

**CERTIFICATE OF AMENDMENT**

THE UNDERSIGNED, being the duly and acting President of Lexington at Walden Homeowners' Association, Inc., a Florida corporation not for profit, hereby certifies that at a meeting of the members held on October 27, 2009, where a quorum was present, after due notice, the resolutions set forth below were approved by the votes indicated for the purpose of amending and restating the Declaration of Restrictions and Protective Covenants for Lexington at Walden, and the Articles of Incorporation and Bylaws of Lexington at Walden Homeowners' Association, Inc. as originally recorded at O.R. Book 1678, Pages 957 *et seq.*, Public Records of Collier County, Florida, as previously amended.

1. The following resolution was approved by Owners holding not less than two-thirds (2/3) of the voting interests of the membership.

*(for use by Clerk of Court)*

RESOLVED: That the Declaration of Restrictions and Protective Covenants for Lexington at Walden is hereby amended and restated in its entirety, and the amendment is adopted in the form attached hereto and made a part hereof.

2. The following resolution was approved by vote of three-fourths (3/4) of the voting interests present and voting.

RESOLVED: That the Articles of Incorporation of Lexington at Walden Homeowners' Association, Inc., are hereby amended and restated in their entirety, and the amendment is adopted in the form attached hereto and made a part hereof.

3. The following resolution was adopted by a majority of the voting interests present and voting.

RESOLVED: That the Bylaws of Lexington at Walden Homeowners' Association, Inc., are hereby amended and restated in their entirety, and the amendment is adopted in the form attached hereto and made a part hereof.

Date: 11-2-09

**LEXINGTON AT WALDEN  
HOMEOWNERS' ASSOCIATION, INC.**

(1) Maerlene Mangiapane  
Witness  
Print Name MAERLENE MANGIAPANZ

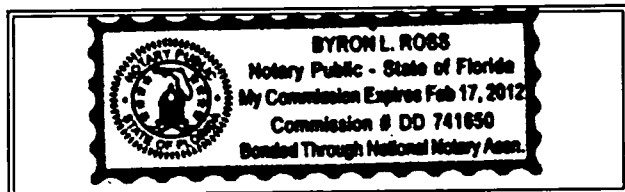
By: Lawrence K. Day  
Lawrence K. Day, President  
6814 Lone Oak Blvd.  
Naples, FL 34109

2) Francis Brusca  
Witness  
Print Name Francis Brusca

(CORPORATE SEAL)

**STATE OF FLORIDA  
COUNTY OF COLLIER**

The foregoing instrument was acknowledged before me this 2<sup>ND</sup> day of November, 2009, by Lawrence K. Day, as President of the aforementioned Corporation, on behalf of the Corporation. He is personally known to me or has produced driver's license as identification.



Robert C. Samouce  
Signature of Notary Public

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

*This instrument prepared by Robert C. Samouce, Esq., Samouce, Murrell & Gal, P.A., 5405 Park Central Court, Naples, FL 34109*

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

**AMENDED AND RESTATED**  
**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**  
**FOR**  
**LEXINGTON AT WALDEN**

**KNOW ALL MEN BY THESE PRESENTS** that the original Declaration of Restrictions and Protective Covenants for Lexington at Walden, was recorded in Official Record Book 1678, at Page 957 *et seq.*, of the Public Records of Collier County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety, as amended.

The land subject to this Declaration (hereinafter the "Property") is legally described as LEXINGTON AT WALDEN, as previously amended and supplemented, described as Lots 5 through 18, Block B, Wellington at Lone Oak Unit Two, according to the Plat thereof as recorded in Plat Book 17, Pages 80 through 83, inclusive, of the Public Records of Collier County, Florida. No additional land is being added by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a parcel or any other ownership interest in the property, or the lease, occupancy or use of any portion of a parcel or the property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

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

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

**1.2 "Articles" and "Bylaws"** as used herein, means the Articles of Incorporation and the Bylaws of Lexington at Walden Homeowners' Association, Inc., as amended from time to time. A copy of the Amended and Restated Articles of Incorporation and Bylaws are attached hereto as Exhibits "A" and "B" respectively.

**1.3 "Association"** means Lexington at Walden Homeowners' Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the common areas and amenities at Lexington at Walden.

**1.4 "Board"** means the Board of Directors responsible for the administration of Lexington at Walden Homeowners' Association, Inc.

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

1.5 **“Common Areas”** or **“Common Properties”** shall mean and refer to those areas of land intended to be devoted to the common use and enjoyment of the owners of The Properties.

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

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

1.8 **“Declaration of Covenants”** means this Declaration, as amended from time to time.

1.9 **“Family”** or **“Single Family”** shall refer to any one of the following:

(A) One natural person.

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

1.10 **“Governing Documents”** means and includes this Declaration, the Articles and Bylaws, and all recorded exhibits thereto, as amended from time to time.

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

1.12 **“Home”** or **“Residence”** means each one of the twenty-six (26) residences intended for residential use which is constructed on a lot or parcel.

1.13 **“Institutional Mortgagee”** means the mortgagee (or its assignee) of a mortgage against a parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

1.14 **“Lease”** means the grant by a residential owner of a temporary right of use of the owner's parcel and residence for valuable consideration.

1.15 **“Lot,” “Parcel”** or **“Unit”** means a parcel of land located within the real property described in Exhibit “A” upon which a home or residence has been or may be permanently placed and affixed and which

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

fee simple title to the parcel has been conveyed to the owner of the home. No lot or parcel may be subdivided or joined together without the consent of the Association.

1.16 **“Master Association”** means and refers to Walden Oaks of Naples Homeowners Association, Inc. for which all members of Lexington at Walden are also members of the Master Association.

1.17 **“Members”** means and refers to those persons who are entitled to membership in the Association as provided in this Declaration and the Association’s Articles of Incorporation and Bylaws.

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

1.19 **“Owner”** or **“Parcel Owner”** means the record owner of legal title to a parcel or lot.

1.20 **“Primary Occupant”** means the natural person approved for occupancy of a home or residence when title to the home or residence is held in the name of two or more persons, or by a trustee or a corporation or other entity which is not a natural person. When used in reference to a parcel owned in one of the forms listed above, the term “primary occupant” shall be synonymous with the term “owner.”

1.21 **“Properties”** or **“Community”** means all the real property which is subject to this Declaration as described herein.

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

1.23 **“Voting Interests”** means the voting rights distributed to the Association members pursuant to the Bylaws.

