, Inc., [] who is personally known or [] has produced a driver's license as identification.

[Notary Seal]

[Signature]
Notary Public
Sharlene M Thompson
Printed Name of Notary
My Commission Expires: 10/17/18



By: [Signature]
Secretary
Its: Secretary

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 27th day of June, 2016 by _____ as Treasurer of Berkshire Lakes Master Association, Inc., [] who are personally known or [] have produced a driver's license as identification.

[Notary Seal]

[Signature]
Notary Public
Sharlene M Thompson
Printed Name of Notary
My Commission Expires: 10/17/18



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

**SECOND AMENDED AND RESTATED BYLAWS OF
BERKSHIRE LAKES MASTER ASSOCIATION, INC.**

ARTICLE I

1. **GENERAL.** These are the Amended and Restated Bylaws of Berkshire Lakes Master Association, Inc., hereinafter the Association, a corporation not for profit organized under the laws of Florida as a community association for the purpose of operating a residential community. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 **Principal Office.** The principal office of the Association shall be at 495 Belville Boulevard, Naples, Florida or at 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 a Florida corporation not-for-profit shall be affixed thereto. The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document where a seal may be required.

1.3 **Definitions.** The definitions set forth in Article I of the Fourth Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Berkshire Lakes Master Association, Inc., to which these Bylaws are attached as Exhibit "B" and incorporated herein by reference, shall apply to terms used in these Bylaws, unless the context clearly requires another meaning.

ARTICLE II

2. **MEMBERS.** The members of the Association are the record owners of legal title to the properties located upon Exhibit "A" to the Original Declaration of Covenants, Conditions, Restrictions and Easements for Berkshire Lakes. In the case of an individual residential unit being subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the residential unit solely for purposes of determining use rights. If an individual residential unit is subject to a life estate, the life tenant is deemed the residential unit's owner, and joint life tenants are deemed joint owners for the purposes of this provision. Membership becomes effective upon the occurrence of the last to occur of the following events:

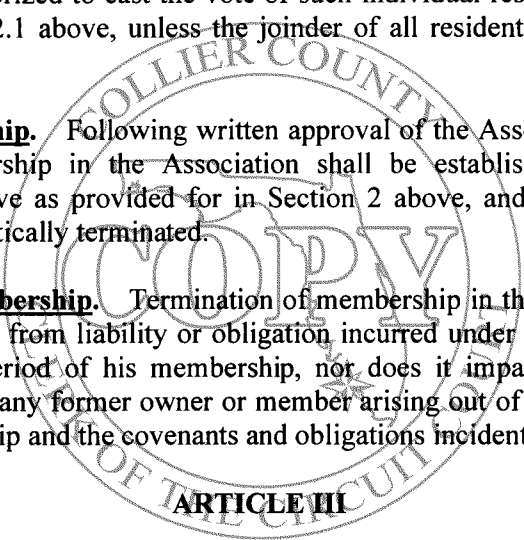
- (A) Approval of the transfer of ownership by the Board of Directors;
- (B) Recording in the public records a deed or other instrument evidencing a member's legal title to the residential unit;
- (C) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title; or
- (D) Delivery to the Association, if required, of a written designation of primary occupant;

2.1 Voting Rights; Voting Interests. The members of the Association are entitled to one (1) vote for each residential unit owned by them. The total number of votes is equal to the total number of individual residential units. The vote of an individual is not divisible. The right to vote may be denied because of delinquent assessments pursuant to Florida Law. If a residential unit is owned by one (1) natural person, his right to vote shall be established by the record title to the residential unit. If a residential unit is owned jointly by two (2) or more natural persons who are not acting as trustees, that residential unit's vote may be cast by any one (1) of the record owners. If two (2) or more owners of a residential unit do not agree among themselves how their one (1) vote shall be cast on any issue, that vote shall not be counted on that issue. If the owner of a residential unit is not a natural person or is a trustee, the vote of that individual residential unit shall be cast by the individual residential unit's designated primary occupant as set forth in the Declaration.

2.2 Approval or Disapproval of Matters. Whenever the decision of a residential unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such individual residential unit at an Association meeting as stated in Section 2.1 above, unless the joinder of all residential unit owners is specifically required.

