

ARTICLES OF INCORPORATION
OF

APPROVED
AND
FILED
IND. SECRETARY OF STATE

WINDEMERE FARMS HOMEOWNERS' ASSOCIATION, INC.

The undersigned incorporator, desiring to form a corporation (hereinafter referred to as the "Association") under the Indiana Nonprofit Corporation Act of 1991, (hereinafter referred to as the "Act"), execute the following Articles of Incorporation:

ARTICLE I

Name

The name of this Corporation is Windemere Farms Homeowner's Association, Inc.

ARTICLE II

Type of Corporation

This Corporation is a mutual benefit association as the term is defined in the Act.

ARTICLE III

Purposes

The purposes for which this Corporation is formed are:

1. To have and exercise each and every power, right and privilege which a corporation organized under the Act, as amended, may now or hereafter have or exercise.
2. This Association does not contemplate pecuniary gain or profit to the members thereof. This Association shall provide for the aesthetic appearance of a certain subdivision located in Vanderburgh County, Indiana, specifically Windemere Farms, a subdivision of part of the North Half of Section 27, Township 5 South, Range 10 West, of the Second Principle Meridian, in Vanderburgh County, Indiana, as per plat thereof, recorded in Plat Book P, Page 84 on December 17, 1996, in the Office of the Recorder of Vanderburgh County, Indiana (hereinafter referred to as the "Subdivision").
3. To educate homeowners and residents in the Subdivision concerning the RESTRICTIONS, RESERVATIONS, CONDITIONS AND PROTECTIVE COVENANTS AFFECTING TITLE TO WINDEMERE FARMS, recorded January 1997, Control No. 0098, Misc. Drawer 5, Car No. 546, Instrument No. 97-01791, in the Office of the Recorder of Vanderburgh County, Indiana, (collectively the "Restrictions") and to encourage compliance with the provisions thereof.
4. To maintain the entrance, streetlights and landscaping and any other common areas or facilities in the Subdivision and to enforce the Restrictions.

RECEIVED
JAN 22 1997
OFFICE OF THE RECORDER
VANDERBURGH COUNTY, INDIANA

5. To arrange for construction and maintenance of improvements for the common benefit of homeowners in the Subdivision and to enhance the appearance of the Subdivision and surrounding area.

6. To acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer and dedicate for public use or otherwise dispose of real or personal property in connection with affairs of the homeowners.

7. To engage in all reasonable efforts to protect, preserve and enhance the residential character and value of the property owned by the homeowners in the Subdivision and to engage in such other activities as may be to the mutual benefit of homeowners.

8. To enter into contracts for the performance for any of the purposes of the Association.

9. To fix, levy, and collect and enforce by any lawful means the payment of dues, charges, assessments, and liens of homeowners and to otherwise solicit and collect funds for the benefit of the Association and to pay all expenses incurred in the performance of the purposes of the Association and incident to the conduct of the business of the Association.

10. To act as a tax-exempt organization as defined in 26 U.S.C. 501(c)(4) so that no part of the net earnings of the Association shall inure to the benefit of any individual members and to otherwise comply with that section.

11. To do all things necessary, convenient, or expedient to accomplish the purposes that are expressed or implied in these Articles or which may be incidental thereto and to perform all other acts not prohibited by law and consistent with the tax-exempt purposes of the Association.

ARTICLE IV Period of Existence

The period during which the Association shall continue is perpetual.

ARTICLE V Resident Agent and Principal Office

Section 1. Resident Agent: The name and address of the Resident Agent of the Association is:

Daniel N. Buck

Incorporation

The name and address of the incorporator is as follows:

Daniel N. Buck
2541 Windemere Dr.
Evansville, IN 47711

ARTICLE IX Statement of Property

A statement of property and an estimated value thereof to be taken over by the Corporation at or upon its incorporation is as follows:

None.

ARTICLE X Provisions for Regulation and Conduct of the Affairs of the Association

Other provisions, consistent with the laws of this State, for the regulation and conduct of the affairs of the Association and creating, defining, limiting or regulating the Powers of the Association, of the Directors or the members of the Association are as follows:

1. At the first annual meeting, the membership shall elect one-third (1/3) of the total number of Directors for terms of one (1) year each, one-third (1/3) of the total number of Directors for terms of two (2) years each, and one-third (1/3) of the total number of Directors for terms of three (3) years each. To the extent that the number of Directors is increased by the By-Laws, an effort will be made to establish noncoterminous terms for as many Directors as possible; provided, however, that no Director's terms shall exceed a period of three (3) years or be less than one (1) year. At each annual meeting after the first annual meeting, the membership shall elect Directors for terms of three (3) years to replace the outgoing Directors. The Directors may establish an executive committee to perform such duties as the directors may determine. Directors may serve consecutive terms.

2. At the first annual meeting, the members shall elect all officers as established by the By-Laws to serve for terms of one(1) year each and thereafter all officers shall be elected by the Directors.

3. Amendment of these Articles shall require sixty-six and two-thirds percent (66-2/3%) of the entire Board of Directors.

