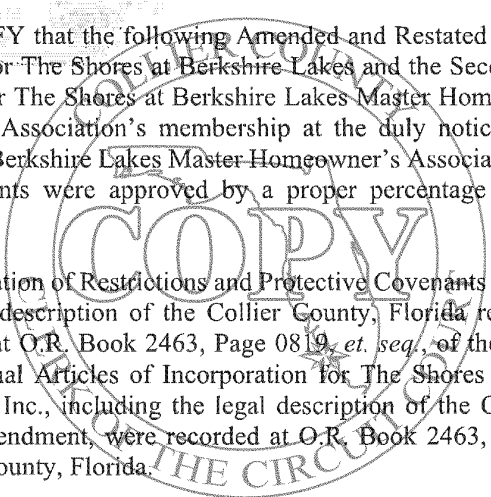


Prepared by and return to:
Lee-Anne Bosch, Esq.
GOEDE, ADAMCZYK, DEBOEST & CROSS, PLLC
6609 Willow Park Drive, Second Floor
Naples, Florida 34109
(239) 331-5100

**CERTIFICATE OF AMENDMENT
TO
DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS FOR
THE SHORES AT BERKSHIRE LAKES
AND
ARTICLES OF INCORPORATION FOR THE SHORES AT BERKSHIRE LAKES
MASTER HOMEOWNER'S ASSOCIATION, INC.**

I HEREBY CERTIFY that the following Amended and Restated Declaration of Restrictions and Protective Covenants for The Shores at Berkshire Lakes and the Second Amended and Restated Articles of Incorporation for The Shores at Berkshire Lakes Master Homeowner's Association, Inc., were duly adopted by the Association's membership at the duly noticed Special Meeting of the Members of The Shores at Berkshire Lakes Master Homeowner's Association, Inc., on the 17th day of June 2019. Said amendments were approved by a proper percentage of voting interests of the membership.

The original Declaration of Restrictions and Protective Covenants for The Shores at Berkshire Lakes, including the legal description of the Collier County, Florida real property subject to this amendment, was recorded at O.R. Book 2463, Page 0819, *et. seq.*, of the Public Records of Collier County, Florida. The original Articles of Incorporation for The Shores at Berkshire Lakes Master Homeowner's Association, Inc., including the legal description of the Collier County, Florida real property subject to this amendment, were recorded at O.R. Book 2463, Page 0858, *et. seq.*, of the Public Records of Collier County, Florida.



WITNESSES:

**THE SHORES AT BERKSHIRE LAKES
MASTER HOMEOWNER'S
ASSOCIATION, INC.**

A Florida not for profit corporation

Signature of First Witness

By: **Delia Mason**
Title: **President**

Print Name: Lady Williams

Signature of Second Witness

Print Name: Tom Easter C.A.M.

STATE OF FLORIDA
COUNTY OF COLLIER

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the county aforesaid to take acknowledgements, personally appeared Delia Mason, as President of The Shores at Berkshire Lakes Master Homeowner's Association, Inc., who is [✓]

personally known to me or [] has produced her Driver License as identification and who executed the foregoing instrument and acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 19 day of June 2019.

Irene M. Porter
Notary Public, State of Florida
My commission expires: 9-21-2020





**AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS
FOR
THE SHORES AT BERKSHIRE LAKES**

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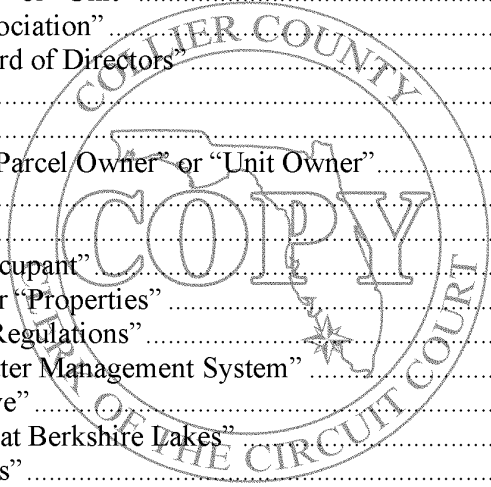


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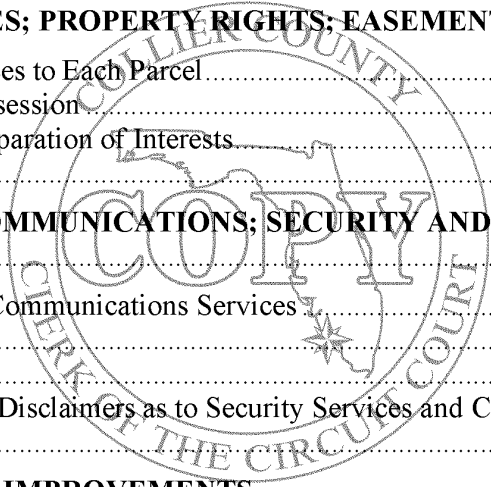


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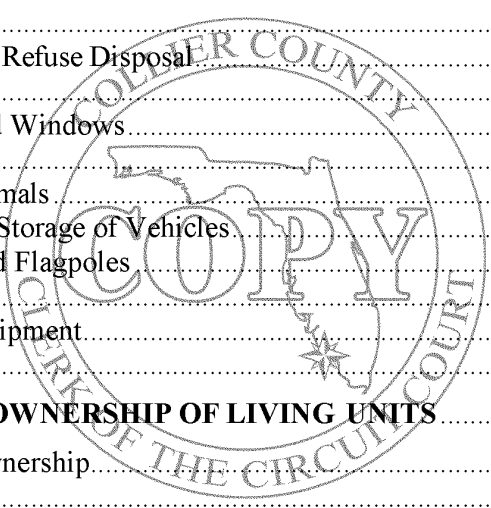


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NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS. SEE CURRENT DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS, AND SUBSEQUENT AMENDMENTS THERETO, FOR PRESENT TEXT.

**AMENDED AND RESTATED DECLARATION
OF RESTRICTIONS AND PROTECTIVE COVENANTS
FOR THE SHORES AT BERKSHIRE LAKES**

THIS AMENDED AND RESTATED DECLARATION is made by The Shores at Berkshire Lakes Master Homeowner's Association, Inc., a Florida Not-For-Profit Corporation ("Master Association"). The original Declaration of Restrictions and Protective Covenants for The Shores at Berkshire Lakes was recorded in O. R. Book 2463, Page 819, of the Public Records of Collier County, Florida, to provide for the preservation and enhancement of the property values, and amenities in The Shores at Berkshire Lakes and to create a corporate entity to which was to be delegated and assigned the powers of administering and enforcing the Declarations of Restrictions and Protective Covenants, maintain common areas, and collecting and disbursing the assessments and charges. That Declaration of Restrictions and Protective Covenants for The Shores at Berkshire Lakes is hereby amended and is restated in its entirety. The land subject to this instrument is legally described in Exhibit "A" attached hereto. The covenants and restrictions contained in this instrument shall run with the land legally described in Exhibit "A" attached hereto and be binding upon and inure to the benefit of all present and future owners of Parcels and Units. The acquisition of title to property or any other interest in The Shores at Berkshire Lakes or the lease, occupancy, or use of any portion of a Parcel constitutes an acceptance and ratification of all provisions of this instrument as amended from time to time, and an agreement to be bound by its terms.

By adoption of this Amended and Restated Declaration of Restrictions and Protective Covenants, the members of the Master Association ratify governance of the property known as The Shores at Berkshire Lakes, under the provisions of this Amended and Restated Declaration of Restrictions and Protective Covenants, and the Exhibits hereto, and in accordance with Chapter 720, Florida Statutes (the "Act"), as may be amended from time to time, however, it is the intention of the governing documents that The Shores at Berkshire Lakes be operated so as to avoid impairment of contract rights or vest of rights that exist. When the original declaration was recorded any provision of the Act which would operate to have such effect shall not be considered operative.

1. **DEFINITIONS**. Certain words and phrases used in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Declaration of Restrictions and Protective Covenants for The Shores at Berkshire Lakes, as originally recorded in O. R. Book 2463, Page 819, of the Public Records of Collier County, Florida, as it may be amended from time to time, or, if different, the meanings stated below, unless the context clearly requires otherwise. The terms below, or other terms given a definition herein, shall have the meanings given to them in such definitions when used throughout this Declaration, whether or not the terms is capitalized, unless the context clearly requires otherwise.

1.1 “Articles of Incorporation and Bylaws” means and refers to the Amended and Restated Articles of Incorporation for the Master Association filed with the Secretary of State, State of Florida, and the Amended and Restated Bylaws for the Master Association adopted by the Master Board of Directors of the Master Association, copies of which are attached hereto as Exhibits “B” and “C” respectively.

1.2 “Assessment” shall have the meaning set forth in Section 720.301, Florida Statutes.

1.3 “Common Areas” means and refers to the land, systems, including the Surface Water Management System, facilities, rights and easements which may be deeded, leased, licensed, granted, reserved, assigned, dedicated or transferred to the Master Association, including without limitations Tracts “A”, “B”, “C”, “D”, “E”, “R” and all easements reflected on the Plat, or was or is designated Master Association Property, together with all improvements and property thereon and equipment, facilities and rights associated therewith, including real property, regardless of whether title has been conveyed to the Master Association, that has been dedicated to the Master Association or its Members by a recorded Plat or committed by this Declaration or the original Declaration or other restrictive covenants to be leased or conveyed to the Master Association or any property for which the Master Association has assumed responsibility of maintenance. The term “Property” shall include, without limitation, all “Common Areas” within the Properties, as that term is defined in Section 720.301 of the Act, as may be amended from time to time, and as may be dedicated or described on the Plat for the Properties. The term “Common Areas” does not include common elements of the Preserve (which have submitted to the condominium form of ownership), or any property owned by the Preserve.

1.4 “Common Expenses” means and refers to all expenses properly incurred by the Master Association in the performance of its duties.

1.5 “Declaration” means this Declaration of Restrictions and Protective Covenants for The Shores at Berkshire Lakes, as amended from time to time.

1.6 “Estates Parcels” means and refers to Lots 1 through 80, inclusive, Block “B” of “Berkshire Pines, Phase One”, according to the Plat thereof recorded in Plat Book 29, Page 47, of the Public Records of Collier County, Florida and Parcels 1 through 25, inclusive, Block “D”, Lots 1 through 43, inclusive, Block “E” and Lots 1 through 11, inclusive, Block “F” of “Shores at Berkshire Lakes, Phase Two-A”, according to the Plat thereof recorded in Plat Book 32, Page 60, of the Public Records of Collier County, Florida.