2.3 Change of Membership. Following written approval of the Association as elsewhere required herein, a change of membership in the Association shall be established by the new member(s); membership becoming effective as provided for in Section 2 above, and the membership of the prior owner shall thereby be automatically terminated.

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



ARTICLE III

3. MEMBERS' MEETINGS; VOTING.

3.1 Annual Meeting. There shall be noticed an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each year at a date, time and place 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. During the annual meeting, ballots cast in the annual election of Directors shall be counted and results announced.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors, and may also be called by members having at least forty percent (40%) of the voting interests. Such requests shall be in writing, shall state the purpose or purposes of the meeting, and shall be signed by all the members making the request. The business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings. Notices of all meetings of the members must state the time, date, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each member at the address which appears on the books of the Association, or may be furnished by personal delivery or by

electronic transmission. The member bears the responsibility for notifying the Association of any change of address. The notice must be mailed, delivered or electronically transmitted at least fourteen (14) days before the meeting. If ownership of an individual residential unit has been transferred or the Association is not notified of such transfer after notice has been mailed, no separate notice to the new owner is required. Notice of any meeting may be waived in writing by any person entitled to receive such notice. 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 owner meetings, except owner meetings called to recall the Board members may be given by electronic transmission to lot owners who consent to receive notice by electronic transmission.

3.4 Quorum. A quorum at a member's meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least a fifteen percent (15%) of the votes of the entire membership.

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 individual residential unit owners for all purposes, except where a greater or different number of votes are expressly required by law or by any provision of the governing documents.

3.6 Proxy Voting. Members may cast their votes at a meeting in person or by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy shall be 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 vote for the individual residential 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 need not be members.

3.7 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. When a meeting is so adjourned it shall not be 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 then present.

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 last members' meeting
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors (annual meeting only)

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

3.9 Actions Specifically Requiring Member Votes. The following actions require approval of the members and may not be taken by the Board of Directors acting alone:

- (a) Amendments to the Declaration, the Articles and By-Laws;
- (b) Cancellation of certain grants, assessments or reservations made by the Declaration, or made by the Association before the transfer of control to the Association from the developer;
- (c) Purchase of any Association land;
- (d) Providing no reserves or less than adequate reserves;
- (e) Recall of members of the Board of Directors; and
- (f) Other matters contained in the Declaration, Articles or these By-Laws or Florida Statute 617 that specifically require a vote of the members.

3.10 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 at all reasonable times. Minutes of a meeting must be reduced to written form within thirty (30) days after the meeting.

3.11 Parliamentary Rules. Roberts Rules of Order (Latest Edition) may govern the conduct of the 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.

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

owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

ARTICLE IV

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

4.1 Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be five (5) unless determined otherwise by the Board of Directors. All Directors shall serve two (2) year terms. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided in Section 4.5 below. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in Section 4.4 below.

4.2 Qualifications. Each Director must be a residential unit owner, the spouse of the owner, or the person designated by the residential unit owner to hold a voting certificate for that specific residential unit.

4.3 Elections. In each annual election the members shall elect by written, 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, or electronically transmit to residential unit owners who so consent, to each residential 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 electronic transmission or included in another Association mailing, delivery or electronic transmission, including regularly published newsletters. Any individual residential 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 not be nominated from the floor at the meeting at which the election is to be held.

(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 residential 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, an information sheet, no larger than 8 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission 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 fifteen percent (15%) 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 lot as many votes for Directors as there are Directors to be elected, but no lot 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.

4.4 Resignation; Vacancies on the Board. Any Director may resign at any time by giving written notice to the Association, and unless otherwise specified therein, the resignation shall become effective upon receipt. If the office of any Director becomes vacant for any reason, a successor to fill the remaining unexpired term shall be appointed or elected as follows:

- (A) Any vacancy occurring on the Board of Directors may be filled by the affirmative vote of the majority of the remaining Directors, even though the remaining Directors constitute less than a quorum, or by the sole remaining Director. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. If a vacancy is not so filled or if no Director remains, the replacement may be elected by the members or, on the petition of any member, by appointment of the Circuit Court of the county where the Community is located.
- (B) If a vacancy occurs on the Board as a result of an increase in the number of Directors or a recall in which less than a majority of the Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum, to fill the vacancy for the unexpired term of the seat being filled.
- (C) If vacancies occur on the Board as a result of a recall, and a majority or more of the Directors are removed, the vacancies shall be filled in accordance with Rule 61B-81, Florida Administrative Code, as amended from time to time, which provides procedures governing the conduct of the recall election as well as the operation of the Association during the period after a recall, but prior to the recall election.
- (D) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under Florida Statute 617.0807 or otherwise, may be filled before the vacancy occurs. However the new Director may not take office until the vacancy occurs.