2541 Windemere Dr.
Evansville, IN 47711

Section 2. Principal Office: The post office address of the principal office of the Association is:

2541 Windemere Dr.
Evansville, IN 47711

ARTICLE VI Membership

Section 1. Determination of Membership. The Association shall be organized without capital stock. Membership will be evidenced by record ownership in the deed records in the Office of the Recorder of Vanderburgh County, Indiana, indicating ownership of a lot in the Subdivision. Membership in the Association shall be restricted to owners of lots in the Subdivision, all as set forth in the Restrictions and as hereinafter prescribed. The membership of any member shall terminate upon execution and delivery of a Deed conveying ownership of the lot to a new owner.

Section 2. Ownership By Other Than Individual. The owner of each lot shall be considered to be a single person even though title may be vested in more than one person, partnership, corporation or other entity and the votes that may be cast on any issue shall be cast only one time and shall be considered cast when made by the person designated for such purpose in writing addressed to the Secretary of the Association or otherwise as established by the By-Laws.

Section 3. Ownership of More Than One Lot. In the event one (1) or more lots or parts of one or more lots in the Subdivision as originally platted are combined for use as a single building site, the owner of such building site shall be entitled to one (1) vote in all matters pertaining to the Association, regardless of the fact that such building site consists of one (1) or more or parts of one or more lots as originally platted, it being the intent that the owner of each residential building site, as above defined, be entitled to one (1) vote in all matters pertaining to the Association.

ARTICLE VII Directors

Section 1. Number of Directors. The initial Board of Directors shall consist of one (1) member who shall serve until the first annual meeting of the members unless sooner removed. The Board of Directors shall consist of no fewer than one (1) and no more than seven (7) members. The exact number of Directors shall be prescribed from time to time in the By-Laws of the Association or by resolution of the Board of Directors.

ARTICLE VIII

4. The board of Directors shall adopt, and may from time to time amend, a Code of By-Laws and shall conduct the business of the Corporation under the terms of the By-Laws.

5. To the extent not inconsistent with the law of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director or officer of the Association shall be indemnified by the Association against all liability and reasonable expense that may be incurred by him in connection with or resulting from any claim, action, suite or proceeding (a) if such director or officer is wholly successful with respect thereto or (b) if not wholly successful, then if such director or officer is determined to have acted in good faith, in what he reasonably believed to be in the best interests of the Association and, in addition, with respect to any criminal action or proceeding, is determined to have had no reasonable cause to believe that conduct was unlawful. The termination of any claim, action, suite or proceeding, by judgment, settlement (whether with or without court approval), conviction, plea of guilty or plea of nolo contendere (or its equivalent) shall not create a presumption that a director or officer did not meet the standards of conduct set forth in the Section. As used in the Section, the terms "claim, action, suit or proceeding" shall include any claim, action, suit or proceeding and all appeals thereof (whether brought by or in the right of this Association, any other corporation or otherwise), civil, criminal, administrative or investigative, or threat thereof, in which a director or officer of the Association (or his heirs and personal representatives) may become involved, as a party or otherwise:

- (a) by reason of his being or having been a director or officer of the Association or of any corporation which such person served as such at the request of the Corporation, or
- (b) by reason of such person acting or having acted in any capacity in a partnership, association, trust or other organization or entity where he served as such at the request of the Association, or
- (c) by reason of any action taken or not taken by such person in any such capacity, whether or not he continues in such capacity at the time such liability or expense shall have been incurred.

As used in this Section, the terms "liability" and "expense" shall include, but shall not be limited to, attorney's fees and expenses, court costs, and disbursements and amounts of judgments, fines or penalties against, and amounts paid in settlement by or on behalf of, a director or officer. As used in this Section, the term "wholly successful" shall mean (1) termination of any action, suit or proceeding against the person in questions without any finding of liability or guilt against him, (b) approval by a suit or proceeding, or (c) the expiration of a reasonable period of time after the making of any claim or threat of an actions, suite or proceeding without the institution of the same, without any payment or promise made to induce a settlement. Every person claiming indemnification hereunder (other than one who has been wholly successful with respect to any claim, actions, suit or

proceeding) shall be entitled to indemnification (a) if special independent legal counsel, which may be regular counsel of the Association or other disinterested person or persons, in either case selected by the Board of Directors, whether or not a disinterested quorum exists (such counsel or person being hereinafter called the "referee"), shall deliver to the Association written findings that such director or officer has met the standards of conduct set forth herein, and (b) if the Board of Directors, acting upon such written finding, so determines. The person claiming indemnification shall, if requested, appear before the referee and answer questions which the referee deems relevant and shall be given ample opportunity to present to the referee evidence upon which he relies for indemnification. The Association shall, at the request of the referee, make available facts, opinions or other evidence in any way relevant to the referee's findings which are within the possession or control of the Association. The rights of indemnification provided in this Section shall be in addition to any rights to which any such director or officer may otherwise be entitled. Irrespective of the provisions of this Section, the Board of Directors may, at any time, and from time to time, approve indemnification of directors, officers, employees or other persons to the full extent permitted by the law of the State of Indiana, whether on account of past or future transactions. Expenses incurred with respect to any claim, action, suit or proceeding may be advanced by the Association by action of the Board of Directors, (whether or not a disinterested quorum exists) prior to the final disposition thereof upon receipt of any undertaking by or on behalf of the recipient to repay such amount unless he is entitled to indemnification. The Board of Directors is authorized and empowered to purchase insurance covering the Association's liabilities and obligations under this Section and insurance protecting the Association's directors, officers, members and employees.