1.7 “Family” or “Single Family” means any one of the following:

- (A) One natural person.
- (B) Two or more natural persons who commonly and regularly reside together as a single housekeeping unit, each of whom is related by blood, marriage, or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them not more than one person who is not so related to some or all of the others.

1.8 “First Mortgagee” means the mortgagee or assignee of a first mortgage against a Unit.

1.9 “Governing Documents” or “The Shores at Berkshire Lakes Documents” means this Declaration, and the Articles of Incorporation and Bylaws, and Rules and Regulations of the Master Association. If there is conflict in the interpretation of the Governing Documents, the order of priority shall be the same as the order in which they appear in this section.

1.10 “Guest” means a person who is physically present in, or occupies a Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.11 “Lease” means the grant by an Owner of a temporary right to occupy the Owner’s Living Unit or Unit for valuable consideration.

1.12 “Living Unit” or “Unit” means any residences which have been constructed on the Parcels, each designed for use and occupancy as a condominium unit or single family residence. Wherever either term is used, it shall be interpreted as though it were followed by the words “and the Parcel on which it is constructed” unless the context clearly requires another meaning.

1.13 “Master Association” means and refers to The Shores at Berkshire Lakes Master Homeowner’s Association, Inc. a Florida corporation not-for-profit.

1.14 “Master Board of Directors” means and refers to the Board of Directors of the Master Association.

1.15 “Member” means and refers to all persons who are members of the Master Association as provided in the Governing Documents.

1.16 “Occupant” when used in connection with a Living Unit, means any person who is physically present in the Living Unit on two or more consecutive days, including staying overnight. “Occupy” means the act of being an occupant.

1.17 “Owner” or “Parcel Owner” or “Unit Owner” means and refers to any person or persons, entity or entities, who is or are the record owners of title to any Parcel in the Property.

1.18 “Parcel” means: (i) any platted residential lot shown upon a subdivision Plat of the Properties recorded in the Public Records of Collier County, Florida, together with the Living Unit constructed thereon; and (ii) each condominium unit or condominium parcel created on the Properties pursuant to a declaration of condominium recorded in the Public Records of Collier County, Florida.

1.19 “Plat” means and includes any and all plats of all or a portion of the Property from time to time, including without limitation, the Plat of “Berkshire Pines, Phase One” as recorded in Plat Book 29, Page 47, of the Public Records of Collier County, Florida, the Plat of “Shores at Berkshire Lakes, Phase Two-A” as recorded in Plat Book 32, Page 60, of the Public Records of Collier County, Florida, the Plat of “Shores at Berkshire Lakes, Phase Two-B” as recorded in Plat Book 34, Page 10, of the Public Records of Collier County, Florida and the Plat of “Shores at Berkshire Lakes, Phase Two-C” as recorded in Plat Book 39, Page 20, of the Public Records of Collier County, Florida.

1.20 “Primary Occupant” means the natural person approved for occupancy when title to a Living Unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person, except where the content clearly indicates otherwise.

1.21 “Property” or “Properties” means and refers to the real property that is subject to this Declaration.

1.22 “Rules and Regulations” means the administrative rules and regulations governing procedures for administering the Master Association and the Property, as adopted, amended or rescinded by resolution of the Master Board of Directors. Rules and Regulations need not be recorded in the public records to be effective.

1.23 “Surface Water Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Florida law and those permits granted by all local, state and federal agencies.

1.24 “The Preserve” means and refers to The Preserve at the Shores at Berkshire Lakes Condominium Association, Inc., the condominium association for The Preserve at the Shores at Berkshire Lakes Condominium, a condominium located within The Shores at Berkshire Lakes (“The Preserve Condominium”).

1.25 “The Shores at Berkshire Lakes” means, and is the name of, the Properties.

1.26 “Villa Parcels” means and refers to Lots 1 through 39, inclusive, Block “A” of “Berkshire Pines, Phase One”, according to the Plat thereof recorded in Plat Book 29, Page 47, of the Public Records of Collier County, Florida and Lots 1 through 34, inclusive, Block “C” and Lots 1 through 4, inclusive, Block “G” of “Shores at Berkshire Lakes, Phase Two-B”, according to the Plat thereof recorded in Plat Book 34, Page 10, of the Public Records of Collier County, Florida.

1.27 “Voting Interest” means and refers to the voting rights distributed to the Members pursuant to the Governing Documents. The Members are entitled to one (1) vote for each Parcel they own. Each Parcel has One “Voting Interest.” There are 517 Parcels in the Property and therefore there are a total of 517 Voting Interests in the Master Association.

2. **MASTER ASSOCIATION; MEMBERSHIP VOTING RIGHTS.** The administration and management of this Property shall be by The Shores at Berkshire Lakes Master Homeowner's Association, Inc., a Florida corporation not-for-profit, which shall perform its functions pursuant to the following:

2.1 **Articles of Incorporation.** A copy of the Articles of Incorporation of the Master Association is attached as Exhibit "B".

2.2 **Bylaws.** The Bylaws of the Master Association shall be the Bylaws as attached as Exhibit "C" to this Declaration, as they are amended from time to time.

2.3 **Members.** Every person or entity who is a record owner of a fee simple interest in any Parcel shall be a member of the Master Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Master Association of a change of membership shall be borne by the new member; and the Master Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership and the fulfillment of the requirements set forth in the Bylaws.

2.4 **Voting Interests.** ~~The members of the Master Association are entitled to one (1) vote in Master Association affairs for each Parcel owned by them. Votes shall be cast as provided in the Bylaws.~~

2.5 **Termination of Membership.** ~~Termination of membership in the Master Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Master Association during the period of his membership, nor does it impair any rights or remedies which the Master 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.~~

2.6 **Master Association as Owner of Parcels.** The Master Association has the power to purchase Parcels and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Master Board of Directors. However, if at any time the Master Association owns two (2) or more Parcels, it may not purchase any more Parcels without the prior approval of a majority of the voting interests, unless the Master Association obtains title to the Parcel by virtue of its foreclosure action, in which case no membership vote shall be required.

2.7 **Master Board of Directors.** Except as otherwise specifically provided by law or by the Governing Documents, the Master Association shall act through its Master Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Master Association have a fiduciary relationship to the members.

2.8 **Powers and Duties.** The powers and duties of the Master Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 720, Florida Statutes (the "Act"), as may be amended from time to time, and Chapter 617, Florida Statutes, to the extent not inconsistent with the foregoing documents. The Master Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Master Association has the power to enter into agreements and to acquire

leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Property. If the Master Association has the authority to maintain a class action suit as plaintiff, the Master Association may also be joined as a defendant in an action as the representative of that class with reference to litigation and disputes involving the matters for which the Master Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available

2.9 Member Approval of Certain Litigation. Notwithstanding any other provisions of the Governing Documents, the Master Board of Directors shall be required to obtain the prior approval of at least two-thirds (2/3rds) of the voting interests of the Master Association present and voting at a duly noticed membership meeting at which a quorum is present prior to commencing any lawsuit where the amount in controversy is in excess of \$50,000, other than for the following purposes:

- (A) The collection of assessments;
- (B) The collection of other charges which members are obligated to pay;
- (C) The enforcement of the Governing Documents;
- (D) The enforcement of the Rules and Regulations of the Master Association;
- (E) In an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Master Association or its members, but in such event, the aforesaid vote shall be taken with respect to the continuation of the action at the earliest practical date (the eminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of the members); or
- (F) Filing a counterclaim.
- (G) This Section 2.9 shall not be amended without the approval of at least two-thirds (2/3rds) of all voting interests present and voting at a membership meeting.

3. ASSESSMENTS. The Master Association has the authority to levy and collect assessments to pay against each Parcel and owner in order to provide funds for the operation of the Master Association, including both regular assessments for each Parcel's share of the common expenses as set forth in the annual budget and special assessments for unusual, nonrecurring or unbudgeted common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Common Areas, Master Association property, and those components of the individual Parcels for which the Master Association is responsible; the expenses of insurance for the Master Association and/or directors and officers; the costs of carrying out the powers and duties of the Master Association; and any other expense, whether or not included in the foregoing, designated as a common expense by this Declaration or the Bylaws. If the Master Board enters into a contract for bulk Broadband Communications Services as defined in Article 6 below, the costs of a duly franchised Broadband Communications Services obtained pursuant to a bulk contract shall be a common expense. The Master Association

may also levy special charges against any individual Parcel for any amounts, other than for common expenses, which are properly chargeable against each Parcel under this Declaration or the Bylaws, including, without limitation, charges under contracts entered into by the Master Board for home security services serving less than all of the Parcels.

3.1 Covenant to Pay Assessments. Each Owner of any Parcel (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Master Association:

(A) The Parcel's pro-rata share of annual assessments based on the annual budget adopted by the Master Association;

(B) The Parcel's pro-rata share of any special assessments levied for expenses not provided for by the annual budget;

(C) Any special charges, or Individual Parcel Assessments against less than all of the Parcels specifically authorized in this Declaration or the Bylaws, all of which are collectible against the respective Parcel as an assessment under this Declaration;

(D) Single Family Parcels and Villa Parcels shall be equally responsible for the Single Family Assessment as referenced below in Section 3.4; and;

(E) The "Resale Assessment" upon conveyance as described in Section 10.2(D) of this Declaration.

Assessments shall be established and collected as provided herein and in the Bylaws. The assessments and charges, together with interest, late fees, costs, and reasonable attorneys' fees shall bind each Parcel in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor any amounts paid by the transferee therefor. Except as provided elsewhere in this Declaration as to First Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

3.2 Share of Assessments. Except as otherwise provided below in Section 3.4, each Parcel and the owner thereof shall be liable for an equal share of all annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Parcels included within the Property.

3.3 Special Charges to Parcels. All legal fees arising from an owner's violation of the governing documents shall be considered a special charge against the owners account in accordance with this Declaration. The costs incurred by the Master Association in paying real estate taxes on a Parcel in order to protect its lien rights, shall be assessable as a special charge against the Parcel and collectable as an assessment pursuant to the terms of this Declaration. The Master Association can also assess a special charge against a Parcel for failing to maintain the Parcel, as set forth in Section 7.3 herein.

3.4 Preserve Condominium and Single Family Assessment Liability. All Owners of a Unit in the Preserve Condominium are responsible for Assessments which are common to all Parcels in the Master Association. In the event the Master Association levies a regular or special assessment which is intended only to benefit or attributable only to the single family and Villa Parcels and not the entire Master Association as determined by the Board (which shall be referred to as the "Single Family Assessment"), such as routine landscape maintenance for the single family Parcels, the Master Association shall only assess Units in the Preserve Condominium for those Assessments which are common to the entire Master Association and specifically excluding the Single Family Assessment.

