BERKSHIRE LAKES MASTER ASSOCIATION, INC.

Second Amended and Restated
By-Laws

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

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

ARTICLE I

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 All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 **Principal Office.** The principal office of the Association shall be at 495 Belville Boulevard, Naples, Florida or at such location within Collier County, Florida as may be determined from time to time by the Board of Directors.

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

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

ARTICLE II

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

(A) Approval of the transfer of ownership by the Board of Directors;

(B) Recording in the public records a deed or other instrument evidencing a member's legal title to the residential unit;

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

(D) Delivery to the Association, if required, of a written designation of primary occupant;

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

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

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

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

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ARTICLE III

3. MEMBERS' MEETINGS; VOTING.

3.1 Annual Meeting. There shall be noticed an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each year at a date, time and place designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members. During the annual meeting, ballots cast in the annual election of Directors shall be counted and results announced.

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

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

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

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

3.5 **Vote Required.** The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all individual residential unit owners for all purposes, except where a greater or different number of votes are expressly required by law or by any provision of the governing documents.

3.6 **Proxy Voting.** Members may cast their votes at a meeting in person or by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the individual residential unit, specify the date, time and place of the meeting for which it is given and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. Holders of proxies need not be members.

3.7 **Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. When a meeting is so adjourned it shall not be necessary to give further notice of the time and place of its continuance if such are announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted when the meeting is reconvened, but only if a quorum is then present.

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

(A) Call of the roll or determination of quorum.

(B) Reading or disposal of minutes of last members' meeting

(C) Reports of Officers

(D) Reports of Committees

(E) Election of Directors (annual meeting only)

(F) Unfinished Business

(G) New Business
(H) Adjournment

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

(a) Amendments to the Declaration, the Articles and By-Laws;

(b) Cancellation of certain grants, assessments or reservations made by the Declaration, or made by the Association before the transfer of control to the Association from the developer;

(c) Purchase of any Association land;

(d) Providing no reserves or less than adequate reserves;

(e) Recall of members of the Board of Directors; and

(f) Other matters contained in the Declaration, Articles or these By-Laws or Florida Statute 617 that specifically require a vote of the members.

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3.10 **Minutes.** Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and available for inspection by members or their authorized representatives at all reasonable times. Minutes of a meeting must be reduced to written form within thirty (30) days after the meeting.

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

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

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

ARTICLE IV

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

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

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

4.3 **Elections.** In each annual election the members shall elect by written, secret ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

(A) First Notice; Candidates. Not less than sixty (60) days before the election, the Association shall mail or deliver, or electronically transmit to residential unit owners who so consent, to each residential unit owner entitled to vote, a first notice of the date of the election. The first notice may be given by separate Association mailing or electronic transmission or included in another Association mailing, delivery or electronic transmission, including regularly published newsletters. Any individual residential unit owner or other eligible person desiring to be a candidate may qualify as such by giving written notice to the Association not less than forty (40) days before the annual election. Candidates may not be nominated from the floor at the meeting at which the election is to be held.

(B) Second Notice; Candidate Information Sheets. If there are more candidates than there are Directors to be elected, balloting is required, and at least fourteen (14) days before the election, the Association shall mail or deliver a second notice of election to all residential unit owners entitled to vote in the contested election, together with a ballot which shall list all qualified candidates in alphabetical order, by surname. This notice may also include the notice of the annual meeting required by Section 3.3 above. Upon timely request of a candidate, an information sheet, no larger than 8 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association.

(C) Balloting. Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least fifteen percent (15%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, there shall be appurtenant to each lot as many votes for Directors as there are Directors to be elected, but no lot may cast more than one (1) vote

for any candidate, it being intended that voting for Directors shall be non-cumulative. Tie votes may be broken by agreement among the candidates who are tied, or if there is no agreement, by lot or by any other method required or permitted by law.

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

(A) Any vacancy occurring on the Board of Directors may be filled by the affirmative vote of the majority of the remaining Directors, even though the remaining Directors constitute less than a quorum, or by the sole remaining Director. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. If a vacancy is not so filled or if no Director remains, the replacement may be elected by the members or, on the petition of any member, by appointment of the Circuit Court of the county where the Community is located.