6. The Association through its Board of Directors shall designate the By-Laws of the Association (which shall thereafter be subject to amendment, addition or repeal by the members) and shall levy regular and/or special assessments against the members to accomplish the purposes of said Association, which shall be payable to the Treasurer on notice of said assessment. An assessment shall be assessed against each member in an equal sum of money, and not otherwise. The annual assessments provided for herein shall commence as to each member on the first day of the month following the conveyance of said member. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every member subject thereto. The due dates shall be established by the Board of Directors, and, unless otherwise provided, the Association shall collect each month from the member of each lot, one-twelfth (1/12) of the annual assessment for such member. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on the specified lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Each lot in the Subdivision or part thereof owned by a member shall be subject to a lien to secure the payment of the assessment established against such member. The

Association shall have the sole authority to collect and enforce the collection of all general and special assessments and may in addition to such assessments, charge and assess costs, (including reasonable attorney fees) and penalties in interest for the late payment or nonpayment thereof. The Association shall have the authority to expend all monies collected from such assessments, costs, penalties and interest for the payment of expenses and costs in carrying out the duties, rights and powers of the Association herein provided for.

Thirty (30) days after an general, regular or special charge and assessment shall be due and payable, and unpaid or not otherwise satisfied, the same shall be and become delinquent, and shall so continue until the amount of said charge and assessment, together with all costs, penalties and interest as provided herein or in the By-Laws of the Association, have been fully paid or otherwise satisfied.

At any time after any general or special charge and assessment against any member has become a lien and delinquent, the Association may record a Notice of Delinquency as to such member which Notice shall state therein the amount of such delinquency and that it is a lien, and the interest, costs (including reasonable attorneys' fees) and penalties which have accrued thereon, a description of the site against which the same has been assessed, and the name of the record or reputed record owner thereof, and such notice shall be signed by an officer of the Association. Upon the payment or other satisfaction of said assessments, interest, penalties and costs in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

Each lien established pursuant to these provisions by the recording of a Notice of Delinquency as hereinabove provided, may be foreclosed as and in the same manner as is provided for the foreclosure of a mortgage upon real property by the laws of Indiana at the date of the commencement of such foreclosure action. In any action to foreclose any such lien, the Association shall be entitled to costs, including reasonable attorneys' fees, and such penalties for delinquent charges and assessments as shall have been established by they Association.

Each and every assessment and lien, together with any costs, penalties or interest, established, reserved or imposed hereunder shall be subordinate to any valid bona fide mortgage or trust deed (and the lien and/or title thereof) which has been or may hereafter be given in good faith and for value on any interest of any owner of such lot. Any subsequent owner of any such lot purchased at foreclosure shall be bound by the restrictions, conditions, covenants, reservations, assessments and liens set out herein, not including, however, any assessment or lien arising prior to the foreclosure sale.

7. Income and Distribution. No part of the earnings of the corporation shall insure to the benefit of or be distributed to its members, directors, or officers, except any such person may be reimbursed for expenses incurred on behalf of the Association, may receive fair and reasonable compensation for his services pursuant to duly adopted

resolution of the members of empowered to vote at the meeting of members of the Association, and except also that a member may receive principal and interest on monies loaned or advanced to the Association.

8. Prohibited Activities. No substantial part of the activities of the Association shall be the carrying on of propaganda, or otherwise attempting to influence legislation's, and the Association shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

9. Distribution on Dissolution. In the event of the dissolution of this Association, the Board of Directors shall, after paying or making provision for the payment for all of the liabilities of the Association, dispose of all the assets of the Association exclusively for the purposes of the Association, or to such organization or organization's organized and operated exclusively for charitable, educational, religious or scientific purposes, as shall at the time qualify (a) as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 or acts amendatory, and (b) as a corporation, contributions to which are deductible under Sections 170(c)(2), 2055(a)(2), 2522(a)(2), or 2522(b)(2) of the Internal Revenue Code of 1986 (or the corresponding section of any future federal tax code), as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by a Court of proper jurisdiction of the County in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

IN WITNESS WHEREOF, the undersigned does hereby execute these Articles of Incorporation and certifies to the truth of the facts herein contained on the 17th day of December, 1997.

Daniel N. Buck

TABLE OF CONTENTS
BY-LAWS
OF
WINDEMERE FARMS HOMEOWNER'S ASSOCIATION, INC.

**APPROVED
AND
FILED
IND. SECRETARY OF STATE**

ARTICLE I.