3.5 Establishment of Liens to Secure Payment. All assessments and charges levied by the Master Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, late fees, and costs of collection (including, but not limited to costs and reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Parcel against which each such assessment or charge is made, and shall also be the personal obligation of the owner of each Parcel assessed. This lien is superior to any homestead rights the owner may acquire. No owner may be exempt from personal liability for assessments and charges, or release any Parcel from the liens and charges hereof, by a waiver of use rights, or by abandoning the Parcel. The Master Association's lien is activated by recording a Claim of Lien by the Master Association in the public records of Collier County, but shall relate back to the date of recording of the original Declaration, setting forth the amount and due date of each unpaid assessment or charge as of the date the Claim of Lien is recorded. The Claim of Lien secures payment of all assessments and charges due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

3.6 Priority of Liens. Except as otherwise provided by law, the Master Association's lien for unpaid assessments and charges shall be subordinate and inferior to that of any recorded First Mortgage, unless the Master Association's Claim of Lien was recorded before the mortgage. The Master Association's lien is superior to, and takes priority over, any other mortgage regardless of when recorded. A lease of a Living Unit is also subordinate and inferior to any Claim of Lien for the Master Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. A mortgagee of a first mortgage of record acquiring title to a Parcel at the public sale resulting from a foreclosure judgment in a foreclosure suit in which the Master Association has been initially named as a defendant junior lienholder, or by deed in lieu of foreclosure where such mortgage is no longer a lien against the property, shall be liable for the share of common expenses or assessments attributable to the Parcel, which came due prior to the mortgagee's acquisition of title, to the fullest extent provided by the Act, as the same may be amended from time to time, plus attorney fees and costs of collection, including the protection of any assessment rights in any foreclosure action by any Institutional Lender or in an Owner's bankruptcy action. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all Owners. No acquirer of title to a Parcel by foreclosure, or by a deed in

lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership. Third party purchasers acquiring title to a Parcel at the public sale shall be responsible for all unpaid assessments, common expenses and other charges, including interest, late fees, attorneys' fees and costs that came due prior to the acquisition of title. Any unpaid assessment or charge which cannot be collected by reason of this Section shall be treated as a common expense, collectible from all Parcels, including the Parcel as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

(A) The Master Association may file a Claim of Lien against a Parcel for unpaid assessments after written notice or demand for past due assessments as well as any other amounts owed to the Master Association has been made by the Master Association. The written notice or demand must (i) provide the Owner with 45 days to make payment for all amounts due, including, but not limited to, any attorney's fees and actual costs associated with the preparation and delivery of the written demand; and (ii) be sent by registered or certified mail, return receipt requested, and by first-class U.S. mail to the Owner at his/her last address as reflected in the records of the Master Association, if the address is within the U.S., and to the address of the Parcel if the Owner's address as reflected in the records of the Master Association is not the Parcel address. If the Owner's address is outside the U.S., the Master Association may send the notice to that address and to the Parcel address via first-class U.S. mail. A Claim of Lien shall secure payment of all Assessments due at the time of recording (including interest, late fees, costs and attorney's fees as provided above), as well as all Assessments, interest, late fees, costs and attorney's fees coming due subsequently, until the Claim of Lien is satisfied or a final judgment of foreclosure obtained. Any payment received by the Master Association and accepted shall be applied first to any interest accrued, then to any late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent Assessment. The preceding sentence applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment.

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

(A) To charge interest on such assessment or charge, from the due date until paid, at the highest rate allowed by law; and, in addition, to impose a late payment penalty which may not exceed the greater of Twenty-Five Dollars (\$25.00) or 5% of each delinquent installment payment of the assessment, or such other maximum as may be provided for by law.

(B) To file an action in equity to foreclose its lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Master Association, in the same manner as provided in Section 720.3085 of the Act, as may be amended from time to time.

(C) To bring an action at law for money judgment against the Owner without waiving any lien foreclosure rights of the Master Association.

(D) If an Owner is delinquent for more than ninety (90) days in paying any monetary obligation due to the Master Association, to suspend the Owner's right to use common areas or common facilities until the monetary obligation is paid, except for that must be used to access the Parcel, utility services, or parking. Such suspension may also include, with the cooperation of the services provider, cable television or internet services if such services are provided under a bulk services contract with the Master Association and the costs are a charged as a common expense. Any such suspension shall be imposed in accordance with the requirements of the Act.

(E) If any Owner is delinquent for more than ninety (90) days in paying any monetary obligation due to the Master Association to suspend the voting rights of a Member until the monetary obligation is paid.

(F) As an additional right and remedy, the Master Association may adopt a policy in the Board's discretion permitting the Master Association to declare any Assessment installments due and immediately payable for the remainder of the budget year following a default in the payment of Assessments as aforesaid.

3.8 Certificate. The Master Association shall, within ten (10) business days of request for same, furnish to any owner liable for assessments a certificate in writing signed by an officer or agent of the Master Association, setting forth whether all assessments and charges against the owner's Parcel have been paid. Any person, except the owner, who relies on the certificate, shall be protected thereby.

3.9 Special Assessments. Special Assessments may be imposed by the Master Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, pursuant to the procedure set forth in Section 6.4 of the Bylaws. Special Assessments shall be paid in installments or in a lump sum, as the Master Board may determine from time to time. Any Special Assessment shall also be levied in accordance with Section 3.4 above.

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

In the event that Section 720.3085(8) is removed from the Act, the remainder of this Section 3.10 shall be applicable to the Master Association's ability to collect rent from a Tenant. If an Owner has leased his Parcel and the Owner becomes delinquent in paying any monetary obligation due to the Master Association, the Master Association may make a written demand that the Tenant pay to the Master Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Owner related to the Parcel have been paid in full

to the Master Association. The Tenant must pay the monetary obligations to the Master Association until the Master Association releases the Tenant or the Tenant discontinues tenancy in the Parcel. If the Tenant paid rent to the Owner for a given rental period before receiving the demand from the Master Association and provides written evidence to the Master Association of having paid the rent within 14 days after receiving the demand, the Tenant shall begin making rental payments to the Master Association for the following rental period and shall continue making rental payments to the Master Association to be credited against the monetary obligations of the Owner until the Master Association releases the Tenant or the Tenant discontinues tenancy in the Parcel. The liability of the Tenant may not exceed the amount due from the Tenant to the Owner. The Owner shall provide the Tenant a credit against rents due to the Owner in the amount of moneys paid to the Master Association. The Master Association may evict the Tenant if the Tenant fails to make a required payment to the Master Association. However, the Master Association shall not be considered a landlord under Chapter 83, Florida Statutes. The Tenant shall not, by virtue of payment of monetary obligations to the Master Association, have any of the rights of an Owner. The Master Board shall have the authority as a condition of approving a Lease to require that the Tenant and the Owner enter into a Lease addendum that provides that all Lease payments shall be paid to the Master Association during such time as the Owner is delinquent in paying any monetary obligation owed to the Master Association. Alternatively, the Master Association may require that such language be included in the Lease.

4. ARCHITECTURAL CONTROL

4.1 Necessity of Architectural Review and Approval. No "Improvement" (which term shall include without limitation, any improvement such as a building, fence, wall, sign, site paving, grading, pool, parking and building addition, alteration, exterior painting, exterior lighting, gas tank installation, screen enclosure, sewer, drain, disposal system, decorative building, landscaping, landscape device or object) on a single family Parcel or Villa Parcel, and no alteration to the exterior color, roof, and building materials of the Preserve buildings, shall take place until the requirements below have been fully met, a review been completed by the Architectural Control Committee ("ACC"), and approval been obtained from the Master Board of Directors. The Master Board of Directors shall appoint all members of the ACC, which shall consist of at least 3 but not more than 5 persons. ACC Members shall be appointed and shall serve at the pleasure of the Board of Directors. This Section 4 shall not apply to construction on or improvements or modifications to the Common Areas made by or on behalf of the Master Association.

4.2 Powers and Duties of the ACC. The ACC shall have the following powers and duties:

(A) To enact initial architectural control criteria and any amendments thereto from time to time ("Architectural Guidelines"), subject to approval from the Master Board of Directors. The Architectural Guidelines shall be consistent with the provisions of this Declaration. The Master Association shall make the Architectural Guidelines available to Owners as set forth in Section 720.303 of the Act.

(B) To require submission of at least one complete set of all plans and specifications for any proposed Improvement, the construction, installation or modification of which is proposed upon any Parcel or the Preserve, as applicable, together with a copy of any

required governmental permits, and an application fee in the amount published in the Architectural Guidelines, or adopted by the Master Board of Directors. The ACC may also require submission of samples (e.g., building materials and colors proposed for use on any Parcel) and may require such additional information as reasonably may be necessary for the ACC to evaluate the proposed Improvement in accordance with this Declaration and the Architectural Guidelines. Upon request by the ACC, the proposed contractor(s) shall supply a copy of all required business licenses and evidence of insurance with such coverage and amounts as the ACC may reasonably require. Within forty-five (45) days of its receipt of all required plans, specifications and other required information, the ACC shall approve or disapprove the proposed Improvement in writing. In the event the ACC has not approved or disapproved the proposed Improvement within the forty-five (45) day period, the proposed Improvement shall be deemed approved and the ACC shall issue a written approval upon receipt of a written demand from the Owner. Any party aggrieved by a decision of the ACC shall have the right to make a written request to the Board within thirty (30) days of such decision for a review thereof. The determination of the Board upon reviewing any such decision shall in all events be final.

(C) To monitor construction to verify compliance with the provisions hereof and any approvals and conditions of the ACC. If the Owner constructs, installs or modifies an Improvement without complying with the approved plans and specifications and other conditions of approval, the Owner shall, upon receipt of a written demand, remove the Improvement or make it conform with the approved plans and specifications and other conditions of approval, and shall bear all costs and expenses of such restoration, including all costs and attorneys' fees the Master Association has incurred. The Master Association may take enforcement action with respect to non-compliance through equitable remedy or self-help and assess the Owner for all of its costs and attorneys' fees as an Individual Assessment.

4.3 No Waiver. The approval of any plans and specifications shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval or consent.

4.4 Variations. The ACC may recommend and the Master Board may authorize variances from compliance with the Architectural Guidelines when circumstances such as topography, natural hardship, or aesthetic or environmental considerations require. No variance shall be effective unless in writing, or stop the ACC or Master Board from denying a variance in other circumstances.

