

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
06/09/2008 at 12:45PM DWIGHT H. BROCK, CLERK  
RBC PBB 384.00

**CERTIFICATE OF AMENDMENT**

THE UNDERSIGNED, being the duly and acting President of Walden Oaks of Naples Homeowners Association, Inc., a Florida corporation not for profit, certifies that at a meeting of the members held on March 20, 2008, where a quorum was present, after due notice, the resolution set forth below was duly approved by the vote indicated for the purpose of amending the Declaration of Covenants, Conditions and Restrictions for Walden Oaks of Naples, and the Articles of Incorporation and the By-Laws of Walden Oaks of Naples Homeowners Association, Inc., as originally recorded in O.R. Book 1331at Pages 831 *et seq.*, Public Records of Collier County, Florida.

1. The following resolution was approved by three-fourths (3/4) of the voting interests present and voting in favor of the proposed amendment.

RESOLVED: That the Declaration of Covenants, Conditions and Restrictions for Walden Oaks of Naples is hereby amended and restated and the amendment is adopted in the form attached hereto and made a part hereof.

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

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

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

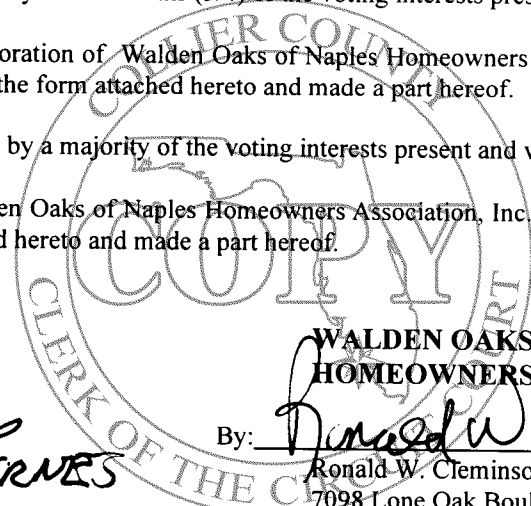
RESOLVED: That the By-Laws of Walden Oaks of Naples Homeowners Association, Inc. are hereby amended and restated and the amendment is adopted in the form attached hereto and made a part hereof.

Date: 4/1/08

(1) Thomas A Wernus  
Witness  
Print Name THOMAS A. WIERNES

(2) Andre Cedras  
Witness  
Print Name ANDRE CEDRAS

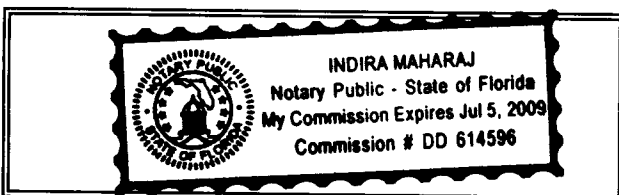
By: Ronald W. Cleminson  
WALDEN OAKS OF NAPLES  
HOMEOWNERS ASSOCIATION, INC.  
Ronald W. Cleminson, President  
7098 Lone Oak Boulevard  
Naples, Florida 34109



(CORPORATE SEAL)

**STATE OF FLORIDA  
COUNTY OF COLLIER**

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of April 2008, by Ronald W. Cleminson, as President of the aforementioned Corporation, on behalf of the Corporation. He is personally known to me or has produced FIDL CASS 739 38101-2 as identification.



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

Indira Maharaj  
Signature of Notary Public

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

(for use by Clerk of Court)

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

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**WALDEN OAKS OF NAPLES**

**KNOW ALL MEN BY THESE PRESENTS** that the original Declaration of Covenants, Conditions and Restrictions for Walden Oaks of Naples, was recorded in Official Record Book 1331, at Page 831 *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 in Exhibit "A" to the original Declaration as amended. That Exhibit is hereby incorporated by reference. No additional land is being added by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a parcel or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a parcel of 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 Walden Oaks of Naples 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 "B" and "C" respectively.

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

1.4 **"Board"** means the Board of Directors responsible for the administration of Walden Oaks of Naples Homeowners Association, Inc.

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.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

- 1 -

- 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 three hundred twenty-two (322) 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, credit union, 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 fee simple title to the parcel has been conveyed to the owner of the home. No lot, parcel, or unit may be subdivided or joined together without the consent of the Association. The term “unit” shall include a

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 2 -

condominium apartment, a townhouse unit or any other form of single family residential dwelling including single family homes.

**1.16** “**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.

**1.17** “**Neighborhood Associations**” means the following Associations which operate and control the six (6) neighborhoods within Walden Oaks of Naples: Barrington Condominium Association, Inc., Huntington Homeowners Association of Naples, Inc., Lexington at Lone Oak Homeowners Association, Inc., Lexington at Walden Homeowners’ Association, Inc., Walden Shores Property Owner’s Association, Inc. and Wellington Homeowners Association of Naples, Inc.