Identification and Applicability

Section 1.01. Identification and Adoption

Section 1.02. Individual Application

ARTICLE II

The Association

Section 2.01. Name

Section 2.02. Proof of Title

Section 2.03. Membership

ARTICLE III

Meetings of the Association

Section 3.01. Purpose of Meeting

Section 3.02. Annual Meetings

Section 3.03. Special Meetings

Section 3.04. Notice and Place of Meetings

Section 3.05. Action Without a Meeting

Section 3.06. Voting

(a) Number of Votes

(b) Multiple Owner

(c) Voting by a Corporation or Trust

(d) Proxy

(e) Quorum

Section 3.07. Conduct of Meeting

(a) Reading of Minutes

(b) Reports of Officers and Committees

(c) Budget

(d) Nomination and Election of Board of Directors

(e) Other Business

(f) Adjournment

ARTICLE IV

Board of Directors

Section 4.01. Number

Section 4.02. Qualifications

Section 4.03. Term of Office and Vacancy

Section 4.04. Removal of Directors

Section 4.05. Meetings

- (a) Organizational Meeting
- (b) Regular Meetings
- (c) Special Meetings
- (d) Quorum
- (e) Action Without a Meeting
- Section 4.06. Duties of the Board of Directors
- Section 4.07. Powers of the Board of Directors
- Section 4.08. Limitation on Board Action
- Section 4.09. Compensation
- Section 4.10. Nonliability and Indemnity of Directors

ARTICLE V

Officers

- Section 5.01. Officers of the Association
- Section 5.02. Election of Officers
- Section 5.03. The President
- Section 5.04. The Vice President
- Section 5.05. The Secretary
- Section 5.06. The Treasurer
- Section 5.07. Committees
- Section 5.08. Bond

ARTICLE VI

Assessments

- Section 6.01. Proposed Annual Budget
- Section 6.02. Regular Assessments
- Section 6.03. Special Assessments
- Section 6.04. Failure to Prepare Annual Budget
- Section 6.05. Remedies for Failure to Pay Assessments

ARTICLE VII

Insurance

- Section 7.01. Public Liability Insurance
- Section 7.02. Premiums

ARTICLE VIII

General Provisions

- Section 8.01. Notice to Mortgagees
- Section 8.02. Notice to the Board of Directors
- Section 8.03. Non-waiver of Covenants
- Section 8.04. Agreements Binding
- Section 8.05. Severability

ARTICLE IX

Amendment of By-Laws

BY-LAWS
OF
WINDEMERE FARMS HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I.

Identification and Applicability

Section 1.01. Identification and Adoption. These By-Laws have been adopted by the Board of Directors of Windemere Farms Homeowners' Association, Inc., (hereinafter referred to as the "Association"), a not-for-profit corporation organized under the provisions of the Indiana Nonprofit Corporation Act of 1991, and these By-Laws shall be the By-Laws of the Association, which relates to all real property and improvements thereon located in the subdivision located in Vanderburgh County, Indiana, specifically Windemere Farms Subdivision, a subdivision of part of the North Half of Section 27, Township 5 South, Range 1- West, of the Second Principle Meridian, in Vanderburgh County, Indiana, as per plat thereof, recorded in Plat Book P, Page 84 on December 17, 1996, in the Office of the Recorder of Vanderburgh County, Indiana.

Section 1.02. Individual Application. All of the co-owners and future owners of lots in Windemere Farms shall be subject to the terms and provisions of these By-Laws.

ARTICLE II.

The Association

Section 2.01. Name. The name of the Association is, as indicated above, Windemere Farms Homeowners' Association, Inc.

Section 2.02. Proof of Title. Each owner of a lot in Windemere Farms, upon acquisition of title thereto, shall provide to the Association a copy of the recorded Deed conveying the interest to a lot in Windemere Farms to the owner, in order to receive a membership certificate.

Section 2.03. Membership. Each owner of a lot in Windemere Farms, upon presentation of proof of title thereto, shall become a member of the Association evidenced by a membership certificate. The term "member shall be synonymous with the terms "owner" or "co-owner" as used in these By-Laws. Such membership shall terminate upon the sale or other disposition by such member of his or her lot, at which time the new owner of such lot, upon presentation of proof of title thereto, shall become a member of the Association, and a membership certificate shall be issued to said new owner.

ARTICLE III.

Meetings of the Association

Section 3.01. Purpose of Meeting. At least annually and at such other times as may be necessary, a meeting of the co-owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of assessments, and for such other purposes as may be required by these By-Laws or the restrictions, reservations and protective covenants affecting Windemere Farms.

Section 3.02. Annual Meetings. The annual meeting of the members of the Association shall be held on the first Thursday of January, of each calendar year. At the annual meeting, the owners shall elect a Board of Directors of the Association in accordance with the provisions of these By-Laws, approve the annual budget, and transact such other business as may properly come before the meeting.

Section 3.03. Special Meetings. A special meeting of the members of the Association may be called by the President, by a resolution adopted by a majority of the Board of Directors or upon a written petition signed by not less than one of one-tenth (1/10) of all members of the Association. The resolution or petition shall be presented to the President and Secretary of the Association and shall state the purpose for which the meeting is to be called.