4.5 Recall of Directors. Any or all Directors may be recalled, with or without cause, by a majority vote of the entire membership, either by a written petition or at a meeting called for that purpose no earlier than sixty (60) days after the Directors have been elected and no later than sixty (60) days before the next election. If a meeting is held or a petition is filed for the removal of more than one (1) 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, 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 notice of the meeting.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors, at such place and time as may be fixed and announced by the Directors at the meeting in conjunction with which they were elected.

4.7 Other Meetings. Meetings of the Board 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, or by petition of fifteen percent (15%) of the total voting interests of the Association. Notice of meetings shall

be given to each Director, personally or by mail, telephone, telegram or electronic transmission at least forty-eight (48) hours before the meeting and as otherwise required by law.

4.8 Notice to Owners. Meetings of the Board of Directors shall be open to members except for meetings between the Board and its attorneys 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 held to discuss personnel matters, and notices of all Board meetings, together with an agenda, shall be posted conspicuously in the community at least forty-eight (48) hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting where assessments are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of assessments and the notice shall be provided to the owners by mail, delivery or electronic transmission or broadcast on closed-circuit cable television and conspicuously posted on the property at least fourteen (14) days prior to the meeting. Notice of any Board meeting where rules that regulate the use of residential units and other property in the community may be adopted, amended or revoked must be provided by mail, delivery or electronic transmission or broadcast on closed-circuit cable television to all members and conspicuously posted on the property at least fourteen (14) days before the meeting. The notice must include a statement that changes to the rules regarding the use of lots will be considered at the meeting.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver is 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 a majority of all 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 conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation in a meeting by such means is equivalent to presence in person.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the governing documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest, and the vote by each Director present on each matter voted upon shall be recorded in the minutes of each meeting. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots may be used in the election or removal of officers.

4.12 Adjourned Meetings. The majority of those present at any meeting of the Board of Directors, regardless of whether a quorum has been attained, may adjourn the meeting to be reconvened at a specified later time. When the meeting is reconvened, provided a quorum is present, any business that might have been transacted at the meeting originally called may be transacted.

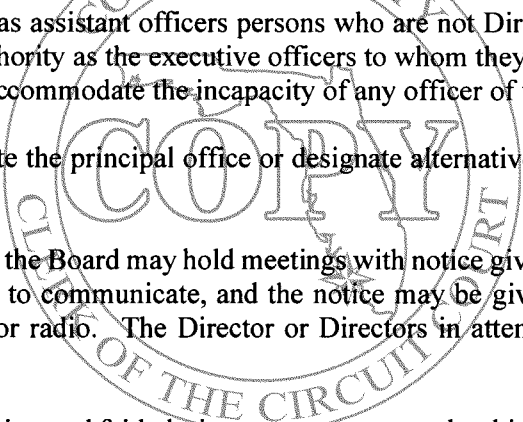
4.13 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those Directors present.

4.14 Compensation of Directors and Officers and Reimbursement of Expenses. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may

be reimbursed for all actual and proper out-of-pocket expenses related to the proper discharge of their respective duties.

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees, as the Board may deem necessary and convenient for the efficient and effective operation of Berkshire Lakes Master Association, Inc. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Only committees assigned with the power to make final decisions requiring the expenditure of Association funds or committees vested with the power to approve or disapprove architectural decisions with respect to a residential unit owned by a Member shall hold meetings that are open to Members and such committees shall give notice and hold their meetings with the same formalities as are required for Board Meetings. Committees vested with the power to approve or disapprove architectural decisions with respect to a residential unit owned by a member of the community may not vote by proxy or secret ballot.

4.16 Emergency Powers. In the event of any "emergency" as defined in Paragraph 4.16(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.

