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OR Bk 5584 Pg 4846  
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This instrument prepared by and  
~~for recording purposes~~

Michael J. Sheahan, Esquire  
Godbold, Downing, Sheahan & Banaglia, P.A.  
222 West Comstock Avenue, Suite 101  
Winter Park, Florida 32789

SPACE ABOVE THIS LINE FOR RECORDING DATA

### DECLARATION OF COVENANTS AND RESTRICTIONS WINTERMERE POINTE

This Declaration of Covenants and Restrictions is made this 17 day of August 1998, by HUBERT R. EARLEY, hereinafter referred to as "Developer," whose address is 337 North Ferncreek Avenue, Suite 890, Orlando, Florida 32803.

#### WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in Orange County, Florida, which is more particularly described in Exhibit "A" attached hereto, and which real property shall hereinafter be referred to as the "Subject Property"; and

WHEREAS, Developer desires to create on the Subject Property a residential community of single family residences with roads, drainage and utility easements, landscape and wall areas, drainage areas, and other open or common areas, all to be known as Wintermere Pointe (the "Development"); and

WHEREAS, Developer may develop the Development in phases; and

WHEREAS, Developer may from time to time in its sole discretion subject additional lands to this Declaration, whereupon such added property, hereinafter referred to as "Additions to Subject Property," shall be subject to this Declaration and the jurisdiction of the Association; and

WHEREAS, Developer desires to provide for the preservation of the value and amenities in said community and for the maintenance of certain common areas, and to this end, desires to subject the Subject Property to the covenants, restrictions, easements, charges and liens hereinafter set forth and those which may arise in the future, each and all of which is and are for the benefit of the Subject Property and each Owner thereof; and

WHEREAS, Developer shall create an Association to which will be delegated and assigned the powers of maintaining and administering the Common Properties (as defined hereinafter), administering and enforcing the covenants and restrictions hereof, and collecting and disbursing the assessments and charges referred to herein; and

WHEREAS, Developer has or will incorporate the Association referred to in Article I as a nonprofit corporation under the laws of the State of Florida for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Developer hereby declares that the Subject Property is and shall be held, transferred, sold, conveyed and occupied subject to the following covenants, restrictions, easements, charges and liens (at times hereinafter referred to as "covenants and restrictions"), which are for the purpose of protecting the value and desirability of, and which shall run with, the Subject Property and be binding on all parties having any right, title or interest in the Subject Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

#### ARTICLE I DEFINITIONS

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The following words when used in this Declaration or any Supplemental Declaration (as defined hereafter), unless the context shall otherwise prohibit, shall have the following meanings:

a. "Additions to Subject Property" shall mean and refer to any real property which may become subject to this Declaration under the provisions of Article II hereof. Such Additions to Subject Property, which may be added from time to time, may be of any size and contain any number of Lots and in any sequence as determined solely by Developer, along with any Common Property deemed appropriate by Developer.

b. "Architectural Review Committee" or "ARC" shall refer to the committee established by the Board of Directors and described in Article VI hereof.

c. "Association" shall mean and refer to the Wintermere Pointe Homeowners Association, Inc., a nonprofit Florida corporation. The Articles of Incorporation of the Association are attached hereto as Exhibit "B" and the Bylaws of the Association are attached hereto as Exhibit "C," both as may be amended from time to time in accordance with the provisions thereof.

d. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

e. "Common Properties" or "Common Property" shall mean and refer to those tracts of land, together with any improvements thereon, which are actually and specifically dedicated, deeded or leased to the Association, or tracts of land or improvements which the Association undertakes to maintain. The terms "Common Properties" or "Common Property" shall also include any personal property acquired by the Association and any real property within the Subject Property, together with any improvements thereon, upon which the Association has accepted an easement for maintenance.

f. "Developer" shall mean and refer to Hubert R. Earley. Wherever the term



Developer is used in this Declaration, it shall be deemed to include Developer's successors and assigns only to the extent specifically so identified by an instrument in writing executed by Developer.

g. "Development" shall mean and refer to the Winternere Pointe development constructed by the Developer upon the Subject Property.

h. "Living Unit" shall mean and refer to any portion of a building or a single family structure situated upon a Lot within the Subject Property designed and intended for use and occupancy as a residence by a single family.

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i. "Lot" shall mean and refer to any numbered plot of land shown on a recorded subdivision plat of the Subject Property, with the exception of the Common Properties heretofore defined, which is intended for use and construction thereon of a Living Unit. The term Lot shall also include the Living Unit located thereon when a house has been constructed on the Lot.

j. "Member" shall mean and refer to all those Owners who may be designated Members of the Association as provided in Article IV, Section 3.

k. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot and Living Unit which is situated within the Subject Property; but, notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any holder of a security interest in a Lot as security for the performance of an obligation, unless and until such holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

l. "Subject Property" shall initially mean and refer to those lands described on the attached Exhibit "A." The term "Subject Property" shall also include Additions to Subject Property when added from time to time under the provisions of Article II hereof.

m. "Surface Water Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to the applicable provisions of the Florida Administrative Code. The Surface Water Management System also shall mean and refer to all land, easements and other facilities and appurtenances that together constitute and comprise the master surface water management and drainage system of the Development as reflected on the plans therefor on file with and approved by the St. Johns River Water Management District.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

**SECTION 1. Subject Property** The Subject Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Orange County Florida, and is more particularly described in Exhibit "A" attached hereto.

**SECTION 2. Additions to Subject Property** The Developer, from time to time, may in its sole discretion cause additional lands to become subject to this Declaration, which additional lands have been hereinabove defined as Additions to Subject Property. Until such time as such additions are made to the Subject Property in the manner hereinafter set forth, real property other than the Subject Property shall in no way be affected or encumbered by this Declaration. The Developer's right to cause additional lands to become subject to this Declaration shall not require the prior approval of any other party.

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**SECTION 3. Supplemental Declaration of Covenants and Restrictions** The Additions to Subject Property authorized under this Article shall be made by the Developer's filing of record a Supplemental Declaration of Covenants and Restrictions, hereinafter referred to as "Supplemental Declaration," with respect to the Additions to Subject Property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Upon the filing of record of such Supplemental Declaration, the lands described therein shall be added to and become a part of the Subject Property under this Declaration. Such additions may be made whenever the Developer in its sole discretion deems appropriate. Such Supplemental Declaration shall be made by the Developer and shall not require consent of any Owner, Member, mortgagee of a Living Unit, or the Association. Such Supplemental Declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additions to Subject Property, and to identify any Common Property included in the Additions to Subject Property. The Owner of each Living Unit in any Additions to Subject Property shall become a Member of the Association when the Supplemental Declaration of Covenants and Restrictions is recorded in the Public Records of Orange County, Florida submitting the Additions to Subject Property in which the Living Unit is located to the terms of this Declaration, and at that time the Owner may exercise all rights of a Member of the Association, including the right to vote, and shall become subject to the terms and conditions of this Declaration as provided in the Supplemental Declaration, including such obligations as the payment of assessments as provided therein.

## ARTICLE III COMMON PROPERTY

**SECTION 1. Common Property** The Common Property will be identified by designation as Common Property on plats of the Subject Property from time to time or by other written designation by Developer, or by the Association after the Developer no longer is entitled to elect a majority of the members of the Board of Directors. The Association shall operate and maintain all



Common Property. The Developer shall convey certain portions of the Common Property to the Association by special warranty deed, and the Association shall accept such conveyance, subject to taxes, restrictions, limitations, conditions, reservations, and easements of record. The Association is obligated to accept the Common Property and any improvements or facilities constructed thereon in their "as is" condition, without recourse. Every Member shall have a right and easement of enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Lot. The rights and easements of enjoyment created hereby shall be subject to the right of the Developer and the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility. The Common Property shall include specifically the following areas designated on the recorded subdivision plat of the initial Subject Property:

- a. Tract A Private Roadways;
- b. Tracts D and H Upland Buffer Areas;
- c. Tract E Detention Pond;
- d. Tracts F and G Conservation Areas;
- e. Wall, Landscape, Drainage and Utility Easement in Lots 1 through 30 and in Tract B, all as shown on the subject Plat;
- f. Sidewalk and Utility Easement between Lots 28 and 29 as shown on the subject Plat; and
- g. Wall, Landscape and Signage Easement Areas in Lots 4 and 5 as shown on the subject Plat.

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## **SECTION 2. Private Roads and Surface Water Management System.**

The Common Property to be operated and maintained by the Association will include all private roads within the Subject Property and the Surface Water Management System. The Association shall at all times comply with any and all requirements applicable to the private roads within the Subject Property and the Surface Water Management System imposed by the City of Winter Garden, Orange County, the St. Johns River Water Management District, or any other applicable governmental authorities. Such requirements of governmental authorities include specifically the City of Winter Garden Resolution 97-11 providing general policies for gated residential developments with private streets. Commencing three (3) years after the issuance of a certificate of completion for the first Living Unit in the Subject Property, the Association shall consult annually with a registered civil engineer for the purpose of determining the level of maintenance and any needed repairs for the private roads in the Subject Property and the Surface Water Management System. Subject to such consultation with an engineer, the

Association shall cause all remedial work to be conducted for the private roads and the Surface Water Management System within sixty (60) days after the date on which the engineer determines the needed repairs; such remedial work shall include resurfacing of the private roads every fifteen (15) years unless the registered civil engineer inspecting the improvements determines through the annual inspection that repaving is not necessary. The Association shall establish and collect reserve funds for maintenance, repair and any replacement of the private roads and Surface Water Management System in accordance with the foregoing provisions. Such reserve funds shall be established and collected through the assessments to be levied and collected in accordance with the provisions of this Declaration and shall be held in an account separate from other Association funds. The Association shall hold the City of Winter Garden harmless from any loss, cost or damage (including attorney's fees or any fees for professional services) for any alterations of the private roads due to utility maintenance. No Owner will receive any discount or reduction of ad valorem real property taxes because the City of Winter Garden or other governmental authority does not maintain the private roads or Surface Water Management System.

For as long as there is a gated entry into the Subject Property, the Association shall maintain such gate as a siren operated gate meeting any and all requirements of the applicable governmental authorities for fire and police emergency services. Further, any such gate at the entry into the Subject Property shall remain open during daylight hours.

### SECTION 3. Easements over Common Property.

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a. Perpetual, non-exclusive easements are hereby reserved over and upon any private roads in the Subject Property for ingress, egress and access to, from, through and between all of the Subject Property and publicly dedicated streets, and from Lots or other portions of the Subject Property to other Lots or other portions of the Subject Property. This easement over and upon all private roads also shall be for utilities and shall be in favor of: (i) the Developer and the Association, and their officers, members, agents, employees, lessees, invitees or other designees of the Developer or the Association; (ii) all Owners, and their agents, employees, lessees, guests or other invitees; and (iii) all governmental and quasi-governmental agencies and service entities having jurisdiction over the Subject Property, while engaged in their respective functions. The easement reserved hereunder over and upon all private roads in the Subject Property shall be for all public services and utilities purposes including, but not limited to, fire, police protection, and emergency services, garbage and trash removal, water, irrigation, sewage, electric and gas service, telephone and other communication, and cable television. The utilities and governmental agencies having jurisdiction, and their employees and agents, shall have the right of access to all of the Subject Property and to all Lots in furtherance of this easement.

b. Perpetual easements for the installation and maintenance of utilities and drainage areas are hereby reserved both to Developer and the City of Winter Garden in and to all utility easement and drainage easement areas shown on the plats of the Subject Property (which easements include, without limitation, the Surface Water Management System and the right of reasonable access over Lots to and from the easement areas), and Developer and the City of Winter



Garden each shall have the right to convey such easements on an exclusive or nonexclusive basis to any person, corporation or governmental entity. Neither the easement rights reserved pursuant to this paragraph or as shown on the plats of the Subject Property shall impose any obligation on Developer to maintain such easement areas. Within easement areas, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with access to or the installation, use and maintenance of the easement areas or any utilities or drainage facilities, or which may change the direction of flow or obstruct or retard the flow of drainage water in any easement areas, or which may reduce the size of any water retention areas constructed by Developer in such easement areas. The easement areas of each Lot, whether as reserved hereunder or as created on the plats of the Subject Property, and all improvements in such easement areas shall be maintained continuously by the Owner of the Lot upon which such easement exists, except for those improvements for which a public authority or utility company is responsible. With regard to specific easements for drainage shown on the plats of the Subject Property, the Developer shall have the right, but without any obligation imposed thereby, to alter or maintain drainage facilities in such easement areas, including buffer areas, swales and slope control areas, subject to review and approval by the applicable governmental authorities.

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**ARTICLE IV**  
**STRUCTURE, POWERS AND DUTIES OF, AND**  
**MEMBERSHIP AND VOTING RIGHTS IN, THE ASSOCIATION**

**SECTION 1. Association.** The Association to be created by Developer hereunder shall be a nonprofit corporation charged with the duties and vested with the powers prescribed by law and set forth in this Declaration. Neither the Articles of Incorporation nor the ByLaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be either (1) Members of the Association, or (2) officers, directors, agents, representatives or employees of the Developer. The Board of Directors and such officers as the Board may elect or appoint, shall conduct the affairs of the Association in accordance with this Declaration, the Articles of Incorporation and the ByLaws of the Association.