Section 3.04. Notice and Place of Meetings. All meetings of the members of the Association shall be held at a suitable place in Vanderburgh County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time, and place of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be personally served or mailed by the Secretary of the Association, or his representative, to each co-owner, not less than ten (10) days prior to the date of such meeting. Personal service shall be satisfied if the notice is placed in the mailbox or otherwise delivered at a location at the owner's lot that is likely to be actually received by the owner. If mailed, such notice shall be satisfied if mailed to the co-owner at his, her or its address as it appears upon the records of the Association. Notice of the time, place and purposes of any meeting of members of the Association may be waived in writing, either before or after the holding of such meeting, by any member of the Association, which writing shall be filed with or entered upon the records of the meeting. The attendance of any member of the Association at any such meeting without protest, prior to or at the commencement of the meeting, shall be deemed to be a waiver by him or her of the lack of proper notice of such meeting.

Section 3.05. Action Without a Meeting. All actions which may be taken at a meeting of the Association, except an action for the removal of a member of the Board of Directors, may be taken without a meeting if prior to such action a consent in writing,

setting forth the action so taken, shall be signed by all of the members of the Association, and such written consent is filed with the minutes of the proceedings of the members.

Section 3.06. Voting.

- (a) **Number of Votes.** On each matter coming before the meeting, each owner shall be entitled to cast one (1) vote for each lot owned by such owner; provided, however, that in the event that one (1) or more lots are combined for use by a single residence, the owner of such residence shall be entitled to one (1) vote only in all matters.
- (b) **Multiple Owner.** Where the owner of a lot constitutes more than one (1) person, or is a partnership, there shall be only one (1) voting representative entitled to vote for that lot. At the time of acquisition of title to a lot by a multiple owner or partnership, those persons constituting such owner or the partnership shall file with the Secretary of the Association a written proxy appointing one (1) of such persons or partners as the voting representative for such lot, which shall remain in effect until the appointment is revoked in writing or is otherwise rescinded by order of a court of competent jurisdiction, or the voting representative becomes incompetent or dies. Such appointed voting representative may grant a proxy to another to vote in his or her place at a particular meeting or meetings pursuant to Paragraph (d) of this Section 3.06, which will not constitute a permanent relinquishment of his or her right to vote as a voting representative for the lot.
- (c) **Voting by a Corporation or Trust.** Where a corporation or trust is an owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the Board of Directors of such corporation shall cast the vote to which the corporation is entitled.
- (d) **Proxy.** Members may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member of members of a proxy to vote or act on his, her, its or their behalf shall be made in writing and delivered to the Secretary of the Association and shall be revocable at any time by actual notice to the Secretary of the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized.
- (e) **Quorum.** Except where otherwise expressly provided by these By-Laws, the members of the Association representing twenty percent (20%) of the lots in Windemere Farms present in person or by proxy shall constitute a quorum for such meeting. The acts approved by a majority of the voting

power present in person or by proxy shall constitute the acts of the Association.

Section 3.07. Conduct of Meeting. The chairman of the meeting shall be the president of the Association, or in his or her absence the Vice President of the Association. He or she shall call the meeting to order at the duly designated time and business shall be conducted in the following order:

- (a) **Reading of Minutes.** The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.
- (b) **Reports of Officers and Committees.** The officers and chairman of committees shall make such report as may be appropriate. If the meeting is the annual meeting, the Treasurer shall report to the co-owners concerning the financial condition of the Association.
- (c) **Budget.** If the meeting is the annual meeting, the budget for the prior year and the proposed budget for the current calendar year shall be presented to the co-owners for approval or amendment.
- (d) **Nomination and Election of Board of Directors.** If the meeting is an annual meeting, an election of the Board of Directors shall be held. Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made by any owner from the floor at the annual meeting or by a written nomination submitted by any owner to the Board at least ten (10) days prior to the annual meeting. The nominating committee shall consist of five (5) members of the Association. The nominating committee shall consist of members of the Board of Directors for the initial annual meeting and thereafter may be appointed by the President at least thirty (30) days prior to each annual meeting of the members in accordance with Section 5.07. 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. Voting for the Board of Directors shall be by paper ballot, unless otherwise agreed by a majority of the members present. The ballot shall contain the name of each person nominated to serve as a Board member. Each owner may cast one (1) for as many nominees as are to be elected; however, he or she shall not be entitled to accumulate his or her votes. Those persons receiving the highest number of votes shall be elected. Each voting owner shall sign his or her ballot.

- (e) **Other Business.** Such other business, old or new, may then be brought before the meeting.
- (f) **Adjournment.** Following the completion of the presentation of such other business as may come before the meeting, the meeting shall adjourn.

ARTICLE IV.

Board of Directors

Section 4.01. Number. The affairs of the Association shall be governed and managed by the Board of Directors (hereinabove and hereinafter sometimes collectively called "Board" or "Directors", and individually called "Director"). The Board of Directors shall be composed of no fewer than one (1) and no more than seven (7) Directors.

Section 4.02. Qualifications. No person shall be eligible to serve as director unless he or she is a member of the Association. Where an owner consists of more than one (1) person or is a partnership, corporation, trust or other legal entity, than one (1) of the persons constituting the multiple owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single lot may be represented on the Board of Directors by more than one (1) person at a time.

