

FALCON POINTE
HOMEOWNERS' ASSOCIATION
GOTHA, FLORIDA 34734

ARTICLES OF INCORPORATION

BY-LAWS

DECLARATION of
CONDITIONS, COVENANTS,
EASEMENTS & RESTRICTIONS

ARTICLES OF INCORPORATION

OF

FALCON POINTE HOMEOWNERS
ASSOCIATION, INC.

A CORPORATION NOT-FOR-PROFIT

The undersigned, being desirous of forming a corporation not for profit, under the provisions of Chapter 617 of the Florida Statutes, hereby subscribes to these Articles for the purpose of forming a corporation and with the powers herein specified.

ARTICLE I. NAME

The name of this corporation shall be Falcon Pointe Homeowners Association, Inc. (hereinafter referred to as the "Association").

ARTICLE II. REGISTERED AGENT AND OFFICE

Ronald E. Fenn, whose address is 8743 Summerville Place, Orlando, Florida 32819, is hereby appointed the initial registered agent of this Association.

ARTICLE III. INITIAL PRINCIPAL OFFICE

The initial principal office of the Association shall be located at 7635 Ashley Park Court, Suite 503, Orlando, Florida. The Association may change its principal office from time to time without amendment of these Articles of Incorporation.

ARTICLE IV. PURPOSE AND POWERS OF THE ASSOCIATION

A. The purpose and object of the Association shall be to administer the operation and management of FALCON POINTE, a subdivision located in Orange County, Florida (hereinafter "Community") more fully described in Exhibit "A" attached hereto, (hereinafter "Property") according to the Declaration of Covenants, and Notice of Restrictions which is to be recorded in the public records of Orange County, Florida ("Declaration") and any additions thereto which may be brought into the jurisdiction of this Association by annexation under the terms and conditions as set forth in the Declaration by Luscian Hills Development Limited Partnership, its successors and Assigns ("The Declarant").

B. The Association does not contemplate pecuniary gain or profit to the Members thereof and shall undertake and perform all acts and duties incident to the operation, management, preservation and architectural control of the Property in accordance with the terms, provisions and conditions of these Articles of Incorporation, the Bylaws of the Association and the Declaration.

The Association shall further- promote the health, safety and welfare of the Members of the Association in the Community.

C. The Association shall have the following powers:

1. All of the powers and privileges granted to corporations not for profit under the laws of the State of Florida as the same may be amended from time to time as therein provided.

2. All of the powers reasonably necessary to implement and effectuate the purposes of the Association, including, without limitation, the power, authority and right to undertake all powers and duties set forth in the Declaration, these Articles and Bylaws as the same may be amended from time to time, the Declaration and Bylaws being incorporated herein as if set forth in full.

3. The right to tax, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

4. The right to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association and to annex such property owned by it to the covenants and restrictions.

5. The right to borrow money, and with the assent of two-thirds (2i3) of each class of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

6. The right to dedicate, sell or transfer all or any part of the Common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of each class of Members, agreeing to such dedication, sale or transfer, provided, however, the Association shall have the right to grant permits, easements or licenses to a public agency or utility company for utilities, roads other purposes reasonably necessary or useful for the proper maintenance or operation of the property, which grants shall not be deemed a dedication, sale or transfer requiring the consent of Members.

7. The right to participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidations or annexation

shall have the consent of two-thirds (2/3) of each class of Members.

8. The right to operate, maintain and manage the surface water management systems including, but not limited to, retention areas, drainage structures and drainage easements.

ARTICLE V. QUALIFICATION OF MEMBERS

The qualification of Members, manner of their admission to and termination of membership shall be as follows:

A. Every person or entity who is a fee simple records owner of a fee interest in any Lot which is subject to the Declaration, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separate from ownership of any Lot which is subject to the Declaration.

B. The membership of any person or entity shall be automatically terminated upon his being divested of his title or interest in such Lot; provided that nothing herein contained shall be construed as terminating the membership of any person or entity owning fee title to or a fee ownership interest in two or more Lots at any time while such person or entity shall retain fee title to or a fee ownership interest in any lot.

C. Transfer of membership shall be recognized by the Association upon its being provided with a copy of the recorded deed conveying such fee simple title to a Lot to the new Member.

D. Except as an appurtenance to his Lot, no member can assign, hypothecate or transfer in any manner, his membership in the Association or his interest in the funds and assets of the Association. The funds and assets of the Association shall belong solely to the Association subject to the limitation that the same be expended, held or used for the benefit of the membership and for the purposes authorized herein, in the Declaration, and the Bylaws hereof.

ARTICLE VI. VOTING RIGHTS

There shall be two classes of voting memberships:

CLASS A. The Class members shall be Owners of a Lot as such is defined in the Declaration, with the exception of Declarant. A Class A Member shall be entitled to one vote for each Lot owned.

CLASS B. The Class B members shall be the Declarant, and the Declarant shall be entitled to five (5) votes for each Lot owned.

The Class B membership shall cease and be converted to Class A membership on the happening of any of the following, whichever first occurs:

a. when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

b. December 31, 2005

c. Upon written notice by Declarant

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Orange Co FL 1998-0167741

Until the recordation of the Declaration in the public records of Orange County, Florida, the membership of the Association shall be comprised of the subscribers to these Articles, each of whom shall be entitled to cast one vote on all matters upon which the membership would be entitled to vote.

When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised by one person as they determine, and such person shall be designated as the holder of the vote. If a corporation, partnership, joint venture or other entity is a fee simple title holder to a Lot, such entity shall designate one person as the holder of the vote. In no event shall more than one vote be cast with respect to any Lot.

ARTICLE VII. BOARD OF DIRECTORS

A. The business affairs of this Association shall be managed by the Board of Directors who need not be Members of the Association. The number of members of the first Board of Directors shall be three and the initial Board of Directors shall be appointed by the Declarant. There shall be three Directors until Class B membership ceases. After Class B membership ceases, the Board of Directors shall consist of five directors.

B. The names and addresses of the persons who are to serve as the initial Board of Directors until their successors are appointed or chosen, are as follows:

DIRECTOR:	ADDRESS:
Ronald E. Fenn	8743 Summerville Place Orlando, Florida 32819
Deborah A. Fenn	8743 Summerville Place Orlando, Florida 32819
John Otsuki	Stonebrige Associates 4800 Montgomery Lane Bethesda, Maryland 20814

C. Until Class B membership ceases, the three directors shall serve for one (2) year and be elected by the members annually at the annual meeting. At the first meeting after termination of the Class 3 membership, the members shall elect five Directors. At such meeting the members shall elect two directors for a term of one year, two directors for a term of two years and one director for a term of three years; and at each annual meeting thereafter the members shall elect one or two directors (being the same number of directors as those whose terms have expired) for a term of three years.

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ARTICLE VI II. OFFICERS

A. The officers of the Association shall be a President, one or more Vice Presidents, Secretary and, Treasure and if any, the Assistant Secretaries and Assistant Treasurers, who shall perform the duties of such offices customarily performed by like officers of corporations in the State of Florida subject to the directions of the Board of Directors.

B. Officers of the Association may be compensated in the manner to be provided in the Bylaws. The Board of Directors, or the President with the approval of the Board of Directors, may employ a managing agent, agency, and/or other managerial and supervisory personnel or entity to administer or assist in the administration of the operation and management of the Community and the affairs of the Association, and any and all such persons and/or entity or person or entity is a Member, Director or officer of the Association.

C. The persons who are to serve as officers of the Association until their successors are chosen are:

OFFICE:	NAME:
President	Ronald E. Fenn
Vice President	John Otsuki
Secretary	Deborah A. Fenn

D. The officers shall be elected by the Board of Directors at their annual meeting as provided in the Bylaws. Any vacancies in any office shall be filled by the Board of Directors at any meeting duly held.

E. The President shall be elected from the membership of the Board, but no other officer need be a Director. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except Secretary and Treasurer.

ARTICLE IX. BYLAWS

A. The Board of Directors shall adopt by a majority vote the original Bylaws of the Association.

a. The Bylaws shall be amended by the procedure more fully set forth in the Bylaws and shall be approved by at least a majority of each class of membership.

ARTICLE X. AMENDMENT OF ARTICLES

Amendment of these Articles shall require the assent of seventy-five percent (75%) of the votes of each class of Members. When the Class B membership ceases and is converted to Class A membership, amendment of these Articles shall require the assent of seventy-five percent (75%) of only the votes of such Class A membership.

ARTICLE XI. INDEMNITY

Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connection with any 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 at the time such expenses are incurred, except in such cases where the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in 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 other officer may be entitled.

ARTICLE XII. NON-PROFIT STATUS

No part of the income of this corporation shall be distributed to the Members except upon the dissolution or final liquidation and as permitted by the court having jurisdiction thereof.

ARTICLE XIII. MERGER AND DISSOLUTION

The Association shall have the right to participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided such merger or consolidation shall have the assent of two-thirds (2/3) of each class of members.