**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 unit.

**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 who are not husband and wife, 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 in Exhibit “A” of the original Declaration.

**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.

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

- 3 -

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.

**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 "B."

**2.4 Bylaws.** The Bylaws of the Association shall be the Amended and Restated Bylaws attached to this Declaration as Exhibit "C," 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, encumber 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.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 4 -

**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.

**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 Walden Oaks of Naples; 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

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 5 -

invitees; and to perform all other duties and responsibilities of the Association as provided in the governing documents. Common expenses also include the funds necessary to provide reserve accounts for:

- (A) renovation or major repairs to the common areas; and
- (B) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss; and
- (C) basic service provided under a bulk cable or satellite television programming services contract if the Board contracts for such bulk services.

**3.3 Share of Assessments.** Walden Oaks of Naples contains three hundred twenty-two (322) units. The owners of each unit shall be jointly and severally liable for an undivided one-three hundred twenty-second (1/322nd) share of annual and special assessments. The owner of each unit 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, collection costs, 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 720.3085, Florida Statutes, 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 to the extent provided in Chapter 720, Florida Statutes, 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 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

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 6 -

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, collection costs, court costs and attorney fees, and then to delinquent charges or assessments. No payment by check is deemed received until the check has cleared.

**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 year's assessments shall be exercised by sending to the delinquent owner a notice of the acceleration, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid.

**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 as provided in Chapter 720, Florida Statutes.

#### **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.

**4.2 Interior Roadway Easements.** The interior roadway system (entire roadway right-of-ways including sidewalks) of Walden Oaks of Naples is common property owned by the Association or owned by a Neighborhood Association with maintenance responsibilities either by the Neighborhood Association or dedicated to the Association. The roadway system is subject to the rules and regulations as the Association

### **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

- 7 -



imposes, however, each owner of a parcel shall have an easement for ingress and egress over said roadway 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 driveways and the roadway system.

**4.3 Utility Easements.** A perpetual easement shall exist upon, over, under and across Walden Oaks of Naples 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.** Throughout Walden Oaks of Naples, drainage and buffer easements have been dedicated to the Association for drainage, access and landscape buffering with the responsibility for maintenance. The Association may move or remove landscaping to facilitate access and to perform its maintenance responsibilities.

**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

(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

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 8 -

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 Walden Oaks of Naples property by such means as the Board of Directors deems 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:**

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

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

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

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

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

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

- 9 -

## 5. MAINTENANCE.

**5.1 Maintenance and Alteration of Parcels and Residences.** Except when a particular Neighborhood Association has assumed maintenance responsibility on portions of parcels or residences, each owner of a parcel shall, at his sole cost and expense, maintain and repair all parts of the residence and structuring located on his parcel (including but not limited to all fixtures, equipment, appliances, patios and pools) and damage caused by wildlife, including birds, keeping the same in a condition comparable to their condition at the time of their initial construction, except for ordinary wear and tear. 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, swimming pools, decks, awnings, hurricane protection and related equipment. The Association shall have the right to control the irrigation system on all home sites including the right to repair and maintain the irrigation system.

**5.2 Association Maintenance.** The Association shall be responsible for the maintenance, repair, replacement and operation of all common areas, including, but not limited to, water retention and water management areas (excluding only those areas maintained by Neighborhood Associations) landscaping, trees, plantings, lawns, flowers, water management facilities, irrigation systems and footpaths, roadways, common driveways, parking areas, lighting, community swimming pool, swimming pool area, clubhouse, utility installations located on parcels but serving more than one parcel and fences. 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.

## 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

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 10 -

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, well, swimming pool, tennis court, driveway, enclosure, sewer, drain, disposal system, decorative building, landscape devise, object or other improvement, the construction or placement of which is proposed upon the Property. 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

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 11 -

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, by check, 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 with approval of the Board..

7. **USE RESTRICTIONS.** The following rules and standards shall apply to Walden Oaks of Naples 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, adult 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 fifteen (15) days and then only with the proviso that the family and its guests consist of no more than two (2) persons per bedroom. That person's spouse and children if any may accompany him. The total 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 thirty (30) 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.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

(C) An owner desiring guest occupancy under (A) or (B) above shall give notice to the Association and/or Neighborhood Association as provided in the rules and regulations.

**7.3 Exceptions.** Upon prior written application by the unit owner, the Board of Directors may make such limited exceptions to the foregoing 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 twenty-five (25) pounds at maturity, (b) cats, (c) caged birds, (d) tropical fish kept in a tank with a capacity of no more than twenty (20) gallons (considered one (1) pet). All 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 Walden Oaks of Naples. 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 Walden Oaks of Naples.