4.5 No Liability. No review or approval by the ACC shall imply or be deemed to constitute an opinion by the ACC, nor impose upon the ACC, the Master Association, the Master Board of Directors and the Master Association's Officers and agents, or any other party, any liability for the design, installation or construction of Improvements, including, but not limited to, structural integrity, design, quality of materials, and compliance with building code or life and safety requirements. Approval hereunder does not constitute governmental approval. It is the sole responsibility of the Owner to obtain the necessary permits and meet all governmental requirements, including applicable building and design codes. The scope of review and approval by the ACC is limited solely to whether the Improvements comply with the Architectural Guidelines.

5. **APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.**

5.1 Appurtenances to Each Parcel. The owners of each Parcel have certain rights and obligations appurtenant to such ownership, including without limitation the following:

(A) Membership in the Master Association, and the right to cast one (1) vote in Master Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Master Association.

(B) The non-exclusive right to use the Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.

(C) Beneficial ownership of an undivided share of the assets and common surplus of the Master Association equal to the owner's share of liability for the assessments levied by the Master Association as set forth in Section 3.2 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.

(D) Other appurtenances as may be provided in the Governing Documents. The appurtenances to a Parcel and Living Unit automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Parcel and Living Unit. The shares in the funds and assets of the Master Association cannot be assigned, pledged or transferred except as an appurtenance to the Living Units.

The appurtenances to a Parcel automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Parcel. The shares in the funds and assets of the Master Association cannot be assigned, pledged or transferred except as an appurtenance to the Parcels.

5.2 Use and Possession. An owner is entitled to exclusive use and possession of his Parcel and Living Unit. He is entitled to non-exclusive use of the Common Areas in accordance with the purposes for which they are intended, but no use of any Parcel or Common Areas may unreasonably interfere with the rights of other owners or residents. No Parcel may be subdivided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, and over the walkways and private roads for use in common with all other owners, their tenants, guests and invitees. The portions of the Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners and each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Master Association. These easements shall be appurtenant to and shall pass with the title to every Parcel subject to the following:

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

(B) The right of the Master Association to dedicate or transfer or grant an easement covering 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 determined by the Master Board. No such easement shall materially interfere with the rights of owners to use the Common Areas for the purposes intended.

(C) The right of an owner to the non-exclusive use and enjoyment of the Common Areas and facilities thereon shall extend to the members of this immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Master Association.

(D) The Master Association shall be responsible for the maintenance and operation of the Common Areas, and any improvements and personal property thereon, unless such authority is delegated to the Owners under the Governing Documents.

5.3 Partition; Separation of Interests. There shall be no judicial partition of the Common Areas, except as expressly provided elsewhere herein, nor shall any owner or any other person acquiring any interest in the Properties, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Parcel and Living Unit owned in co-tenancy. The ownership of any Parcel and the ownership of the Living Unit constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Parcel and Living Unit hold membership in the Master Association.

5.4 Easements. Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Property. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Parcel shall be subject to an easement in favor of all other portions of the Property for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

(A) Utility and Other Easements. The Master Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, Broadband Communications Services, or other utility, service or access easements, or relocate any existing easements, in any portion of the Properties, as the Master Association shall deem necessary or desirable for the proper operation and maintenance of the Properties. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Parcels. The Master Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

(B) Encroachments. If for any reason other than the intentional act of the owner or the Master Association, any Living Unit or Parcel encroaches upon any of the Common Areas, upon any other Parcel, or any Common Area encroaches upon any Parcel, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(C) Ingress and Egress. A non-exclusive easement shall exist in favor of each owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Areas as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

(D) Drainage. A perpetual, non-exclusive easement shall exist in favor of the Master Association, and their employees or other designees for the use of drainage areas established throughout the Properties, and an easement for ingress, egress, and access to enter any portion of the Properties in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Common Areas by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

6. BROADBAND COMMUNICATIONS; SECURITY AND ALARM MONITORING SERVICE

6.1 Broadband Communications Services. The Master Board of Directors of the Master Association is authorized to negotiate a bulk contract for the provision of “Broadband Communications Services” and security services to the Properties, under such terms and conditions as the majority of the Master Board of Directors deem appropriate in its discretion. At least thirty (30) days prior to entering into any bulk contract contemplated by this Section, the Board shall hold an informational meeting at which the Board presents the contract terms and details to the Members for comment. For the Master Board of Directors to enter into a bulk contract for the provision of “Broadband Communications Services” and security services to the Properties it must be approved by at least a majority of the voting interests of the Master Association present in person or by proxy at a meeting of the Master Association at which a quorum is present.

6.2 Definition. Broadband Communications Services as used in this Declaration includes and has the same meaning as “communication service,” “information services,” and “internet services,” as found in section 720.309(2), Florida Statutes, and may also include, but is not limited to, coaxial cable, optical fiber, twisted pair, or wireless broadband.

6.3 Expenses. The fees, costs, and expenses of Broadband Communications Services and/or Security Services to be provided under such bulk contract may be added to the operating budget of the Master Association and may be a portion of the Assessment payable by the Owners of all Parcels in this Master Association. The provision of additional, premium, or other Broadband Communications Services to each Parcel, not paid for by the Master Association under the bulk contract, shall be determined by each parcel Owner, as such Owner determines. The costs for such additional, premium, or other Broadband Communications Services, if any, shall be the responsibility of each Owner and shall be borne directly by such Owner.

6.4 Notices and Disclaimers as to Security Services and Communications Services. The Master Association, any sub-association, or their successors, assigns or franchisees and any applicable Broadband Communications Services operator may enter into contracts for the provision of security services.

In recognition of the fact that interruptions in Broadband Communications Services or Security Services will occur from time to time, the Master Association shall not in any manner be liable, and no user of any Broadband Communication Services or Security Services shall be entitled to receive from the Master Association any refund, rebate, discount or offset to applicable fees, for any interruption in such services, regardless of whether or not same is caused by reasons within the control of the then provider(s) of such services, unless specifically provided for within the bulk contract.

7. MAINTENANCE; IMPROVEMENTS.

7.1 Maintenance by Owner. Each Owner shall maintain his Parcel and Unit, and all fixtures and appliances located therein in good condition and repair at all times. The yards and landscaping on all improved Parcels shall be neatly and attractively maintained, and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved Parcels in the Property. During prolonged absence, an Owner shall arrange for the continued care and upkeep of his Parcel. An Owner shall not allow a condition to exist on his Parcel which will adversely affect any other Parcels or Units of other Owners. Garages shall be maintained in an orderly condition, and the storage of combustibles or explosives other than ordinary household materials is prohibited. Owners are also obligated to maintain, repair, and replace their private driveways, including any portion of the private driveway that may extend into the right of way tract. Each Owner is prohibited from painting or otherwise decorating or changing the appearance of his Unit except as permitted in the Declaration, or in any Rules and Regulations promulgated by the Master Board of Directors from time to time, or in any Architectural Guidelines promulgated by the ACC or the Master Board of Directors from time to time. Each Owner shall maintain, repair or replace his/her mailbox, including the post, pursuant to prior written approval of the Master Board or ACC. In the event a fence or wall (other than party walls addressed in Section 7.8 below, or walls and fences located entirely on a single Parcel) services more than one Parcel, each Owner shall maintain the surface or area of the fence or wall facing his Parcel, and in the event such a fence or wall needs repair or replacement, the cost thereof shall be shared on a prorata basis, based upon the number of lineal feet of the fence or wall on each Parcel served by such fence or wall.

7.2 Maintenance by the Master Association. The Master Association shall be responsible for the maintenance, repair, and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

(A) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such Common Area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(B) Construct, reconstruct, repair, replace, or refinish any portion of the Common Area used as a road, street, walk, and parking area (but not private driveways, which are the responsibility of the Owner);

(C) Replace injured and diseased trees or other vegetation in Common Areas, and plant trees, shrubs and ground cover to the extent that the Master Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(D) Place and maintain upon any such Common Area such signs as the Master Board may deem appropriate for the proper identification, use and regulation thereof;

(E) Construct, maintain, repair and replace landscaped areas on any portion of the Common Area;

(F) Maintain any and all easement areas granted to the Master Association herein or on the Plat or in any other document, including but not limited to easements for access, open space, recreation, utilities, and drainage;

(G) Maintain the Surface Water Management System and any other portion of the Common Area used for drainage and retention;

(H) The Master Association shall be responsible for mowing and edging the lawns, for trimming landscaping, for fertilizing lawns and landscaping, and for maintenance of all irrigation systems upon all Parcels, except in The Preserve Condominium, as reasonably determined from time to time by the Master Association. All costs and expenses of the Master Association to provide such landscape maintenance and irrigation service shall be shared in equal amounts by Owners of the Parcels who receive such service, and the same shall be assessed by the Master Association to each such Parcel Owner as an Individual Parcel Assessment pursuant to Section 3.1(C) of this Declaration. All other maintenance responsibilities as to landscaping shall be provided by each Parcel Owner as set forth in Section 7.1 above; and

(I) Do all such other and further acts which the Master Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration.

The Master Association is not responsible for the maintenance, repair or replacement of The Preserve Condominium's Common Elements, Association Property or Condominium Property as described in the Declaration of Condominium of The Preserve at the Shores at Berkshire Lakes, a Condominium, recorded at Official Records Book 2594, Page 1409, et. seq., Public Records of Collier County, Florida. However, The Master Association may contract with The Preserve to provide for the maintenance and management of its certain of The Preserve's common elements (for example but without limitation or obligation, lawn and landscaping).

7.3 Enforcement of Maintenance. If the owner of a Parcel and Living Unit or the Preserve Condominium fails to maintain their respective property as required in this Declaration, the Master Association may 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 or Preserve Condominium, as applicable, and performing the work necessary to

bring the property into compliance with the Governing Documents, with or without consent of the Owner or the Preserve. The Master Association may, but is not obligated to, repair, replace, or maintain any item which constitutes a hazard to other property or residents, or which has a material adverse effect on the appearance of the Properties. Any expenses so incurred by the Master Association shall be assessed against the owner as an Individual Parcel Assessment against the offending Owner or, in the case of the Preserve, pro-rata against all Preserve unit Owners, together with reasonable attorney's fees and all other expenses of enforcement pursuant to the terms of this Declaration.