(B) If a vacancy occurs on the Board as a result of an increase in the number of Directors or a recall in which less than a majority of the Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum, to fill the vacancy for the unexpired term of the seat being filled.

(C) If vacancies occur on the Board as a result of a recall, and a majority or more of the Directors are removed, the vacancies shall be filled in accordance with Rule 61B-81, Florida Administrative Code, as amended from time to time, which provides procedures governing the conduct of the recall election as well as the operation of the Association during the period after a recall, but prior to the recall election.

(D) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under Florida Statute 617.0807 or otherwise, may be filled before the vacancy occurs. However the new Director may not take office until the vacancy occurs.

4.5 **Recall of Directors.** Any or all Directors may be recalled, with or without cause, by a majority vote of the entire membership, either by a written petition or at a meeting called for that purpose no earlier than sixty (60) days after the Directors have been elected and no later than sixty (60) days before the next election. If a meeting is held or a petition is filed for the removal of more than one (1) Director, the question shall be determined separately as to each Director sought to be recalled. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days after the date of notice of the meeting.

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

4.7 **Other Meetings.** Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors, or by petition of fifteen percent (15%) of the total voting interests of the Association. Notice of meetings shall

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

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

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

4.10 **Quorum of Directors.** A quorum at a Board meeting exists only when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation in a meeting by such means is equivalent to presence in person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ARTICLE V

5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Association shall be a President, and a Vice-President, a Treasurer and a Secretary, all of whom must be directors and shall be elected annually by the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two (2) or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

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

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

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

5.5 Treasurer. The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer shall oversee the disbursement of Association funds, keeping proper documentation for such disbursements, and shall render to the President and Directors, at meetings of the Board, or whenever they may require it, a full accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one (1) has been designated.

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

ARTICLE VI

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

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

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

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

6.4 **Reserves.** The Board may establish in the budget one or more restricted reserve accounts for capital expenditures and deferred maintenance. Contingency reserves for unanticipated operating expenses shall be included, if at all, in the operating portion of the budget. These funds may be spent for any purpose approved by the Board. The purpose of reserves is to provide financial stability and to avoid the need for special assessments. The amounts proposed to be so reserved shall be shown in the annual budget.

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

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

statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

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

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

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

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

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

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ARTICLE VII

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

ARTICLE VIII

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

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

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

(A) Notice. The party against whom the fine and/or suspension is sought to be levied or imposed shall be afforded an opportunity for hearing before the Board of Directors after reasonable notice of not less than fourteen (14) days, and the notice shall include:

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

(2) A specific designation of the provisions of Chapter 720, Florida Statutes, the governing documents or the rules which are alleged to have been violated;

(3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and

(4) The possible amounts of any proposed fine and/or possible use rights of common areas or facilities to be suspended.

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

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

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

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

ARTICLE IX

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

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

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

9.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the governing documents, a proposed amendment to these Bylaws shall be adopted if it is approved at least forty percent (40%) of the members who are entitled to vote provided that notice of the proposed amendment has been given to the members in accordance with law.

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

COLLIER COUNTY COPY CLERK OF THE CIRCUIT COURT

ARTICLE X

10. **MISCELLANEOUS.**

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

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

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

DATED this 27th day of June, 2016.

BERKSHIRE LAKES MASTER ASSOCIATION, INC.

By: Robert Lupariello
PRESIDENT
Its: President

STATE OF FLORIDA
COUNTY OF COLLIER

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

[Notary Seal]

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

SHARLENE M. THOMPSON
MY COMMISSION # FF 133918
EXPIRES: October 17, 2018
Bonded Thru Notary Public Underwriters

By: _____
Its: Secretary / O'Connor Craig

COLLIER COUNTY CLERK OF THE CIRCUIT COURT
COPY

STATE OF FLORIDA
COUNTY OF COLLIER

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

[Notary Seal]

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

SHARLENE M. THOMPSON
MY COMMISSION # FF 133918
EXPIRES: October 17, 2018
Bonded Thru Notary Public Underwriters