**SECTION 2. Association Purpose and Duties.** For the purpose of protecting and continuing the orderly and aesthetically pleasing growth and maintenance of the Development, the Association shall:

- a. Provide for the landscaping, maintenance and irrigation of the Common Property.
- b. Provide and pay for the maintenance of the Surface Water Management System, to the extent not dedicated to and accepted for maintenance by governmental authorities. The Association shall be responsible for the maintenance, operation and repair of the Surface Water Management System. Maintenance of the Surface Water Management System shall mean the

exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the Surface Water Management System shall be as permitted or, if modified, as approved by the St. Johns River Water Management District.

c. Adopt standards of maintenance and operation which are, at the very least, as stringent as those adopted and/or followed by other first class developments similar to the Development.

d. Take any and all actions necessary to enforce all covenants, conditions and restrictions set forth in this Declaration and to perform any of the functions or services delegated to the Association in this Declaration or in the Articles of Incorporation or ByLaws of the Association. In addition to its other powers and rights, the Association shall have the power and right to grant, convey, encumber, release and mortgage any of the Common Property as it may deem appropriate in order to carry on its duties, responsibilities and obligations arising hereunder.

e. Conduct the business of the Association, including, but not limited to, administrative services such as legal, accounting, and financial, and communications services informing the Members of activities, notices of meetings, and other important events.

f. Purchase general liability and hazard insurance covering improvements and activities on the Common Property at a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, directors and officers liability and such other insurance as the Board of Directors deems necessary. Hazard insurance proceeds for losses to any Common Property may not be used other than for the repair, replacement or reconstruction of such property unless the Board of Directors decides otherwise.

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g. Establish and operate the Architectural Review Committee as hereinafter defined in Article VI hereof.

h. In addition to the maintenance herein provided, provide landscape maintenance to any Lot or exterior maintenance upon any improvements or structures erected upon any Lot which, in the Association's opinion, requires such maintenance because said landscaping, improvements or structures are being maintained in a sub-standard manner. The Association shall notify the Owner of said Lot in writing, specifying the nature of the condition to be corrected, and if the Owner has not corrected or does not begin and diligently pursue to correct same within fifteen (15) days after the date of said notice, the Association (after approval of a majority affirmative vote of the Board of Directors) may correct such condition. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any structure or improvement at reasonable hours on any day. The cost of such maintenance shall be assessed against the Lot upon which such maintenance is performed, but shall not be considered part of the annual maintenance assessment or charge. Any such special assessment



or charge shall be a personal obligation of the Owner and a lien upon said Owner's Lot and shall become immediately due and payable in all respects, together with interest calculated at the highest rate allowable by Florida law, attorneys fees, court costs and other fees or costs of collection as provided for other assessments of the Association.

**SECTION 3. Membership.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a Member. The Association membership of each Owner shall be appurtenant to the Lot giving rise to such membership and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

**SECTION 4. Voting Rights.** The Association shall have two classes of voting membership.

**Class A.** Class A members shall be every person or entity who is a record owner of a fee simple interest or undivided fee simple interest in any Lot, with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

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**Class B.** The Class B Member shall be the Developer and the Class B Member shall have three (3) votes for each Lot owned by said Member. For purposes of determining voting rights hereunder, the number of Lots owned by the Developer shall be deemed to include the total number of Lots Developer plans to develop within the entire Development, whether or not yet included in a final plat subdividing the Subject Property into single family residential lots. It is presently planned and anticipated by Developer that the total number of Lots to be included within the Development will be approximately 186 Lots.

The Class B membership shall cease and become converted to Class A membership upon the earlier to occur of the following events:

- a. When the Developer has sold, transferred or conveyed seventy-five percent (75%) of the total number of Lots Developer plans to develop within the Development; or
- b. On December 31, 2005.

**ARTICLE V**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.**

a. Each Owner of any Lot in the Property, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees to pay (1) an initial capital assessment; (2) annual assessments; (3) resale assessments; and (4) special assessments for capital improvements; such assessments to be fixed, established and collected from time to time as hereinafter provided at a uniform rate applicable to each Lot within the Subject Property. The initial, annual, resale and special assessments may be imposed in Developer's reasoned discretion or by the Association. The charges imposed together with such interest thereon and costs of collection thereof, including court costs and reasonable attorneys' fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All Lots shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to Lots, including, but not limited to, the continuing-lien herein described. Each such assessment, together with such interest, costs and attorneys' fees as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment falls due.

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b. Notwithstanding the provisions of subparagraph a. above, the Developer shall not be subject to any of the aforesaid assessments as to Lots which are owned by Developer. Lots owned by the Developer shall be exempt from the assessments until such time that any of said Lots has been improved by Developer with a completed Living Unit as determined by the issuance of a certificate of occupancy and has been conveyed to a third party homeowner. The Developer shall fund any deficit for payment of the general operating expenses of the Association for as long as the Developer is exempt from the assessments as provided herein. The Developer shall have the right to waive the exemption from assessments set forth herein, at which time the Lots owned by the Developer shall be subject to the assessments in the same manner as the Owners of all other Lots in the Subject Property.

c. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

1. Those properties owned by the Developer as set forth in subparagraph b. hereof; and

2. Lots purchased by general contractors for the purpose of constructing Living Units thereon and thereafter offering same for sale to the general public shall be exempt from the assessments, charges and liens until the earlier to occur of one (1) year from the date the Lot is conveyed to the general contractor or the date of the issuance of a certificate of occupancy for the Living Unit constructed upon the Lot.



Except as specifically set forth in subparagraph l. above and this subparagraph c., no land or improvements devoted to dwelling use shall be exempt from assessments, charges or liens.

**SECTION 2. Purpose of Assessments.** Any assessments levied shall be used exclusively for the purposes of the improvement and maintenance of the Common Properties and promoting the recreation, health, safety and welfare of the Owners within the Subject Property, including, but not limited to:

a. Lighting, improvements and beautification of the roads and easement areas in the Subject Property, and the acquisition, maintenance, repair and replacement of directional markers and signs and traffic control devices, and costs of controlling and regulating traffic on the roads; and

b. Installation, maintenance, improvement and operation of drainage and utility facilities and easements; and

c. Installation, management, maintenance, improvement and beautification of landscaping and irrigation on Common Properties; and

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d. Installation, maintenance, repair and improvement of any subdivision boundary wall situated within the Subject Property; and

e. Maintenance, repair and replacement when necessary of any entry gate, support structures and appurtenant facilities and equipment situated within the Subject Property; and

f. Repair and maintenance of all roads within the Subject Property, which shall include repaving and any other remedial work from time to time as may be appropriate to maintain the roads in good condition and repair; reserve funds shall be collected by the Association for maintenance, repair and any replacement of the roads within the Subject Property as provided in Article III, Section 2 hereof; and

g. Maintenance and repair of the Surface Water Management System, including but not limited to work within retention areas, swales, berms, drainage structures and drainage easements; and

h. Payment of operating expenses of the Association, including, without limitation, real estate taxes and insurance; and

i. Doing any other thing necessary or desirable in the judgment of Developer or the Association to benefit or improve the Development, to keep the Development neat and attractive, to preserve or enhance the value of the properties therein, to eliminate fire, health or safety hazards, or any other thing which, in the judgment of Developer or the Association, may be of general benefit to the Owners or occupants of lands included in the Development.

**SECTION 3. Amount of Assessments.** The first purchaser of each Lot within the Subject Property upon which a Living Unit has been constructed, at the time of closing of the acquisition of such Lot with a Living Unit by such first purchaser, shall pay to the Developer an initial capital assessment in such amount as may be determined by the Developer; the funds derived from the initial capital assessments shall be used at the discretion of the Developer for any purpose, including but not limited to, future and existing capital improvements, operating expenses, support costs and start-up costs. Upon the closing of the first sale of each Lot, and on the first day of each fiscal year thereafter, an annual assessment shall be assessed against each Lot and paid to the Association. The annual assessment shall be in addition to the initial capital assessment and shall be prorated in the year in which the first sale of the Lot occurs to the actual date of closing. After the closing of the first sale of each Lot and collection of the initial capital assessment as provided above, a resale assessment shall be assessed against each Lot and shall be paid to the Association by each Owner at the time said Owner closes on its purchase of a Lot; the resale assessment shall be a recurring fee to be paid to the Association at the time of each transfer of title to a Lot. The amounts of the annual and resale assessments shall be determined from time to time by the Developer, and subsequently by the Association after the Developer no longer is entitled to select a majority of the members of the Board of Directors.

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**SECTION 4. Special Assessments for Capital Improvements.** In addition to the foregoing initial, annual and resale assessments, the Developer or the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, installation, repair or replacement of any capital improvement upon the Common Properties, provided that any such assessment shall have the assent of fifty-one percent (51%) of the total number of votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

**SECTION 5. Effect of Nonpayment of Assessments.** The Association has a lien on each Lot for any unpaid or past due assessments and charges. If any assessments are not paid on the date when due, then said assessments shall become delinquent and shall, together with such interest thereon and charges and costs of collection thereof as hereinafter provided, be and remain a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The lien shall be perfected by recording a Claim of Lien in the public records of the County in which the Subject Property is located; such lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The personal obligation of the then Owner to pay assessments shall remain his personal obligation for the statutory period.

If any assessment is not paid within thirty (30) days after the due date, an administrative charge may be levied by the Developer or the Association and the assessment shall bear interest from the date when due at the rate of 18% per annum. Developer or the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot.



and there shall be added to the amount of such assessment, all charges and interest as provided above, and all costs of the action, including legal fees whether or not judicial proceedings are involved, and including legal fees and costs incurred on any appeal of a lower court decision.

**SECTION 6. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage recorded prior to the filing of the claim of lien in the public records. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, of any first mortgage recorded prior to the filing of the claim of lien in the public records shall extinguish the lien for such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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## **ARTICLE VI**

### **RESTRICTIVE COVENANTS**

**SECTION 1. Residential Use; No Subdivision.** All of the Lots in the Subject Property shall be known and described as residential property and no more than one (1) single-family dwelling may be constructed on any Lot. Each Living Unit shall be occupied by only one (1) family at any time, as a residence and for no other purpose. No Lot may be divided or subdivided without the express written consent of the Developer, or subsequently by the Association after the Developer no longer is entitled to elect a majority of the members of the Board of Directors.

**SECTION 2. Structures and Pools.** No Living Unit or other structure shall be erected nearer to the boundary lines of the Lot than as permitted by the applicable governmental authorities. A swimming pool may not be located in the front yard of any Lot and no above-ground pool shall be permitted. The framing of any pool screen enclosures shall be white, bronze, or such other color as may be approved by Developer or the ARC.

**SECTION 3. Dwellings, Roofs and Garages.** Roof shingles shall be of at least the fungus resistant architectural grade quality. All block walls must be stuccoed, bricked or covered with a suitable material other than paint. No exterior colors on any Living Unit or other structure shall be permitted that, in the judgment of the Developer or the ARC, would be inharmonious, discordant or incongruous within the Subject Property. The initial exterior color and design of all Living Units and other structures shall be as approved by the Developer or the ARC, and any later changes must be approved by the ARC. All Living Units shall have at least a two (2) car garage which must be maintained and operated as such at all times. All Living Units shall be constructed with concrete driveways or of such other material as may be approved by Developer or the ARC.

**SECTION 4. Use of Accessory Structures.** Other than the Living Unit and its garage, no tent, shack, barn, utility shed or building shall, at any time, be erected and used on any Lot temporarily or permanently, whether as a residence or for any other purpose; provided, however, temporary buildings, mobile homes, or field construction offices may be used by Developer or other

general contractors constructing Living Units in the Development and its agents in connection with construction work. No recreation vehicle may be used as a residence or for any other purpose on any of the Lots in the Subject Property. A pool-house, cabana, gazebo or similar structure may be included with the original Living Unit, subject to approval thereof by the Developer or the ARC in conjunction with review and approval of the Living Unit. Subsequent to construction of the original Living Unit, any such pool-house, cabana, gazebo or other structure on a Lot shall be subject to approval of the ARC in accordance with the provisions of this Declaration.

**SECTION 5. Commercial Uses and Nuisances.** No Owner may conduct or carry on trade, business, profession or other types of commercial activity upon any Lot. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Living Unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. This Section 5 is, however, intended to prohibit commercial or business activity by any Owner or any persons which would unreasonably disrupt the residential ambiance of the Subject Property, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Subject Property by persons making deliveries or pick-ups, by employees or other business associates, or by customers or clients. Notwithstanding the foregoing provisions, every person, firm or corporation purchasing a Lot in the Development recognizes that Developer, its agents or designated assigns, have the right to (i) use Lots or houses erected thereon for sales offices, field construction offices, storage facilities, general business offices, and (ii) maintain fluorescent lighted or spot lighted homes in the Development open to the public for inspection seven (7) days per week for such hours as are deemed necessary. It is the express intention of this paragraph that the rights granted Developer to maintain sales offices, general business offices and homes shall not be restricted or limited to Developer's sales activity relating to the Development, but shall benefit Developer in the construction, development and sale of such other property and lots which Developer may own.

**SECTION 6. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that cats, dogs, and other household pets may be kept provided they are not kept, bred, or maintained for any commercial purposes or in any manner or quantity which presents a nuisance to other Owners; provided further that no person owning or in custody of a dog shall allow the dog to stray or go upon other Lots without the consent of the Owner of such Lot. Each dog must be on a leash when the dog is outside of the Owner's Lot.