7.4 Negligence, Damage Caused by Condition in Living Unit. The owner of each Parcel and Living Unit shall be personally liable for the expenses of any maintenance, repair or replacement made necessary by his negligence, act or omission, or by that of any member of his family or his guests, employees, invitees, agents, or lessees; but such liability shall be limited to the extent that such expenses are not met by the proceeds of insurance available.

7.5 Alterations and Additions. Funds necessary for material alterations or substantial additions to the Common Areas by the Master Association costing, in the aggregate, Twenty Five Thousand Dollars (\$25,000) or less may be levied by the Master Association upon approval by at least two-thirds (2/3) of the entire Board of Directors. Funds necessary for material alterations or substantial additions to the Common Areas by the Master Association costing, in the aggregate, more than Twenty-Five Thousand Dollars (\$25,000) must be approved by at least a majority of the voting interests of the Master Association present in person or by proxy at a meeting of the Master Association at which a quorum is present.

7.6 Hurricane Shutters. Notwithstanding anything to the contrary above, the Master Board of Directors or the ACC may adopt and amend regulations governing hurricane shutters, including model, style or color, as a standard for use in the Properties. No hurricane or storm shutters except those in accordance with guidelines adopted by the ACC or rules adopted by the Master Board of Directors shall be used.

7.7 Villa Parcels: Roof Repair or Replacements. It is contemplated that the roof of each residence constructed upon a Villa Parcel will also serve an adjacent residence constructed upon an adjacent Villa Parcel and shall be a common roof. In the event that a roof or portion of a roof requires repair or replacement, or in the event the Owner of one of the Villa Parcels sharing a common roof seeks to improve or replace the roof, or in the event that an entire roof has reached the end of its useful life and requires replacement, then the cost thereof in excess of insurance proceeds, if any, shall be shared prorata by the Owners of the Villa Parcels over which the roof to be repaired or replaced is situated; provided, however, that in the event that damage or destruction is confined to the roof area wholly within the dimensions of a Villa Parcel, cost of repair and replacement thereof which is in excess of insurance proceeds, if any, shall be paid by the owner of said Villa Parcel. If the damage or destruction of adjacent roof areas is caused by the negligence or willful misconduct of any one Owner, such negligent Owner shall bear the entire cost of repair or replacement, in excess of insurance proceeds. If the Owner shall refuse to repair or reconstruct the shared roof as required by the arbitration committee referenced below in Section 7.7(A), and to pay his share, the Master Association may have the shared roof repaired or replaced and shall be entitled to a lien on the Lot of the Owner so failing to pay his or her respective share, together with attorneys' fees and costs incurred by the Master Association and incident to collection in the

same manner as an Individual Parcel Assessment. In the event repairs or replacement shall be necessary, all necessary entries on the adjacent Lots shall not be deemed a trespass so long as the repairs and replacement shall be done in a workmanlike manner, and consent is hereby given to enter on the adjacent Lots to effect necessary repairs and replacement. If an Owner shall give, or shall have given a mortgage or mortgages upon his Villa Parcel, then the mortgagee shall have the full right at his option to exercise the rights of his mortgagor as an Owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the mortgagee for repairs hereunder and not reimbursed to said mortgagee by the Owner.

(A) Arbitration. In the event of any dispute arising under the provisions of this Section including, without limitation, scope of roof work, contractor selection, engineering solutions or materials, any party may request the Master Board of Directors to settle the dispute, and the Master Board's decision shall be binding, provided, however that the Master Board may elect not to act in this capacity, in which case each party shall choose an arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators and shall be binding.

7.8 Villa Parcels Party Walls.

(A) General Rules of Law to Apply. Each wall (including a fence, if any) which is built as a part of a residence upon a Villa Parcel and placed on the common boundary line of two adjacent Villa Parcels shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law in the State of Florida regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(B) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of Villa Parcels abutting same.

(C) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner of an adjoining Villa Parcel may restore it, and in the event the cost thereof is in excess of the insurance proceeds, the Owner of the other adjoining Villa Parcel shall contribute equally to pay such excess without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(D) Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(E) Rights to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Land and shall pass to such Owner's successors in title. If any Owner shall neglect or refuse to pay his share under the provisions of this Article, any other affected Owner is entitled to file a lien in the Public Records on the Villa Parcel of the defaulting Owner in the amount of such share plus attorneys' fees and costs which may be foreclosed in the same manner as a lien of a mortgage.

(F) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, any party may request the Master Board of Directors to settle the dispute, and the Master Board's decision shall be binding, provided, however, that the Master Board may elect not to act in this capacity, in which case each party shall choose an arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of all of the arbitrators and shall be binding.

(G) Alterations. The Owner of any Villa Parcel sharing a party wall with an adjoining Villa Parcel shall not possess the right to cut windows or other opening in the party wall, nor make any alterations, additions or structural changes in the party wall without consent from the Owner of such adjoining Villa Parcel.

(H) Perpetual Use. Each party wall is and shall remain a party wall for the perpetual use and benefit of the respective owners of the Villa Parcels being served, their heirs, assigns, successors and grantees, said Villa Parcels being conveyed subject to this condition and this condition shall be construed to be a covenant running with the land in perpetuity.

(I) Mortgage Protections. So long as there shall be a mortgage or mortgages upon any Villa Parcels, the provisions of this Section shall not be modified, abandoned, or extinguished as to that Villa Parcel without the consent of such mortgagee. If a Villa Parcel owner shall give or shall have given a mortgage or mortgages upon his Villa Parcel, then the mortgagee shall have the full right at its option to exercise the rights of its mortgagor as an Owner hereunder and in addition, the right to add the outstanding balance of such mortgage any amounts paid by the mortgagee for repair hereunder and not reimbursed to said mortgagee by the Villa Parcel Owner.

(J) Right of Access. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Villa Parcels shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner and consent is hereby given to enter on the adjacent Villa Parcel to effect necessary repairs and reconstruction.

(K) Location of Reconstruction. Whenever a party wall or any part thereof shall be rebuilt, it shall be erected in the same manner and at the same location where it shall initially be constructed and shall be the same size and of the same or similar materials and of like quality.

8. **INSURANCE; DUTY TO RECONSTRUCT.**

8.1 **Duty to Insure and to Reconstruct.** Owners are responsible for any insurance on the Unit and any other improvements located on any Parcel. The Master Association has no obligation to insure any portion of a Parcel or any portion of the Preserve Condominium. If any Unit or other improvements located on any Parcel are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such Units or improvements shall cause repair or replacement to be commenced within sixty (60) days from the date that such damage or destruction occurred, and complete the repair or replacement within six (6) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition; shall utilize and conform with the

original foundation and boundary of the original improvements. The Board of Directors may, based on its sole and exclusive discretion, extend the time periods for reconstructions contained herein.

8.2 Failure to Reconstruct. If the owner of any Parcel fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 8.1 above, the Master Association shall give written notice to the owner of his default. If the owner has not notified the Master Association of satisfactory arrangements to meet his obligations within thirty (30) days after the Master Association delivered such notice, the Master Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to remove all debris and damaged improvements, and additionally to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Master Association exercises the rights afforded to it by this Section, which shall be in the sole discretion of the Master Board of Directors, the owner of the Parcel shall be deemed to have assigned to the Master Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Master Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Parcel and Unit to secure payment.

8.3 Intentionally Left Blank

8.4 Master Association's Right of Entry. For the purpose of performing the duties authorized by this Section 8, the Master Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the Parcel at reasonable hours.

8.5 Master Association Insurance; Duty and Authority to Obtain. The Master Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Master Association as agent for the owners without naming them, and their mortgagees.

8.6 Required Coverage. The Master Association shall maintain adequate liability insurance and casualty insurance covering all buildings and other insurable improvements (if any) within the Common Areas in an amount determined annually by the Master Board of Directors, such insurance to afford the following protection:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism, and malicious mischief, and other hazards covered by what is commonly referred to as an "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 shall be required by the Master Board of Directors, with cross liability endorsement to cover liabilities of the owners as a group to any single owner.

(C) Fidelity. Adequate fidelity bond coverage for all individuals having control of or access to Master Association funds.

(D) Directors and Officers Liability.

8.7 Optional Coverage. The Master Association may purchase and carry such other insurance coverage as the Master Board of Directors may determine from time to time to be in the best interest of the Master Association and owners. Some common examples are:

(A) Flood insurance.

(B) Broad Form Comprehensive General Liability Endorsement.

(C) Automobile. Automobile liability for bodily injury and property damage for owned and/or non-owned motor vehicles, in such limits of protection and with such coverage as shall be required by the Master Board of Directors.

(D) Medical Payments.

(E) Worker's Compensation.

8.8 Description of Coverage. A detailed summary of the coverages included in the Master Association's policies shall be available for each owner upon request. All Master Association insurance policies shall be available for inspection by owners upon request.

8.9 Waiver of Subrogation. If available and where applicable, the Master Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogate as to any claim against owners, the Master Association, or their respective servants, agents or guests, except for any claim based primarily upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

8.10 Insurance Proceeds. All insurance policies purchased by the Master Association shall be for the benefit of the Master Association, and all proceeds shall be payable to the Master Association.

8.11 Distribution of Proceeds. Proceeds of insurance policies received by the Master Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Master Association's common surplus.

8.12 Master Association as Agent. The Master Association is hereby irrevocably appointed agent for each owner to adjust all claims arising under insurance policies purchased by the Master Association for damage or loss to the Living Units.

9. **GENERAL COVENANTS AND USE RESTRICTIONS.**

9.1 Residential Use. Each Living Unit shall be occupied by only one Family and its temporary guests at any time, as a residence and for no other purpose. No time-sharing, business or commercial activity shall be conducted in or from any Living Unit, except that an

Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements; (c) the business activity involves only telephone calls and correspondence to and from the Unit and does not involve persons coming into the Property who do not reside in the Property, or door-to-door solicitation of occupants of The Shores at Berkshire Lakes; and (d) the business activity is consistent with the residential character of The Shores at Berkshire Lakes and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other occupants of Units. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

9.2 Occupancy of Living Unit when Owner is not in Residence. An owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily occupy his Unit in his absence. Except as otherwise provided in Section 9.4 below, this provision is not intended to allow any owner to use his unit as short-term transient accommodations for several individuals or families. The owner must register all overnight Guests (excluding immediate Family) with the Master Association in advance, giving such information about the Guests, their vehicles, and the period of their stay as the Master Board may reasonably require. On the failure to register a Guest as required above, the Master Board shall have the right to remove through lawful means said Guest with five (5) days’ notice, without securing consent to such removal from the owner. In the event of an eviction action by the Master Association, the Owner is deemed to have irrevocably appointed the Master Association as the Owner’s agent with the authority to evict the unauthorized occupant. The Master Board shall have the ability to amend and rescind registration requirements set forth above by adopted rule without the need for amendment of this provision. The owner is responsible for the conduct of his Guests. Notwithstanding the foregoing, the Master Board shall have the discretion to grant exceptions to these Guests restrictions on a case by case basis.