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- (A) The Board may name as assistant officers persons who are not Directors, which assistant officers will 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 supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.
 - (G) An emergency exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence or imminent occurrence of a catastrophic event, such as a hurricane, earthquake, act of war, civil unrest or terrorism, or other similar event. An emergency also exists during the period of time that civil authorities have declared that a state of emergency exists in, or have ordered the evacuation of, the area in which the Community is located, or have declared that area a disaster area. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

ARTICLE V

5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Association shall be a President, and a Vice-President, a Treasurer and a Secretary, all of whom must be directors and shall be elected annually by the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two (2) or more offices. 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. If the Board so determines, there may be more than one Vice-President.

5.2 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be *ex-officio* a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts and documents requiring the execution 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 shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the governing documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.

5.5 Treasurer. The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate accounts 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. The Treasurer shall oversee the disbursement of Association funds, keeping proper documentation for such disbursements, and shall render to the President and Directors, at meetings of the Board, or whenever they may require it, a full 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 one (1) has been designated.

5.6 Compensation of officers. No compensation shall be paid to any officer for services as an officer of the Association. This provision does not preclude the Board of Directors from employing officers as employees of the Association.

ARTICLE VI

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

6.2 **Accounts of the Association.** The Association shall maintain its accounting books and records according to generally accepted accounting principles. There shall be an account for each residential unit. Such account shall designate the name and mailing address of each residential unit owner, the amount and due date of each assessment or charge against the residential unit, the amounts paid, date of payment and the balance due.

6.3 **Budget.** The Treasurer shall prepare and the Board of Directors shall adopt a budget of Association estimated revenues and expenses for each coming fiscal year. Once adopted, the Association shall provide to each member a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and revenue and expense classifications. The estimated surplus or deficit as of the end of the current year shall be shown and all fees or charges for recreational amenities shall be set out separately.

6.4 **Reserves.** The Board may establish in the budget one or more restricted reserve accounts for capital expenditures and deferred maintenance. Contingency reserves for unanticipated operating expenses shall be included, if at all, in the operating portion of the budget. These funds may be spent for any purpose approved by the Board. The purpose of 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 annual budget.

6.5 **Assessments.** Regular annual assessments based on the adopted budget shall be paid annually, due on the first day of January of each year. Written notice of any increase in annual assessments shall be sent to all members prior to the beginning of the year the increase takes effect, but failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget for a new fiscal year has not been adopted, or if notice of any increase has not been made, at the time the annual payment for that year is due, it shall be presumed that the amount of such annual payment is the same as the last prior annual payment, and shall be continued at such rate until a budget is adopted and new annual payments are calculated at which time an appropriate adjustment shall be added to or subtracted from each residential unit's next due payment

6.6 **Special Assessments.** Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The total of all special assessments made coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests, present, in person or by proxy at a meeting called for the purpose first consent. The notice of any special assessment must contain a

statement of 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 by law.

6.7 Fidelity Bonds. The President, Secretary and Treasurer, and all other persons who are authorized to sign checks or have access to 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 are a common expense.

6.8 Financial Reports. Not later than ninety (90) days after the close of each fiscal year, the Board 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 21 days after the final financial report is completed by the Association or received from the third party, but not later than 120 days after the end of the fiscal year, the Association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member in accordance with Chapter 720, Florida Statutes. These full reporting requirements of Section 720.303(7), Florida Statutes, may be waived if approved by at least a majority of the voting interests present in person or by proxy at a meeting called for the purpose.

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

6.10 Application of Payments and Co-Mingling of Funds. All money collected by the Association may be co-mingled in a single fund or divided into two or more funds, as determined by the Board of Directors. All payments on account by a unit owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, and regular or special assessments, in such manner and amounts as the Board may determine.

6.11 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may adopt a different fiscal year in accordance with law and the regulations of the Internal Revenue Service.