This Association may be dissolved by the approval of two-thirds of the votes of each class of members given in person, by proxy or by written consent. Upon dissolution of the

**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR
THE SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT UPON
WHO PROCESS MAY BE SERVED.**

In compliance with the laws of Florida, the following is submitted:

First - - That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, at City of Orlando, County of Orange, State of Florida, the corporation named in said Articles has named Ronald E. Fenn, located at 8743 Summerville Place, Orlando, Florida 32819, County of Orange, State of Florida, as its statutory registered agent.

Having been named the statutory agent of the above corporation at the place designated in this certificate, I hereby accept the same and agree to comply with the provisions of Florida law relative to keeping the registered office open.


Registered Agent

Dated this 15 day of
January, 1998.

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Orange Co FL 1998-0167741

BY-LAWS
OF
FALCON POINTE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME: AND LOCATION. The name of the corporation is FALCON POINTE HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association." The principal office of the corporation shall be located at 7635 Ashley Park Court, Suite 503, Orlando, Florida, but meetings of members and directors may be held at such places within the State of Florida. County of Orange, as may be designated by the Board of Director -

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ARTICLE II
DEFINITIONS

Section 1. "Association" shall mean and refer to FALCON POINTE HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. Common area shall include those areas defined as in the Declaration of Covenants, Conditions, and Restriction.

Section 4. "Lot" shall mean refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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Exhibit "B"

to vote thereat shall have power to Adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5 Proxies . At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE IV BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of the Association shall be initially managed by a board of three (3) directors who need not be members of the Association. The initial directors shall be Ronald E. Fenn Deborah A. Fenn and John Otsuki. The board shall consist of three directors who are elected annually at the annual meeting until Class B Membership ceases as set forth in the Declaration. After Class B Membership ceases the board shall consist of five(5) directors who are each members of the Association.

Section 2 Term of Office. The term of office for the two (2) directors shall be one year until the class B membership ceases. After the class B membership ceases, the members shall elect two directors for a term of one year, two directors for a term of two years and one director for a term of three years; and at each annual meeting thereafter the members shall elect one or two directors (being the same number of directors whose terms have expired) for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of 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.

Section 4. Compensation. No director shall receive compensation for any service he may render to the association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made for the floor at the annual meeting. The Nominating Committee, after Class B membership ceases, shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. 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 nomination may be made from among members or non-members.

Notwithstanding the above, the Declarant shall appoint the Nominating Committee so long as Class B membership exists.

Section 2 Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETING OF DIRECTORS

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Section 1. Regular Meetings. Regular meeting of the Board of Directors shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board.

Should said meetings fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the association, *or* by any two directors, after not less than three (3) days notice to each director.

Section 3 Quorum. A majority of the number of directors shall constitute a quorum for the transactions of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII POWERS AND DUTIES OF THE: BOARD OF DIRECTORS

Section 1 Powers The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) 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 meeting of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

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Section 2 Duties It shall be the duty of the Board of Directors to

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;
- (b) supervise officers, agents and employees of this Association. and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
 - (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
 - (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (f) cause all officers or employee having fiscal responsibilities to be bonded, as it may deem Appropriate.
- (g) cause the Common Area to be maintained.

ARTICLE VIII
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, and a secretary/treasurer, and other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3 Term of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have authority, and perform such duties as the Board may, from time to time, determine.

Section 5 Resignation and Removal. Any officer may *be* removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

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Orange Co FL 1998-0167741

Section 8. - The duties of the officers are as follows:

President

(a) The president shall preside at all meeting of the Board of Directors: shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and co-sign all checks and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the board.

Secretary/Treasurer

(c) The secretary/treasurer shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal serve; notice of meeting of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses. He/She shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors: shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members, and shall perform such other duties as required by the Board.

ARTICLE IX
COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board or Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X
BOOKS AND RECORDS

The books, records and papers of the Association shall at times, during reasonable business hours, subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI
ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fee of any such action shall be added to the amount of such assessment. No Owner may waiver or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumferences the words:
FALCON POINTE HOMEOWNERS ASSOCIATION, INC.

ARTICLE XIII
AMENDMENTS

Section 1 These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws the Articles shall control and in the case of any conflict between the Declaration and these By-Laws the Declaration shall control.

**ARTICLE XIV
MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of Incorporation

IN WITNESS WHEREOF, we bring all of the directors of the FALCON POINTE
HOMEOWNERS ASSOCIATION, INC have hereunto set our hands of this 5th day of February 1998.



Ronald E. Fern



Deborah A. Fern, Director



L. O. Fern

OR Bk 5472 Pg 1882
Orange Co FL 1998-016n41

I, the undersigned, do hereby
certify

THAT I am the duly elected acting secretary of the FALCON POINTE HOMEOWNERS
ASSOCIATION, INC., a Florida corporation, and.

THAT the forgoing By-Laws constitute the original By-Laws of said Association as duly adopted
at a meeting of the Board of Directors thereof, held on the 5th day of February 1998


Deborah A. Fenn, Secretary

OR Bk 5472 Pg 1883
Orange Co FL 1998-016TI41

DESCRIPTION:

THAT PORTION OF LOTS 27 AND 28, LAKEVIEW HEIGHTS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK E PAGE 39, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BLOCKS 16, 17, 23, AND 24, PARK RIDGE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK Q PAGE 100, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA ALL LYING IN SECTION 28, TOWNSHIP 22 SOUTH RANGE 28 EAST BEING DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF HEMPLE AVENUE 50 FOOT RIGHT OF WAY, AND THE SOUTHE LINE OF THE NORTHWEST 1/4 OF SAND SECTION 28 THENCE RUN N 0078'00" W ALONG SAND EAST RIGHT OF WAY LINE OF HEMPLE AVENUE 459.07 FEET TO THE CENTERLINE OF MARKET STREET: THENCE RUN S 75'22.39" E ALONG SAND CENTERLINE 496.16 FEET TO THE EAST LINE OF PARK RIDGE THENCE RUN N 0004'13DEGREE W ALONG SAND EAST LINE 209.09 FEET TO THE SOUTH RIGH OF WAY LINE OF OLD WINTER GARDEN ROAD: THENCE RUN S 75 27'4E8 E ALONG SAND SOUTH RIGHT OF WAY LINE 77.97 FEET TO A CURVE CONCAVE TO THE SOUTHWEST: THENCE RUN SOUTHEASTERLY ALONG SAID CURVE HAVING A CENTRAL ANGLE OF 26 02 21 A RADUS OF 2011.89 FEET AN ARC LENGTH OF 914.34 FEET A CHORD BEARING OF S 62 26 38 E AND A CHORD DISTANT OF 906.49 FEET THENCE RUN S 49 25 27 E 1857 MEET TO THE EAST LINE OF LOT 28 LAKEVIEW HEIGHTS THENCE RUN S 00 14 ALONG SAID EAST LINE 94.30 FEET TO THE AFORESAID SOUTH LINE OF THE NORTHWEST 1/4 THENCE RUN S 00 28 24 E CONTINUEING ALONG THE SAID EAST LINE OF LOT 28 446.96 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF THE EAST-WEST EXPRESSWAY BEING A CURVE CONCAVE TO THE SOUTHEAST THENCE RUN SOUTHWESTY ALONG SAID CURVE HAVING A CENTRAL ANGLE OF 035

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 34.317 ACRES MORE OR LESS.

OR Bk 5472 Pg 1884
Orange Co FL 1998-0167741

Recorded - .Martha O. Haynie

Exhibit "C"

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

By: [Signature], D.C.
DATED: 5/16/98



Prepared By:
Ladd Fassett
P.O. Box 3387
Orlando, Florida 32802-3387

Orange Co FL 1998-0167741
050198 11:45:29am
OR Bk 5472 Pg 1839
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**DECLARATION OF CONDITIONS, COVENANTS, EASEMENTS
AND RESTRICTIONS FOR FALCON POINTE HOMEOWNERS ASSOCIATION**

This declaration is made on this 24th day of APRIL, 1998 by Luscian Hills Development Limited Partnership, a Delaware Limited Partnership whose address is c/o Stonebridge Associates Inc. 4800 Montgomery Lane, Suite 815, Bethesda, Maryland 20814, which declares hereby that the "Properties" described in Article II of this Declaration are and shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Restrictions, Easements, Charges and Liens hereinafter set forth.

ARTICLE I

Definitions

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meaning:

1.1 "Additional Properties" shall mean and refer to any additional land which Declarant may from time to time subject to the terms and conditions of this Declaration in accordance with the terms hereof.

1.2 "Assessment" shall mean and refer to a share of the funds required for payment of expenses of the Association, which funds shall be assessed against Lot Owners from time to time.

1.3 "Association" shall mean and refer to The Falcon Pointe Homeowners Association, Inc., a Florida Corporation not for profit.

1.4 "Board of Directors shall mean and refer to board of directors of the Association.

1.5 "Common Area or "Common Property shall mean any property designated on the Plat to be recorded for the Falcon Pointe Subdivision for the common use of the owners of the Lots (including improvements thereto), Tract A on the Plat, the streets and all personal property owned by the Association or to be owned by the Association for the common use, enjoyment and benefit of the Owners and all property designated as Common Areas in any future recorded supplemental declaration; together with the landscaping and any improvements thereon, including without limitation, all structures, open space, conservation areas, retention area, masonry walls, walkways, entrance markers, signs and street lights but excluding any public utility installations or easements thereon.