9.3 Approval of Improvements by Master Board of Directors or ACC. As described in Section 4 hereof all buildings, structures, landscaping and improvements to be built on or in the Community, must be approved by the ACC. The ACC may adopt the procedure and method of obtaining said approval.

9.4 Leasing. All Leases of Units must be in writing. An Owner may Lease only his or her entire Unit, and then only in accordance with this Section 9.4, after receiving the approval of the Master Association. Timeshare or other similar occupancy of a Unit is prohibited.

9.4.1 Procedures.

(A) Notice by the Owner. An Owner intending to Lease his or her Unit shall give to the Master Board or its designee written notice of such intention at least 25 days prior

to the first day of occupancy under the Lease together with the name and address of the proposed Tenant, a fully executed copy of the proposed Lease, and such other information as the Master Board may reasonably require. The Master Board may also require that the Parcel be inspected by the Association for any violations of the Governing Documents or the Architectural Guidelines as a pre-condition for approval. The applicant must sign for having received copies of the Governing Documents. The Master Board may adopt or amend reasonable rules and regulations from time to time as to the timeframes within which notice of a proposed lease must be submitted and the time within which the Master Board shall have to review the proposed lease.

(B) Master Board Action. After the required notice and all information or interviews requested have been provided, the Master Board shall have 20 days in which to approve or disapprove the proposed Lease. If approved, the proposed Tenant may not occupy the Unit until at least five (5) days following receipt of written approval by the Master Association. If the Master Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Master Board shall issue a written letter of approval to the Tenant.

(C) Disapproval. A proposed Lease shall be disapproved only if a majority of the entire Master 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 Owner is delinquent in the payment of Assessments at the time the application is considered;

(2) the Owner has a history of leasing his or her Unit without obtaining approval, or leasing to troublesome tenants and/or refusing to control or accept responsibility for the occupancy of his or her Unit;

(3) the application on its face indicates that the prospective Tenant or any proposed occupant intends to conduct himself or herself in a manner inconsistent with the Governing Documents;

(4) the prospective Tenant or any proposed occupant has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance within ten (10) years of application, or a felony demonstrating dishonesty or moral turpitude;

(5) the prospective Tenant or any proposed occupant has a history of conduct which evidences disregard for the rights and property of others;

(6) the prospective Tenant or any proposed occupant has a record of financial irresponsibility, including without limitation, prior bankruptcies, foreclosures or bad debt;

(7) the prospective Tenant or any proposed occupant, during previous occupancy, has evidenced an attitude of disregard for the Governing Documents;

(8) the prospective Tenant or any proposed occupant gives false or incomplete information to the Master Board as part of the application procedure, or the required transfer fees and/or security deposit are not paid; or

(9) the Owner fails to give proper notice to the Master Board of his or her intention to Lease the Unit.

(10) The Association has notified the Owner that the subject Parcel has violations of the Governing Documents or Architectural Guidelines and such violations remain uncured.

(D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Master Board at its election, may approve or disapprove the Lease. Any Lease entered into without approval may, at the option of the Master Board, be treated as a nullity, and the Master Board shall have the power to evict the Tenant and other occupants of the Residence without securing consent to such eviction from the Owner.

(E) Applications; Assessments. Applications for authority to Lease shall be made to the Master Board on such forms and include such terms as the Master Board may provide from time to time. The Owner may not delegate legal responsibility for paying Assessments to the Tenant. This restriction shall not prohibit the Master Association from exercising its rights pursuant to Section 3.9 hereof.

(F) Committee or Manager Approval. To facilitate approval of Leases proposed during times when many of the Directors are not in residence, the Master Board may by resolution delegate its approval powers (but not disapproval) to a committee (such as, but not limited to the executive committee), the President, or the Master Association's manager.

9.4.2 Term of Lease and Frequency of Leasing. The maximum lease term is Six (6) months. The minimum Lease term is 30 consecutive days. No Unit may be leased more often than four (4) times in any calendar year, nor any combination of Leases and allowing Guests to occupy a Unit when the owner is not in residence more than four (4) times per year, and no option for the Tenant to extend or renew the Lease for any additional period shall be permitted unless approved by the Master Board. No subleasing or assignment of Lease rights by the Tenant is allowed. Any purchaser of a Unit after the recording of this Amended and Restated Declaration is prohibited from leasing their Unit for a period of two (2) years from the date of purchase. For purposes of the foregoing sentence, the purchase of a Unit does not include the devise or inheritance of a Plot, or a change in title to a Plot for purposes of estate planning, as listed as items (a) through (e) in Section 10.2(D) below.

9.4.3 Occupancy During Lease Term. Guests shall not occupy leased Units unless the Tenant and/or his or her Family are in residence. The total number of occupants of a leased Unit is limited to two (2) persons per bedroom.

9.4.4 Occupancy in Absence of Tenant. If a Tenant absents himself or herself from the Unit for any period of time during the Lease term, his or her Family authorized to occupy the Unit who are already in residence may continue to occupy the Unit and may have Guests subject to all of the restrictions set forth in this Declaration. If the Tenant and all of the

Family members mentioned in the preceding sentence are absent, no other person may occupy the Unit.

9.4.5 Regulation by Master Association. All of the provisions of the Governing Documents shall be applicable and enforceable against any person occupying a Unit to the same extent as against the Owner. A covenant on the part of each occupant to abide by the Governing Documents, designating the Master Association as the Owner's agent with the authority to terminate any Lease and evict the Tenants and other occupants in the event of breach of such covenant, shall be deemed to be included in every Lease, whether oral or written, and whether specifically expressed in such agreement or not. The Master Board shall have the authority as a condition of approving a Lease to require that the Tenant and the Owner enter into a Lease addendum which acknowledges the foregoing, and which also states that "Tenant and Landlord (Owner) acknowledge that pursuant to Section 3.9 of the Amended and Restated Declaration of Restrictions and Protective Covenants for The Shores at Berkshire Lakes, all Lease payments shall be paid to the Master Association during such time as the Owner is delinquent in paying any monetary obligation owed to the Master Association." Alternatively, the Master Association may require that such language be included in the Lease.

9.4.6 Fees and Deposits for the Lease of Units. Whenever herein the Master Board's approval is required to allow the Lease of a Unit, the Master Association may charge the Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. No fee may be charged for approval of a renewal or extension of a Lease with the same Tenant. The Master Association may also require payment of a security deposit to the Master Association, which security deposit shall cover damage to the Common Area. Handling of the security deposit and claims against the security deposit shall be in accordance with Chapter 83, Florida Statutes.

9.4.7 Unapproved Leases. Any Lease of a Unit not approved pursuant to this Section 9.4 shall be void and unenforceable unless subsequently approved by the Master Board and shall constitute a valid basis for an eviction action.

9.5 Nuisance. No member shall use or permit a Unit to be used in any manner which would be unreasonably disturbing, detrimental or a nuisance to the occupant of another Unit or which would not be consistent with the maintenance of the highest standards for the first class residential development, nor permit the premises to be used in a disorderly or unlawful way, nor shall the Common Areas be used by any member or their tenants, guests or invitees, in any manner which would be unreasonably disturbing, detrimental or a nuisance to other members. The use of each Unit and the Common Areas shall be consistent with existing laws and the Governing Documents, and residents shall at all times conduct themselves in a peaceful and orderly manner. No unlawful, disorderly or offensive activity shall be carried on upon any Parcel or in any Unit, or the Common Areas, nor shall any owner permit or condone any activity that is, or may reasonably become, a source of annoyance or nuisance to other residents.

9.6 Temporary Structures. Except as provided herein, no structure of a temporary character, including trailer, tent, shed or shack shall be used on any Parcel, either temporarily or permanently. Owners may keep storage pods and/or dumpsters on the Parcel in

connection with approved construction activity for a period not to exceed sixty (60) days after obtaining written approval from the Master Association.

9.7 Signs. In order to maintain an attractive community, no signs may be erected or displayed in or on any Parcel, Living Unit, or structure, except a "For Sale" sign or a reasonable security company sign. Owner's right to install a sign shall be further subject to approval of the Master Board and any additional restrictions which may be later promulgated by the Master Board of Directors or Architectural Control Committee.

9.8 Appearance; Refuse Disposal. Each owner shall keep his Parcel and Unit free and clear of trash and debris and shall reasonably maintain his Unit. No Parcel nor any adjacent common areas shall be used or maintained as a dumping ground for rubbish. Personal property of residents shall not be left on the lawns or landscaped areas outside the Units. Trash, garbage or other waste shall not be kept except in sanitary containers suitably screened from view from the street and adjacent Parcels. No portions of any Parcel shall be used for hanging or drying laundry of any kind, except an Owner can hang or dry laundry on a stand-up collapsible metal umbrella clothesline that is not visible from the street.

9.9 Maintenance. Master Association shall have the right to repair any structure or improvement on any Parcel which, in the opinion of the Master Board, constitutes a danger or nuisance or is in unsightly disrepair, provided that the owner is given reasonable notice of the Master Association's intent to do so, which reasonably specifies the proposed action. The Master Association shall charge the expense of same against the owner of said Parcel, which special charge shall be a lien on the Parcel which may be foreclosed, and which shall secure the Master Association's attorney's fees and other costs in connection with said foreclosure.

9.10 Awnings and Windows. Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to the prior approval and control of the Master Board of Directors or ACC.

9.11 Fences. No fences or fencing shall be constructed, installed or placed on any Parcel. Any fences installed on Parcels prior to the effective date of this Amended and Restated Declaration shall be "grandfathered." Owners are prohibited from replacing or installing a new fence if the "grandfathered" fence is removed, damaged or destroyed in whole or in part. Notwithstanding any of the foregoing, if the ACC adopts regulations governing pool fences in lieu of a pool screen or pool cages, then and only then such a pool fence which encloses only pools and pool decks may be permitted upon advance approval, in accordance with said adopted ACC regulations and with applicable governing local laws and ordinances.