## 2. **ASSOCIATION.**

2.1 **Membership.** Every owner of a parcel shall be a member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the rules and regulations of the Association, as amended from time to time. When more than one person holds an interest in any lot or unit, all such persons shall be Members. The vote for such lot or unit shall be exercised as such Members may determine among themselves, but in no event shall more than one vote be cast with respect to any unit owned by multifamily Members.

2.2 **Voting Rights.** Voting rights are set forth in the Bylaws of the Association.

## DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

**2.3 Articles of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached to this Declaration as Exhibit "A."

**2.4 Bylaws.** The Bylaws of the Association shall be the Amended and Restated Bylaws attached to this Declaration as Exhibit "B," as they may be amended from time to time.

**2.5 Delegation of Management.** The Association may contract for the management and maintenance of those portions of the property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common areas with funds made available by the Association for such purposes.

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

**2.7 Powers and Duties.** The powers and duties of the Association include those set forth in Chapter 617, Florida Statutes, and in the governing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the common areas. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use interests in lands or facilities for the use and enjoyment of the owners.

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

**2.9 Purchase of Parcels.** The Association has the power to purchase parcels and to hold, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

**2.10 Interests in Real Property.** The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 2.9 above, the power to acquire or convey ownership interests in real property shall be exercised by the Board of Directors only after approval by at least a majority of the voting interests of the Association, present, in person or by proxy, at a duly called meeting of the members of the Association, called for the purpose.

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

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

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

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

3.1 **Covenant to Pay Assessments.** Each owner of a parcel by the act of becoming an owner covenants and agrees, and each subsequent owner of any parcel (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

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

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

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

- (A) renovation or major repairs to the common areas; and

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

(B) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

**3.3 Share of Assessments.** Lexington at Walden contains twenty-six (26) lots. The owners of each lot shall be jointly and severally liable for an undivided one twenty-sixth (1/26th) share of annual and special assessments. The owners of each lot shall also be jointly and severally liable with the prior parcel owner(s) for all unpaid assessments that come due prior to the transfer of title.

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

**3.5 Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments or charges by the procedures and in the same manner as is provided in Section 718.116 of the Florida Condominium Act, as amended from time to time, for the foreclosure of a lien upon a condominium parcel for unpaid assessments. The Association may also bring an action at law against any owner liable for unpaid charges or assessments. If final judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney fees in connection with any appeal of such action.

**3.6 Priority of Liens.** The Association's lien for unpaid charges or assessments shall be subordinate and inferior to any recorded institutional first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when recorded. Any lease of a parcel shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

**3.7 Application of Payments; Failure to Pay; Interest.** Assessments, charges and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) not to exceed the maximum amount allowed by law. Assessments, charges and installments thereon shall become due, and the parcel owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, late payment fees, court costs and attorney fees, and then to delinquent charges or assessments. The Association may refuse to accept a partial payment which bears a restrictive endorsement and such will be the equivalent of no payment. No payment by check is deemed received until the check has cleared.

## DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

- 6 -

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

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

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

**3.10 Mortgage Foreclosure.** The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:

1. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

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

#### **4. EASEMENTS.**

**4.1 Appurtenant Enjoyment Easements.** The owner of each parcel, their guests, lessees and invitees, shall have as an appurtenance to their parcels a perpetual nonexclusive easement for ingress and egress over, across and through the common areas, for the use and enjoyment of all recreational facilities and common areas, such use and enjoyment to be shared in common with the other owners of parcels, their guests, lessees and invitees, subject to the provisions of this Declaration.

### **DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

- 7 -



**4.2 Interior Roadway and Sidewalk Easements.** The interior roadway and sidewalk system of Lexington at Walden has been dedicated by plat to Walden Oaks of Naples Homeowners Association, Inc. (Master Association) for maintenance and repair responsibility. The roadways and sidewalks are subject to the rules and regulations as the Association and Master Association impose; however, each owner of a parcel shall have an easement for ingress and egress over said roadway and sidewalk system. The Board of Directors shall have the right to establish parking regulations and to enforce such regulation by all means lawful for such enforcement on drives and roadways.

**4.3 Utility Easements.** A perpetual easement shall exist upon, over, under and across Lexington at Walden for the purpose of maintaining, installing, repairing, altering and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, valves, gates, pipelines, cable television and all machinery and apparatus appurtenant thereto as may be necessary for the installation and maintenance of utilities servicing all owners of parcels and servicing the common areas, all such easements to be of a size, width and location so as to minimize and not unreasonably interfere with the use of any improvements which are now, or will be, located upon said property. The Association, through its Board of Directors, has the authority to grant additional such easements, and to modify, move or vacate such existing easements as may be necessary to efficiently and effectively provide utility and other services to the parcels and the common elements and common areas.

**4.4 Drainage and Landscape Buffer Easements.** Drainage and landscape buffer easements have been dedicated to the Master Association for drainage, access and landscape buffering with the responsibility for maintenance.

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

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

- (A) the right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the common areas and providing the services authorized herein, and, in aid thereof, to mortgage said properties;
- (B) the right of the Association to impose rules and regulations governing the use of the common areas and Association property as further provided in Section 7. of the Bylaws; and
- (C) the right of the Association to a non-exclusive easement over, across and through each parcel as necessary to meet the Association's maintenance responsibilities.
- (D) the right of the Association to levy assessments on lots and units to enable the Association to pay the costs of operating and maintaining the Common Properties and other costs of the Association, and

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

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

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

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

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

4.7 Any owner of a parcel in the Properties which parcel contains a structure which encroaches upon another parcel or, the common areas shall have a valid easement for the encroachment and maintenance of same, as long as it stands and exists.

4.8 **Party Walls and Roofs:**

(A) Generally. Each wall which is built as part of the original construction of any duplex subject to this Declaration and placed on the dividing line between adjoining lots and sites shall constitute a party wall. Each roof which is built as part of the original construction of any duplex shall constitute a party roof. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and roofs and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(B) Cost of Repairs and Replacement. The cost of repair, maintenance and replacement of a party wall and party roof shall be shared equally by the owners who share the wall and roof, except in the event of damage caused by the intentional or negligent acts of an owner or any tenant, guest or invitee of an owner, in which event such owner shall be responsible for the cost of the maintenance, repair or replacement. The cost of repair, maintenance and replacement of a party wall or party roof as a result of normal wear and tear shall be the equally shared expense of the owners who share the wall and roof. The cost of repair, maintenance and replacement of a party wall or party roof as a result of any act of nature, including fire, storm, flooding, lightning or other casualty loss, shall be shared equally by the owners who share the roof.