1.6 "Declaration" shall mean and refers to this Declaration of Conditions, Covenants, Easements and Restrictions for Falcon Pointe as recorded in the Public Records of Orange County, Florida, and as the same may be amended from time to time.

1.7 "Declarant" shall mean and refers to Luscian Hills Development Limited Partnership, a Delaware limited partnership, and its successors and assigns by virtue of such written instruments assigning the rights and obligations of Declarant hereunder which are recorded in the Public Records of Orange County, Florida Upon recording of any such assignment, the initial Declarant shall be released and absolved from any obligations on the part of the Declarant as may arise by or through this Declaration. A Lot purchaser, Lot Owner or Lot mortgagee shall not be deemed to be the Declarant by the mere act of purchase or mortgage of a Lot

1.8 "Drainage Easements" shall mean and refer to the drainage easement declared and reserved on Plat.

1.9 "Entitled to Vote" shall mean and refer to that Lot Owner who shall cast a vote for a Lot at an Association meeting. If more than one person or legal entity shall own any Lot, the Owners thereof shall determine among themselves who shall be the Member Entitled To Vote. Said determination shall be manifested upon a voting certificate, signed by all Owners of said Lot, and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein to the contrary, all Lot Owners whether Entitled To Vote or not are assured of all other privileges, rights and obligations of Association membership and shall be Members of the Association. In no event shall any mortgage or other party holding any type of security interest in a Lot or the Residence constructed thereon by Entitled To Vote for purposes hereof, unless and until any of said parties obtain or receive fee simple title to such Lot.

1.10 "Institutional Lender" or "Institutional Mortgagee" shall mean and refer to a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust, or any other generally recognized institutional-type lender or its loan its loan correspondent, the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Federal Housing Administration (FHA) or the Veteran's Administration (VA) and to any successor or assignee thereof.

1.11 "Lot" shall mean and refer to any Lot on a Plat or portion of the Properties, and any other property hereafter declared as a Lot by the Declarant and thereby made subject to this Declaration.

1.12 "Member shall mean and refer to all those Owners who are Members of the Association as provided in Article III hereof.

1.13 "Owner" shall mean and refer to the record owner, whether one or more persons or entitles, of the fee simple title to any Lot situated upon the Properties.

1.14 "Plat" shall mean and refer to the plat of Falcon Pointe a Re-plat as recorded in the Public Records of Orange County, Florida, together with any plat of additional land made subject to this Declaration and to the jurisdiction of the Association.

1.15 "Properties" shall mean and refer to all of the Properties described in Section 2.1 of this Declaration, and in addition thereto, as are now or hereafter made subject to this Declaration and to the jurisdiction of the Association, except such as are withdrawn from the provisions hereof in accordance with the procedures hereinafter set forth.

1.16 "Residence" or "Dwelling Unit" or "Unit" shall mean and refer to any residential building constructed on a Lot for which a certificate of occupancy has been duly issued.

1.17 "Architectural Review Committee" or "ARC" shall mean and refers to a committee appointed in accordance with Article VI, Sections 6.9 through 6.28 hereof.

1.18 "Builder" shall mean and refer to the purchasers of developed Lots from Declarant who purchase for the purpose of constructing Dwelling Units thereon for the sale to third parties in the normal course of business.

1.19 "County" shall mean and refer to Orange County, Florida, a political subdivision of the State of Florida.

1.20 "Articles of Incorporation" shall mean and refer to the articles of incorporation of the Falcon Pointe Homeowners Association, Inc., herein attached as Exhibit "A".

1.21 "By-Laws" shall mean and refer to the bylaws of the Falcon Pointe Homeowners Association, Inc., herein attached as Exhibit "B".

1.22 "Surface Water" or "Storm Water Management System" shall mean and refer to 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 re-sue water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quantity of discharges from the system as permitted pursuant to Chapters 40C-4, 40C-40 or 40C-42, Florida Agriculture commission.

1.23 "Streets" shall mean and refer Shadowind Way, Shonnora Drive, Cerulean Way and Ballinore Place which are the roads within Falcon Pointe subdivision.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

2.1 **Legal Description.** The real property which initially 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 as follows:

All of Falcon Pointe, a Re-plat according to the plat thereof as recorded in the Public Records of Orange County, Florida more particularly described in Exhibit "C".

all of which real property and all additions thereto is herein referred to collectively as the "Properties".

2.2 **Supplements.** So long as Class B Memberships, as herein defined, shall exist, Declaration may from time to time bring all or any portions of the Additional Properties under the provisions hereof by recorded supplemental declarations (which shall not require the consent of the then existing Owners or the Association or any mortgagee) and thereby add to and include all or such portions of the Additional Properties as part of the Properties subject to this Declaration. To the extent that additional real property shall be made a part of the Properties as a common scheme, reference herein to the Properties should be deemed to be a reference to all of such additional property where such reference is intended to include property other than that legally described above. Nothing herein, however, shall obligate the Declarant to add to the initial portion of the Properties, to develop any such future portions under such common scheme, nor to prohibit the Declarant from rezoning and/or changing the development plans with respect to such future portions and/or the Declaration from adding additional or other property to the Properties under such common scheme. All Owners, by acceptance of a deed to their Lot(s), thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by Declarant and shall evidence such consent in writing if requested to do so by the Declarant at any time.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1 **Membership.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in the Section 3.1, any such person or entity who holds such interest merely as security for performance of an obligation shall not be a member of the Association. Membership in the Association shall be appurtenant to each Lot and may not be separated from ownership of said Lot. The record title holder to each Lot shall automatically become a Member of the Association and shall be assured of all rights and privileges thereof upon presentation of a photostatically or otherwise reproduced copy of said Owner's deed to the Association Secretary for placement in the records of the Association. To the extent that said deed shall pass title to a new Lot Owner from an existing Lot Owner, membership in the Association shall be transferred from the existing Lot Owner to the new Lot Owner. In no event shall any mortgagee or other party holding any type of security interest in a Lot or Residence constructed thereon be a Member of the Association unless and until any of said parties obtain or receive fee simple title to such Lot.

3.2 **Voting Rights.** The Association shall have two (2) classes of voting membership:

Class A. Class A Membership shall be all Owners of Lots {except the Declarant and its successors and assigns as long as the Class B Membership shall exist, and thereafter the Declarant and its successors and assigns shall be Class A Member to the extent that each would otherwise qualify). Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised only by that one person who is Entitled To Vote. In no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B membership shall be the Declarant and its successors and assigns. The Class B Membership shall be entitled to five (5) votes for each Lot owned by the Class B Member. The Class B Membership shall cease and terminate upon the earlier to occur of the following; (i) December 31, 2005; (ii) at such time as the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or, (iii) sooner at the election of the Declarant, whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Association. Upon termination of the Class B Membership as provided herein, the Class B Membership shall convert to Class A membership with voting strength as set forth above for Class A Membership.

3.3 **General Matters.** When reference is made herein, or in the Articles of Incorporation, Bylaws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of votes of Members Entitled To Vote and not of the members themselves.

3.4 **Board of Directors.**

A. The business affairs of this Association shall be managed by the Board of Directors who need not be Members of the Association. The number of members of the first Board of Directors shall be three and the initial Board of Directors shall be appointed by the Declarant. There shall be three Directors

until class B membership ceases. After Class B membership ceases, the Board of Directors shall consist of five directors.

B. The names and addresses of the persons who are to serve as the initial Board of Directors until their successors are appointed or chosen, are as follows:

DIRECTOR:	ADDRESS:
Ronald E. Fenn	8743 Summerville Place Orlando, Florida 32819
Deborah A. Fenn	8743 Summerville Place Orlando, Florida 32819
John Otsuki	Stonebridge Associates, Inc. 4800 Montgomery Lane, Suite 815 Bethesda, Maryland 20814

C. Until Class B membership ceases, the three directors shall serve for one (1) year and be elected by the members annually at the annual meeting. At the first meeting after termination of the Class B membership, the members shall elect five Directors. At such meeting the members shall elect two directors for a term of one year, two directors for a term of two years and one director for a term of three years; and at each annual meeting thereafter the members shall elect one or two directors (being the same number of directors as those whose terms have expired) for a term of three years.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREAS: OTHER EASEMENTS

4.1 **Members Easements.** Each member, and each tenant, agent and invitee of such member or tenant, shall have an on exclusive permanent and perpetual easement over and upon the Common Area and over and upon each of the Tracts as recorded on the Plat, for the intended use and enjoyment thereof in common with all other such Members, their tenants, agents and invitees in such a manner as may be regulated by the Association.

Without limiting the generality of the foregoing, such rights of use and enjoyment as hereby made subject to the following:

A. The right and duty of the Association to levy Assessments against each Lot for the purpose of maintaining the Common Area, the Tracts and the facilities in compliance with the provisions of this Declarant and with the restrictions on the Plats of portions of the Properties from time to time.

B. The right of the Association to suspend the Owner's voting rights for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations.

C. The right of the Association to adopt, at any time, and from time to time and to enforce rules and regulations governing the use of the Lots and Common Area and all facilities at any time situated thereon, including the right to fine Members as hereinafter provided. Any rule and/or regulation so adopted shall apply until rescinded or modified as it originally set forth at length in the Declaration.