**SECTION 7. Fences, Walls and Hedges.** Construction and maintenance of fences, walls and hedges which exceed six (6) feet in height is prohibited. Notwithstanding the foregoing, no fence, wall or hedge erected adjacent to or in close proximity of any perimeter subdivision wall constructed by Developer shall exceed the height of the subdivision wall. Further, the following restrictions shall be applicable to any fences, walls and hedges on Lots abutting ponds or conservation areas: the maximum height of any fence, wall or hedge shall be restricted to four feet (4'); such fences shall not obstruct the views of the pond or conservation areas from other Lots along such pond or conservation area; the composition, material or design of any such fence or wall shall



result in the surface area of the fence or wall being not more than fifty percent (50%) opaque. No chain link fences shall be permitted. Fences (other than subdivision walls constructed by Developer) shall only be made of iron, real clay, brick or of wood materials and must be kept in good condition and repair. The following specifications shall be applicable to any wood fencing that may be constructed. Pressure treated wood shall be utilized for all sections of the fencing; post structures must be situated below grade elevation of the Lot and said posts shall be located facing inside the fences so that said posts are not visible from any street or from any adjacent Lot or property and may only be visible from the area which is enclosed by the fence. Materials utilized must be of a quality suitable for paint or stain and varnish finishing and all wood fencing shall be stained or painted on all sides within no later than thirty (30) days after installation of such wood fencing. The color of the paint or stain and varnish finishing of any wood fencing on a Lot shall match the color of the exterior of the Living Unit on such Lot, unless otherwise expressly approved by Developer or the ARC. The location and placement of all fences shall be subject to approval by Developer or the ARC. Except for subdivision walls constructed by the Developer, no fence, wall or hedge may be constructed or maintained between a front street line and the front dwelling line. Fences, walls and hedges between a side street line and the side dwelling line shall be governed and controlled by applicable local ordinances and laws. Notwithstanding the foregoing, a decorative wall or entrance forward of the front dwelling line or forward of a side dwelling line fronting a side street line shall be permitted if constructed at the same time as the original dwelling on the Lot as part of the dwelling's elevation or design.

**SECTION 8. Vehicles.** No motor vehicle shall be parked in the Subject Property except on a paved or concrete driveway or in a garage. Parking on lawns or landscaped areas is prohibited. Parking of any motor vehicle of any kind on streets overnight is prohibited. No motor vehicles which are primarily used for commercial purposes, other than those present on business, nor any trailers, may be parked in the subdivision unless inside a garage and concealed from public view. Boats, boat trailers, campers, motorhomes or recreational vehicles, buses, trucks, motorcycles, or disabled, inoperative or unlicensed motor vehicles of any type shall be parked inside of garages or otherwise fully concealed from public view; this restriction shall not apply to a pick-up truck for personal use of an Owner to a maximum of 3/4 ton capacity.

**SECTION 9. Outdoor Equipment.** All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool and spa equipment and housing, sprinkler pumps and other such outdoor equipment must be underground, or placed in areas not readily visible from adjacent Lots or streets, or adequate landscaping must be used as screening around any such facilities and maintained by the Owner.

**SECTION 10. Clothes Hanging and Drying; Solar Panels and Skylights.** No outdoor clothes hanging or drying activities shall be allowed in the Subject Property. Solar collectors, skylights, roof vents and other installations on the roofs of Living Units shall be permitted only at locations approved in writing by the Developer or the ARC, and may be required to be screened from view by landscaping or other suitable visible barrier.

**SECTION 11. Antennas; Mail Boxes and Basketball Goals.** No exterior radio, TV, CB, or other electronic antennas, aerials or other devices shall be allowed, except if federal, state or local law expressly requires that any such device be allowed, in which event the placement of any such device shall be subject to the reasonable control and approval of the ARC. No satellite dishes shall be permitted on any Lot unless the placement of any such satellite dish is authorized by the Developer or the ARC. Developer or ARC approval of any such satellite dish shall be based upon a determination that the satellite dish is small in size, placed within a fenced-in backyard, and placed at a low elevation so as not to be visible from adjacent or nearby streets. If a mail box is situated on a Lot, it shall be maintained in a neat and attractive manner. **No basketball goals, poles or structures shall be permitted on a Lot unless in accordance with the following criteria.** No goal, backboard, pole or other basketball structure shall be affixed to the Living Unit or other structure on the Lot; any such basketball structure shall be situated perpendicular to the adjacent street and shall be located not closer than fifteen (15) feet from the street right-of-way line; any basketball structure of any nature in the backyard must be approved by the Developer or the ARC.

**SECTION 12. Landscaping Maintenance.** Shrubbery plantings shall be in front of each Living Unit and the initial size of new trees and shrubs planted or placed at the time of construction of such dwellings shall be in compliance with all requirements of the City of Winter Garden and the Minimum Property Standards of the Department of Housing and Urban Development in effect as of the date of recording this Declaration. The front, side and rear yards of all Lots shall be fully sodded with St. Augustine type sod upon completion of a Living Unit thereon and all such yard areas shall be fully irrigated with an automatic sprinkler system. All Owners of Lots with completed Living Units thereon shall, as a minimum, regularly mow, trim and otherwise maintain in good condition at all times all grass and landscaping on the Lot. All lawns and landscaping shall be maintained on a regular basis to preserve a neat and attractive appearance and such maintenance shall include regular chemical treatment for insect and weed control. All landscaping shall be regularly weeded and mulched and maintained to standards at least equivalent to the initial landscaping package included on the Lot at the time of completion of the Living Unit on the Lot. No lawn or landscaped area may be paved or concreted for the purpose of vehicular parking. No gravel or rock mulch shall be used as ground cover, except in minimal accent landscaping areas.

**SECTION 13. Subdivision Wall.** Developer may elect to construct a boundary wall along portions of the Subject Property. An easement for the installation and maintenance of such wall is hereby reserved by Developer and for the benefit of the Association. In the event any Owner disturbs any portion of the wall, it shall be the responsibility of the Owner to repair or replace any portion of the subdivision wall so damaged. Standard maintenance to preserve the condition of the subdivision wall against the effects of normal wear and tear, and any repair or replacement of any portions of the subdivision wall made necessary by casualty damage, except for the fault or negligence of an Owner, shall be the responsibility of the Association.

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**SECTION 14. Maintenance of Living Units.** Each Owner shall maintain the Living Unit and improvements upon his Lot in good condition. In particular, the exterior of all Living Units including, but not limited to, roofs, walls, windows, screening, fences, patio and garden areas, pools



**SECTION 11. Antennas; Mail Boxes and Basketball Goals.** No exterior radio, TV, CB, or other electronic antennas, aerials or other devices shall be allowed, except if federal, state or local law expressly requires that any such device be allowed, in which event the placement of any such device shall be subject to the reasonable control and approval of the ARC. No satellite dishes shall be permitted on any Lot unless the placement of any such satellite dish is authorized by the Developer or the ARC. Developer or ARC approval of any such satellite dish shall be based upon a determination that the satellite dish is small in size, placed within a fenced-in backyard, and placed at a low elevation so as not to be visible from adjacent or nearby streets. If a mail box is situated on a Lot, it shall be maintained in a neat and attractive manner. No basketball goals, poles or structures shall be permitted on a Lot unless in accordance with the following criteria. No goal, backboard, pole or other basketball structure shall be affixed to the Living Unit or other structure on the Lot; any such basketball structure shall be situated perpendicular to the adjacent street and shall be located not closer than fifteen (15) feet from the street right-of-way line; any basketball structure of any nature in the backyard must be approved by the Developer or the ARC.

**SECTION 12. Landscaping Maintenance.** Shrubbery plantings shall be in front of each Living Unit and the initial size of new trees and shrubs planted or placed at the time of construction of such dwellings shall be in compliance with all requirements of the City of Winter Garden and the Minimum Property Standards of the Department of Housing and Urban Development in effect as of the date of recording this Declaration. The front, side and rear yards of all Lots shall be fully sodded with St. Augustine type sod upon completion of a Living Unit thereon and all such yard areas shall be fully irrigated with an automatic sprinkler system. All Owners of Lots with completed Living Units thereon shall, as a minimum, regularly mow, trim and otherwise maintain in good condition at all times all grass and landscaping on the Lot. All lawns and landscaping shall be maintained on a regular basis to preserve a neat and attractive appearance and such maintenance shall include regular chemical treatment for insect and weed control. All landscaping shall be regularly weeded and mulched and maintained to standards at least equivalent to the initial landscaping package included on the Lot at the time of completion of the Living Unit on the Lot. No lawn or landscaped area may be paved or concreted for the purpose of vehicular parking. No gravel or rock mulch shall be used as ground cover, except in minimal accent landscaping areas.

**SECTION 13. Subdivision Wall.** Developer may elect to construct a boundary wall along portions of the Subject Property. An easement for the installation and maintenance of such wall is hereby reserved by Developer and for the benefit of the Association. In the event any Owner disturbs any portion of the wall, it shall be the responsibility of the Owner to repair or replace any portion of the subdivision wall so damaged. Standard maintenance to preserve the condition of the subdivision wall against the effects of normal wear and tear, and any repair or replacement of any portions of the subdivision wall made necessary by casualty damage, except for the fault or negligence of an Owner, shall be the responsibility of the Association.

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Orange Co FL 1998-0404541

**SECTION 14. Maintenance of Living Units.** Each Owner shall maintain the Living Unit and improvements upon his Lot in good condition. In particular, the exterior of all Living Units including, but not limited to, roofs, walls, windows, screening, fences, patio and garden areas, pools

and pool decks, and awnings, shall be maintained by the Owner in good condition and repair and in a neat and attractive manner.

**SECTION 15. Signs.** Except as otherwise provided in this paragraph, no signs, banners, billboards or advertisements of any nature whatsoever shall be erected or displayed upon any of the Subject Property other than by Developer. Every Owner has the right to place upon his Lot one (1), but only one (1), professionally made sign which shall not be larger than two (2) feet by two (2) feet and which shall contain no wording other than "For Sale", the name and address of one (1) registered real estate broker and a phone number of Owner or his agent. Notwithstanding anything to the contrary, Developer, its successors, agents or designated assigns, shall have the exclusive right to maintain signs of any type and size and for any purpose in the Development; designated assigns of Developer for purposes hereof shall include specifically general contractors who have purchased Lots from Developer for the purpose of constructing Living Units thereon.

**SECTION 16. Leasing of Living Units.** No Living Unit may be leased or rented for a term shorter than thirty (30) consecutive days.

**SECTION 17. Cable Television.** The Developer and/or the Association may coordinate and establish an agreement with one or more cable television service companies for the provision of cable television services for the Subject Property and all Living Units included therein. If such agreement is established, the fees for the cable television service payable to the service provider shall be a common expense payable by the Association and shall be included within the annual budget for which assessments under the Declaration are levied each year. No Owner may avoid or escape liability for any portion of the assessments for election by any Owner not to utilize the cable television service.

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**SECTION 18. Architectural Control.** Prior to the commencement of the work described therein, all building plans and specifications (including plot plan, elevations, grading plan and material lists) for the construction, alteration or addition of Living Units or any structures, or for the erection of walls, hedges or fences, and all plans for the landscaping of yards, and all plans or agreements relating to the appearance, colors and materials to be used on the exterior of a structure, shall be approved in writing by Developer or the ARC. The ARC shall be composed of three (3) or more representatives which shall be appointed by the Board of Directors. The Developer or the ARC, as the case may be, shall have the absolute right to approve or disapprove said plans for any reason including aesthetic considerations. Any plans not disapproved within thirty (30) days after their receipt by Developer shall be deemed approved. The rights granted to Developer under this paragraph may be assigned by Developer to the ARC.

**SECTION 19. Developer Amendments, Modifications, Variances and Exceptions.** Notwithstanding any provisions of this Declaration to the contrary, Developer, its successors and designated assigns, reserves the right and authority for a period of ten (10) years from the date of recording of this Declaration to amend, modify, or to grant exceptions or variances from any of the provisions of this Declaration, on a case by case basis, without notice to or approval by the Members.



of the Association, provided that such amendments, modifications, exceptions or variances shall be substantially consistent with the general uniform plan of residential development set forth in Article VI of this Declaration.

## **ARTICLE VII MISCELLANEOUS**

**SECTION 1. Term and Amendment.** The terms, provisions, restrictions and easements set forth or created in this Declaration shall run with the land, regardless of whether or not they are specifically mentioned in any deeds or instruments of conveyance for any Lots in the Development subsequent to the execution hereof and shall be binding on all parties and all persons claiming an interest in the Subject Property under such deeds for a period of fifty (50) years from the date this Declaration is recorded, after which time this Declaration shall automatically extend for successive periods of ten (10) years each, unless prior to the commencement of any ten (10) year period an instrument in writing, signed by a three-quarters (3/4) majority of the Owners of Lots in the Development, has been recorded in the Public Records of Orange County, Florida, which said instrument rescinds this Declaration, except as hereafter specifically provided. Subject to the provisions of Section 19, Article V, this Declaration may not be amended without the consent of at least two-thirds (2/3) of the Owners, subject to either Veterans Administration or Federal Housing Administration approval as long as there is a Class B Member (which approval need not be evidenced of public record). No amendment of this Declaration shall be effective which requires Developer to relinquish any rights reserved to Developer under this Declaration. Notwithstanding anything contained herein to the contrary, Developer has the unrestricted right to make Additions to Subject Property by recording a Supplemental Declaration. Any amendment to this Declaration which alters any provision relating to the Surface Water Management System, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

**SECTION 2. Fines and Enforcement.** If any person, firm or corporation, or their respective heirs, personal representative, successors or assigns, shall violate or attempt to violate any provisions of this Declaration, it shall be the right of the Developer, and the Association, or any other person or persons owning any Lot in the Development to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any term or condition of this Declaration, whether such proceeding is to prevent such persons from so doing or to recover damages. If such person is found in the proceedings to be in violation of or attempting to violate any term or condition of this Declaration, he shall bear all expenses of the litigation, including court costs and reasonable attorneys' fees (including those incurred on appeal) incurred by the party enforcing the term or condition of this Declaration. The Developer and the Association (acting through its Board of Directors) each also shall have the full right and authority to impose fines upon the Owner of any Lot who causes or permits any violations of any terms or conditions of this Declaration; any and all such fines levied by the Developer or the Association shall be secured by a lien, and shall be due, payable and enforceable in accordance with the same provisions for any nonpayment of assessments as provided in of Article V of this Declaration. Developer shall not be obligated to

enforce any term or condition of this Declaration and shall not in any way or manner be held liable or responsible for any violation of any term or condition of this Declaration by any person other than itself. Failure by Developer or any other person or entity to enforce any term or condition of this Declaration upon breach thereof, however long continued, shall in no event be deemed a waiver of the right to do so thereafter with respect to such breach or as to a similar breach occurring prior or subsequent thereto. Issuance of a building permit or license, which may be in conflict with any term or condition of this Declaration, shall not prevent Developer or any Owner in the Development from enforcing any term or condition of this Declaration. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water Management System.