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

(C) Weatherproofing. Notwithstanding any other provision of this Declaration, 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.

(D) Contribution. The right of any owner to contribution from any other owner(s) under this Declaration shall be appurtenant to the land and shall pass to such owner's successors in title.

(E) Binding Arbitration. In the event of any dispute arising concerning a party wall or party roof, such dispute shall be submitted to arbitration.

**5. MAINTENANCE.**

**5.1 Maintenance and Alteration of Parcels and Residences.** Each owner of a parcel shall, at his sole cost and expense, maintain and repair all parts of the residence and structures located on his parcel (including but not limited to all fixtures, mailboxes, equipment, appliances, patios and pools) and damage caused by wildlife, including birds, keeping the same in a condition comparable to their condition at the time of their initial construction, except for ordinary wear and tear. No owner shall materially alter, or make any substantial additions to his parcel or to the exterior of his residence without the prior written approval of the Association, as further provided in Section 6. Such additions and alterations shall include, but not be limited to, landscaping, decks, awnings, hurricane protection and related equipment.

**5.2 Association Maintenance.** The Association shall maintain all grassed or sodded areas, lawns, landscaping, trees, vegetation and sprinkler systems located on the individual parcels. The Association shall control the irrigation system on all home sites including the repair and maintenance of the irrigation system. Any landscaping additions made by individual parcel owners, as approved by the Association, are the maintenance responsibility of the individual parcel owners if said maintenance will cost more than maintenance of the typical originally installed landscaping on the parcel. The Association shall also pressure clean the roofs, building exteriors (excluding caged areas) of the residences, and sidewalks within the Lexington Community upon approval in writing of a majority of the voting interests. The cost of Association maintenance shall be a common expense.

**5.3 Enforcement of Maintenance.** If the owner of a parcel fails to maintain his parcel and/or residence as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the parcel, with or without consent of the parcel owner. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the property. Any expenses so incurred by the Association shall be billed directly to the owner of the parcel to which such services are provided, and shall be a charge against the parcel, secured by a lien against the parcel as provided in Section 3. above.

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

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

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

**6.1 Improvements Requiring Approval.** No building, structure, enclosure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way alters the exterior appearance of any structure, parcel or common area, be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in writing by the Association. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography.

**6.2 The ARC.** The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Committee (the ARC), which shall consist of at least three (3) members, who need not be members of the Association. All members of the ARC shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association. The Board of Directors can appoint all or some of the Directors to the ARC. A majority of the ARC shall constitute a quorum to transact business at any meeting of the ARC, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARC. Any vacancy occurring on the ARC because of death, resignation, or other termination of service of any member thereof, or in the absence of ARC members, shall be filled by the Board of Directors.

**6.3 Powers and Duties.** The ARC shall have the following powers and duties:

(A) To recommend, from time to time, to the Board of Directors of the Association the creation of or modification and/or amendments to the Architectural Planning Criteria. The Criteria for any item not contained in the written Architectural Planning Criteria shall be whatever already physically exists within the Community for such an item unless and until such item is added to the written Architectural Planning Criteria. If any item does not already exist within the Community and is not contained in the written Architectural Planning Criteria, then such item may not be used or placed within the Community unless and until such item is added to the written Architectural Planning Criteria. Any Architectural Planning Criteria or modifications or amendments thereto shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present. Notice of the adoption, modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such adoption, change or modification, shall be delivered to each member of the Association. However, receipt of notice of a Board meeting concerning the Architectural Planning Criteria or of a copy of any adoption of or modification or amendment to the Architectural Planning Criteria shall not affect the validity of such change or modification.

(B) To require submission to the ARC of two (2) complete sets of all plans and specifications for any improvement, structure of any kind or any other work which in any way alters the exterior appearance of any structure, parcel or common area, including without limitation, any building, fence, driveway, enclosure, sewer, drain, disposal system, decorative building, landscape device, object or other improvement, the construction or placement of which is proposed upon the property.

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

- 11 -

The ARC may also require submission of samples of building materials proposed for use in any residence, and may require such additional information as may reasonably be necessary to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Planning Criteria.

(C) To approve or disapprove any improvement or structure of any kind, including, without limitation, any building, fence, wall, screen enclosure, drain or disposal system, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon the property, and which is visible from the outside of any residence. All decisions of the ARC shall be submitted in writing to the Board of Directors of the Association, and evidence thereof may be made by a certificate, in recordable form, executed under seal by the President or Vice President of the Association. Any party aggrieved by a decision of the ARC shall have the right to make a written request to the Board of Directors of the Association within thirty (30) days of the decision, for a review thereof. The determination of the Board upon reviewing any such decision shall in all events be dispositive.

(D) To adopt a schedule of reasonable fees for processing requests for ARC approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specifications are submitted to the ARC.

(E) To adopt a procedure for inspecting approved changes during and after construction to insure conformity with approved plans.

(F) The members of the ARC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder. The ARC, however shall have the power to engage the services of professionals for compensation for purposes of aiding the ARC in carrying out its functions.

7. **USE RESTRICTIONS.** The following rules and standards shall apply to Lexington at Walden and shall be enforced by the Association pursuant to Section 12. hereof:

7.1 **Residences.** Each residence shall be occupied by only one family at any time. Each residence shall be used as a home and for no other purpose. No business or commercial activity shall be conducted in or from any residence. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library in his residence, from keeping his personal, business or professional records in his residence, or from handling his personal, business or professional telephone calls or written correspondence in and from his residence. Such uses are expressly declared customarily incident to residential use.

7.2 **Occupancy in Absence of Owner.** If the owner and his family who permanently reside with him are absent from the unit and are not occupying it, and the unit has not been leased, the owner may permit his unit to be occupied by his guests only in accordance with the following:

(A) Any one (1) person who is the parent, child, adult grandchild or sibling of the unit owner or of the unit owner's spouse, if any, may occupy the unit in the absence of the owner for a period not to exceed thirty (30) days. That person's spouse and children if any may accompany him. The total

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

number of occasions for occupancy by all guests combined under this paragraph shall be limited to two (2) in any one (1) calendar year, with a maximum aggregate total of sixty (60) days.