**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.

**7.8 Signs.** No person may post or display "For Sale," "Open House" or other similar signs anywhere within Walden Oaks of Naples, 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 Walden Oaks of Naples.

**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.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 13 -

**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 or commercial vehicles stored on site in garages at all times. Any boats, watercraft, recreational vehicles or commercial vehicles that are of such size as will not permit the garage door to be closed with the boat, watercraft, recreational vehicles or commercial vehicles inside the garage or within the confines of a covered parking facility may not be kept on the property. 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. Designated parking spaces within the Common Properties are intended only for the temporary parking of vehicles belonging to owners or their guests and are not able to be used for long term parking unless authorized by the Board of Directors. Parking on any streets within Walden Oaks is strictly prohibited and illegally parked vehicles will be towed.

**7.12 Garages.** Each unit shall include a carport or garage which can accommodate at least one (1) full size automobile. No garage shall be converted to any other use. Repair of vehicles shall be prohibited within Walden Oaks of Naples, except that minor maintenance may be performed in carports or 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. Residents must park as many vehicles in their garage as the number of vehicles the garage was designed for before parking any resident vehicles in the driveway.

**7.13 Boats and Docks.** No docks may be built nor may any boats be kept in the water or stored on the shore of Lake one (1) (surrounding pool), Lake two (2) (surrounded by Huntington) nor Lake forty-five (45) (surrounded by Lexington and Walden Shores). Docks may be built on Lake three (3) (surrounded by Wellington and Barrington) by site owners or by condominium association if approved in advanced of construction by the ARC. Boats may be powered only by paddles, oars or small electric motors which create no wake. No boat may be stored on the shore; boats must be securely fastened to a dock. No storage facilities of any kind shall be allowed on or affixed to a dock. The Board of Directors is empowered to remove any dock.

**7.14 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.

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

**7.16 Storage Tanks.** No underground or 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 unit outside of the building.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 14 -

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

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

**7.19 Garbage and Refuse Disposal.** No unit shall be used as a dumping ground for rubbish, trash, garbage, or other waster 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 screened from view from neighboring residences and the interior roadways except when out for pick-up. 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.

**7.20 Parking.** Parking along roadways and streets or any other common area of the properties other than designated parking areas 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 December 1st 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 Walden Oaks of Naples and at the least conspicuous location visible from neighboring residences within Walden Oaks of Naples.

**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. All lawns shall be mowed at reasonable intervals.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 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 and Use.** All windows, porches, balconies, lanais and exteriors of all building on any unit shall at all times be maintained in a neat and orderly manner. Lanais or balconies may not be used as a storage area or converted for any other use.

**7.29 Basketball Hoops.** No permanent basketball hoops are permitted within Walden Oaks. Portable basketball hoops must be stored in garages when not in use. Basketball hoops may not be used between 9:00 p.m. and 9:00 a.m.

**7.30 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 owners expense.

**7.31 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.

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

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

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

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

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 16 -

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

**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 8.3 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

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 17 -

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.

**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.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 18 -

## 9. OWNERSHIP OF PARCELS.

### 9.1 Forms of ownership:

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

(B) Co-ownership. Co-ownership of parcels is permitted. If the co-owners are other than husband and wife, 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

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 19 -

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.

(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 9.3 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 two (2) 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.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 20 -

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

- (1) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
- (2) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (3) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the property;
- (4) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
- (5) The person seeking approval has evidenced an attitude of disregard for Association rules by his conduct in Walden Oaks of Naples 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

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 21 -

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. Pets are not permitted in leased units.

#### 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 twenty (20) 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 twenty (20) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

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

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

#### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

- 22 -

- (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 two (2) members.

**10.2 Term of Lease and Frequency of Leasing.** No parcel and residence may be leased more often than three (3) 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 as long as a new application and the required processing fee is submitted. 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 may not bring pets to leased units.

**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 COVENANTS, CONDITIONS AND RESTRICTIONS**



**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 March 1, 2018. On March 1, 2018, 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 the affirmative vote of at least two-thirds (2/3rds) of the voting interests 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 COVENANTS, CONDITIONS AND RESTRICTIONS**

- 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 COVENANTS, CONDITIONS AND RESTRICTIONS

- 25 -

**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 TO DECLARATION**

Exhibits listed below were recorded on March 1, 1988, together with the original Declaration of Covenants, Conditions and Restrictions for Walden Oaks of Naples, at O.R. Book 1331, Page 831 *et seq.*, Public Records of Collier County, Florida.

● The following exhibits, as previously recorded with the original Declaration are hereby incorporated by reference as exhibits to the Amended and Restated Declaration of Covenants.

Exhibits "A" - LEGAL DESCRIPTION

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

Exhibit "B" - ARTICLES OF INCORPORATION

Exhibit "C" - BYLAWS

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

- 26 -