Section 4.03 Term of Office and Vacancy. The Board of Directors shall be elected at each annual meeting of the Association. In the event of the death or resignation of a Director, the vacancy created thereby shall be filled until the next annual meeting by a vote of the majority of the remaining Directors; provided, however, if all Directors resign simultaneously, the vacancies shall be filled until the next annual meeting by the vote of the members of the Association at a special meeting called by the President for that purpose. there shall be no term limit imposed upon a member of the Board of Directors, so that any Director shall be eligible for re-election to the Board of Directors during any consecutive or subsequent year.

Section 4.04. Removal of Directors. A Director or Directors may be removed with or without cause by vote of a majority of members at a special meeting of the members duly called and constituted. In such case, his or her successor shall be elected at the same meeting from eligible persons nominated at the meeting. A director so elected shall serve until the next annual meeting of the members or until his or her successor is duly elected and qualified.

Section 4.05. Meeting.

- (a) **Organizational Meeting.** Immediately after each annual meeting of the members of the Association, the Directors shall hold an organizational

meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

- (b) **Regular Meetings.** Regular meetings of the Board of Directors may be held at such times and places as shall be determined by a majority of the Directors.
- (c) **Special Meetings.** Special meetings of the Board of Directors may be held at any time upon call by the President or any two (2) Directors if two (2) or more Directors exist, otherwise, the sole Director. Written notice of the time and place of each such meeting shall be given to each Director either by personal delivery or by mail, telegram or telephone at least two (2) days before the meeting, which notice need not specify the purposes of the meeting; provided, however, that attendance of any Director at any such meeting without protesting (prior to or at the commencement of the meeting) the lack of proper notice shall be deemed to be a waiver by him of notice of such meeting and such notice may be waived in writing either before or after the holding of such meeting by any Director, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any organizational, regular, or special meeting.
- (d) **Quorum.** A quorum of the Board of Directors shall consist of a majority of the Directors then in office; provided that a majority of the Directors present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time and place to which such meeting is adjourned or fixed and announced at such meeting.
- (e) **Action Without a Meeting.** All actions which may be taken at a meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all Directors and such written consent is filed with the minutes of proceedings of the Board.

Section 4.06. Duties of the Board of Directors. Except as otherwise provided by law or these By-Laws, all power and authority of the Association shall be exercised by the Board of Directors. The Board shall provide for the maintenance, repair, replacement, restoration and operation of the common areas and facilities, and the collection and disbursement of the common expenses. These duties include, but are not limited to:

- (a) Take title to and maintain, repair, replace, restore and operate the retention basin located within Windemere Farms;
- (b) Maintain and repair the common areas, streetlights, and landscaping within Windemere Farms;

- (c) Assessment and collection from each of the owners of said owner's share of the common expenses;
- (d) Preparation of the proposed annual budget;
- (e) Keeping a book with a detailed account of the receipts and expenditures made by the Board, which book and vouchers accrediting the entries made thereon shall be available for examination by all of the owners at convenient hours on working days that shall be set and announced for general knowledge, and which books and records shall be kept in accordance with good accounting procedures;
- (f) Prepare and deliver annually to the co-owners a full accounting of all receipts and expenses incurred in the prior year, which accounting shall be delivered to each owner simultaneously with the delivery of the annual budget; and
- (g) Enforce the lien against any lot and the improvements thereon for which assessments are not paid in accordance with the provisions of these By-Laws, or to bring an action at law against the owner personally obligated to pay the same.

Section 4.07. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power to:

- (a) Purchase of the benefit of the owners such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors for the maintenance, repair, replacement and operation of the retention basin, the common areas, streetlights and landscaping of the other common areas of Windemere Farms Subdivision, all as evidenced by payment vouchers and acknowledged by the supplier or laborer and certified by the Secretary as having been supplied or performed;
- (b) Employ legal counsel, accountants or other professionals as in the judgment of the Board of Directors may be necessary or desirable in connection with the performance of the business and affairs of the Association;
- (c) Include the cost of all of the above and foregoing as common expenses and to pay all such costs therefrom;
- (d) Open and maintain a bank account or accounts in the name of the Association;

- (e) Exercise for the Association all powers, duties and authorities vested in or delegated to the Association, and authorize and direct an officer or officers of the Association to execute and deliver, for and on behalf of the Association such documents and instruments as may be necessary or required in the exercise of said powers, duties and authorities;
- (f) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

Section 4.08. Limitation on Board Action. The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of not more than one thousand Dollars (\$1,000.00) without obtaining the prior approval of a majority of the members, except in the following cases:

- (a) Proposed contracts and proposed expenditures set forth in the annual budget as approved by the Members at the annual meeting; and
- (b) Contracts for repairs, replacement or maintenance where delay of such repair, replacement or maintenance increases substantially the cost and expense of the same and/or would subject the lots in Windemere Farms and the improvements thereon or the persons therein, to substantial risk of injury or damage.

Section 4.09. Compensation. No Director shall receive any compensation for his or her services as such, except to such extent as may be expressly authorized by the majority of the members. However, any Director may at any time be reimbursed for his or her actual expenses incurred in the performance of his or her duties, and such reimbursement shall not require approval of the members.