(B) House guests not included within 7.2(A) are permitted for only one (1) family occupancy in the unit owner's absence and then only with the proviso that the family and its guests consist of no more than four (4) persons. Such guests may stay only one (1) week and the total number of occasions for this type of guest occupancy in any unit shall be limited to two (2) in each calendar year.

(C) An owner desiring guest occupancy under (A) or (B) above shall give notice to the Association as provided in the rules and regulations. Each guest occupancy shall be counted as using one (1) of the two (2) allowable lease occupancies. Therefore in the absence of the owner the unit, the unit may have no more than either two (2) leases, two (2) guest occupancies, or one (1) lease and one (1) guest occupancy.

7.3 **Exceptions.** Upon prior written application by the unit owner, the Board of Directors may make such limited exceptions to the foregoing Section 7.2 restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one (1) exception shall not be construed as a precedent for later exceptions.

7.4 **Occupancy When Owner is Present.** There is no restriction on the number of guests, whether related or unrelated to the owner, who may occupy the unit together with the unit owner, so long as the total number within the residence does not exceed two (2) persons per bedroom.

7.5 **Minors.** All occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

7.6 **Pets.** The owner of each unit may keep in the unit no more than two (2) small pets in the aggregate, of normal domesticated household types such as: (a) dogs no more than 15 inches in height from shoulder to toe at maturity, (b) cats, or (c) caged birds. The pets must be carried under the owner's arm or be leashed at all times while on the property outside of the unit. Pet messes or droppings must be removed immediately by the unit owner or pet handler and disposed of directly into the garage waste disposal containers. Owner's pets are prohibited in the pool area or in the social areas. The ability to keep such pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of Lexington at Walden. No pets of any kind are permitted to be kept by lessees or guests in leased units or guest suites. No reptiles, monkeys, rodents, amphibians, poultry, swine or livestock may be kept in Lexington at Walden.

7.7 **Nuisances.** No owner shall use his parcel and residence, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another parcel and residence, or which would not be consistent with the maintenance of the highest standards for a first class residential community nor permit the premises to be used in a disorderly or unlawful way. The use of each parcel and residence shall be consistent with existing laws and the governing documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the community. Extreme care shall be exercised to minimize noises so as not to unreasonably disturb other persons.

## DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

- 13 -

7.8 **Signs.** No person may post or display "For Sale," "Open House" or other similar signs anywhere within Lexington at Walden, including those posted in windows of buildings or motor vehicles, other than of a size, shape, content, location and duration of posting as approved by the Board of Directors. "For Rent" signs are prohibited anywhere within Lexington at Walden.

7.9 **Garage Sales.** No garage sales or other similar commercial activities will be permitted to be held on any parcel or on the common areas.

7.10 **Single Family Parcel Structures.** Other than one single family residence, pool, deck and related equipment, no structure, trailer, house trailer, tent, shack, garage, barn or other outbuilding shall be used or placed on any parcel at any time either temporarily or permanently.

7.11 **Motor Vehicles and Boats.** Only vehicles (automobiles, trucks, commercial vehicles and recreation vehicles, trailers, etc.) which can be kept in the garage of a residence shall be permitted on the property except for those vehicles of an owner's guests and invitees and repairmen and maintenance personnel whose vehicles are on the property temporarily. Owners or authorized occupants must keep any boats, watercraft, recreational vehicles and commercial vehicles stored on site in garages. Any boats, commercial vehicles and recreational vehicles that are of such size as will not permit the garage door to be closed with the vehicle or boat inside the garage may not be kept on the property. Motorcycles are strictly prohibited to be parked or kept anywhere on the property including within garages. The parking of any vehicle upon any other part of the property is prohibited except in spaces expressly provided for guests or as may be approved in writing by the Board of Directors. Only vehicles bearing current license and registration tags and inspection certificates, as required pursuant to state law, shall be permitted to be parked on the property.

7.12 **Garage Parking.** Each unit shall include a garage which can accommodate at least two (2) full size automobiles. No garage shall be converted to any other use. Repair of vehicles shall be prohibited within Lexington at Walden, except that minor maintenance may be performed in garages. All garages must be equipped with operational automatic door openers and closers. All garage doors shall remain closed except when entering or exiting garages.

7.13 **Trees.** No tree or shrub, the trunk of which exceeds two inches in diameter shall be cut down or otherwise destroyed without the prior expressed written consent of the ARC.

7.14 **Artificial Vegetation.** No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior portion of any lot.

7.15 **Storage Tanks.** No above ground storage tanks, including but not limited to, those used for storage of water, gasoline, oil, or other liquid or gas shall be permitted on the lot outside of the building.

7.16 **Easements.** Owners may not grant easements on their lots without written consent of the Association.

7.17 **Fences, Hedges and Walls.** No fence, hedge, wall or other dividing instrumentality shall be constructed or maintained on any lot unless approved by the ARC.

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

**7.18 Garbage and Refuse Disposal.** No lot shall be used as a dumping ground for rubbish, trash, garbage, or other waste matter. No incinerator or any out door burning shall be permitted.

Trash, garbage and other waste shall be kept only in sanitary containers which shall be kept in a clean and sanitary condition and the containers shall be kept in the garages except when out for pick-up at the applicable pick-up times on the applicable pick-up days. Trash and recycle bins shall not be put on the curb, for pick-up, prior to 6:00 P.M. the night before the scheduled pick-up. All trash and recycle bins shall be removed by 7:00 P.M. in the evening of the scheduled pick up.

**7.19 Mailbox.** All mailboxes throughout Lexington at Walden shall be of the same size, color, and have the same post the Association has selected.

**7.20 Parking.** Parking along roadways and streets is prohibited.

**7.21 Underground Utility Lines.** All telephone, electric, water, sewer, television or other distributors must be underground from the parcel line to the structure being served.

**7.22 Drainage.** Except to comply with the governmental regulation or control, no changes in the elevation of the lands shall be made which will interfere with the drainage or otherwise cause undue hardship to adjoining property.

**7.23 Seasonal Holiday Decorations.** Lights or decorations may be erected on the exterior of the residences or on the interior of the residences, where they may be seen from the outside of the residence, in commemoration or celebration of nationally publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations that are not permanent fixtures of the residence as part of the original construction shall be removed after the holiday has ended. Christmas decorations or lights may not be displayed prior to the day after Thanksgiving of any year and must be removed by January 5<sup>th</sup> of the following year. Other holiday decorations or lights may not be displayed more than one (1) week in advance of the holiday. The Association shall have the right, upon fifteen (15) days prior written notice, to enter any unit and remove lights and decorations displayed in violation of this provision. The Association and the persons removing such lights and decorations shall not be liable to the owner for trespass, conversion or damages of any kind except intentional misdeeds and gross negligence.