**SECTION 3. Irreparable Harm.** Every Owner agrees and acknowledges that a violation of any term or condition of this Declaration by such Owner or its family members, guests, invitees, licensees, tenants or servants constitutes irreparable harm to the Developer and every other Owner in the Development and that any action at law or equity to obtain an injunction against such violation shall require no further proof of irreparable harm other than the admission herein contained.

**SECTION 4. Severability.** Invalidation of any one provision contained herein by judgment or court order shall not affect any of the other provisions, which shall remain in full force and effect.

**SECTION 5. Governmental Authorities.** All codes, rules and regulations of the City of Winter Garden and all other applicable governmental authorities shall remain fully applicable to the Subject Property, and no restrictions or provisions contained in this Declaration shall be applied or construed in any manner to allow any violations of all such codes, rules and regulations of the governmental authorities.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed and has executed the same on this 17<sup>th</sup> day of August, 1998.

OR BK 5584 Pg 4866  
Orange Co FL 1998-0404541

Signed, sealed and delivered  
in the presence of:

Michelle Baurd

Print Name: Michelle Baurd

Clay Earley

Print Name: Clay Earley

Hubert R. Earley  
HUBERT R. EARLEY

Date: 8-17-98



STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August  
1998, by HUBERT R. EARLEY. He  
☒ is personally known to me, or  
☐ has produced \_\_\_\_\_ as identification.

IMPRINT NOTARY PUBLIC  
RUBBER STAMP SEAL BELOW



STEPHANIE CHIPPAS  
My Commission 00488187  
Expires Mar. 28, 1999  
Bonded by ANB  
No. 452 0878

Stephanie Chippas  
Signature of Person Taking Acknowledgement  
Notary Public

OR Bk 5584 Pg 4867  
Orange Co FL 1998-0404541

OR EX 5584 Pg 4868  
Orange Co FL 1998-0404541EXHIBIT A

Recorded - Martha O. Haynie

Legal Description of the Property

The Northeast 1/4 of the Southwest 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 2, Township 23 South, Range 27 East, Orange County, Florida, lying West of a 60 foot right-of-way, being Winter Garden - Vineland Road (State Road 535) as recorded in Official Records Book 1546, Page 267 of the Public Records of Orange County, Florida.

LESS AND EXCEPT:

That part of South 3/4 of the Southeast 1/4 of the Southwest 1/4 of Section 2, Township 23 South, Range 27 East, which lies Northwest of State Road 535.

Parcel No. 3056:

All that portion of the South 3/4 of the Southeast 1/4 of the Southwest 1/4 of Section 2, Township 23 South, Range 27 East, in the County of Orange, State of Florida, included within a strip of land varying width, said strip of land being 35 feet of even width between the points hereinafter designated as the Point of Beginning and Point "A", the Northwesterly and North line of said 35 foot wide strip of land lying 20 feet Northwesterly and North, measured at right angles, from the following described line between said Point of Beginning and said Point "A", and said strip of land being 15 feet of even width between said Point "A" and the Southwesterly terminus of the following described line, the Southwesterly line of said 15 foot wide strip of land being the following described line: Beginning at a point on the North line of said South 3/4 of the Southeast 1/4 of the Southwest 1/4 of Section 2, distance thereon South 89°39'00" West 290.27 feet from the Northeast corner of said South 3/4; thence South 44°55'48" West 167.72 feet; thence South 89°55'48" West 104.46 feet to said Point "A"; thence South 44°55'48" West 769.70 feet to the beginning of a tangent 1030 foot radius curve, concave Southeasterly; thence Southwesterly along the arc of said curve, through a central angle of 22°36'17" a distance of 406.36 feet to a point on the South line of said Section 2, distance thereon North 89°35'14" East 43.49 feet from the Southwest corner of said Southeast 1/4 of the Southwest 1/4 of Section 2, a radial line to said point bears North 67°40'30" West.

ALSO LESS AND EXCEPT:Parcel No. 4056:

All that portion of the South 3/4 of the Southeast 1/4 of the Southwest 1/4 of Section 2, Township 23 South, Range 27 East, in the County of Orange, State of Florida, included within a strip of land 40 feet of even width, said 40 foot wide strip of land lying Northwesterly and North of, and immediately adjoining the Northwesterly and North line of the 35 foot wide strip of land described in Parcel No. 3056 above, together with a strip of land 10 feet of even width, said 10 foot wide strip of land lying Northwesterly of and immediately adjoining the Northwesterly line of the 15 foot wide strip of land described in said Parcel No. 3056 above. Contains 36.279 acres of upland more or less / 6.461 acres of wetland more or less. Contains 42.740 total acres more or less.





 PREPARED BY AND RETURN TO:  
RICHARD E. LARSEN, ESQ.  
LARSEN & ASSOCIATES, P.A.  
34 E. Pine Street  
Orlando, FL 32801  
(407)841-6555

## AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS WINTERMERE POINTE

WHEREAS, the Declaration of Covenants and Restrictions Wintermere Pointe was recorded at Official Records Book 5584, Page 4848, Public Records of Orange County, Florida (hereinafter "Declaration"); and

WHEREAS, Article VI, Section 19, of said Declaration provides that the Declaration may be amended by the developer, its successors and designated assigns, for a period of ten (10) years from the date of recording of the Declaration without notice to or approval by the members of the Association; and

WHEREAS, Wallis Investment Corporation, a Florida corporation, is the successor developer of the Wintermere Pointe subdivision pursuant to that certain Amendment and Supplemental Declaration of Covenants and Restrictions Wintermere Pointe recorded at Official Records Book 6239, Page 5905, Public Records of Orange County, Florida; and

WHEREAS, Wallis Investment Corporation has the right to amend the Declaration without notice to, or approval by, the members of the Association until October 6, 2008.

NOW, THEREFORE, the following Amendments to the Declaration are hereby adopted:

1. ARTICLE VI, SECTION 7, of the Declaration is hereby amended to read as follows:

SECTION 7. Fences, Walls and Hedges. Construction and maintenance of fences, walls and hedges which exceed six (6) feet in height is prohibited. Notwithstanding the foregoing, no fence, wall or hedge erected adjacent to or in close proximity of any perimeter subdivision wall constructed by Developer shall exceed the height of the subdivision wall. ~~Further, the following restrictions shall be applicable to any fences, walls and hedges on Lots abutting ponds or conservation areas; the maximum height of any fence, wall or hedge shall be restricted to four feet (4'); such fences shall not obstruct the views of the pond or conservation areas from other Lots along such pond or conservation area; the composition, material or design of any such fence or wall shall result in the surface area of the fence or wall being not more than fifty percent (50%) opaque. No chain link fences shall be permitted. Fences (other than subdivision walls constructed by Developer) shall only be made of wrought iron, real clay, brick, PVC, Aluminum or of wood materials in board on board, shadowbox or picket types styles, and must be kept in good condition and repair. Regular maintenance shall be performed on all fences no less frequently than every two (2) years. All fences must be white in color, (except for fences near ponds or conservation areas as set forth below) with the shade of white approved by the ARC prior to installation or painting.~~

The following specification shall be applicable to any wood fencing that may be constructed.

DELETION INDICATED BY STRIKE-OUT, NEW TEXT INDICATED BY UNDERLINE



Pressure treated wood shall be utilized for all sections of the fencing; post structures must be situated below grade elevation of the Lot and said posts shall be located facing inside the fences so that said posts are not visible from any street or from any adjacent Lot or property and may only be visible from the area which is enclosed by the fence. Materials utilized must be of a quality suitable for paint or stain and varnish finishing and all wood fencing shall be stained or painted on all sides within no later than thirty (30) days after installation of such wood fencing. ~~The color of the paint or stain and varnish finishing of any wood fencing on a Lot shall match the color of the exterior of the Living Unit on such Lot, unless otherwise expressly approved by Developer or the ARC.~~ The design (including the distance between pickets, etc.), location and placement of all fences shall be subject to approval by Developer or the ARC. Except for subdivision walls constructed by the Developer, no fence, wall or hedge may be constructed or maintained between a front street line and the front dwelling line. Fences, walls and hedges between a side street line and the side dwelling line shall be governed and controlled by applicable local ordinances and laws. Notwithstanding the foregoing, a decorative wall or entrance forward of the front dwelling line or forward of a side dwelling line fronting a side street line shall be permitted if constructed at the same time as the original dwelling on the Lot as part of the dwelling's elevation or design.

In addition to the general requirements relating to all fences as set forth above, the following additional, specific, restrictions shall be applicable to any fences, walls and hedges on Lots abutting ponds or conservation areas:

1) Any such fence, wall or hedge shall not obstruct the views of the pond or conservation areas from other Lots along such pond or conservation area as determined by the ARC; and

2) all fences constructed in this area must be of aluminum type, must be black in color and must be of a style which does not obstruct the view of the pond or conservation areas; and

3) any fences, hedges or walls to be construct or planted in these areas must be approved by the ARC prior to installation or planting and the ARC shall have full authority to determine whether such installation adequately preserves the view.

2. A new ARTICLE VI, SECTION 20, is hereby added to the Declaration to read as follows:

Section 20. Tree Restrictions. No trees shall be planted by a homeowner in the area between the sidewalk and the street on any lot. This provision shall not, however, limit the authority of the Association to plant trees in any Common Property as defined in the Declaration.

3. ARTICLE VII, SECTION 2, of the Declaration is hereby amended to read as follows:

SECTION 2. Fines and Enforcement. If any person, firm or corporation or their respective heirs, personal representative, successors or assigns, shall violate or attempt to violate any provisions of this Declaration, it shall be the right of the Developer, and the Association, or any other person or persons owning any Lot in the Development to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any term or condition of this Declaration, whether such proceeding is to prevent such persons from so doing or to recover damages. If such person is found in the proceedings to be in violation of or attempting to violate any term or condition of this Declaration he shall bear all expenses of the litigation, including court costs and reasonable attorneys' fees (including those incurred on appeal) incurred by the party enforcing the term or condition of this Declaration. ~~The Developer and the Association (acting through its Board of Directors) each also shall have the full right and authority to impose fines upon the Owner of any Lot who causes or permits any violations of any terms or conditions of this Declaration; any and all such fines levied by the Developer or the Association shall be secured by a lien, and shall be due, payable and enforceable in accordance with the same provisions for any nonpayment of assessments as provided in of Article V of this Declaration.~~ Developer shall not be obligated to enforce any term or condition of this Declaration and **DELETION INDICATED BY STRIKE-OUT, NEW TEXT INDICATED BY UNDERLINE**

shall not in any way or manner be held liable or responsible for any violation of a term or condition of this Declaration by any person other than itself. Failure by Developer or any other person or entity to enforce any term or condition of this Declaration upon breach thereof, however long continued, shall in no event be deemed a waiver of the right to do so thereafter with respect to such breach or as to a similar breach occurring prior or subsequent thereto. Issuance of a building permit or license, which may be in conflict with any term or condition of this Declaration, shall not prevent Developer or any Owner in the Development from enforcing any term or condition of this Declaration. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water Management System.

In addition to all other remedies, the Association may impose a fine or fines upon an owner, occupant or guest for failure to comply with this Declaration, or any rule or regulation promulgated by the Association hereunder, provided the following procedures are adhered to:

(a) Notice: The Association shall notify the owner or other party of the infraction or infractions. Included in the notice shall be the date and time of a special hearing at which the fine or fines will be addressed. Such notice shall be provided to the offending party at least fourteen (14) days prior to such hearing.

(b) Hearing: The hearing as set forth above shall be before a committee of at least three (3) members of the Association appointed by the Board who are not officers, directors, or 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 approve of a proposed fine or suspension, it may not be imposed.

(c) Penalties: The Association may impose a fine against the offending party in an amount not to exceed \$100.00 per violation. A fine may be levied on the basis of each day of a continuing violation, with a single notice and hearing, except that no such fine shall exceed \$1000 in the aggregate.

(d) Payment of Penalties: Fines shall be paid not later than five (5) days after notice of the imposition of the fine.

(e) Collection of Fines: Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth elsewhere in this Restated Declaration.

(f) Nonexclusive Remedy: These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled.

IN WITNESS WHEREOF, this Amendment has been executed by the successor Developer on the date as set forth below.