Section 4.10. Nonliability and Indemnity of Directors. As provided for in the Articles of Incorporation of the Association (the "Articles") and in these By-laws, the Directors shall not be liable to the Members for any errors or mistake in judgment in exercising and carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct bad faith or gross negligence. The members shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the express provisions of these By-Laws or the Articles. It is intended that the Directors shall have no personal liability with respect to any contract made by the on behalf of the Association. The liability of any Member arising out of any contract the Director shall be limited to such member's proportionate share thereof, based upon the number of lots owned by him or her in Windemere Farms Subdivision. Every contract made by the Board on behalf of the Association shall provide that the Board on behalf of the Association is acting for and on behalf of the Association and no Director shall have

personal liability thereunder, except in his or her capacity as a Member of lots in said subdivision and then only to the extent of his or her proportionate share thereof. The Members shall indemnify any person, his or her heirs, assigns and legal representatives made a party to any action, suit or proceeding by reason of the fact that he or she is or was a Director of the Association, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him or her in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters to which it shall be judged in such action, suit or proceeding, unless it shall be established that the Director was guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit, or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his or her duties where, acting in good faith, such Director relied on the books and records of the attorney, or other person, firm or corporation employed by the Association to render advice or service, unless such Director had actual knowledge of the falsity or incorrectness thereof, nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors.

ARTICLE V.

Officers

Section 5.01. Officers of the Association. The principal officers of the Association shall be the President, Vice President, Secretary, and Treasurer. The Board may from time to time appoint and elect such other officers as in their judgment may be necessary. Any two (2) or more offices may be held by the same person, except that the duties of the President shall be exclusive, and the President shall not hold any other office.

Section 5.02. Election of Officers. The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his or her successor shall be elected at any regular meeting of the Board or any special meeting of the Board called for such purpose.

Section 5.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside at all meetings of the Board of Directors and at all meetings of the Association, and subject to the directions of the Board of Directors, the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, contracts and other obligations of the Association and shall have such authority and shall perform such other duties as may be determined by the Board of Directors or otherwise provided for in these By-Laws.

Section 5.04. The Vice President. The Vice President shall be elected from among the Directors and shall perform all duties encumbered upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 5.05. The Secretary. The Secretary shall be elected from among the Directors or members of the Association. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete copy of the proceedings of such meetings, shall perform all of the duties incident to the office of the Secretary, and such other duties as, from time to time may be prescribed by the Board or by the President. The Secretary shall specifically see that all notices of the Association or the Board are given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 5.06. The Treasurer. The Treasurer shall be elected from among the Directors or members of the Association. The Treasurer shall maintain a correct and complete record of accounts showing accurately at all times the financial condition of the Association, and shall perform such other duties incident to the office of Treasurer, and such other duties as, from time to time, may be prescribed by the Board or by the President. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association. He shall immediately deposit all funds of the Association coming in his or her hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

Section 5.07. Committees. The Board of Directors may appoint such Committees as shall be necessary or desirable for the Association. These committees may include, but shall not be limited to the following committees:

- a.) Improvements and Landscape Committee
- b.) Restrictions, Enforcement and Safety Committee
- c.) Welcoming and Social Committee
- d.) Budget Committee
- e.) Communications, Newsletter and Meetings Committee
- f.) Nominating Committee

The Board of Directors may appoint any other committees as is deemed appropriate in carrying out its purpose.

Section 5.08. Bond The Board of Directors may require such officers as the Board deems necessary, to provide a fidelity or surety bond, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful extraction, willful misappropriation, and other acts of fraud or dishonesty, in such sums and with such

sureties as may be approved by the Board of Directors. The cost of such bond shall be paid by the Association as a common expense.

ARTICLE VI.

Assessments

Section 6.01. Proposed Annual Budget. On or before the first day of October prior to each annual meeting of the members of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing twelve (12) months from January 1 to December 31, estimating the total amount of October expenses to be incurred during said period, and shall on or before October 15, notify each member in writing as to the amount of such estimate, with reasonable itemization thereof. The annual budget shall be submitted to the members at the annual meeting of the Association for adoption, and, if so adopted, shall be the basis for the regular assessments (hereinafter defined) for the twelve (12) months' period from January 1 to December 31. At the annual meeting of the members, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the vote; provided, however, that in no event shall the annual meeting of members be adjourned until an annual budget is approved at such meeting, either the proposed annual budget or the proposed annual budget as amended.

Section 6.02. Regular Assessments. The annual budget as adopted shall, based upon the estimated cash requirements for expenses in the ensuing twelve (12) months' period as set forth in said budget, contain a proposed assessment against each member of a lot in Windemere Farms Subdivision. A member shall be assessed for each lot owned in the Subdivision regardless of such member's voting power (i.e., regardless of whether the member has only one (1) vote relating to one (1) or more lots). Immediately following the adoption of the annual budget, each member shall be given written notice of his assessment (hereinafter called "Regular Assessment"). The Regular Assessment shall be paid in one (1) installment, payable on the first day of December of each calendar year. Payment of said installment shall be made to the Board of Directors, or such other representative of the Board as may be directed by said Board. The Regular Assessment for the year shall become a lien on each separate lot as of the first day of January of each calendar year.