**7.24 Clothes Drying.** No towels, garments, rugs, etc. may be hung from windows, railings or other parts of the residences. No clotheslines or drying yards shall be located so as to be visible from the interior roadways within Lexington at Walden and shall be located in the least conspicuous location visible from neighboring residences.

**7.25 Lawn Care.** No weeds, underbrush (other than indigenous growth), or other unsightly growths shall be permitted to grow or remain upon any part of the premises and no refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon. No decorative objects such as weather vanes, sculptures, bird baths, fountains and the like shall be placed on a lot or common areas without the prior written approval of the ARC.

## DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

- 15 -



7.26 **Wells.** No well shall be drilled and no septic tank shall be installed, used or maintained on the property.

7.27 **Antennas.** No antenna of any kind shall be placed or erected upon any parcel or affixed in any manner to the exterior of any building other than a satellite antenna less than one meter in diameter, an aerial designed to receive over-the-air television broadcast, or an antenna designed to receive multichannel, multipoint distribution service which may be installed only at a location approved by the ARC.

7.28 **Exterior Appearance.** All windows, porches, lanais, and exteriors of all building on any lot shall at all times be maintained in a neat and orderly manner.

7.29 **Water Use Restrictions.** The Water Use Permit, authorized by the South Florida Water Management District, provides that all parcel owners within the areas covered by the permit shall abide by all water use restrictions, put in place by the district or any other governmental agency empowered with such authority.

7.30 **Basketball Posts and Hoops.** No basketball posts or hoops, either fixed or portable, are permitted within Lexington at Walden.

7.31 **Hurricane Shutters.** All hurricane shutters must be approved by the ARC. Hurricane shutters may not be installed before June 1<sup>st</sup> and must be removed by December 1<sup>st</sup> of each year. Shutters installed before or after the above dates shall be removed by the Association at the owner's expense.

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

8.1 **Association; Required Coverage.** If the Association should acquire any real property or common areas, the Association shall maintain adequate property insurance covering all of the common areas and all Association property. The Association shall also provide adequate general liability insurance covering any Association property. The amounts of coverage shall be determined annually by the Board of Directors. The insurance carried by the Association shall afford at least the following protection:

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

(B) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a parcel owner.

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

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

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

**8.2 Duty to Insure.** Each parcel owner is responsible for insuring the real and personal property within his own parcel and residence. Each owner must recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance liability including all risk, flood, liability, etc.

**8.3 Duty to Reconstruct.** Except as otherwise approved by the Board of Directors, if any residence or other improvements located on any residential parcel is destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements shall cause repair or replacement to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, and shall utilize and conform with the original foundation and appearance of the original improvements.

**8.4 Failure to Reconstruct.** If the owner of any residence fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 9.3 above, the Association shall give written notice to the owner of default. If after thirty (30) days the owner has not made satisfactory arrangements to meet its obligations, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, 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 Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the owner of the residence shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The 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 residence to secure payment.

**8.5 Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under this Declaration, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

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

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

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

## DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

- 17 -

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

(A) **Common Areas.** Proceeds on account of damage to common areas shall be held in as many undivided shares as there are residences, the shares of each owner being the same as his share in the common areas.

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

**8.10 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the owners in the following manner: The proceeds shall be paid to defray the costs of reconstruction or repair by the Association. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to residence owners and their mortgagees being paid jointly to them.

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

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

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

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

**9. OWNERSHIP OF PARCELS.**

**9.1 Forms of ownership:**

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

(A) A parcel may be owned by one natural person.

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

(C) Ownership by Corporations, Partnerships or Trusts. A parcel may be owned in trust, or by a corporation, partnership or other entity which is not a natural person. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the parcel and residence may be used as short-term transient accommodations for several individuals or families. A trustee, or corporation, partnership or other entity as a parcel owner shall be required to designate one (1) natural person to be the "primary occupant." The use of the parcel and residence by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant must be approved in advance by the Board of Directors. No more than one such change will be approved in any twelve (12) month period.

(D) Designation of Primary Occupant. Within thirty (30) days after the effective date of this provision, each owner of a parcel which is owned in the forms of ownership stated in preceding subsections (B) and (C) shall designate a primary occupant in writing to the Association. If any parcel owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

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

## 9.2 Transfers.

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

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

## DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

- 19 -

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

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

### 9.3 Procedures.

#### (A) Notice to Association.

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

(2) Devise, Inheritance or Other Transfers. The transferee of a parcel must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the parcel following the procedures in this Section or Section 10.

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

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

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

## DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

- 20 -

- (1) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (2) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (3) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the property;
- (4) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
- (5) The person seeking approval has evidenced an attitude of disregard for Association rules by his conduct in Lexington at Walden as a tenant, parcel owner or occupant of a residence;
- (6) The parties to the proposed transfer have failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or
- (7) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

**9.4 Exception.** The provisions of Sections 9.2 and 9.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

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

**9.6 Fees Related to the Sale, Lease or Other Transfer of Parcels.** Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a parcel, the Association may charge the owner a preset fee for processing the application, such fee not to exceed one hundred dollars (\$100) per applicant.

**10. LEASING OF PARCELS.** In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of parcels and residences by their owners shall be restricted as provided in this section. All leases of parcels and residences must be in writing. An owner may lease only his entire parcel and residence, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person. The legal responsibility for paying Association assessments may not be delegated to the lessee. If a unit is leased and any special assessment or installment of a regular assessment for a unit remains unpaid for at least thirty (30) days after the due date and a Claim

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

of Lien has been recorded, then upon written notice mailed to both owner and lessee of such delinquency, both owner and lessee agree that all future lease payments due under the lease shall be paid by lessee directly to the Association until such time as the Association notifies both owner and lessee that all sums due the Association have been paid in full. Such lease payments shall be funds of the Association to be utilized for any Association purpose at the discretion of the Board and shall only be remitted to the owner if full payment of all amounts due the Association have been paid by the owner and a Satisfaction of Claim of Lien has been recorded.