D. The right to use and enjoy the Common Area, Tracts, and facilities thereon shall extend to all permitted user's immediate family who reside with him subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

4.2 Easements Appurtenant. The easements provided in Section 4.1 shall be appurtenant to and shall pass with the title to each Lot.

4.3 Maintenance. The Association shall at all times maintain in good repair and manage, operate and insure and shall replace as required, the Common Area together with the paving, drainage structures, masonry walls, lighting fixtures and appurtenances, landscaping, sprinkler systems, entrance markers, signs, improvements and other structures install by the Declarant or the Association situated on the Common Area, if any, with all such work to be done as ordered by the Board of Directors of the Association. In order to maintain, manage and operate the Common Area and such appurtenances as are described above, the Association shall have the right and authority to enter into such contracts or agreements as the Board of Directors of the Association deem appropriate. Maintenance of any lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. Without limiting the generality of the foregoing, the Association shall assume all of the Declarant's responsibilities to Orange County of any kind with respect to the Common Area and shall indemnify and hold the Declarant harmless with respect thereto.

Each Owner shall be responsible for the maintenance, replacement and repair of walls, gates, paving, structures and improvements located on his Lot other than those specifically provided to be maintained by the Association.

All work pursuant to this Section and all expenses incurred hereunder shall be paid for by the Association through Assessments (either general or special) imposed in accordance herewith.

No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Area or Lots or abandonment of the right to use the Common Area or by any other reason.

4.4 Utility Easements. The Association shall have the right to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property. In addition, easements over, upon, under, through and across the Common Area are reserved to the Association and the Declarant and may be declared or granted from time to time by the Declarant during any period that the Declarant shall own at least one (1) Lot, for such further utility, egress, ingress or drainage easements over and across the Properties as may be required from time to time to serve any other or additional lands during the course of development of same, whether such additional lands become subject to the jurisdiction of the Association and part of the Properties or not. Regarding any easement declared by the Declarant, the joinder of the Association or any Lot Owner or Lot Owner's mortgagee shall not be required.

4.5 Drainage Easements. Drainage Easements have been declared and reserved as shown on and created by the Plat. Each Owner of any Lot encumbered by a Drainage Easement upon

which a drainage swale is located shall be solely responsible for the repair, replacement and maintenance of such drainage swale. Alteration, obstruction or removal of any drainage swales or drainage control facilities or structures are expressly prohibited. In the event any Owner fails to repair, replace and maintain any drainage swales or alters or obstructs any piping, drainage swales, facilities and structures, the Association may repair, replace and maintain such drainage swales, facilities and structures and assess such Owner for the costs and expenses incurred in order to accomplish the foregoing. Each Owner hereby grants as easement and license to the Declarant and the Association over, upon and across such Owner's Lot in order to facilitate and accomplish the foregoing. Further, no Owner shall place, erect or construct any improvements or otherwise permit anything to occur within any Drainage Easement area which would in any way effect said Drainage Easement or any swale, pipe or drainage control facility or structure located therein or thereon, unless, in the event of construction of any improvements, such improvements have been approved by Declarant or the ARC (as hereinafter defined).

4.6 **Ownership.** As described and demonstrated on the Plat, the Common Area is hereby dedicated non-exclusively to the joint and separate use in common of the Owners of all Lots that may from time to time constitute part of the Properties and such Owner's tenants, guests and invitees. Declarant shall convey the Common Area to the Association which shall accept such conveyance. Beginning on the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Area (whether or not then conveyed to the Association), such maintenance to be performed in a continuous and satisfactory manner. It is intended that (1) all real estate taxes and assessments, if any, assessed against that portion of the Common Area owned or to be owned by the Association shall be proportionally assessed against and payable as part of the taxes of the Lots within the Properties. However, in the event that, notwithstanding the foregoing, (2) any such taxes are assessed directly against the Common Area, the Association shall be responsible for the payment of the same, including taxes, on any improvements and any personal property located thereon, which taxes accrue from and after the date this Declaration is recorded.

The Common Area cannot be mortgaged or conveyed without the approval of two-thirds (2/3) of each class of Members voting at an annual or special meeting of the membership of the Association.

4.7 **Conservation Easements.** Declarant reserves the right to grant conservation easements and development rights to qualified grantees, over, upon and across the Common Area.

4.8 **Declarant Offices.** Notwithstanding anything herein to the contrary, but subject to approval by Orange County, if required by its laws and ordinances, the Declarant shall have the specific right to maintain upon any portion of the Properties sales, administration, construction or other offices and signs which advertise or promote the sale of Lots and homes, without charge and appropriate easements of access and use are expressly reserved unto the Declarant and its successors, assigns, employees and contractors for this purpose.

ARTICLE V

ASSOCIATION COVENANT FOR MAINTENANCE ASSESSMENTS

5.1 **Creation of the Lien and Personal Obligations of the Assessments.** Except as provided elsewhere herein, the Declarant (and each party joining in this Declaration or in any supplemental declaration), for all Lot within the Properties, hereby covenant and agree, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance,

shall be deemed to covenant and agree, to pay to the Association annual Assessments or charges for the maintenance, management, operation and Insurance of the Common Areas and other properties that may be otherwise used for the benefit of the Properties as provides elsewhere herein, including such reasonable *reserve* as the Association may deem necessary, capital improvement Assessments, as provided elsewhere herein and all other charges and Assessments hereinafter referred to, all such Assessments to be fixed, established and collected from time to time as herein provided. In addition, individual assessments may be levied against particular Owners and Lots for expenses incurred against particular Lots and/or Owners to the exclusion of others and other charges against specific Lots or Owners as contemplated is this Declaration. The annual, special and other Assessments, together with such interest therein and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be continuing lien upon the Lot against which each such Assessment is made. Each such Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the Assessment fell due. Except as provided herein with respect to individual Assessments which may be imposed on one or more Lots and Owners to the exclusion of others or to assessments against Lots owned by Declarant, all Assessments imposed by the Association shall be imposed against all Lots subject to its jurisdiction equally. Reference herein to Assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

5.2 **Purpose of Assessments.** The regular Assessments levied by the Association shall be used exclusively for operation maintenance, repair, renovation and construction upon the Common Areas, including without limitation the private streets and drainage tracts located within the Properties, and the maintenance and repair of such other properties as may be used for the benefit of the Properties, as specifically provided herein, capital improvements, reserves, operating costs of the Association and to promote the health, safety, welfare and aesthetics of the Members of the Association and their families residing with them, their guests and tenants, all as provided for herein.

5.3 **Reserves for Replacement.** The association may establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area. The reserve fund shall be maintained from annual Assessments. Notwithstanding the foregoing, if the Declarant elects to pay the amount of any deficits incurred by the Association for expenses of the amounts collected as Assessments, in accordance with the provisions of Section 5.14 of this Declaration, the Declarant shall not be required to contribute to a reserve fund.

5.4 **Initiation Fee.** Upon the initial closing of the sale of a Lot and for each subsequent sale of a Lot, the Buyer at time of purchase shall pay to the Association the sum of \$1000.00 for the use and benefit of the Association. Said amounts shall not be considered as advance payment of any Assessments.

5.5 **Maximum Annual Assessment.** Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment shall be Three Hundred Dollars (\$300.00) per Lot (plus the initiation fee of Three Hundred Dollars (\$300.00) to be conveyed at closing of each Lot).

A From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year, upon approval by a majority of the Board of Directors without a vote of the Membership, by an amount not greater than twenty percent (20%) above the maximum assessment for the previous year.

B. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by an amount greater than twenty percent (20%) above the maximum assessment for the previous year as hereinabove provided, upon approval of a majority of each class of members voting in person or by proxy at a meeting duly called for such purpose.

C. The Board of Directors may fix the annual Assessment at an amount not in excess of the maximum.

5.6 Exterior Maintenance. The Owner of each Lot shall maintain the exterior of the Residence and the Lot at all times in a neat and attractive manner and as provided elsewhere herein. Upon the Owner's failure to do so, the Association may at its option, after giving the Owner written notice for a period of thirty (30) days mailed to the last known address or to the address of the subject premises, perform such reasonable maintenance and make such repairs as may be required and deemed necessary to restore the neat and attractive appearance of the Lot and the exterior of the Residence located thereon. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an individual Assessment against the Lot which the work was performed, collectible in a lump sum and secured by the lien against the Lot as herein provided. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor in its sole discretion.

5.7 Capital Improvements. Funds which are necessary for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Common Area or other properties used for the benefit of the Properties and which have not previously been collected as reserves or are otherwise available to the Association shall be levied by the Association as special Assessments only upon approval by a majority of each class of Members voting in person or by proxy at a meeting duly called for such purpose. Notwithstanding the foregoing, if the Declarant elects to pay the amount of deficits incurred by the Association for expenses in excess of the amounts collected as Assessments, as provided in Section 5.14 of this Declaration, then the Declarant shall not be required to pay any special Assessments (except Declarant shall pay special Assessments for any Lot owned by Declarant on which dwelling unit has been constructed if a certificate of occupancy has been issued for the dwelling unit, such payment to be in an amount equal to the special Assessment on each Owner of a dwelling unit on a Lot within the Properties).