Wallis Investment Corporation, a  
Florida Corporation

By: Philip Wallis

Philip Wallis, President

Address: c/o Joey Arroyo

Sentry Management, Inc.

179 N. Hwy. 27, Suite E

Clermont, FL 34711

Dated: APRIL 16, 2002

DELETION INDICATED BY STRIKE-OUT, NEW TEXT INDICATED BY UNDERLINE



STATE OF FLORIDA  
COUNTY OF LAKE

THE FOREGOING instrument was acknowledged before me this 12TH day of APRIL  
2002, by Philip Wallis, as the President of Wallis Investment Corporation, who is personally  
known to me or produced identification (type of identification produced) \_\_\_\_\_.

PAMELA H. FAUER

Printed Name:

Notary Public - State of Florida

My Commission Expires:

Commission No.:



STATE OF FLORIDA - COUNTY OF ORANGE  
I HEREBY CERTIFY that this is a copy of  
the document as recorded in this office.  
MARTHA O. HAYNIE, COUNTY COMPTROLLER

By: Martha O. Haynie, D.C.

DATED: 6/20/02



DELETION INDICATED BY STRIKE-OUT, NEW TEXT INDICATED BY UNDERLINE







Orange Co FL 2001-0167025  
04/19/2001 04:00:30pm  
OR BK 6239 Pg 5905  
Rec 19.50

This instrument prepared by and  
after recording return to:

Michael J. Sheahan, Esquire  
Godbold, Downing, Sheahan & Bill, P.A.  
222 West Comstock Avenue, Suite 101  
Winter Park, Florida 32789

*After recording return to:*  
*Lionel E. Russell, Esq. / KA*  
WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.  
P. O. BOX 880  
WINTER PARK, FL 32790



[SPACE ABOVE THIS LINE FOR RECORDING DATA]

**AMENDMENT AND SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
WINTERMERE POINTE**

**WHEREAS, HUBERT R. EARLEY** ("Developer"), whose address is 337 North Ferncreek Avenue, Suite 890, Orlando, Florida 32803, previously executed and caused to be recorded that certain Declaration of Covenants and Restrictions for Wintermere Pointe dated August 17, 1999, and recorded in Official Records Book 5584, Page 4848, of the Public Records of Orange County, Florida, as previously amended or supplemented (the aforesaid Declaration and all amendments and supplements thereto are referred to hereinafter as the "Declaration"); and

**WHEREAS, Hubert R. Earley** has transferred and assigned his interest as Developer to Wallis Investment Corporation, a Florida corporation, who is hereinafter referred to as the "Successor Developer"; and

**WHEREAS, pursuant to Articles VI and VII of the Declaration, the Successor Developer** has the full right and authority to amend provisions of the Declaration by the filing of record of an Amendment to the Declaration; and

**WHEREAS, pursuant to Article II of the Declaration, the Successor Developer** has the full right and authority to extend the scheme of the Declaration to additional real property other than the real property specifically described in the Declaration as the Subject Property by the filing of record of a Supplemental Declaration; and

**WHEREAS, the Successor Developer** desires to amend the Declaration and also extend the scheme and operative effect of the Declaration to the real property described on Exhibit "A" attached hereto.

**NOW, THEREFORE, Wallis Investment corporation, a Florida corporation ("Successor Developer")** does by the execution and recording of this Amendment and Supplemental Declaration of Covenants and Restrictions amend the Declaration and extend the scheme and operative effect of the Declaration to the real property described on Exhibit "A" attached hereto and said real property is hereby made subject to each and every of the provisions of the Declaration, including, but not limited to, the levy of assessments on said real property as provided in the Declaration, as if said provisions were fully set forth herein and specifically stated herein and each and every of said provisions are hereby incorporated herein by reference to the Declaration.

Declaration.  
herein and each and every of said provisions are hereby incorporated herein by reference to the  
provided in the Declaration, as if said provisions were fully set forth herein and specifically stated  
Declaration, including, but not limited to, the levy of assessments on said real property as  
and said real property is hereby made subject to each and every of the provisions of the  
Declaration to the real property described on Exhibit "A" attached hereto

FURTHER, the Successor Developer hereby amends the Declaration by adding thereto at the end of Section 2 of Article III the following new terms and provisions:


The Successor Developer has constructed a Drainage Swale upon certain Lots for the purpose of managing and containing the flow of excess surface water, if any, found upon such Lots from time to time. Each Lot owner, including builders, shall be responsible for the maintenance, operation and repair of the swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the St. Johns River Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the Drainage Swale shall be authorized and any damage to any Drainage Swale, whether caused by natural or human-induced phenomena, shall be repaired and the Drainage Swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) upon which the Drainage Swale is located. The Drainage Swales specifically are located on Lots 9 through 16, 29 through 32, 39 through 48, 73 through 75, 87 through 89 and 115 through 123; as shown on the Plat of the Subject Property identified as Wintermere Pointe Phase II; all of the foregoing provisions are applicable specifically to the aforesaid Lots.

IN WITNESS WHEREOF, Wallis Investment Corporation, a Florida corporation, has caused this instrument to be executed as of the date indicated below.

Signed, sealed and delivered  
in our presence:

  
Signature

Print Name: Doug Oswald


  
Signature

Print Name: Kenneth F. Oswald

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of November, 2000, by C. Philip Wallis, as President of WALLIS INVESTMENT CORPORATION, a Florida corporation. He ☒ is personally known to me or ☐ has produced as \_\_\_\_\_ identification.

IMPRINT NOTARY PUBLIC  
RUBBER STAMP SEAL BELOW

  
Signature of Person Taking Acknowledgment  
Notary Public

DOUG OSWALD  
Notary Public, State of Florida  
My comm. exp. Mar 30, 2004  
Comm No. CC923739

OR Bk 6239 Pg 5906  
Orange Co FL 2001-0157025





## EXHIBIT "A"

### WINTERMERE POINTE PHASE 2

#### LEGAL DESCRIPTION:

A portion of Sections 2, 3, 10 and 11, Township 23 South, Range 27 East, Orange County, Florida. Being more particularly described as follows:

Commence at the West 1/4 section corner of said Section 2; thence run South  $00^{\circ}11'01''$  East along the West line of the Southwest 1/4 of said Section 2, for a distance of 1845.94 feet to the Point of Beginning, point also lying on the North line of the South 140.00 feet of the North Half of the Southwest 1/4 of the Southwest 1/4 of said Section 2; thence departing said West line, run North  $89^{\circ}42'39''$  East along said North line, for a distance of 1325.34 feet to the East line of the Southwest 1/4 of the Southwest 1/4 of said Section 2, also being the Westerly line of Wintermere Pointe, as recorded in Plat Book 40, Pages 88 through 93 of the Public Records of Orange County, Florida; thence departing said North line, run South  $00^{\circ}10'14''$  East along said East and Westerly line, for a distance of 322.41 feet to a point on the Easterly line of Tract "C", of said Wintermere Pointe, point also lying on a non-tangent curve, concave Westerly and having a radius of 51.97 feet; thence from a tangent bearing of South  $89^{\circ}19'17''$  East, run Southerly along the arc of said curve and said Easterly line, through a central angle of  $124^{\circ}49'16''$ , for an arc distance of 113.22 feet to a point of compound curvature of a curve, concave Northwesterly and having a radius of 1475.00 feet; thence run Southwesterly along the arc of said curve and said Easterly line, through a central angle of  $2^{\circ}40'30''$ , for an arc distance of 68.86 feet to a point on the Easterly line of Tract "B", of said Wintermere Pointe; thence run Southeasterly along said Easterly line the following courses and distances: run South  $51^{\circ}49'31''$  East along a radial line, for a distance of 50.00 feet to a point on a curve, concave Northwesterly and having a radius of 1525.00 feet; thence from a tangent bearing of South  $38^{\circ}10'29''$  West, run Southwesterly along said curve, through a central angle of  $01^{\circ}31'21''$ , for an arc distance of 40.52 feet; thence run South  $50^{\circ}18'10''$  East, for a distance of 136.06 feet to a point on the Westerly right-of-way line of Winter Garden - Vineland Road ( County Road 535 ), point also lying on a non-tangent curve, concave Southeasterly and having a radius of 1055.00 feet; thence run along said Westerly right-of-way line the following courses and distances: from a tangent bearing of South  $33^{\circ}42'14''$  West, run Southwesterly along aforesaid curve, through a central angle of  $11^{\circ}51'43''$ , for an arc distance of 218.42 feet to a point on the South line of the Southwest 1/4 of aforesaid Section 2; thence run South  $89^{\circ}42'39''$  West along said South line, for a distance of 15.92 feet to the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of aforesaid Section 11; thence run South  $00^{\circ}02'00''$  East along the East line of said Northwest 1/4 of the Northwest 1/4 of Section 11, for a distance of 115.03 feet to a point on a non-tangent curve, concave Easterly and having a radius of 984.93 feet; thence departing said East line from a tangent bearing of South  $19^{\circ}32'09''$  West, run Southerly along said curve, through a central angle of  $9^{\circ}25'56''$ , for an arc distance of 162.14 feet; thence run South  $00^{\circ}02'00''$  East, for a distance of 350.13 feet to a point on the Easterly line of Tract "B", of said Wintermere Pointe.







FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham  
Secretary of State

September 29, 1998

ELISE Y LAUBACH  
GODBOLD DOWNING SHEAHAN ET AL  
P O BOX 1984  
WINTER PARK, FL 32790

The Articles of Incorporation for WINTERMERE POINTE HOMEOWNERS ASSOCIATION, INC. were filed on September 28, 1998 and assigned document number N98000005588. Please refer to this number whenever corresponding with this office regarding the above corporation. The certification you requested is enclosed.

**PLEASE NOTE: COMPLIANCE WITH THE FOLLOWING PROCEDURES IS ESSENTIAL TO MAINTAINING YOUR CORPORATE STATUS. FAILURE TO DO SO MAY RESULT IN DISSOLUTION OF YOUR CORPORATION.**

**A CORPORATION ANNUAL REPORT MUST BE FILED WITH THIS OFFICE BETWEEN JANUARY 1 AND MAY 1 OF EACH YEAR BEGINNING WITH THE CALENDAR YEAR FOLLOWING THE YEAR OF THE FILING DATE NOTED ABOVE AND EACH YEAR THEREAFTER. FAILURE TO FILE THE ANNUAL REPORT ON TIME MAY RESULT IN ADMINISTRATIVE DISSOLUTION OF YOUR CORPORATION.**

**A FEDERAL EMPLOYER IDENTIFICATION (FEI) NUMBER MUST BE SHOWN ON THE ANNUAL REPORT FORM PRIOR TO ITS FILING WITH THIS OFFICE. CONTACT THE INTERNAL REVENUE SERVICE TO RECEIVE THE FEI NUMBER IN TIME TO FILE THE ANNUAL REPORT AT 1-800-829-3676 AND REQUEST FORM SS-4.**

**SHOULD YOUR CORPORATE MAILING ADDRESS CHANGE, YOU MUST NOTIFY THIS OFFICE IN WRITING, TO INSURE IMPORTANT MAILINGS SUCH AS THE ANNUAL REPORT NOTICES REACH YOU.**

Should you have any questions regarding corporations, please contact this office at the address given below.

Freida Chesser, Corporate Specialist  
New Filings Section

Letter Number: 798A00048704

# State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of WINTERMERE POINTE HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on September 28, 1998, as shown by the records of this office.

The document number of this corporation is N98000005588.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Twenty-ninth day of September, 1998



CR2EO22 (2-95)



Sandra B. Northam  
Secretary of State



ARTICLES OF INCORPORATION  
OF  
WINTERMERE POINTE  
HOMEOWNERS ASSOCIATION, INC.

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
98 SEP 28 AM 9:18

By these Articles of Incorporation, the undersigned incorporator forms a corporation not for profit in accordance with Chapter 617, Florida Statutes, and pursuant to the following provisions ("these Articles"):

ARTICLE I  
NAME

The name of the corporation shall be WINTERMERE POINTE HOMEOWNERS ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association."

ARTICLE II  
DURATION

The Association shall exist perpetually unless and until dissolved according to law. Corporate existence of the Association shall commence upon the filing of these Articles with the Florida Department of State. If the Association is dissolved for any reason, the assets of the Association shall be dedicated to a public body or conveyed to a non-profit organization or similar entity with similar purposes. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C., and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

ARTICLE III  
DEFINITIONS

The term "Declaration" shall mean the DECLARATION OF COVENANTS AND RESTRICTIONS FOR WINTERMERE POINTE recorded in the Public Records of Orange County, Florida, and all amendments or supplements made thereto. All other capitalized words and terms used in these Articles shall have the meaning and definition as provided in the Declaration.

ARTICLE IV  
PRINCIPAL OFFICE

The principal office of the Association is located at 337 North Ferncreek Avenue, Orlando, Florida 32803.

ARTICLE V  
REGISTERED OFFICE AND AGENT

Thorpe J. Earley, whose address is 337 North Ferncreek Avenue, Suite 890, Orlando, Florida 32803, is hereby appointed the initial registered agent of the Association and the registered office shall be at said address.