ARTICLE VII

7. RULES AND REGULATIONS. The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each lot owner.

ARTICLE VIII

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in of the Fourth Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Berkshire Lakes the following shall apply:

8.1 Fines; Suspensions. The Board of Directors may levy fines against members, or a member's tenants or guests or both who commit violations of Chapter 720, Florida Statutes, the provisions of the governing documents, or the rules and regulations, or who condone such violations by their family members, guests or lessees. Fines shall be in amounts deemed necessary by the Board to deter future

violations, but in no event shall any fine exceed the maximum amount allowed by law or \$5,000.00, whichever is greater. Suspensions of the use of common areas and facilities may be imposed for a reasonable period of time to deter future violations. A Suspension cannot be imposed to prevent access or utility services to the parcel. The procedure for imposing fines and/or suspensions shall be as follows:

(A) Notice. The party against whom the fine and/or suspension is sought to be levied or imposed shall be afforded an opportunity for hearing before the Board of Directors 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 specific designation of the provisions of Chapter 720, Florida Statutes, the governing documents or the rules which are alleged to have been violated;
- (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
- (4) The possible amounts of any proposed fine and/or possible use rights of common areas or facilities to be suspended.

(B) Hearing: At the hearing the party against whom the fine and/or suspension may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before the Board of Directors and shall be confirmed or rejected by a Committee formed for the sole purpose to confirm or reject the fine levied by the Board. None of the Committee members may then be serving as Directors or officers or be employees of the Association, or the spouse or non-spouse companion, parent, child, brother or sister of an officer, director or employee of a Board member. If the Committee, by majority vote, does not agree with the fine, and/or suspension, it may not be levied. If the committee agrees with the fine, and/or suspension, the Board of Directors shall levy same.

8.2 Correction of Health and Safety Hazards. Any violations of Association rules which create conditions of the property which are deemed by the Board of Directors to be a hazard to the public health or safety may be dealt with immediately as an emergency matter by the Association, and the cost thereof shall be charged to the unit owner.

8.3 Mandatory Mediation. In the event of any dispute as defined in Section 720.311, Florida Statutes, between a residential unit owner and the Association arising from the operation of the Community, the parties must submit the dispute to mandatory mediation. Nothing herein shall be construed to require mediation of disputes related to the levy or collection of fees or assessments.

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

ARTICLE IX

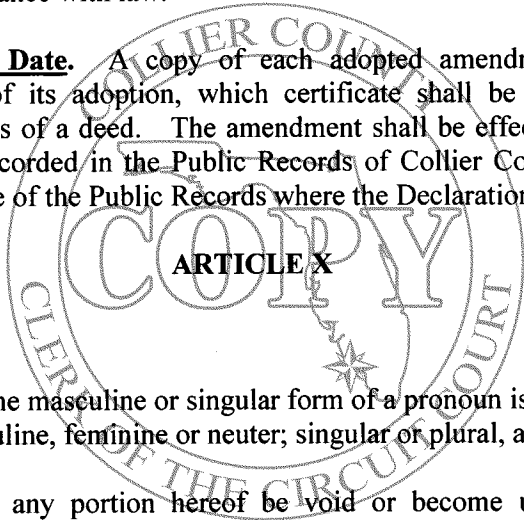
9. **AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner:

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

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

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 at least forty percent (40%) of the members who are entitled to vote provided that notice of the proposed amendment has been given to the members in accordance with law.

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



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.

10.3 **Conflict.** If any irreconcilable conflict between these Bylaws and the Declaration or Articles of Incorporation should exist or arise, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

DATED this 27th day of June, 2016.

BERKSHIRE LAKES MASTER ASSOCIATION, INC.

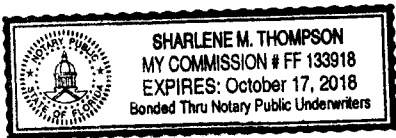
By: Robert Suparello
PRESIDENT
Its: President

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 27th day of June, 2016 by _____ as President of Berkshire Lakes Master Association, Inc., [] who is personally known or [] has produced a driver's license as identification.

[Notary Seal]

Sharlene M. Thompson
Notary Public
Printed Name of Notary Sharlene M. Thompson
My Commission Expires: 10/17/18



By: Paul O'Connor Craig
Secretary
Its: Secretary

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 27th day of June, 2016 by _____ as Secretary of Berkshire Lakes Master Association, Inc., [] who is personally known or [] has produced a driver's license as identification.

[Notary Seal]

Sharlene M. Thompson
Notary Public
Printed Name of Notary Sharlene M. Thompson
My Commission Expires: 10/17/18