5.8 Notice and Quorum for Any Action Authorized Under Sections 5.5 and 5.7. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.5 or 5.7 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all votes of each class of Members or of proxies entitled to the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than ninety (90) days following the preceding meeting.

5.9 Date of Commencement of Annual Assessments: Due Dates. The annual Assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31st of such year. Each subsequent annual Assessment shall be payable in advance by one (1) annual payment, or by monthly,

quarterly or biannual installments in the discretion of the Board of Directors of the Association. At the time of the closing of the sale of any Lot, the purchaser thereof shall pay to the Association an amount equal to the lesser of: (i) the full annual Assessment multiplied by a fraction, the numerator of which is the number of days remaining in the year of closing (including the day of closing) and the denominator of which is 365, or (ii) the portion of the full annual Assessment otherwise due and owing for the remainder of the year. *The* due date of any special Assessment shall be fixed in the Board resolution authorizing such assessment.

5.10 Certain Duties of the Board of Directors The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessment against each Lot subject to the Association's jurisdiction for each assessments period, to the extent practical, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto thirty (30) days prior to payment of the first installment thereof, except as to emergency Assessments. Subject to other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid. The Association may charge a reasonable fee for such certificate. The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Declarant) for management services or for other services beneficial to the Association for the property operation and maintenance of the Properties. The Association shall have all other powers provided elsewhere herein, in its Articles of Incorporation and its Bylaws.

5.11 Effect of Non-Payment of Assessments: the Personal Obligation: the Lien: Remedies of the Association. If the Assessments (or installments) whether general or special, are not paid on the date(s) when due (being the date(s) specified herein), then such Assessments (or installments) shall become delinquent (and, at the option of the Declarant, all general Assessments attributable to the Lot for the existing fiscal year shall be accelerated and shall become immediately due and payable) and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien of the Lot which shall bind such property. Each Assessment against a Lot shall also be the personal obligation of the Owner at the time the Assessment fell due.

If any installment of an Association is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater the Fifty and no/100 Dollars (\$50.00) may be imposed and all such sums shall bear interest from the date when due until paid at the highest lawful rate and the Association may bring an action of law against the Owner(s) personally obligated to pay the same or may record a claim of lien against the Lot on which the assessment and late charges are unpaid, and may foreclose the lien against the Lot on which the assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time successively. The Association shall also have the right to recover its attorney's fees (including paralegal fees) and costs, including without limitation, costs and expenses for consultation with an attorney due to any such items not being paid, and costs and expenses charged by such attorney for services related in an way to the failure by an Owner to pay such sums (such as, without limitation, fees for telephone calls, preparation of correspondence, attendance at meeting, etc.) whether or not suit is filed. Further, in addition to the foregoing, in the event suit is filed, the Association shall have the right to recover all attorney's fees, paralegal fees and costs incurred before

Trial, at trial and upon all appellate levels.

In addition to the rights of collection of Assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the Assessment is delinquent, including without limitation, persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Lot or the enjoyment of the Common Area until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid and no sale or other dispositions of Lots shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all assessments and other sums due; provided, however, that the provisions of this sentence shall not be applicable to the mortgages and purchasers contemplated by Section 5.12 of this Article.

It shall be the legal right of the Association to enforce payment of the Assessments hereunder. Failure of the Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

5.12 Subordination of the lien. The lien of the Assessments provided for in this Article shall be subordinate to the lien of any first mortgage to any Institutional Lender and which is now or hereafter placed upon any property subject to Assessment; provided, however, that any such mortgage when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an Assessment divided equally among, payable by and a lien against all Lots subject to Assessment by the Association, including the Lots as to which foreclosure (or conveyance in lieu of foreclosure) took place.

5.13 Collection of Assessments. The Association shall collect the Assessments of the Association.

5.14 Effect of Declarant. Notwithstanding any provision that may be contained to the contrary in this Declaration, or the Articles of Incorporation or Bylaws of the Association, for as long as Declarant or its successors or assignees, from time to time, is the Owner of any Lot on which a Residence has not yet been constructed, the Declarant shall be liable for ten percent (10%) of the Assessments against each Lot so owned; provided, however, the Declarant in its sole discretion, may elect in any given assessment year, in lieu of payment of such portion of the Assessments for each Lot, to pay the amount of any deficits incurred by the Association for expenses incurred in excess of the amounts collected as Assessments. For purposes hereof, the existence, or nonexistence or a deficit for the Association shall be determined on a cash basis accounting instead of accrual basis. When Declarant has sold and conveyed all its Lots in the Properties, Declarant shall not have further liability of any kind to the Association for the payment of Assessments or for funding any deficits of the Association.

ARTICLE VI

CERTAIN RULES AND REGULATIONS

6.1 Land Use and Building Type. No Lot shall be used except for residential

purposes. No building constructed on a Lot shall be used except for residential purpose. No business, commercial, industrial, trade, profession or other non-residential activity or use of any nature or kind shall be conducted on any Lot. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Residence. Temporary uses by Declarant for model homes, sales displays, parking lots, sales offices, construction offices and other offices, or any one or combination of such shall be permitted until permanent cessation of such uses takes place. No changes may be made in building erected by the Declarant (except if such changes are made by the Declarant) without the consent of the Architectural Review Committee ("ARC") as provided herein.

6.2 Opening Walls: Removing Fences or Landscaping. No Owner shall make or permit any opening to be made in any Declarant or Association erected wall, except as such opening is installed by Declarant or the Association. No such building wall or masonry wall or fence, or any associated landscaping or buffer improvements, shall be demolished or removed without the prior written consent of the Declarant and the ARC. Declarant shall have the right but shall not be obligated to assign all or any portion or its rights and privileges under this Section to the Association.

6.3 Easements. Easements for installation, replacement, connection to, disconnection from and maintenance of utilities are reserved as shown on the recorded Plats covering the Properties and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with or prevent the maintenance or utilities, unless said structure, planting or other material has been so placed by the Declarant or the Association or has been so placed with the permission of the ARC. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lots, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate water authority, electric and gas utility company, telephone company, the Association and the Declarant and their respective successors and assigns shall have a perpetual easement for the installation, replacement, connection to, disconnection from and maintenance, all underground of waterlines, storm drains, gas and electric, telephone and security lines, cables and conduits under and through the utility and drainage easements, as the case may be, as shown on the Plats. Declarant and its designees, successors and assigns shall have a perpetual easement for the installation and maintenance of cable, radio, television and security lines within easement areas shown on the Plat. All utility lines within the Properties, whether in street right-of-ways or utility easements shall be installed and maintained underground.

6.4 Nuisances. No noxious, offensive or unlawful activity shall be carried on upon or about the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners.

6.5 Temporary and Other Structures. No structure of a temporary character, or storage shed, utility shed or similar structure, green house, trailer, tent, mobile home, motor home or recreational vehicle shall be permitted on the Properties at any time or used at any time as a residence, either temporarily or permanently, excepted by the Declarant during construction. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the exterior of any Residence or on or about any ancillary building unless approved by the ARC and if approved must be buried or enclosed by a structure approved by the ARC.

6.6 Signs. No sign of any kind shall be displayed to the public view on the Properties, except any sign used by the Declarant (or by a Builder with Declarant's written consent) to advertise the company or builder, project, sales or other matters during the construction and sales period. No sign of any kind

shall be permitted to be placed inside a Residence or on the outside wall of a Residence so as to be visible from the exterior or on any fences on the Properties, nor on the Common Area, nor on dedicated areas if any, nor on entryway or any vehicles within the Properties. Notwithstanding this provision, an Owners may place one sign of not more than five (5) square feet advertising the *sale* of the Owner's property.

6.7 **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in the Properties. No derrick or other structure designated for *use* in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

6.8 **Animals and Pets.** No reptiles, livestock, poultry or animals of any kind, nature or description shall be kept, bred or raised upon the Properties, except for dogs, cats, aquarium-kept fish or birds which may be kept, raised and maintained upon the Properties, provided that the same are not kept, raised or maintained thereon for business or commercial purposes or in number deemed unreasonable by the Declarant or the Association, in the exercise of their reasonable discretion. Numbers in excess of two (2) of each type of household pet (other than aquarium-kept fish) shall prima facie be considered unreasonable. Notwithstanding the foregoing, no such reptiles, animals, birds or other pets may be kept, raised or maintained on the Properties under circumstances, which in good faith judgment of the Declarant or the Association shall constitute an unreasonable annoyance, hazard, or nuisance to Residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation and enjoyment of other Lots or portions of the Properties.

6.9 **Architectural Control.** No building, addition, wall, fence or other structure or improvements of any nature or kind (including mailboxes, landscaping and exterior paint and finish) shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping or composition of the materials used therefore, as may be required by the ARC have been approved in writing by the ARC named below and all necessary governmental permits are obtained. Each building, addition, wall fence, mailbox or other structure or improvements of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved and applicable governmental permits and requirements. The ARC shall have the right, in its sole and absolute discretion, to refuse approval of plans, specifications and plot plans, or any of them, based on any ground, including purely aesthetic grounds. Any change in the exterior appearance of any building, wall, fence, mailbox or other structure or improvements and any change in the appearance of landscaping shall be deemed to be an alteration requiring approval. The ARC shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section.