ARTICLE VI  
PURPOSE AND POWERS OF THE ASSOCIATION

The Association shall not pay dividends and no part of any income of the Association shall be distributed to its Members, directors or officers. The Association is formed to provide for, among other things, the improvement, maintenance, preservation and architectural control of the Property and to promote the recreation, health, safety and welfare of the Owners. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in these Articles, the Bylaws, or the Declaration. The Association shall have the power and duty to do any and all lawful things which may be authorized, assigned, required or permitted to be done by the Declaration, any Supplemental Declaration, these Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvement of the Property and the Common Property. Unless otherwise specifically prohibited, any and all functions, duties and powers of the Association shall be fully transferable, in whole or in part, to any developer, management agent, governmental unit, public body, or similar entity. Any instrument effecting such a transfer shall specify the duration thereof and the means of revocation. The Association shall operate, maintain and manage the surface water or stormwater management system(s) in a manner consistent with the St. Johns River Water Management District permit requirements and applicable District rules, and shall assist in the enforcement of the Declaration of Covenants and Restrictions which relate to the surface water or stormwater management system. The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system. The assessments shall be used for the maintenance and repair of the surface water or stormwater management systems, including but not limited to work within retention areas, drainage structures and drainage easements.

ARTICLE VII  
MEMBERSHIP AND VOTING RIGHTS

Each Owner, including the Developer, shall be a Member of the Association. Any person or entity who holds any interest merely as a security for the performance of any obligation shall not be a Member. The Association membership of each Owner shall be appurtenant to the Lot giving rise to such membership, and shall not be transferred except upon the transfer of title to said Lot and then only to the transferee of title thereto. Any prohibited separate transfer shall be void. Any



transfer of title shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof. All voting rights and procedures within the Association shall be governed in accordance with the provisions set forth in the Declaration and in the Bylaws.

## ARTICLE VIII DIRECTORS AND OFFICERS

The affairs of this Association shall be managed by a Board of Directors, and the affairs of the Association shall be administered by the Officers. All matters regarding the Directors and the Officers of the Association, including numbers, election, duration, etc., shall be governed in accordance with the provisions set forth in the Declaration and in the Bylaws.

## ARTICLE IX INDEMNIFICATION

9.1 Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding whether civil, criminal, administrative or investigative, or any settlement of any proceeding, or any appeal from such proceeding to which he may be a party or in which he may become involved by reason of his being or having been a director or officer of the Association, or having served at the Association's request as a director or officer of any other corporation, whether or not he is a director or officer at the time such expenses are incurred, regardless of by whom the proceeding was brought, except in relation to matters as to which any such director or officer shall be adjudged liable for gross negligence or willful misconduct, provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors of the Association approves such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

9.2 Expenses incurred in defending a suit or proceeding whether civil, criminal, administrative or investigative may be paid by the Association in advance of the final disposition of such action, suit or proceeding if authorized by all of the non-interested directors upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not to be indemnified by the Association as authorized by these Articles of Incorporation.

9.3 The Association shall have the power to purchase at its expense and maintain insurance on behalf of any person who is or was a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of another association, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of these Articles.

## ARTICLE X BYLAWS

The first Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided by the Bylaws.

## ARTICLE XI AMENDMENTS

Amendments to these Articles of Incorporation shall be made in the following manner:

11.1 Resolution. The Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of Members, which may be either the annual or a special meeting.

11.2 Notice. Within the time and in the manner provided in the Bylaws for the giving of notice of meetings of Members, written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member of record entitled to vote thereon. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

11.3 Vote. At such meeting, a vote of the Members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a two-thirds (2/3) majority of the votes of Members entitled to vote thereon.

11.4 Multiple Amendments. Any number of amendments may be submitted to the Members and voted upon by them at one meeting.

11.5 Limitations. No amendment shall make any changes in the qualifications for membership. No amendment shall be made that is in conflict with the Declaration. HUD/VA shall have a veto power as long as there is a Class B membership over any dissolution of the Association, any amendment of these Articles, any mortgaging of Common Property, any mergers and consolidations affecting this Association, and the annexation of any additional properties.

## ARTICLE XII INCORPORATOR

The name and address of the Incorporator of these Articles of Incorporation is as follows:

<u>Name</u>	<u>Address</u>
Thorpe J. Earley	337 North Ferncreek Avenue Orlando, Florida 32803



ARTICLE XIII  
NONSTOCK CORPORATION

The Association is organized on a nonstock basis and shall not issue shares of stock evidencing membership in the Association; provided, however, that membership in the Association may be evidenced by a certificate of membership which shall contain a statement that the Association is a corporation not for profit.

IN WITNESS WHEREOF, the undersigned Incorporator has caused these Articles to be executed as of the 11<sup>th</sup> day of September, 1998.

Signed, sealed and delivered  
in the presence of:

[Signature]

[Signature]  
THORPE J. EARLEY

[Signature]

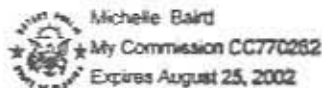
STATE OF FLORIDA

COUNTY OF ORANGE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of September, 1998, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Thorpe J. Earley, the incorporator described in the foregoing Articles of Incorporation. He ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

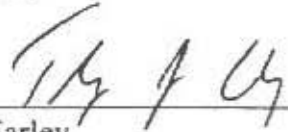
IMPRINT NOTARY PUBLIC  
RUBBER STAMP SEAL BELOW

[Signature]  
Signature of Person Taking Acknowledgment  
Notary Public



WINTERMERE POINTE HOMEOWNERS ASSOCIATION, INC.  
ACCEPTANCE OF REGISTERED AGENT

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

  
\_\_\_\_\_  
Thorpe J. Earley  
Registered Agent

Date: 9/11, 1998

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
98 SEP 28 AM 9:18





## BYLAWS

### OF

#### WINTERMERE POINTE HOMEOWNERS ASSOCIATION, INC. A NONPROFIT ORGANIZATION

1. **Definitions.** When used in these Bylaws, the terms defined in the Articles of Incorporation of the Association (the "Articles") and the Declaration of Covenants and Restrictions for Wintermere Pointe ( the "Declaration") shall have the same meanings as in the Articles and the Declaration.

2. **Identity.** These Bylaws, together with the Articles and the Declaration shall be sometimes referred to as the "governing documents" of the Association.

2.1 **Office.** The office of the Association shall be located at 337 North Ferncreek Avenue, Orlando, Florida 32803, or at such other place as may be designated from time to time by the Board of Directors.

2.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.

2.3 **Seal.** The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation not for profit", and the year of incorporation.

#### 3. **Members.**

3.1 **Qualification.** The members of the Association shall consist of every Owner, including the Developer, and in the case of multiple Owners, every group of record Owners, of Lots in the Property. The foregoing is not intended to include persons or entities who hold an interest merely as security for performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lot. A Member does not have the authority to act for the Association by virtue of being a Member. A Member may act only through its voting rights or as is otherwise specifically set forth herein.

3.2 **Change of Membership.** Change of membership in the Association shall be established by recording in the Public Records of the County in which the Property is located a deed or other instrument establishing record title to a Lot under the jurisdiction of the Association. The Owner designated as grantee by such instrument thus becomes a Member of the Association and the membership of the prior Owner is terminated. The new Owner shall notify the Association of such property transfer and furnish the Association a copy of the recorded deed, the new Owner's address, and the Owner's local agent, if any, in the event the Owner is located outside the State of Florida. Any notice requirements set out in these Bylaws and in the Articles shall be deemed to be complied with if notice to an Owner is directed to the address of said Owner as then reflected in the Association's records.



**3.3 Voting Rights.** Every Member of the Association, including the Developer, shall have one (1) vote for each Lot to which it holds title. Notwithstanding the foregoing, the Declaration or the Articles may provide for "Class A" Members and "Class B" Members, in which case such Members shall have the number of votes as designated therein.

**3.4 Designation of Voting Representative.** If a Lot is owned by one person or entity, its rights to vote shall be established by the record title to the Lot. If a Lot is owned by more than one person or entity, the person entitled to cast the votes for the Lot shall be designated by a certificate signed by all of the record Owners of the Lot and filed with the Secretary of the Association. If a Lot is owned by a general or limited partnership, the person entitled to cast the votes for the Lot shall be designated by a certificate of appointment signed by one of the general partners and filed with the Secretary of the Association. If a Lot is owned by a corporation, the person entitled to cast the votes for the Lot shall be designated by a certificate of appointment signed by the President or Vice President of the corporation and filed with the Secretary of the Association. If a Lot is owned in trust, the person entitled to vote for the Lot shall be designated by a certificate of appointment signed by the trustee of record for the trust and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot concerned. A certificate designating the person entitled to cast the votes of a Lot may be revoked in writing by any Owner thereof. Provided, however, that no Lot shall vote in excess of the voting rights allocated to that Lot pursuant to the Declaration.

**3.5 Approval or Disapproval of Matters.** Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the votes of such Owner if at an Association meeting, unless the joinder of record Owners is specifically required by the Declaration, the Articles, or by these Bylaws.

**3.6 Restraint Upon Assignment of Shares in Assets.** The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to that Owner's Lot.

#### **4. Members' Meetings.**

**4.1 Annual Members' Meetings.** The annual Members' meeting shall be held each year for the purpose of appointing or electing Directors, if applicable in that year, and of transacting any other business authorized to be transacted by the Members. The Board of Directors shall determine the date, time and place to hold the annual meeting.

**4.2 Special Members' Meetings.** Special meetings of the Members must be held when called by the Board of Directors, or by the holders of at least twenty percent (20%) of the total voting interest of the Association. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

**4.3 Notice of All Meetings of Members.** Written notice of a meeting stating the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be provided not less than ten (10) or more than sixty (60) days before the date of the meeting. Notice shall be provided: (a) by posting such notice in a conspicuous place in the Property; (b) by hand delivery; or (c) by first-class mail. Notice shall be provided by or at the direction of the President, the Secretary, or the officer or persons calling the meeting. If the meeting notice is mailed at least thirty (30) days before the date of the meeting, it may be done by a class of United States mail other than first class. If mailed or hand delivered, such notice shall be deemed to be delivered when placed in the Member's mailbox or deposited in the United States mail addressed to the Member at its address as it appears on the books of the Association.

**4.4 Quorum.** A quorum at Members' meetings shall consist of thirty percent (30%) of the total voting interest in the Association, whether represented in person or by proxy. If a quorum is present, the affirmative vote of a majority of votes represented at a meeting in person or by proxy shall constitute the acts of the Members, except when approval by a greater number of Members is required by the Declaration, these Bylaws, the Articles, or by law. When a specified item of business is required to be voted upon by a particular class of Members, if applicable, thirty percent (30%) of the votes of such class of Members shall constitute a quorum for the transaction of such item of business by that class. After a quorum has been established at a Members' meeting, the subsequent withdrawal of Members so as to reduce the number of votes at the meeting below the number required for a quorum shall not affect the validity of any action taken at the meeting or any adjournment thereof.

**4.5 Proxies.** Every Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting, or his duly authorized attorney-in-fact, may do so in person or may authorize another person or persons to act for him by proxy. Every proxy must be dated, must state the date, time and place of the meeting for which it was given and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires ninety (90) days after the date of the meeting for which it was originally given. Every proxy shall be revocable at any time at the pleasure of the Member executing it and shall expire upon the transfer of title to the Lot giving rise to the voting rights to which the proxy pertains. The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the Member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the Association officer responsible for maintaining the list of Members. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his place.

**4.6 Adjourned Meetings.** When an annual or special meeting is adjourned to a different date, time or place, the new date, time and place to which the meeting is adjourned must be announced at the meeting at which the adjournment is taken, or notice must be given of the new date, time and place pursuant to Section 4.3 hereof. Any business may be transacted at the adjourned meeting that might have been transacted on the original date of the meeting. If, however,



after the adjournment the Board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given in compliance with the Bylaws to Members entitled to vote at such meeting who were not Members as of the previous record date.

**4.7 Order of Business.** The order of business at annual Member's meetings, and as far as practical at all other Member's meetings, shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading and disposal of any unapproved minutes;
- (d) Reports of officers;
- (e) Reports of Committees;
- (f) Appointment of Directors, when applicable;
- (g) Appointment of Nominating Committee;
- (h) Unfinished business;
- (i) New business; and
- (j) Adjournment.

**4.8 Minutes of Meetings.** The Association shall maintain minutes of each meeting of the Members and of the Board of Directors in written form or in another form which can be converted into written form within a reasonable time. The minutes shall be kept in a book available for inspection by Members or their authorized representatives at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.

## **5. Board of Directors.**

**5.1. Governing Body.** The affairs of the Association shall be governed and managed by the Board of Directors, which shall be appointed or elected as set forth herein.

**5.2. Initial Board.** The initial Board shall be comprised of three (3) Directors appointed by the Developer. Their terms shall be governed as set forth herein, except that each initial Director may be reappointed at the Developer's discretion, if otherwise permitted by these

Bylaws.

**5.3. Majority Appointed.** Thereafter, the Developer may continue to appoint at least a majority of the Board until the earlier of:

(a) Three (3) months after ninety percent (90%) of the Lots that will be ultimately operated by the Association have been conveyed to Members other than the Developer (not including builders, contractors or others who purchase a Lot for the purpose of constructing improvements thereupon for resale); or

(b) The time at which such other percentage of Lots has been conveyed to Members other than the Developer (not including builders, contractors or others who purchase a Lot for the purpose of constructing improvements thereupon for resale) in order to comply with the applicable requirements of any governmental chartered entity (HUD/VA) regarding mortgage financing of Lots.

**5.4 Less Than Majority Appointed.** The Developer is entitled to appoint at least one (1) Director to the Board so long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots that will be ultimately operated by the Association. After the Developer relinquishes control of the Association, the Developer may continue to exercise its voting rights for any remaining Lots held by it in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting a majority of the Board of Directors.