### 10.1 Procedures.

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

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

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

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

### DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

- 22 -

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

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

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

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

**10.2 Term of Lease and Frequency of Leasing.** No parcel and residence may be leased more often than two (2) times in any calendar year, with the minimum lease term being thirty (30) days. The first day of occupancy under the lease shall determine in which year the lease occurs. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

**10.3 Occupancy By Guests.** There is no restriction on the length of stay of guests, whether related or unrelated to the tenant of a parcel and residence, so long as the tenant is occupying the parcel and the total number within the residence does not exceed two (2) persons per bedroom. Guests are not allowed in the absence of the tenant.

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

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**



## 11. AMENDMENTS; TERMINATION.

**11.1 Duration.** The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns until January 14, 2022. On January 14, 2022, 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, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least two-thirds (2/3rds) of owners of residences affirmatively vote at a duly held meeting of members of the Association in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, be given at least forty-five (45) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

**11.2 Amendments by Members.** Except as otherwise provided herein or by law, this Declaration may be amended at any time by affirmative vote of at least two-thirds (2/3rds) of the voting interests who are present and voting, in person or by proxy, at a duly called meeting of the members of the Association, called for the purpose. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded, and shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

## 12. ENFORCEMENT; GENERAL PROVISIONS.

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

### DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

- 24 -

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

**12.3 Litigation.** Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the governing documents or Association rules, may be brought by any owner, or the Association against:

- (A) the Association;
- (B) a parcel owner;
- (C) anyone who occupies or is a tenant or guest of a residential parcel; or
- (D) any officer or Director of the Association who willfully and knowingly fails to comply with these provisions.

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

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

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

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

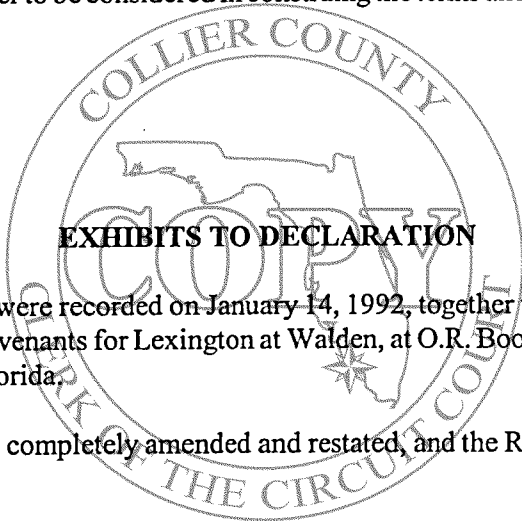
**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

**12.8 Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

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

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

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



Exhibits listed below were recorded on January 14, 1992, together with the original Declaration of Restrictions and Protective Covenants for Lexington at Walden, at O.R. Book 1678, Page 957 *et seq.*, Public Records of Collier County, Florida.

● The following Exhibits are completely amended and restated, and the Restatements are attached hereto and recorded herewith.

- Exhibit "A"- ARTICLES OF INCORPORATION
- Exhibit "B" - BYLAWS

**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS**

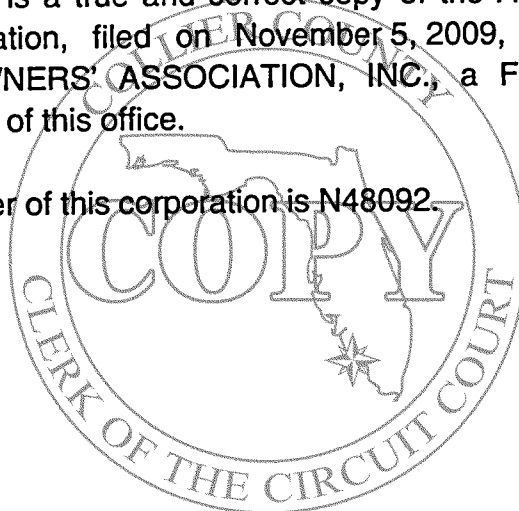
# State of Florida



Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on November 5, 2009, for LEXINGTON AT WALDEN HOMEOWNERS' ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

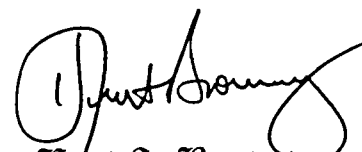
The document number of this corporation is N48092.



Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Ninth day of November, 2009



CR2EO22 (01-07)

  
Kurt S. Browning  
Secretary of State

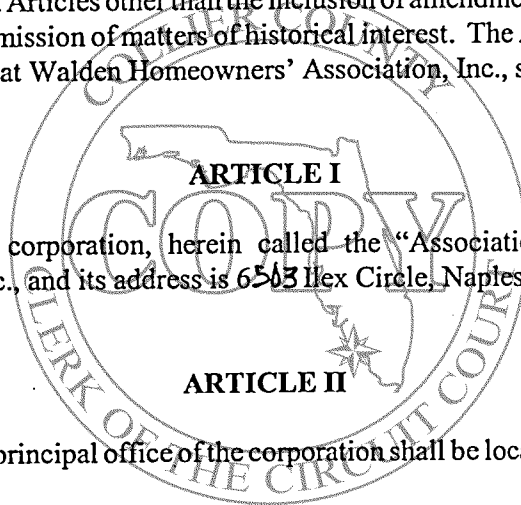
**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES OF INCORPORATION.  
FOR PRESENT TEXT SEE EXISTING ARTICLES OF INCORPORATION**

FILED  
2009 NOV -5 PM 12:01  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF**

**LEXINGTON AT WALDEN HOMEOWNERS' ASSOCIATION, INC.**

Pursuant to Chapter 617, Florida Statutes, the Articles of Incorporation of Lexington at Walden Homeowners' Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on March 25, 1992 are hereby amended, and restated in their entirety as amended. All amendments included herein have been adopted pursuant to Chapter 617, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Chapter 617, Florida Statutes and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Lexington at Walden Homeowners' Association, Inc., shall henceforth be as follows:



**ARTICLE I**

**NAME:** The name of the corporation, herein called the "Association," is Lexington at Walden Homeowners' Association, Inc., and its address is 6503 Ilex Circle, Naples, Florida 34109.

**ARTICLE II**

**PRINCIPAL OFFICE:** The principal office of the corporation shall be located at 6503 Ilex Circle, Naples, Florida 34109.