9.12 Pets and Animals. No horses, reptiles, livestock or poultry of any kind (including, without limitation, pigs, goats and chickens) shall be raised, bred or kept on any Parcel, except for commonly accepted household pets such as dogs, cats and birds. Pets may not be kept, bred or maintained for any commercial purposes. All pets shall be contained in Residences and shall not be permitted to run freely. When outside a Living Unit, all pets must be carried or secured with a hand held leash. The Owner, pet's owner or handler, as applicable, must pick up all of the pet's solid waste and deposit it in the Owner's own trash container. In the event that any pet becomes a nuisance or exhibits aggressive behavior or becomes a danger in the Board's sole

discretion, the Master Board of Directors may order the Owner and the pet's owner, as applicable, to permanently remove the same from the Living Unit and shall if necessary, have the right to seek injunctive relief requiring the Owner and the pet's owner, as applicable, to remove the pet in the event the pet is not removed after receipt of such notice. Tenants and Guests are permitted to keep pets in Residences with written permission from the Owner of the respective Living Unit. Pets are further subject to all local laws and ordinances and the Rules and Regulations adopted by the Master Board, which may be amended from time to time.

9.13 Parking and Storage of Vehicles. Except for service vehicles temporarily present on the property, Owners may not park, store or keep on the property any commercial truck or other commercial vehicle, or any boat, trailer, semi-trailer, recreation vehicle, motorcycle, house trailer, mobile home, motor home, bus, tractor, or any other such vehicle, unless it is enclosed within a garage. No person may park, store or keep any motor vehicle on grassed or landscaped areas, or any places outside of paved driveways, garages, or other designated parking areas. Vehicles which are in wrecked, junked, partially dismantled, inoperative or abandoned condition, whether attended or not, and those not bearing current license plates, are not permitted on the Properties. The repair of motor vehicles is not permitted on the Properties, except within a building and totally isolated from public view. No more than three(3) vehicles per Unit are permitted to be parked in any driveway or street, including right of way in front of Units for a period of time in excess of six (6) hours unless approved by the Master Board of Directors. No portion of any vehicle may be parked on any portion of a Parcel's driveway such that the vehicle blocks the sidewalk or the continuation of the sidewalk area or sidewalk easement across the driveway. Overnight parking on the street or right of way is prohibited. Parking in the clubhouse parking lot is strictly subject to the Rules and Regulations of the Master Association, as may be amended from time to time.

9.14 Antennas and Flagpoles. Antennas and satellite dishes are prohibited except that (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter (b) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter; (c) cell phone booster antenna; or (d) antennas or satellite dishes designed to receive television broadcast signals, ("Reception Device") shall be permitted, provided that the Owner obtains prior ACC approval as provided herein, which may include conditions that the Reception Device is located so as not to be visible from outside the Residence, or is located on the side or rear yard of the Parcel. The Master Board of Directors may require that a Reception Device be painted or screened by landscaping in order to blend into the Residence and removed from view from the street and other Residences. A flagpole shall not be used as an antenna. The installation and display of flagpoles and flags shall be subject to regulation by the Master Board of Directors, but no Owner shall be prevented from displaying one portable, removable official United States flag or official flag of the State of Florida in a respectful manner, or on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, a portable, removable US Army, Navy, Air Force, Marine Corps or Coast Guard flag. The permitted flags shall not exceed 4.5' x 6'. Notwithstanding the foregoing, no one shall be permitted to display the United States flag in a manner that violates: (i) Federal law or any rule or custom as to the proper display or use of the United States flag; or (ii) any reasonable restriction pertaining to the time, place and manner of displaying the flag. The restriction must be necessary to protect a substantial interest of the Master Association.

9.15 Garages. Owners are not permitted to permanently enclose garages or convert garages to another use without first obtaining written approval from the Master Board of Directors. In order to maintain a harmonious and aesthetic appearance, garage doors must remain closed except when a vehicle must enter or exit the garage or when an Owner is engaged in outdoor activity, such as, mowing the lawn, gardening or decorating.

9.16 Outdoor Equipment. All oil tanks, bottled gas tanks, swimming pool equipment, housing and sprinkler pumps and other such outdoor equipment must be walled-in or placed in sight-screened or fenced-in areas so that they shall not be readily visible from any adjacent streets or Residences. Otherwise, adequate landscaping shall be installed and maintained around these facilities. All trash containers shall be stored out of sight from the roadway except on trash “pick up” days.

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

10. TRANSFERS OF OWNERSHIP OF LIVING UNITS

10.1 Forms of Ownership

(A) One owner. A Unit may be owned by one natural person who has been approved as provided herein.

(B) Co-ownership. Co-ownership of Units is permitted. However, if the proposed co-owners are other than husband and wife, the Board shall condition its approval upon designation of one of the approved co-owners as “primary occupant,” and the use of the Lot by other persons shall be as though the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 10.

(C) Ownership by Corporations or Trusts. A Unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers or title. However, the intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Unit may be used as short term transient accommodations for several individuals or families. The approval of a Director, or corporation or other entity as an owner shall be conditioned upon designation of one natural person to be the “primary occupant”, and the use of the Unit by other persons shall be as though the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 10. Except for changes in the primary occupant necessitated by the death of an existing primary occupant, no more than one such change will be approved in any twelve-month period.

(D) Life Estate. A Unit may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant shall be the only member

from such Unit, and occupancy of the Unit 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 right unless separately approved by the Master Association. The life tenant and holders of the remainder interest shall be jointly and severally liable for all assessments and charges against the Parcel. The life tenant may, by signed agreement, transfer the right to vote in all Master Association matters to any one remainderman, subject to approval by the Master Association of such arrangement. Except in the case where such a transfer has been made, if the consent or approval of the owner is required for any purpose, that consent or approval of the holders of the remainder interest shall not be required.

10.2 Transfers.

(A) Sale or Gift. No owner may effectively convey title to a Unit or any interest therein by sale or gift without the prior written approval of the Master Board of Directors.

(B) Devise or Inheritance. If any owner acquires his title by devise or inheritance, his right to occupy or use the Unit shall be subject to the approval of the Master Association. The approval of the Master Association shall not be denied to any devisee or heir who was the decedent's lawful spouse or related to the owner by blood or adoption with the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, his right to occupy the Unit shall be subject to the approval of the Master Association under the procedure outlined in Section 10.3 below.

(D) Resale Assessment; Replacement Reserve Account. A resale, or "capital" assessment, sometimes referred to as the "Special Reserve Contribution" (referred to herein as the "Resale Assessment") shall be due and payable to the Master Association upon the conveyance of a Unit. The amount of the Resale Assessment shall be as determined by resolution of the Board of Directors from time to time, provided (a) the amount shall not exceed the prorata equivalent of three (3) months of single family Assessments; (b) the amount is calculated or applied at a uniform rate against all Units, and (c) amounts derived from the Resale Assessment shall be used to fund a voluntary deferred expenditure account for the purpose major repairs and replacement of existing assets in accordance with Section 6.2.1 of the Bylaws. The current amount of the Resale Assessment is Five Hundred and No/100ths Dollars (\$500.00). Payment of the Resale Assessment shall be the legal obligation of the transferee and shall be secured by a continuing lien as provided for in this Declaration. The Resale Assessment shall be used to fund the Association's "Replacement Reserve Account, described below." The Resale Assessment will be added onto the first month's account statement which the new owner receives after conveyance, but may be paid at closing. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Unit by deed or other authorized means of conveyance, with or without valuable consideration, including, without limitation, as a result of the issuance of a certificate of title or deed in lieu of foreclosure or a transfer of possession and beneficial ownership by means of an agreement for deed. The following conveyances shall be exempt from payment of the resale capital assessment: (a) by a co-Owner to any person who was a co-Owner immediately prior to such conveyance; (b) to the owner's estate, surviving spouse or other heirs resulting from the death of the Owner; (c) to a trustee or the Owner's spouse, without a change in occupancy, solely for estate planning or for tax reasons; (d) to the Master Association pursuant to a final judgment of

foreclosure or deed in lieu of foreclosure; and (e) to a first mortgage holder pursuant to a final judgment of foreclosure or deed in lieu of foreclosure. Provided, however, that upon a resale that occurs following an exempt resale described in (a) through (e) above, the Resale Assessment shall be due and payable.

10.3 Procedures.

(A) Notice to Master Association.

1. **Sale or Gift.** An Owner intending to make a sale or gift of his Parcel or any interest therein shall give to the Master Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the date of the proposed transfer, together with the name, and address of the proposed purchaser or donee and such other information as the Master Board may reasonably require. The Master Board may require a personal interview with any purchaser or donee and his or her spouse, if any, as a pre-condition to approval. The Master Board may also require that the Parcel be inspected by the Association for any violations of the Governing Documents or Architectural Guidelines as a pre-condition for approval.

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

3. **Failure to Give Notice.** If no notice is given, the Master Association at its election may approve or disapprove the transfer without prior notice. If it disapproves, the Master Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Master Board with the required notice and request reconsideration.

(B) **Master Board Action; Approval.** Within thirty (30) days of receipt of the required notice and all information requested, the Master Board must 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 Vice-President of the Master Association in recordable form and delivered to the transferee or the closing agent. If the Master Board neither approves or disapproves within thirty (30) days, such failure to act shall be deemed the equivalent of approval, and on demand the Master Board shall issue a Certificate of Approval.

(C) Disapproval.

1. The Master Board may disapprove a transfer of ownership only if a majority of the whole Master Board so votes, after receiving a written opinion of counsel that such disapproval is for a good cause. Only the following shall be deemed to constitute good cause:

(a) The person seeking approval or any proposed occupant has been convicted of a felony involving violence to person or property, a felony

involving possession or sale of a controlled substance within ten (10) years prior to application, or a felony demonstrating dishonesty or moral turpitude;

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

(c) The application for approval on its face gives the Master Board reasonable cause to believe that the person seeking approval or any proposed occupant intends to conduct himself in a manner inconsistent with the Governing Documents;

(d) The person seeking approval or any proposed occupant has a history of disruptive behavior or an attitude of disregard for the Governing Documents or the rights and property of others, as evidenced by his conduct in other social organizations or Master Associations, or by his conduct as a tenant, owner or occupant of a Living Unit; or

(e) The person seeking approval or any proposed occupant failed to provide the information or fees required to process the application in a timely manner, or provided false information, or concluded the transaction without obtaining approval.

(f) The person seeking approval is delinquent in any monetary amounts owed to the Master Association.

(g) The Association has notified the Owner that the subject Parcel has violations of the Governing Documents or Architectural Guidelines and such violations remain uncured.