**5.5. Right of Members Other Than Developer to Elect Board.** The right of Members of the Association other than the Developer to elect members of the Board pursuant to Sections 5.3 and/or 5.4 shall be exercised at the next scheduled annual meeting of the Members.

**5.6 Number.** The Board at all times shall consist of not less than three (3) nor more than nine (9) Directors. After such a time as the Developer no longer is entitled to appoint a member of the Board pursuant to Section 5.4 above, the number of members may be increased from time to time to a maximum of nine (9) members; provided, however, the established number of Board members shall always be an odd number. In the event that the number of members of the Board of Directors is changed, such changes in number shall be implemented in such a manner as to have as nearly equal in number as possible the number of Directors whose terms expire in any given year. All directorships shall expire during any given three (3) year period.

**5.7 Term of Office.** Except for the initial Board of Directors which may serve until such time allowed hereunder, the term of office of each Director shall be for staggered terms of three (3) years each. Each Director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified or until his earlier resignation, removal from



office or death.

**5.8 Removal.** Any Director may be removed from the Board, with or without cause, by vote or agreement in writing by a majority of all votes of the membership. In the event of the death, resignation or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

**5.9 Director's Fees.** Directors shall serve without compensation or fees; provided, however, nothing herein shall be deemed to prevent reimbursement of out-of-pocket expenses approved by the Board and incurred on behalf of the Association.

**5.10 Election.** Elections of the Directors must be conducted in accordance with these Bylaws. All members of the Association shall be eligible to serve on the board. Election to the Board of Directors shall be by written ballot as hereinafter provided. At such election, the Members or their proxies may cast, in respect of each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles. The names receiving the largest number of votes cast by eligible voters for each vacancy shall be elected.

**5.11 Nominations.** Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall be one of the standing committees of the Association. Notwithstanding the foregoing, a Member may nominate himself as a candidate for the Board at a meeting where the election is to be held.

**5.12 Nominating Committee.** The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting.

**5.13 Duties of Nominating Committee.** The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or officers, Directors or agents of the Developer, as the Committee in its discretion shall determine. Separate nominations shall be made for each vacancy to be filled. Nominations shall be placed on a written ballot as provided in Section 5.14 and shall be made in advance of the time fixed in Section 5.14 for the mailing of such ballots to Members.

**5.14 Ballots.** All elections to the Board of Directors shall be made on written ballot which shall:

- (a) describe the vacancies to be filled;
- (b) set forth the names of those nominated by the Nominating Committee

for each such vacancy; and

(c) contain a space for a write-in vote by the Members for each vacancy. Such ballots shall be prepared and mailed by the Secretary to the Members at least fourteen (14) days in advance of the date set forth therein for a return (which shall be a date not later than the day before the meeting at which the vote is to be taken).

**5.15 Number of Ballots.**

(a) Class A. Each Class A Member, if applicable, shall receive as many ballots as it has votes. Notwithstanding that a Member may be entitled to several votes, it shall exercise on any one ballot only one vote for each vacancy shown thereon. The completed ballots shall be returned as follows:

(1) Each ballot shall be placed in a sealed envelope marked "Ballot" but not marked in any other way;

(2) Each such "Ballot" envelope shall contain only one ballot;

(3) The Members shall be advised that, because of the verification procedures of Section 5.16 the inclusion of more than one ballot in any one "Ballot" envelope shall disqualify the return; and

(4) Such "Ballot" envelope, or envelopes (if the Member or his proxy is exercising more than one vote), shall be placed in another sealed envelope which shall bear on its face the name and signature of the Member or his proxy, the number of ballots being returned, and such other information as the Board of Directors may determine will serve to establish his right to cast the vote or votes presented in the "Ballot" or "Ballots" contained therein. The ballots shall be returned to the Secretary at the address of the Association.

(b) Class B. Each Class B Member, if applicable, shall receive one ballot upon which all votes held by each Class B Member may be exercised. If there are no separate classes of Members, each Member shall receive one ballot upon which all votes held by that Member may be exercised.

**5.16 Election Committee: Counting of Ballots.** Upon receipt of each return, the Secretary shall immediately place it in a safe or other locked place until the day set for the meeting at which the elections are to be held. On that day, the unopened external envelopes containing the "Ballot" envelopes shall be turned over to an Election Committee which shall consist of three (3) members appointed by the Board of Directors. The Election Committee shall then:

- (a) establish that external envelopes were not previously opened or tampered with in any way;
- (b) open the external envelopes to establish that the number of envelopes therein marked "Ballot" corresponds to the number of votes allowed to the Member or his proxy identified on the external envelope;
- (c) confirm that the signature of the Member or his proxy on the outside envelope appears genuine; and
- (d) if, the vote is by proxy, determine that a proxy has been filed with the Secretary.

Such procedure shall be taken in such manner that the vote of any Member or his proxy shall not be disclosed to anyone, even the Election Committee. The opened external envelopes shall thereupon be placed in a safe or other locked place and the Election Committee shall proceed to the opening of the "Ballot" envelopes and the counting of the votes. If any "Ballot" envelope is found to contain more than one ballot, all such ballots shall be disqualified and shall not be counted. Ballots shall be retained for such period of time after the election as shall be deemed prudent by the Board of Directors.

**5.17 Recording.** Any Member may tape record or videotape meetings of the Board of Directors and meetings of the Members; provided, however, that the Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.

## **6. Meetings of Directors.**

**6.1 Meetings.** A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. Regular and special meetings of the Board are open to all Members except meetings between the Board and its attorney to discuss proposed or pending litigation where the contents of the discussion are governed by the attorney-client privilege.

**6.2 Regular Meetings.** Regular meetings of the Board of Directors shall be held as may be determined by the Board and upon giving notice to the Members as set forth in Section 6.4 hereof, at such place and hour as may be fixed from time to time by resolution of the Board. If the day for such regular meeting is a legal holiday, then the meeting shall be held at the same time on the next day that is not a legal holiday.

**6.3 Special Meetings.** Special meetings of the Directors may be called by the Chairman of the Board, by the President of the Association, or by any two (2) Directors upon giving notice to the Members as set forth in Section 6.4. Additionally, not less than two (2) days' notice of the special meeting shall be given to each Director personally or by first-class mail, telegram, or cablegram, which notice shall state the time, place and purpose of the meeting.



**6.4. Notice to Members.** Notices of all regular or special Board meetings may be posted in a conspicuous place on the Property at least seventy-two (72) hours in advance of any such meeting, except in an emergency. In the alternative, notice may be mailed or delivered to each Member at least seven (7) days prior to the meeting, except in an emergency. Notwithstanding the foregoing, in the event the Association has 100 or more Members, the notice requirement for Board meetings may be satisfied by either publishing said notice in a newspaper widely circulated in the community where the Property is located or by providing each Member with a schedule of Board meetings on an annual basis. The notice for any Board meeting at which an assessment will be levied must include a statement that an assessment will be considered and the nature of the assessment. The notice requirements set forth in this section also apply to meetings of any committee or similar body, including any body vested with the power to approve or disapprove architectural decisions with respect to any Lot.

**6.5. Manner of Voting.** Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots may be used in the election of officers.

**6.6. Waiver of Notice of Directors.** The transaction of any business at any meeting of the Board of Directors, however called and noticed to the Directors, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present, if it was properly noticed to the Members, and, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holdings of such meeting, or an approval of the minutes thereof. All such waivers, consents or approval shall be filed with the Associations' records and made a part of the minutes of the meeting. Other than as set forth in Section 6.4 above with regard to assessments, neither the business to be transacted nor the purpose of any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

**6.7. Defects in Notice to Director or Members, etc. Waived by Attendance.** Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a Director states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened. Likewise, attendance of a Member at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a Member states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened. Members of the Board of Directors may participate in a meeting of such Board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting, including any Members, can hear each other at the same time. Participating by such means shall constitute presence in persons at a meeting.

**6.8. Quorum.** A quorum at Directors' meetings shall consist of a majority of all votes of the entire Board of Directors. The acts approved by a majority of those votes represented

at a meeting at which a quorum is present shall constitute the act of the Board of Directors, except where approval by a greater number of Directors is required by the Declaration, the Articles, or these Bylaws.

**6.9 Adjourned Meetings.** A majority of the Directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the Directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other Directors and to the Members as required by Section 6.4.

**6.10 Action by Directors Without a Meeting.** Any action required to be taken at a meeting of the Directors or a committee thereof, may be taken without a meeting, if such action is noticed to the Members as required by Section 6.4 and if a consent in writing setting forth the action so to be taken signed by all of the Directors or all of the members of the committee, as the case may be, is filed in the minutes of the proceedings of the Board or of the committee. Such consent shall have the same effect as a unanimous vote.

**6.11 Presiding Officer.** The presiding officer of Directors' meetings shall be the President. In the absence of the President, the Vice President shall preside, and in the absence of both, the Directors present shall designate one of their number to preside.

**6.12 Powers and Duties of Board of Directors.** All of the powers and duties of the Association existing under Chapter 617, Florida Statutes, the Declaration, the Articles, and these Bylaws, shall be exercised by the Board of Directors, subject only to approval by Members when such is specifically required.

## **7. Officers.**

**7.1 Officers and Election.** The executive officers of the Association shall be a President, who shall be selected from the Board of Directors, a Vice-President, who also shall be selected from the Board of Directors, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find necessary or convenient to manage properly the affairs of the Association.

**7.2 President.** The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of an Association, including but not limited to the power to appoint committees from among the Members from time to time as he may in his discretion determine appropriate to assist in the conduct of the affairs of the Association. He shall serve as chairman of all Board and Members' meetings.

**7.3 Vice President.** The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

**7.4 Secretary.** The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an Association and as may be required by the Directors or the President. The duties of the Secretary may be fulfilled by a manager employed by the Association.

**7.5 Treasurer.** The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the books of the Association in accordance with good accounting practices and provide for collection of assessments; and he shall perform all other duties incident to the office of Treasurer. The duties of the Treasurer may be fulfilled by a manager employed by the Association.

**7.6 Compensation.** The compensation, if any, of the officers shall be fixed by the Board of Directors.

## **8. Books and Records.**

**8.1 Official Records.** The Association shall maintain within the State of Florida each of the following, which shall constitute the official records of the Association:

- (a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair or replace;
- (b) A copy of the Bylaws of the Association and of each amendment to the Bylaws;
- (c) A copy of the Articles of Incorporation of the Association and of each amendment thereto;
- (d) A copy of the Declaration of Covenants and a copy of each amendment thereto;
- (e) A copy of the current rules of the Association;
- (f) The minutes of all meetings of the Board of Directors and of the Members, which minutes must be retained for at least seven (7) years;



(g) A current roster of all Members and their mailing addresses and Lot identification;

(h) All of the Association's insurance policies or a copy thereof, which policies must be retained for at least seven (7) years;

(i) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease or other contract under which the Association has any obligation or responsibility. Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of one (1) year; and

(j) The financial and accounting records of the Association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and account records must include:

1. Accurate, itemized, and detailed records of all receipts and expenditures;

2. A current account and a periodic statement of the account for each Member, designating the name and current address of each Member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the Member, the date and the amount of each payment on the account, and the balance due;

3. All tax returns, financial statements, and financial reports of the Association; and

4. Any other records that identify, measure, record or communicate financial information.

**8.2. Inspection and Copying.** The official records shall be open to inspection and available for photocopying by Members or their authorized agents during reasonable business hours, at the principal office of the Association, or on the Property, within ten (10) business days after receipt of a written request for access. Such inspection must take place within the presence of an agent of the Association. The Association shall provide copies of any of the official records to any Member or its authorized agent, within ten (10) business days after receipt of a written request for such copies, and may charge a fee for providing such copies, which shall include the costs of copying.

**8.3. Copies.** The Association shall maintain an adequate number of copies of the

Declaration, the Articles and the Bylaws, to ensure their availability to Members and prospective Members, and may charge the cost of reproducing and furnishing these documents to those persons entitled to receive them.

9. **Fiscal Management.** The provisions for fiscal management of the Association are governed by the following provisions:

9.1 **Accounts.** The receipts and expenditures of the Association shall be credited and charged to accounts under the following classifications and any other classifications as shall be appropriate, when authorized and approved by the Board of Directors. The receipts shall be entered by the amounts of receipts by accounts and receipt classifications, and expenses by the amounts of expenses by accounts and expense classifications.

(a) **Current Expense.** The current expense account shall include all receipts and expenditures to be made within the year for which the expenses are budgeted and may include a reasonable allowance for contingencies and working funds. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year or to fund reserves. This may include but not be limited to:

- (1) Professional, administration and management fees and expenses;
- (2) Taxes on Common Property;
- (3) Expense for utility services and maintenance expense relating to the Common Property;
- (4) Insurance costs;
- (5) Administrative and salary expenses;
- (6) Operating capital; and
- (7) Other expenses.

(b) **Reserve for Deferred Maintenance.** If required by the Board of Directors, there shall be established a reserve account for deferred maintenance which shall include funds for major maintenance items which are the obligation of the Association and which occur less frequently than annually.

(c) **Reserve for Replacement.** If required by the Board of Directors,

there shall be established a reserve account for replacement which shall include funds for repairs for replacements which the Association is obligated to make resulting from damage, depreciation or obsolescence.

**9.2 Budget.** The Board of Directors shall adopt an operating budget for the Property in advance for each calendar year. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, if any, whether owned by the Association, the Developer or another person. The budget shall be prepared utilizing the categories for current expenses and reserves set forth in Section 9.1 above. The Association shall provide each Member with a copy of the annual budget or a notice that a copy of the budget is available upon request at no charge. The copy must be provided within ten (10) business days after receipt of a written request for such copy.