**ARTICLE III**

**PURPOSE AND POWERS:** The Association is organized and shall exist on a non-stock basis as a corporation not for profit under the laws of the State of Florida, and this Association will not permit pecuniary gain or profit nor distribution of its income to its members, officers or Directors. It is a nonprofit corporation formed for the purpose of establishing a corporate residential community homeowners' association which, subject to a Declaration of Restrictions and Protective Covenants for Lexington at Walden originally recorded in the Public Records of Collier County, Florida, at O.R. Book 1678 at Page 957 *et seq.*, has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Articles, the Bylaws of the corporation, and with said Declaration of Restrictions and Protective Covenants for Lexington at Walden, and shall have all of the powers and authority reasonably necessary or appropriate to the operation and regulation of a residential community, subject to said recorded Declaration, as it may from time to time be amended, including but not limited to the power:

**ARTICLES OF INCORPORATION**

**EXHIBIT "A"**

- (A) To fix, levy, collect and enforce payment by any lawful means all charges, assessments, or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property or the corporation;
- (B) To make, amend and enforce reasonable rules and regulations governing the use of the Common Areas and the operation of the Association;
- (C) To sue and be sued, and to enforce the provisions of the Declaration, these Articles, and the Bylaws of the Association;
- (D) To contract for the management and maintenance of the Common Areas and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;
- (E) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Properties;
- (F) To dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless an instrument has been signed by two-thirds (2/3rds) of the voting interests agreeing to such dedication, sale or transfer or where such action has been approved by two-thirds (2/3rds) of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose;
- (G) To borrow money, and with the prior approval of two-thirds (2/3rds) of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (H) To maintain, repair, replace and provide insurance for the common areas;
- (I) To acquire (by gift, purchase or otherwise) own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the corporation;
- (J) To exercise any and all powers, rights and privileges which a corporation organized under Chapters 720 and 617 of Florida Statutes may now or hereafter have or exercise; subject always to the Declaration as amended from time to time; and

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

ARTICLES OF INCORPORATION

EXHIBIT "A"

**ARTICLE IV**

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

**ARTICLE V**

**TERM; DISSOLUTION:** The term of the Association shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3rds) of the voting interests. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was formed. In the event there is a refusal to accept such dedication, then such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization which is devoted to purposes similar to those of this Association.

**ARTICLE VI**

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

**ARTICLE VII**

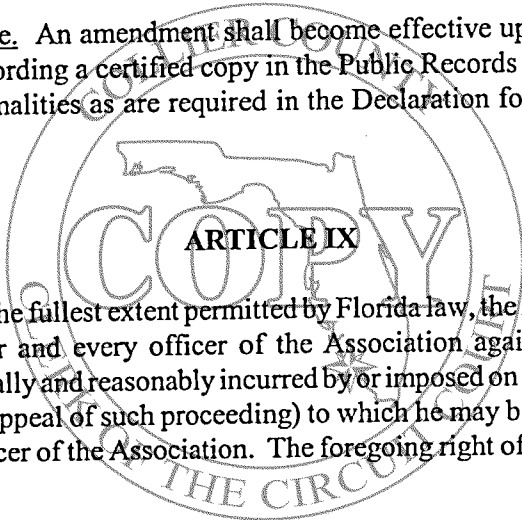
**DIRECTORS AND OFFICERS:**

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.
- (B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VIII

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

- (A) Proposal. Amendments to these Articles shall be proposed by a majority of the Board or upon petition of one-fourth (1/4th) of the voting interests, and shall be submitted to a vote of the members not later than the next annual meeting.
- (B) Vote Required. Except as otherwise required by Florida law, these Articles of Incorporation may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting, or by a majority of the voting interests in writing without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains a fair statement of the proposed amendment.
- (C) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida with the same formalities as are required in the Declaration for recording amendments to the Declaration.



ARTICLE IX

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities including attorney's fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not apply to:

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgement in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.
- (D) Wrongful conduct by Directors or officers, in a proceeding brought by or on behalf of the Association.

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



**CERTIFICATE**

The undersigned, being the duly elected and acting President of Lexington at Walden Homeowners' Association, Inc., hereby certifies that the foregoing <sup>Amendment & Restated</sup> Articles of Incorporation were approved and adopted by vote of three-fourths (3/4) of the voting interests present and voting at a meeting held on October 27, 2009, after due notice, in accordance with the requirements of the Articles of Incorporation for their amendment, and that said vote was sufficient for the amendment. The number of votes cast was sufficient for the amendment.

Executed this 2nd day of November, 2009.

**LEXINGTON AT WALDEN  
HOMEOWNERS' ASSOCIATION, INC.**

Lawrence K. Day  
Lawrence K. Day, President  
6814 Lone Oak Blvd.  
Naples, FL 34109

Attest:

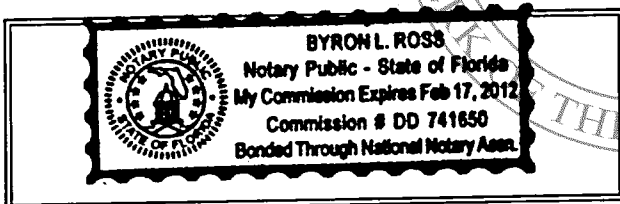
Andre Cedras  
Andre Cedras, Secretary

(SEAL)

STATE OF FLORIDA  
COUNTY OF Collier

Subscribed to before me this 2<sup>ND</sup> day of Nov., 2009, by Lawrence K. Day, as President of the aforementioned corporation, on behalf of the corporation. He is personally known to me or did produce drivers license as identification.

[Signature]  
Signature of Notary Public

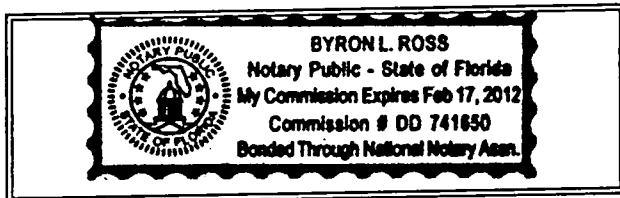


(Print, Type or Stamp Commissioned Name of Notary Public) (Affix Notarial Seal)

STATE OF Florida  
COUNTY OF Collier

Subscribed to before me this 2<sup>ND</sup> day of Nov., 2009, by Andre Cedras, as Secretary of the aforementioned corporation, on behalf of the corporation. He is personally known to me or did produce \_\_\_\_\_ as identification.