On or before the date of each annual meeting, the Board shall supply to all members an itemized accounting of the expenses for the preceding twelve (12) months' period actually incurred and paid, together with a tabulation of the assessments collected, and showing the net amount over or short of the actual expenditures. Any amount accumulated in excess of the amount required for actual expenses shall be credited to the budget for the ensuing twelve (12) months' period and the Regular Assessment shall be adjusted accordingly. Any shortage shall be added to the Regular Assessment for the ensuing twelve (12) months' period.

Section 6.03. Special Assessments. If the Regular Assessments are inadequate for any reason, including nonpayment of any member's Regular assessment, the Board shall prepare an estimate of the actual cash requirements then necessary, or necessary for the balance of the year, which additional amount shall be assessed to the members, and the amount of each member's assessment shall be determined in the same manner as such member's Regular Assessment is determined pursuant to Section 6.02 of this Article. The Association shall serve notice of such further assessment (herein called "Special Assessment") on all members by a statement in writing giving the amount and the reasons therefor, and such Special Assessment shall become due and effective within fifteen (15) days after the giving of such notice. Said Special Assessment shall become a lien on each lot as of the due date of said Special Assessment.

Section 6.04. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual budget on the members, or the failure of the Association to adopt said annual budget, shall not constitute a waiver or release in any manner of any member's obligation to pay the Regular Assessment as hereinabove provided, whenever the same shall be determined, and in the absence of any annual budget, the member shall continue to pay the monthly installments of the Regular Assessments at the rate established for the previous period until the Regular Assessment for the next ensuing twelve (12) months' period shall have been determined and delivered to the members.

Section 6.05. Remedies for Failure to Pay Assessments. If any member is in default in the payment of any of the assessments provided for in this Article VI, the Board of Directors may bring suit for and on behalf of the Association to enforce collection thereof and/or to foreclose the lien therefor, and there shall be added to the amount due, the cost of said suit, together with interest and reasonable attorney's fees to be fixed by the court. In any foreclosure the member shall be required to pay a reasonable rental for the lot if he or she occupies the improvements thereon, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. Any mortgagee of the lot shall be entitled to written notice of such failure to pay any assessment, which notice shall be served not less than ten (10) days prior to the institution of a suit for collection.

When the mortgagee of a first mortgage of record or other purchaser of a lot acquires title to the lot as a result of foreclosure of the first mortgage, or where the mortgagee of a first mortgage of record in lieu of foreclosure of its mortgage acquires title to the lot by accepting a deed to the lot in full satisfaction of its mortgage, such acquirer of title, its successors and assigns, shall not be liable for any assessments chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer. Such unpaid assessments shall be deemed to be expenses collectible from all of the lots, including that of such acquirer, at the time of the first assessment next following the acquisition of title by such mortgagee or other purchaser.

In the event of a voluntary conveyance of a lot, other than by deed in lieu of foreclosure, the Grantee of the lot shall be jointly and severally liable with the Grantor of said lot for all unpaid assessments levied by the Association against the Grantor and his or her lot up to the time of the grant and conveyance, without prejudice to the Grantee's right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the Board of Directors setting forth the amount of all unpaid assessments against the Grantor due the Association, and such Grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the Grantor in excess of the amount set forth in such statement for the period reflected in such statement.

Any lien provided for under this Article shall be a lien against not only the lot but all improvements located thereon and any reference to "lot" in this Article shall be deemed to include that portion of an adjoining lot or lots comprising one building site, and all improvements located thereon.

ARTICLE VII.

Insurance

Section 7.01. Public Liability Insurance. The Board of Directors, if authorized by the members at a duly held meeting of the Association, shall obtain comprehensive public liability insurance in such limits as the Board of Directors shall deem appropriate. Such insurance shall cover and inure to the benefit of the Association, the Board of Directors, all persons acting or who may come to act as agents or employees of the Association or the Board of Directors, and all lot members.

Section 7.02. Premiums. The premiums for such insurance shall be paid by the Association, as part of the common expenses.

ARTICLE VIII.

General Provisions

Section 8.01. Notice to Mortgagees. Upon written request to the Board of Directors by the holder of any duly recorded mortgage or trust deed against any lot, the Board of Directors shall give such mortgage holder a copy of any and all notices permitted or required by these By-Laws to be given to the member or members whose lot is subject to such mortgage or trust deed.

Section 8.02. Notice to the Board of Directors. Notice required to be given to the Board of Directors by the Association may be delivered to any member of the Board of Directors or officers of the Association either personally or by mail addressed to such member or officer.

Section 8.03. Non-waiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 8.04. Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established by these By-Laws shall be deemed to be binding on all lot members, their successors and assigns.

Section 8.05. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provisions of these By-Laws, or any part of the same, shall not impair or affect in any manner the validity, enforceability, or affect the rest of these By-Laws.

ARTICLE IX.

Amendment of By-Laws.

These By-Laws may be amended by a vote of not less than fifty-one percent (51%) of the total voting power of the members of the Association in a duly constituted meeting called for such purpose or in any regular meeting of the members of the Association.