So long as Class B Membership exist, the ARC shall be two (2) persons appointed by the Declarant who shall initially be Ronald E. Fenn and Deborah A Fenn. Thereafter, the ARC shall be a committee composed of or appointed by the Board of Directors of the Association. At such times as the Board of Directors appoints the ARC members, the ARC shall have any number of members, as deemed appropriate by the Board of Directors, but never less than three (3).

The address of the ARC shall be the address of the Declarant or the Association, depending on which party appoints its membership. The Board of Directors of the Association and the ARC may employ personnel and consultants to assist the ARC at the expense of the Association. The members of the ARC shall not be entitled to any compensation for services performed pursuant to this Declaration. The

members of the ARC shall act on submissions to it or request further information thereon, within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved. The foregoing provisions regarding ARC approval shall not be applicable to the Declarant or to construction activities conducted by the Declarant.

Notwithstanding anything herein to the contrary, the ARC, in its sole and absolute discretion, may grant a variance as to any of the restrictions, conditions and requirements set forth in this Article so long as, in the judgment of the ARC, the noncompliance for which the variance is granted is not of a substantial nature and the granting of the variance shall not unreasonably detract from the use and enjoyment of adjoining Lots and Properties. In no event shall the granting of a variance in one instance require the ARC to grant a similar or other type of variance in any other instance, it being understood that the granting of variances from the restrictions, conditions and requirements of this Article shall be the sole and absolute discretion of the ARC.

Notwithstanding anything herein to the contrary, prior to commencing construction of improvements approved by the ARC, the Owner of the Lot upon which such improvements shall be installed shall obtain any and all appropriate governmental permits and approvals and shall construct the improvements in compliance with all terms and conditions of such permits and approvals.

The ARC and any and all officers, directors, employees, agents and Members of the Association shall not, either jointly or severally, be liable or accountable in damages or otherwise to any Owner or other person or party whomsoever, by reason or on account of any decision, approval or disapproval or any plans, specifications or other materials required to be submitted for review and approval pursuant to provisions of this Section of this Declaration, or for any mistake in judgment, negligence, misfeasance or nonfeasance related to or in connection with any such decision, approval or disapproval and each Owner by acquiring title to any Lot or interest therein, shall be deemed to have agreed that he or it shall not be entitled to and shall not bring any action, proceeding or suit against such parties.

6.10 Exterior Appearances. The paint, coating, stain and other exterior finishing colors on all Residences and masonry walls may be maintained as that originally installed, without prior approval of the ARC, but prior approval of the ARC shall be necessary before any such exterior is changed.

6.11 Commercial Trucks, Trailers, Campers and Boats. No trucks except trucks which (1) have one-half ton capacity or less, (2) have no lettering, (3) have no roof racks or similar racks, and which (4) do not appear to be commercial trucks (the determination about appearance shall be made by the ARC in its sole discretion) or commercial vehicles, or campers, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans shall be permitted to be parked or to be stored at any place on the Properties, nor in dedicated areas, unless same be parked or stored entirely within and fully enclosed by a garage or in an area not visible from the street which has been approved in writing by the ARC. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up and delivery and other commercial services, nor to non-commercial vans for personal use which are in acceptable condition, in the sole opinion of the Board of Directors (which favorable opinion may be changed at any time), nor to any vehicles of the Declarant or those required by any builder during construction on any Lot). No on-street parking shall be permitted. In the event any provision of this covenant is breached, the Declarant or the Association may have said truck, commercial vehicle, camper, mobile home, motor homes, house trailer, other trailer, recreational vehicle, boat, boat trailer or horse trailer towed from the Properties at the Lot Owner's sole cost and expense, and an individual Assessment may be levied therefore against such Owner.

6.12 Garbage and Trash Disposal. No garbage, refuse, trash, rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All garbage and trash containers and their storage areas and the like shall be kept within a garage, placed inside an enclosure approved by the ARC, or behind opaque walls attached to and made a part of the Residence on each Lot and otherwise in conformity with applicable rules, regulations and approvals. Such containers may not be placed out for collection sooner than the night prior to scheduled collection and must be removed by the night of collection.

6.13 Fences. No fence, wall or other similar structure shall be erected on any Lot unless the materials therefore and color thereof are in accordance with such standards as may be adopted by the ARC and the location and dimensions thereof are approved by the ARC. The ARC shall have the right to adopt such standard as it deems advisable in regard to the location and height of an colors and materials for any fences installed within the Properties. In no event shall any wall or fence exceed six (6) feet in height.

6.14 Mailboxes. No mailboxes or similar improvements shall be installed on any Lot unless the location thereof has been approved by the ARC and the materials therefore and color thereof have been approved by the ARC and are in accordance with such standards for materials and colors as may be adopted by the ARC.

6.15 Clothes Drying. To the extent lawful, no clothing, laundry or wash shall be aired or dried on any portion of the Properties which is visible from the adjacent Lots or the streets or any other adjoining portion of the Properties.

6.16 Unit Air Conditioners and Reflective Materials. No air conditioning units may be mounted through windows or wall or on any roof. No building shall have alumni foil placed in any window or glass door or any reflective substance or other materials (as determine by the ARC in its sole discretion) placed on any glass, except such as may be approved by the ARC for energy conservation purposes.

6.17 Exterior Antennas. No exterior antennas, microwave antennas, satellite antennas, microwave dish, satellite dish, transducers or signal amplification systems for use in connection with television or radio equipment or the like shall be permitted on any Lot or improvements thereon without the prior written approval of the ARC, which may be granted or denied in the sole discretion of the ARC, except that (1) Declarant shall have the right (but not the obligation) to install and maintain community antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines and (2) each Owner may have one (1) satellite dish of less than 3 feet in diameter so long as the dish is not visible from the street.

6.18 Chain Link Fences. No chain link fences shall be permitted on any Lot or portion thereof, unless installed by Declarant during construction periods or around any retention or detention areas as required by Orange County.

6.19 Recreational Facilities. No tree houses or skate board or bicycle ramps shall be constructed or placed upon the Properties. Basketball goals may be permitted provided the goal is at least 15 feet from the front property line and the quality and installation procedures have been approved by the ARC.

6.20 **Garage.** Each Residence shall have a garage large enough to accommodate at least two (2) cars. Garage doors shall remain in operating condition and shall remain in the down position at all time, except when moving cars or transporting items to and from the Residence through the gargage.

6.21 **Residence.** Each Residence constructed on a Lot shall have a minimum of one Thousand Five Hundred (1,500) square feet or heated and cooled living space.

6.22 **Roofs.** All roofs shall be constructed of fiberglass shingles or other materials approved by the ARC. All roof colors must be approved by the ARC in its sole discretion.

6.23 **Landscaping.** All landscaping and grass to be installed on each lot shall be set forth on a landscape plan which is approved by the ARC. No type or variety of grass other than St. Augustine or a hybrid zoysia thereof shall be planted on any Lot and such grass shall be fully planted on such areas where specified on a landscape plan approved by the ARC. The planting of grass on each Lot shall be accomplished by the installation of full sod covering the entire area required to be grassed. Partial sodding, sprigging, plugging or seeding shall not be permitted, except to replace any dead sod.

6.24 **Irrigation Systems.** All landscaped and grassed open areas on each Lot shall be irrigated by means of an automatic underground irrigation or sprinkling system capable of regularly and sufficiently watering all lawns and plantings with such open areas. The plans and specifications for each such irrigation or sprinkling system shall be included in and submitted with and reviewed and approved by the ARC as part of the landscape plan required pursuant to the provisions of Section 6.23 above. The Declarant may prepare master plans, rather than individualized Lot plans, for all landscaping, grass and irrigation systems to be installed by the Declarant.

6.25 **Precedence Over Less Stringent Governmental Regulations.** In those instances where the covenants, conditions and restrictions set forth in this Article set or establish minimum standards in excess of the ordinances, regulations and requirements of Orange County and other applicable governmental authorities, including without limitation, building and zoning regulations, the covenants, conditions and restrictions set forth in this Article shall take precedence and prevail over any such less stringent ordinances, regulations and requirements.

6.26 **Solar Panels.** Solar panels may only be constructed on the roof of a Residence so as not to be visible from the adjacent front street (or configured so as to minimize visibility in the case of corner Lots) and only after review and approvable by the ARC, in its sole and absolute discretion. The ARC reserves the right to promulgate such performance standards and requirements as it may deem desirable in regard to the installation of solar panels. To the extent applicable laws require otherwise, then the terms and conditions of applicable law shall control

6.27 **Pools.** All pools must be inground pools approved by the ARC. No above ground pools are permitted.

6.28 **Exterior Structures and Flags.** All exterior structures, fountains, flags and similar items must be approved by the ARC, except an American flag (not to extend six feet in length or width) may be displayed.