**9.3 Assessments.** The manner in which expenses of the Association are shared, and the Members proportionate share thereof, are set forth in the Declaration. Assessments levied pursuant to the annual budget or special assessments must be in the Members proportional share of expenses as described in the Declaration, which share may be different among classes of Members, based upon relevant factors which may include the state of development thereof or level of services received by a class of Members. The Board of Directors shall establish the amount of the assessments based upon the annual budget each year; the Board also shall establish and notify the Members of the frequency and/or due dates of the assessments established under the annual budget. If an annual assessment is not levied as required, an assessment shall be presumed to have been levied in the amount of the last prior assessment, and such assessments shall be due at the same time(s) in the year as the prior year. In the event the annual assessments prove to be insufficient, the budget and assessments may be amended at any time by the Board of Directors.

**9.4 Acceleration of Assessment Installments Upon Default.** Installments of assessments are due upon receipt by each Owner of the bill therefor. If an Owner shall fall more than fifteen (15) days in arrears in the payment of an installment of the annual assessment, the Board of Directors may provide written demand to the said Owner specifying that, if the overdue installment or installments are not paid within twenty (20) days from the receipt for the said written demand, then the Board of Directors shall be deemed to have declared the sums to be delinquent and to have accelerated the remaining installments of the annual assessment as of the said twentieth (20th) day, without further notice or demand. The unpaid balance of the delinquent installment, and upon acceleration of the unpaid balance of the annual installment, the entire unpaid balance of the annual assessment, shall bear interest from the date due until paid at the highest rate allowed by law, or at such lesser rate as may be adopted and uniformly applied by the Board. In addition, any payment of assessments not made within thirty-five (35) days after the due date thereof shall become a lien upon the Lot upon the recordation by the Association or its agent of a Claim of Lien setting forth the amount due and the description of the Lot intended to be encumbered. The said lien shall also secure all costs of collection including, without limitation, costs of legal action and the Association's reasonable attorneys' fees, including said costs and fees upon appeal, as well as subsequent



installments which are thereafter unpaid when due and while the lien remains unsatisfied. The lien may be foreclosed in the same manner as a mortgage upon real estate, or the Association, without waiving the right of foreclosure, may pursue collection directly against the affected Owner.

**9.5     Depository.** The depository of the Association will be such banks as shall be designated from time to time by the Directors and the withdrawal of monies from such accounts shall be only by checks signed by such persons as authorized by the Directors; provided, however, that the provisions of a management agreement between the Association and a manager relative to the subject matter of this section shall supersede the provisions hereof.

**9.6     Financial Reporting.** The Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year. The Association shall provide each Member a copy of the annual financial report or a written notice that a copy of such report is available upon request at no charge. Such copy shall be furnished within ten (10) business days after receipt of a written request for the financial report. The financial report shall consist of either:

(a)     Financial statements presented in conformity with generally accepted accounting principals; or

(b)     A financial report of actual receipts and expenditures, cash basis, which report must show:

(1)     The amount of receipts and expenditures by classification; and

(2)     The beginning and ending cash balances of the Association.

**10.     Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings, when not in conflict with these Bylaws.

**11.     Amendment.** Amendments to these Bylaws shall be proposed and adopted in the following manner:

**11.1     Resolution.** The Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote by the Board of Directors at a meeting of the Directors.

**11.2     Notice.** Within the time and in the manner provided in these Bylaws for the giving of notice of meetings of the Board, written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member of record.

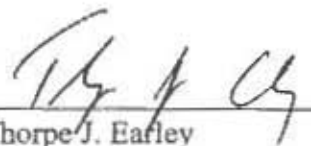
**11.3     Vote.** At such meeting of the Board, a vote of the Directors shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the Directors.

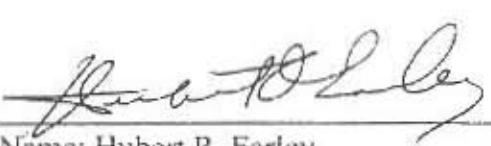
11.4 **Multiple Amendments.** Any number of amendments may be submitted and voted upon by the Board at one meeting.

11.5 **Proviso.** No amendment shall make any changes in the qualifications for membership nor the voting rights of Members without approval by at least a two-thirds (2/3) majority of the votes of the Members. No amendment shall be made that is in conflict with chapter 617, Florida Statutes, or with the Declaration or Articles of Incorporation.

The foregoing were adopted as the Bylaws of WINTERMERE POINTE HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation established under the laws of the State of Florida, at the first meeting of the Board of Directors on the 11<sup>th</sup> day of September, 1998.

APPROVED:

  
Name: Thorpe J. Earley  
Title: Vice-President

  
Name: Hubert R. Earley  
Title: President





# Wintermere Pointe HOA Policy

**Policy Number:** 2007-01

**Date Approved:** 09/24/07

**Policy Name:** Procedure for adoption of HOA Policies

**Summary:** Establish procedure for adoption and notice to homeowners of HOA policies

**Policy:**

A committee, comprised of two HOA Board members will make a recommendation to the HOA Board on policies to be adopted or amended. Committee shall verify that proposed policy or amendment to policy does not conflict with Wintermere Pointe Covenants & Restrictions or Florida State Statutes

Prior to the adoption or revision of any policy, all homeowners will be notified by mail at least 14 days prior to the meeting date where a policy or change in an existing policy will be considered for adoption. In addition, notice will be posted at both entrances to Wintermere Pointe at least 14 days in advance of such a meeting. Written notices will include the time, date and place of the meeting.

WPHOA Board may adopt or amend policies by majority vote of board members present at the meeting

Policies will be subject to review on a minimum of an annual basis.



## Wintermere Pointe HOA Policies

**Policy Number:** 2007-02

**Date Approved:** 9/24/2007

**Policy Name:** House Colors

**Summary:** Establish a list of acceptable house, trim, door and fence colors for repainting of homes within Wintermere Pointe.

### Policy:

Acceptable house, trim, door and fence colors for Wintermere Pointe:

Color Name	WPHOA Reference#	CW Code	Source	Collection
<b>House Colors</b>				
Hayseed	H1	8220W	Cambridge Original	Millennium
Mushroom Basket	H2	8712W	Cambridge Original	Millennium
Botany Biege	H3	8221W	Cambridge Original	Millennium
Historic Tan	H4	8741W	Cambridge Original	Millennium
Tequila	H5	8672W	Cambridge Original	Millennium
Gray Ashlar	H6	8760W	Cambridge Original	Millennium
Crete	H7	Q3-16P	Cambridge Original	Cue
Enchant	H8	B51-H-4W	Cambridge Original	Gallery
Classic Cream	H9	B44-H-1W	Cambridge Original	Gallery
Pullman Gray	H10	E142-H-3W	Cambridge Original	Gallery
Touchstone	H11	8762W	Cambridge Original	Millennium
Dauphin Gray	H12	8773M	Cambridge Original	Millennium
Afghan	H13	Q6-11P	Cambridge Original	Cue
Warm Shadows	H14	8823W	Cambridge Original	Millennium
Desert Castle	H15	8722W	Cambridge Original	Millennium
Toga	H16	Q6-17T	Cambridge Original	Cue
Swept Plains	H17	8253M	Cambridge Original	Millennium
Crisp Khaki	H18	8233M	Cambridge Original	Millennium
Peanut Shell	H19	8262W	Cambridge Original (Coast Pointe)	Millennium



Desert Tumbleweed	H20	8723M	Cambridge Original	Millennium
Sandy Lane	H21	8211W	Cambridge Original	Millennium
Tavern Taupe	H22	8673M	Cambridge Original	Millennium
Silver Dove	H23	Q8-16P	Ryland Original	Cue
Sugar White	H24	B51-H-1W	Ryland Original	Gallery
Winsome	H25	B52-H-1W	Ryland Original	Gallery
Sombrero	H26	Q4-17T	Ryland Original	Cue
Pampas White	H27	B46-H-1	Ryland Original	Gallery
Lenox	H28	B53-H-1W	Ryland Original	Gallery
Stonewall	H29	8783M	Ryland Original	Millennium
Opalescence	H30	7790W	Ryland Original	Millennium
Sterling Coin	H31	8782W	Color Wheel Florida Classics	Millennium
Silver Seed	H32	8810W	Color Wheel Florida Classics	Millennium
Silver Sage	H33	8612W	Color Wheel Florida Classics	Millennium
Smoky Candle	H34	8633W	Color Wheel Florida Classics	Millennium
Kindling Wood	H35	8713W	Color Wheel Florida Classics	Millennium
Rugged Trail	H36	8663W	Color Wheel Florida Classics	Millennium
Toasted Tan	H37	7783M	Color Wheel Florida Classics	Millennium
Misted Beige	H38	8312W	Color Wheel Florida Classics	Millennium
Desert Faun	H39	8222W	Color Wheel Florida Classics	Millennium
Enchilada	H40	7781W	Color Wheel Florida Classics	Millennium
Threshold Gray	H41	8802W	Color Wheel Florida Classics	Millennium
European Gray	H42	8631W	Color Wheel Florida Classics	Millennium
Herbivore	H43	8173M	Millennium Color Deck	Millennium
Ferland	H44	8174M	Millennium Color Deck	Millennium
Hourglass	H45	8832W	Millennium Color Deck	Millennium
<b>Trim Colors</b>				
Swiss Coffee	T1	Q8-36P	Cambridge Original	Cue
Solo White	T2	CW051W	Color Wheel Florida Classics	Millennium
Prism White	T3	8630W	Color Wheel Florida Classics	Millennium
Crystal Ball	T4	8780W	Color Wheel Florida Classics	Millennium
Ivory Powder	T5	7800W	Color Wheel Florida Classics	Millennium
Sugar White	T6	B51-H-1W	Ryland Original	Gallery
Pampas White	T7	B46-H-1	Ryland Original	Gallery
Classic Cream	T8	B44-H-1W	Cambridge Original	Gallery
Pickel White	T9	CW066W	Millennium Color Deck	Millennium
Natural Echo	T10	CW054W	Millennium Color Deck	Millennium

**Door and Shutter Colors**

Alligator	D1	AC093W	Color Wheel Florida Classics	Millennium
Night Magic	D2	8466N	Color Wheel Florida Classics	Millennium
Roasted Pepper	D3	AC116N	Color Wheel Florida Classics	Millennium
Rainforest Teal	D4	AC090N	Color Wheel Florida Classics	Millennium
Swiss Coffee	D5	Q8-36P	Cambridge Original	Cue
Dutch Green	D6	AC22-H-3U	Cambridge Original	Gallery
Navy Dress	D7	AC28-H1U	Cambridge Original	Gallery
Zebra Agate	D8	Q2-60D	Cambridge Original	Gallery
Aubergine	D9	AC139N	Cambridge Original	Millennium
Dark Batik	D10	AC078N	Cambridge Original	Millennium
Earthbound Green	D11	AC091N	Cambridge Original	Millennium
Robust Red	D12	AC114N	Millennium Color Deck	Millennium

**Concrete Color (driveway)**

Moonlight Mist	C1	No Code	Ultracrete Color System	Ultracrete
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**Fence Colors**

White	F1	B1 White	Color Wheel Standard	Color System
Black	F2	112 black (flat)	Color Wheel Standard	

**Notes:**

Collection refers to Color Wheel Pallets, Millennium, Gallery and Cue are not in use but can be matched

Homeowner may obtain paint from any supplier (Home Depot, Lowes, etc.) but must match permitted colors

Architectural review and approval is required prior to commencement of work

Only colors included in the WPHOA Color list will be considered for approval

Shutters (if present) may be painted same as trim

Color samples may be viewed by appointment, during normal business hours at offices of HOA manager.

Limited number of color sample books will be available for loan to homeowners, on a first come, first serve basis.

Color book must be returned within 30 days or homeowner will be billed a replacement charge of \$100.

With prior arrangement with manager, color books may be borrowed/returned at HOA meetings.

Driveway paint color may not be used on sidewalks or portion of driveway between sidewalk and street.

Fence Colors F1 (white) to be used on wood fences, F2 (black) on black fences by ponds and conservation areas.





## **Wintermere Pointe HOA Policy**

**Policy Number:** 2007-03

**Date Approved:** 09/24/07

**Policy Name:** Lawn Ornaments and Fountains

**Summary:** Establish limits and standards for Lawn Decorations and Fountains

### **Policy:**

With the exception of temporary decorations for a recognized national or religious holiday, each home shall be allowed a combined maximum of five (5) figurines and/or fixtures, which are visible from the street or from an adjacent homeowner's property

Lawn ornaments and fixtures shall not be of a nature as to be offensive to other homeowners, including items that may be racially, ethically or morally offensive.

Figurines will be inclusive of any items resembling a living or mythical creature and shall not exceed 36" in height.

Fixtures will include items such as fountains and other stand-alone decorative items, and shall not exceed 60" in height and 36" in width. All fixtures must be kept in good repair and be in proper working order as their design implies. Fountains must be operated with running water for a minimum of eight hours a day.

All figurines and fixtures, regardless of type, must be cleaned and maintained in an effort to retain their original finishes by the homeowner. Fountains shall be kept clean of algae and other growth.

Lawn ornaments and fixtures that are not maintained shall be required to be removed by the homeowner. Homeowner shall receive notice of requirement for maintenance or removal through current WPHOA violation procedure, including referral to attorney if required.

All figurines and fixtures are subject to the approval of the Wintermere Pointe HOA Architectural Review Committee prior to placement on homeowner's property.