10.4 Exception. The provisions of Sections 10.2 and 10.3 do not require Master Association approval of the acquisition of title by any acquirer who acquires title through an institutional mortgage, whether by foreclosure or deed in lieu of foreclosure; however, Master Association approval is required for a purchaser from such mortgagee.

10.5 Unapproved Transfers. Any sale or transfer which is not approved pursuant to the terms of this Declaration shall be void or voidable unless subsequently approved by the Master Board.

10.6 Committee or Manager Approval. To facilitate approval of transfers proposed during times when many of the Directors are not in residence, the Master Board may by resolution delegate its approval powers set for the above (but not disapproval) to a committee (such as, but not limited to the executive committee), to the President, or to the Master Association's manager.

11. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.

Every owner, and all guests, tenants and occupants, shall at all times comply with Chapter 617, Florida Statutes, Chapter 720, Florida Statutes, as may be amended from time to time, the Governing Documents, and the rules of the Master Association. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Master Board of Directors of the Master Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Master Association, are governed by, and must comply with Florida Statutes Chapters 720 and Chapter 617, the Governing Documents, and the rules of the Master Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Master Association or by a member against:

- (A) The Master Association;
- (B) A member,
- (C) Any Director or officer of the Master Association who willfully and knowingly fails to comply with these provisions, and
- (D) Any tenants, guests, or invitees occupying a parcel or using the Common Areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section 11 does not deprive any person of any other available right or remedy.

11.2 Enforcement Action. Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Master Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.3 Self-Help Remedies. Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Master Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the owner of the land, any construction or other violation that may be or exist thereon. The Master Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

11.4 Suspension of Common Area Use Rights; Fines. The Master Association may levy a reasonable fine or suspend, for a reasonable period of time, the rights of an owner, the owner's family, or an owner's tenants, guests, or invitees, or both, to use the Common Areas and facilities in the event of their failure to comply with any covenant, restriction, or rule contained in the Governing Documents or applicable law or in the event they condone such violation by their family members, guests, tenants or invitees. Such suspension may also include, with the

cooperation of the services provider, suspension of cable television or internet services if such services are provided under a bulk services contract with the Master Association the costs for which are charged as a common expense. Any suspension of use rights will not prohibit an owner or tenant of a Unit from having vehicular and pedestrian ingress to and egress from the Unit, including, but not limited to, the right to park. The procedure for levying fines and suspending use rights is set forth in the Bylaws.

12. **SURFACE WATER MANAGEMENT SYSTEM.** The Master Association shall maintain and operate the Surface Water Management System and shall have an easement over the Properties for the purpose of repairing and maintaining the system. The cost of the maintenance and operation of the Surface Water Management System shall be a common expense. No amendment or modification to the Surface Water Management System shall be undertaken without first seeking prior approval from the Master Association and the appropriate governmental entity. No activity which has the effect of changing, altering impeding or interfering with the operation of the Surface Water Management System shall be permitted.

13. **DURATION OF COVENANTS; AMENDMENT OF DECLARATION.**

13.1 **Duration of Covenants.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Master Association, and any owner, their respective legal representatives, heirs, successors and assigns, for an initial period that expires on the ninety-ninth (99th) anniversary of the date of recordation of the Declaration of Restrictions and Protective Covenants for The Shores at Berkshire Lakes Master Homeowners' Association, Inc. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of members of the Master Association vote in favor of terminating this Declaration at the end of its then current term. Written notice of any meeting at which such a proposal will be considered shall be given at least forty-five (45) days before the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Master Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Master Association, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the Public Records of Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

13.2 **Amendments; Proposal.** Notwithstanding the foregoing, this Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Master Board of Directors or by written petition to the Master Board signed by at least one-fourth (1/4th) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

13.3 Amendments; Vote Required. Except as otherwise provided by law or by other specific provision of the Governing Documents, a proposed amendment to this Declaration shall be adopted if it is approved by at least a majority of the voting interests of the Master Association present in person or by proxy and voting at any annual or special meeting called for the purpose where a quorum is present, provided that notice of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendments shall be in substantially the same form as is specified in Chapter 720, Florida Statutes, for proposed amendments to a Declaration of Covenants. No amendment shall change any Parcel's share of liability for assessments or any owner's voting rights, unless the owner consents to the amendment.

13.4 Amendments; Certificate; Recording; Effective Date. A copy of each amendment shall be attached to a certificate attesting 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 was originally recorded, and shall be executed by the President or Vice President of the Master 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. If a copy of the proposed amendment has not been provided to the Owners prior to the vote on that amendment, then within thirty (30) days after recording an amendment the Master Association will provide copies of the amendment to the Owners. If a previous copy of the proposed amendment had been provided to the Owners, then the Master Association may provide notice to the Owners that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the Owner upon written request to the Master Association.

13.5 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote of more than two-third (2/3rds) of the voting interests present and voting in person or by proxy is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

14. THE PRESERVE CONDOMINIUM.

14.1 Maintenance of The Preserve Common Elements. The Master Association may, but has no obligation to, contract with The Preserve to provide for the maintenance and management of any of the Preserve's Common Elements when mutually beneficial. In the event the Preserve fails to make payment to the Master Association under said contract, any outstanding amounts may be assessed pro-rata against all Units within the Preserve as an Individual Parcel Assessment.

14.2 The Preserve Covenants. The Preserve Condominium and all Units within The Preserve are subject to this Declaration and all Governing Documents of the Master Association. The Preserve's documents establishing or governing The Preserve Condominium shall not be inconsistent with this Declaration or its recorded exhibits, except they may establish restrictions on subjects related to the use and occupancy of The Preserve Property, such as pets, parking, architectural controls, leasing and guest occupancy, that are more restrictive than those set forth in the Master Association Governing Documents. The Master Association shall have the

power, but not the obligation, to enforce the Preserve Covenants only after the Preserve has received actual notice of the violation and has had at least 60 days to review the claim and respond. If, after the period of 60 days has passed and the Preserve has been unable or unwilling to resolve the problem in a satisfactory manner, the Boards of the Associations will meet to seek a resolution of the dispute through negotiations and mediation, if necessary.

14.3 No Liability for Single Family and Villa Parcel Assessment. In accordance with Section 3.4 above, the Units in the Preserve Condominium shall not be liable for any Single Family and Villa Parcel Assessment levied by the Association and shall be liable for those portions of the regular annual assessment which are common to all Parcels within the Master Association. Notwithstanding the above, the Preserve Condominium shall be liable for any obligations to the Master Association incurred as a result of an agreement with the Master Association as authorized by the Section 14.1 above.

15. **GENERAL PROVISIONS.**

15.1 Waiver. Any waiver by any person of any provisions of this Declaration, or breach thereof, must be in writing to be effective, and shall not operate or be construed as a waiver of any other provision or subsequent breach.

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

15.3 Headings and Capitalization. The headings of Sections and paragraphs herein, and the capitalization of certain words, are for convenience only, and do not affect the meaning or interpretation of the provisions of this Declaration.

15.4 Notices. Any notice required to be sent to any owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner in the records of the Master Association at the time of such mailing, or when provided electronically to those Owners who previously consented to receive notice electronically. The owner bears the responsibility for notifying the Master Association of any change of address or email address.

15.5 Rule Against Perpetuities. In the event any court should hereafter determine any provisions as originally drafted herein in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose. The "Measuring life" shall be that of the incorporator of the Master Association.

EXHIBIT "D"
LEGAL DESCRIPTION OF PROJECT

Two (2) parcels of land described as follows:

Parcel 1:

A part of West 5/6 of West 1/2 of Section 33, Township 49 South, Range 26 East.

All that part of West 5/6 of West 1/2 of Section 33, Township 49 South, Range 26 East, Collier County, Florida and being more particularly described as follows:

Commencing at the southwest corner of Section 33, Township 49 South, Range 26 East, Collier County, Florida:

thence North 0°-07'-01" west along the west section line of said Section 33, a distance of 50.04 feet;

thence North 87°-43'-59" east along the north Right-of-Way of Radio Road, a distance of 100.07 feet to the point of intersection of the said north Right-of-Way of Radio Road, the east Right-of-Way of Santa Barbara Boulevard and the point of beginning of the parcel herein described:

thence North 0°-07'-53" West along the said east

Right-of-Way of Santa Barbara Boulevard, a distance of 2364.93 to an angle point;

thence continuing along said east Right-of-Way North 5°-04'-53" East, 466.12 feet;

thence North 87°-43'-59" east, 2057.87 feet;

thence South 0°-06'-01" east, 316.47 feet;

thence South 0°-07'-01" east, 2511.14 feet to the north Right-of-Way of Radio Road;

thence South 87°-43'-59" west along the said north

Right-of-Way, 2100.04 feet to the Point of Beginning

being a part of West 5/6 of West 1/2 of Section 33, Township 49 South, Range 26 East, Collier County, Florida. Subject to easements and restrictions of Record: Containing 136.00 acres of land more or less;

together with.

Parcel 2:

All that part of West 5/6 of West 1/2 of Section 33, Township 49 South, Range 26 East, Collier County, Florida and being more particularly described as follows:

Commencing at the southwest corner of Section 33, Township 49 South, Range 26 East, Collier County, Florida;

thence North 0°-07'-01" west along the West section line of said Section 33, a distance of 50.04 feet;

thence North 87°-43'-59" east along the north Right-of-Way of Radio Road, a distance of 100.07 feet to the point of intersection of the said north Right-of-Way of Radio Road, the east Right-of-Way of Santa Barbara Boulevard;

thence North 0°-07'-01" west along said east Right-of-Way of Santa Barbara Boulevard, 2364.93 feet to an angle point;

thence continuing along said east right-of-way North 05°-04'-53" east, 466.18 feet to the point of beginning of the parcel herein described:

thence continuing along said east Right-of-Way North 05°-04'-53" east, 93.38 feet to an angle point;

thence continuing along said east Right-of-Way North 0°-00'-58" west, 199.93 feet to the point of intersection of the southerly Right-of-Way of Interstate Route No. 75;

thence easterly along the said southerly Right-of-Way, 333.28 feet along the arc of a circular curve concave to the north, having a radius of 5891.58 feet and being subtended by a chord which bears

North 89°-32'-09" east, 333.23 feet;

thence continuing along said southerly Right-of-Way,

North 87°-54'-55" east, 1715.47 feet;

thence South 0°-06'-01" east, 276.64 feet,

thence South 87°-43'-59" west, 2057.87 feet to the point of beginning.

being a part of West 5/6 of West 1/2 of Section 33, Township 49 South, Range 26 East, Collier County, Florida.

Subject to easements and restrictions of Record;

Containing 13.204 acres of land more or less.