6.29 **Construction Time.** Unless otherwise approved by the ARC in writing, construction of Residences and other improvements must be commenced not later than six (6) months from the date

that the ARC issues its written approval of the final plans and specifications thereof. If construction does not commence within such six (6) month period, the plans and specifications for any proposed construction must once again be reviewed and approved by the ARC in accordance with the provisions of this Article and any prior approval of the same by the ARC shall no longer be binding on the ARC. Upon commencement of construction, such construction shall be prosecuted diligently, continuously and without interruption to completion within a reasonable time; but in no event more than six (6) months from the date of commencement of such construction. however, the ARC shall have the power and authority to extend the period permitted for construction, as aforesaid; provided that the Owner and general contractor involved make written application for such extension stating that reasons for the requested extension of time and provided further that the ARC, in the exercise of its discretion, determines that the request is reasonable and the extension is warranted.

6.30 Additional Rules and Regulations. In addition to the foregoing, the Association shall have the right, power and authority, subject to the prior written consent and approval of Declarant, to promulgate and impose rules and regulations governing and/or restricting the use of the Properties and Lots, including without limitations, rules and regulations relating to the placement or installation of any type of improvement on any Lot, and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no rules and regulations so promulgated shall be in conflict with the provisions of this Declaration. Any such rules and regulations so promulgated by the Association shall be applicable to and binding upon all the Properties and the Owners thereof and their successors and assigns, as well as all guests and invitees of all parties claiming by, through or under such Owners.

ARTICLE VII

ENFORCEMENT

7.1 Compliance by Owners. Every Owner shall comply with the terms, provisions, restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

7.2 Enforcement. The Declarant, the Association, the Association Board of Directors, the Architectural Review Committee, each Owner or any other party provided herein shall have the right to enforce this Declaration and the covenants, restrictions and provisions hereof, including without limitation bringing the actions and filing and foreclosing the liens described in Article V hereto. In addition, appropriate governmental authority shall have the right to enforce this Declaration with respect to the operation and maintenance of the stormwater management systems for the Properties, Enforcement of this Declaration and the covenants, restrictions and provisions hereof may be accomplished by any proceeding at law or in equity, including without limitation, any action for damages and injunctive relief. The Association shall have the right to suspend the voting rights and use of the Common Area of any defaulting Owner. Failure to enforce any covenant, restriction or provision hereof shall not be deemed a waiver to do so thereafter. The defaulting and/or offending Owner shall be responsible for all costs incurred in enforcement of this Declaration, including but not limited to, attorney, paralegal and legal assistant fees, costs and expenses, related fees, costs and expense, court costs and witness and expert fees and costs, whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

ARTICLE VIII

DRAINAGE SYSTEM

The surface water system of the Properties is subject to the jurisdiction of the governmental authority which has issued a permit for the operation of such system, as the same may be amended from time to time (collectively the "Permit"). The Association shall own and shall be responsible for the operation and maintenance of the surface water management system within the Properties, including without limitation operation and maintenance of all retention ponds and drainage improvement as may be situated throughout the Common Areas. The Association shall maintain the surface water management system in accordance with all Permit requirements. The registered agent of the Association shall maintain copies of all further surface water management system permitting documents.

ARTICLE IX

GENERAL PROVISIONS

9.1 Insurance and Fidelity Bonds. The Association shall obtain and maintain in effect casualty and liability insurance and fidelity bond coverage in form and amounts as may be deemed advisable by the Board of Directors of the Association. Additionally, the Association may obtain and maintain in effect "directors and officers insurance" in form and amounts as may be deemed advisable by the Board of Directors of the Association.

9.2 Duration: Amendment. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years unless during the last year of its applicability during the initial term or any extension period no less than seventy-five percent (75%) of each class of Members at a duly noticed meeting of the Association vote in person or by proxy to terminate this Declaration. Provided, however, no such termination shall void the duty of the Association to maintain the surface water management system unless specifically allowed by the appropriate governmental authority. Further, no such termination shall have the effect of terminating any easements herein provided or reserved. Except as otherwise provided herein, this Declaration may be amended by an instrument signed by not less than a majority of the Lot Owners; provided, however, this Declaration may be amended by Declarant to clarify ambiguities and scrivener's errors. In addition, to the foregoing, so long as Declarant owns any Lots within the Properties, all amendments to this Declaration must be approved and joined in by Declarant. If not so joined by Declarant, the amendment shall be null and void. Any amendment to this Declaration must be recorded in the Public Records of Orange County, Florida. Notwithstanding anything to the contrary, any amendment of the provisions in Article X of the Requirements for Gated Communities shall require the consent of Orange County.

9.3 Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed postage prepaid to the last known address of the person who appeared as a Member or Owner on the records of the Association at the time of such mailing.

9.4 Severability. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof specific circumstances, by Judgment or court order shall

not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

9.5 **Annexation of Additional Land.** Other than annexation of the Additional Properties while Declarant is a Class B Member as provided in and governed by Section 2.2 above, additional residential property and common area may be annexed to the Properties with the consent of a majority of each of Members.

9.6 **Effective Date.** This Declaration shall become effective upon its recordation in the Public Records of Orange County, Florida

9.7 **Conflict.** This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and Bylaws of the Association and the Articles shall take precedence over the Bylaws.

9.8 **Standards for Consent, Approval, Completion, Other Action and Interpretation.** Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Declarant, the Association or the Architectural Review Committee, such consent, approval or action may be withheld in the sole and absolute discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed when so determined, in the discretion of the Declarant or Association, as appropriate.

9.9 **Easements.** Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the assessments were originally intended to have been granted the benefit of such easement and the Owners hereby designate the Declarant and the Association for either of them as their lawful attorney-in-fact to execute any instrument on such Owner's behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

9.10 **Covenants Running with The Land.** ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND SUBJECT TO THE LIMITATIONS) OF SECTION 9.3, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTIES. IF ANY PROVISIONS OR APPLICATIONS OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISIONS AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LANDS; BUT IF SUCH PROVISIONS AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE

PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

9.11 **Dissolution of Association.** In the event of a permanent dissolution of the Association, (i) all assets of the Association shall be conveyed to a non-profit organization with similar purposes and acceptable to the appropriate governmental authorities, or (ii) all Association assets may be dedicated to Orange County, Florida or any applicable municipal or other governmental authority. Said successor non-profit organization or governmental entity shall, pursuant to this Declaration, provide for the continued maintenance and upkeep of the Common Area, including without limitation, the surface water management system, the Properties and such other property as may be contemplated herein.

9.12 **Inspection and Maintenance.** The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area Improvements and landscaping, including, but not limited to, foundations, utility equipment and storm drainage facilities maintained by the Homeowners' Association, streets, parking areas and the irrigation system. The Board periodically and at least once every two (2) years shall review and update the inspection and maintenance guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines, and shall keep records of such implementation and compliance.

9.13 **Required Insurance.** Each Owner shall obtain and at all times maintain in effect a standard policy of property insurance for the full insurable replacement value of the Owner's unit. Each such insurance policy shall contain a waiver of subrogation provision as to both Declarant and the Homeowners' Association.

ARTICLE X

REQUIREMENTS FOR GATED COMMUNITIES

Notwithstanding anything herein to the contrary, the following additional covenants, restrictions and requirements shall apply to the Properties, each Lot therein and all Owners thereof:

10.1 **Dedication of Streets and/or Tracts to County.** The streets in Falcon Pointe will not be dedicated to Orange County for the purpose of the assumptions of maintenance responsibilities, nor shall any party seek such dedication, unless all Owners of Lots within the Properties have previously approved such dedication and provided their written consent thereto.

10.2 **Reserve Accounts.** In addition to all other Assessments as provided herein, the Association shall levy an additional assessment, in order to collect, in advance, sufficient funds to pay for periodic major maintenance of the streets as shown on the Plat (the "Special Road Reserve Assessments. Commencing on January 1st of the year following the year of recordation of this Declaration, the Association shall collect from each Class A Member the Special Road Reserve Assessment in the amount of THIRTY-FIVE DOLLARS (\$35.00) per year, which upon receipt the Association shall deposit in the Special Reserve Account at a financial institution (the "Special Reserve Account") with offices in Orange County, Florida. The initial Special Road Reserve Assessment shall be paid by the Buyer upon conveyance of each Lot by Declarant to a Class A Member. Thereafter, the Special Road Reserve Assessments shall be paid as and when all other Assessments are levied and paid. All sums deposited in the Special Reserve Account, together with interest accrued thereon, may only be utilized by the Association for maintenance of the street. At such time as the sums held in the Special Reserve Account reach TWENTY-TWO

THOUSAND AND FIVE HUNDRED DOLLARS (\$22,500.00) (the "Maximum Required Amount"), no further Special Road Reserve Assessments shall be required unless and until the remaining balance in the Special Reserve Assessment shall be below the Maximum Required Amount. Such Subsequent assessments, which shall constitute a Special Road Reserve Assessment, shall be in an amount sufficient when collected over several years (not to exceed ten (10) years to increase the Special Reserve Account to the Maximum Required Amount) prior to the next scheduled major road maintenance and repaving. On an annual basis, the financial institution maintaining the Special Reserve Account shall submit to Orange County sufficient information to confirm the existence of such Special Reserve Account and the amount of funds contained therein.