[Signature]  
Signature of Notary Public



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

ARTICLES OF INCORPORATION

EXHIBIT "A"

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

**AMENDED AND RESTATED  
BYLAWS  
OF  
LEXINGTON AT WALDEN HOMEOWNERS' ASSOCIATION, INC.**

**1. GENERAL.** These are the Amended and Restated Bylaws of Lexington at Walden Homeowners' 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 such location within Collier County, Florida as may be determined from time to time by the Board of Directors.

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

**1.3 Definitions.** The definitions set forth in Section I of the Amended and Restated Declaration of Restrictions and Protective Covenants for Lexington at Walden, to which these Bylaws are attached as Exhibit "B," shall apply to terms used in these Bylaws, unless the context clearly requires another meaning.

**2. MEMBERS.** The members of the Association are the record owners of legal title to the twenty-six (26) residential lots within Lexington at Walden. In the case of a lot subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the lot solely for purposes of determining use rights. If a lot is subject to a life estate, the life tenant is deemed the lot 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 as provided for in Section 9. of the Declaration.

(B) Recording in the public records of a deed or other instrument evidencing legal title to the lot in the member.

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

(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 lot owned by them. The total number of votes ("voting interests") is equal to the total number of lots. The vote of a lot is not divisible. The right to vote may be denied because of delinquent assessments pursuant to Florida Law. If a lot is owned by one (1) natural person, his right to vote shall be established by the record title to the lot. If a lot is owned jointly by two (2) or more natural persons who are not acting as trustees, that lot's vote may be cast by any one (1) of the record owners. If two (2) or more owners of a lot 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 lot is not a natural person or is a trustee, the vote of that lot shall be cast by the lot's primary occupant, designated as set forth in Section 9. of the Declaration.

**2.2 Approval or Disapproval of Matters.** Whenever the decision of a lot 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 lot at an Association meeting as stated in Section 2.1 above, unless the joinder of all record 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.

### **3. MEMBERS' MEETINGS; VOTING.**

**3.1 Annual Meeting.** There shall be an annual meeting of the members in each year during the first calendar quarter of the 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 twenty-five percent (25%) 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 a lot 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 lot owner meetings, except lot 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 members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least thirty percent (30%) 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 lot owners for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the governing documents.

**3.6 Proxy Voting.** 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 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 **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.

3.10 **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.

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

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 lot owners only when such is specifically required.

4.1 **Number and Terms of Office.** The number of Directors which shall constitute the whole Board of Directors shall be five (5). All Directors shall be elected for one (1) year terms. A Director's term ends at the annual election at which his successor is to be duly elected. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy between annual elections, as provided in Section 4.4 below.

4.2 **Qualifications.** Each Director must be a lot owner or the primary occupant.

**4.3 Nominations and Elections.** At each Annual Meeting the members shall elect, by a written ballot which the member personally casts, either by hand or by mail, as many Directors as there are regular terms of Directors expiring or vacancies to be filled. The search committee, if any, may submit its candidates for the office of Director in time to be included with the notice of the annual meeting, any other eligible person may also be nominated as a candidate by himself or by another member from the floor at the annual meeting. Directors shall be elected by a plurality of the votes cast, in person or by proxy, at the annual meeting. In the election of Directors, there shall be appurtenant to each unit as many votes as there are Directors to be elected. No member may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. The candidates receiving the highest number of votes shall be declared elected. A tie vote shall be broken by agreement among the candidates who are tied, or by lot.

**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, but only for a term of office continuing until the next annual election of Directors by the members, at which time the members shall elect a successor to fill the remaining unexpired term, if any.

(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 procedural rules to be adopted by the Division, which provide 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 §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. 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 twenty percent (20%) 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 attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege, 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 lots in the community may be adopted, amended or revoked must be provided by mail, delivery or electronic transmission or broadcast on closed-circuit cable television to all members and conspicuously posted on the property at least fourteen (14) days before the meeting. The notice must include a statement that changes to the rules regarding the use of lots will be considered at the meeting.

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

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

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

**4.12 Adjourned Meetings.** The majority of those present at any meeting of the Board of Directors, regardless of whether a quorum has been attained, may adjourn the meeting to be reconvened at a specified

later time. When the meeting is reconvened, provided a quorum is present, any business that might have been transacted at the meeting originally called may be transacted.

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

**4.14 Compensation of Directors and Officers and Reimbursement of Expenses.** Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses related to the proper discharge of their respective duties.

**4.15 Committees.** The Board of Directors may appoint from time to time such standing or temporary committees, including a search committee, as the Board may deem necessary and convenient for the efficient and effective operation of Lexington at Walden. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Any appointed committee shall be open to members and the committee shall notice and hold its 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 specified lot of residential property owned by a member of the community may not work 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 officer's 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.

## 5. OFFICERS.

**5.1 Officers and Elections.** The executive officers of the Association shall be a President, and a Vice-President, who must be Directors, a Treasurer and a Secretary, all of whom shall be elected annually by the Board 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 seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

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

**5.4 Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He 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.

**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 lot. Such account shall designate the name and mailing address of each lot owner, the amount and due date of each assessment or charge against the lot, 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 in quarterly installments in advance, due on the first day of January, April, July and October 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 first quarterly payment for that year is due, it shall be presumed that the amount of such installment is the same as the last prior quarterly payment, and shall be continued at such rate until a budget is adopted and new quarterly installments are calculated at which time an appropriate adjustment shall be added to or subtracted from each unit's next due quarterly installment.

**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 or longer period if permitted by law, the Board shall prepare and distribute to the owner of each lot a financial report or provide notice that a copy of the financial report is available upon request and prepare in accordance with Chapter 720, Florida Statutes.

**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.

**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.

**8. COMPLIANCE AND DEFAULT; REMEDIES.** In addition to the remedies provided in Section 12. of the Declaration the following shall apply:

**8.1 Fines; Suspensions.** The Board of Directors may levy fines and/or suspensions 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. Suspensions of the use of common areas and facilities may be imposed for a reasonable period of time to deter future violations. 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 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 a panel of three (3) non-Director lot owners appointed by the Board, none of whom may then be serving as Directors or officers or who are employees of the association, or the spouse, parent, child, brother or sister of an officer, director or employee. If the committee, by majority vote, does not 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 creates 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 lot 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.

**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 lot 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 by at least two-thirds (2/3rds) of the voting interests present, in person or by proxy, at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law.

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

**10. MISCELLANEOUS.**

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

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

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