10.3 Annual Inspection. Beginning three (3) years after the certificate of completion is issued, the Association shall retain a Florida Registered Engineer who using good engineering practices shall annually inspect and review the maintenance thereof and render a written report which shall determine the level of maintenance needed and any repairs. In the event such registered engineer determines there are any needed repairs, such repairs shall be completed by the Association within sixty (60) days following its receipt of the final engineering report of the registered engineer unless the work is of such a nature that it cannot be completed within sixty (60) days, in which event the work shall be commenced in sixty (60) days and such repairs shall be completed as expeditiously thereafter as reasonably possible. Such that the work is completed within 180 days after receipt of the report. Copies of the registered engineer's written report shall be submitted to Orange County within fifteen days of the completion of such written report to the Association.

10.4 Resurfacing of Streets. The Association shall resurface the streets no less than every fifteen (15) years unless Orange County Engineering Department, in its discretion, determines that any such repaving may be delayed and then delayed only for such period.

10.5 Notice of Private Road Assessments and Reserve Accounts. All contracts for sale of Lots within the Properties, whether sold by the Declarant or any other party shall include the following notice:

"Prospective purchasers of all Lots within Falcon Pointe are hereby notified that the private roads, existing and to be constructed in Falcon Pointe must be maintained, resurfaced and repaired by the Association as more particularly described in the Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Falcon Pointe as recorded in the Official Records of Orange County, Florida (the "Declaration"). All Owners of Lots in Falcon Pointe must pay assessments to be imposed by an Association of Lot Owners as provided in the Declaration. The Assessments will, in part, be placed into a separate reserve account in order to create a reserve sufficient to repave all roads in the platted subdivision every fifteen (15) years, but a total amount of no greater than Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) shall be retained in the reserve account. The Association shall annually have the private roads inspected by a Registered Engineer and shall repair any deficiencies noted by such engineering using the reserve funds. This notice shall be included in each sales contract and/or resale contract relating to the sale or resale of a Lot in Falcon Pointe as appropriate."

10.6 Indemnification Regarding Maintenance and Reconstruction. The Declarant {but only to the extent and limited to (i) the time during which, and (ii) the proportional share to which, the Declarant has ownership interest in the streets} and the Association hereby expressly hold Orange County harmless from and indemnify Orange County against any cost of maintenance and reconstruction of, or tort liability related to or stemming from the streets.

10.7 No Discount of Taxes. Declarant hereby notifies all subsequent purchasers of any portion of the Properties, including all Lots thereon, no Owner of any Lot shall receive any discount in payment of ad valorem real property taxes or any other taxes due and owing to Orange County based upon the private ownership and maintenance of the streets and surface water management system with Falcon Pointe.

10.8 Defaults. In the event of any default in the requirements of this Article X. Orange County, at its option, shall first provide written notice thereof to Declarant and the Association. If the stated default is not cured within twenty (20) days after receipt by Association and Declarant of such written notice, or if such default may not reasonably be cured within such twenty (20) day period, if Association or Declarant do not commence to cure such default within such twenty (20) day period and diligently continue to cure such default thereafter, then Orange County may remove the gates located at the entrance of the Properties of Falcon Pointe and, in addition, upon dedication of the streets, may assume responsibility for maintenance, using available Association revenues, or if none are available or are insufficient, other financing methods as Orange County may elect, but in no case without concurrence of a unanimous vote of all Owners of Lots within the Property.

10.9 Orange County Approval. Notwithstanding anything herein to the contrary, this Article X shall not be amended without the consent of Orange County, Florida.

ARTICLE XI

Procedure to Resolve Disputes with Declarant

11.1 Dispute Notification and Resolution Procedure (Declarant Disputes). Any disputes between the Homeowners' Association (or any Owners) and Declarant or any director, officer, partner, member, manager, employee, subcontractor or agent of Declarant relating to this Declaration, the use or condition of the Property, and/or the construction and installation of any Improvements located thereon shall be subject to the following provisions:

A Notice. Any person with a claim against Declarant or any director, officer, partner, employee, subcontractor or agent thereof (collectively "Declarant" for purposes of this section) shall notify Declarant in writing of the claim, describing the nature of the claims and the proposed remedy (the "Claim Notice").

B. Right to Inspect and Right to Corrective Action Within a reasonable period after receipt of the Claim notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place with the Property to discuss the claim. At such meeting or at such other mutually-agreeable time, Declarant and Declarant's representative shall have full access to the Property that is subject to the claim for purposes of inspecting the Property. The parties shall negotiate in good faith in an attempt to resolve the claim. If Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided in full access to the Property to take and complete corrective action.

C. Litigation, If the Homeowners' Association and/or Owner had complied with the requirements of subparagraphs (A) and (B) above and Declarant denies any responsibility for the claim, accepts only partial responsibility, or accepts responsibility but the parties cannot in good faith agree on an appropriate remedy, the Homeowners' Association and/or Owner may bring an action in any court of

competent jurisdiction to resolve the dispute. The Homeowners' Association and each Owner covenants that they shall forbear from commencing any litigation against Declarant without complying with the procedures described in subparagraphs (A) and (B) above. If the Homeowners' Association or any Owner breaches the foregoing covenant, Declarant may obtain an appropriate order compelling the Homeowners' Association and/or Owner to comply with the procedures described in subparagraphs (A) and (B). The procedures set forth in subparagraphs (A) and (B) above shall not apply to any action taken by the Homeowners' Association against Declarant for delinquent assessments. Furthermore, nothing herein shall prevent the Homeowners' Association or any Owner from commencing any legal action which in the good faith determination of the Board or Owner is necessary to preserve any Homeowners' Associations's or Owner's rights under any applicable statute of limitations, provided that the Homeowners' Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in subparagraphs (A) and (B).

D. Miscellaneous. Notwithstanding any other provisions herein to the contrary, in any dispute between the Homeowners' Association and/or any Owner and Declarant, each party shall bear its own attorneys fees.

Any and all communications by and between the parties., whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the matter shall be considered communications undertaken in the course of effecting a settlement or compromise as such shall not be admissible as an admission on the part of any part or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

ARTICLE XII

Notice for Significant Litigation

12.1 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, the Board shall not institute any significant legal proceeding, including any arbitration or judicial reference proceeding, against any person without providing the Members of the Homeowners' Association with at least 30 days' prior written notice of the Homeowners' Association's intention to institute legal proceedings. The notice shall describe the purpose of the proceeding, the parties to the proceeding, the anticipated costs to the Homeowners' Association (including attorneys' fees) in processing the proceeding, the source of funds to process to the proceeding (reserves or special or regular assessments), and suggested information that should be disclosed to third parties., such as prospective purchasers and lenders., while the proceeding is being prosecuted. For purposes herein, "significant legal proceeding" shall mean any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- a. the levy of a special assessments to fund all or any portion of the costs of the proceeding;
- b. the expenditure of funds from the Homeowners' Association's reserves in connection with the proceeding in an amount in excess of five percent (5%) of the then current reserves;
- c. the amount of the claim is in excess of Twenty-Five Thousand and 00/100 Dollars

(\$25,000); or

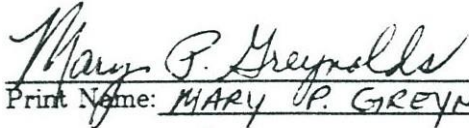
d. the action could have a material adverse effect on the ability to sell and/or refinance the Residences within the Development during the period the proceeding is being prosecuted.

Notwithstanding the foregoing, the notice shall not be required to commence and pursue any action to collect delinquent assessments. Furthermore, if the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations or prior to the loss of any other significant right of the Homeowners' Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Homeowners' Association, provided that as soon as is reasonably practical thereafter, and not later than thirty (30) days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

Executed this 24th day of April, 1998.

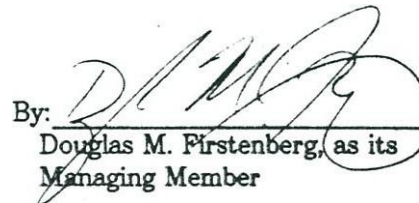
Signed, Signed and Delivered
in the Presence of:

LUSCIAN HILLS DEVELOPMENT
LIMITED PARTNERSHIP, a Delaware
limited partnership


Print Name: MARY P. GREYNOLDS

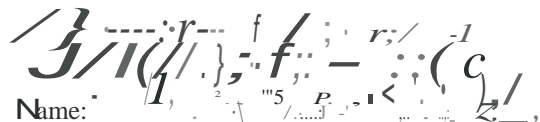

Print name: D. M. Cinkala

By: SRP-Luscan Hills, LLC, a
Delaware limited liability
Company as its general partner
4800 Montgomery Lane, STE 875
Bethesda, Maryland 20814-5332

By: 
Douglas M. Firstenberg, as its
Managing Member

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 24th day of April, 1998 by DOUGLAS M. FIRSTENBERG, as Managing Member, of SRP-Luscan Hills, LLC, a Delaware limited liability company as general partner of LUSCIAN HILLS DEVELOPMENT LIMITED PARTNERSHIP, a Delaware, limited partnership, on behalf of said limited partnership, who is personally known to me or who produced DL as identification and who did take an oath.


Name: _____
Notary Public,
Serial No.: - : - : - : - : - : - : - : - :
My commission expires:

CHRISTINE M. KIRK

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