

10/2

Doc# 2005074899
Hernando County, Florida
08/26/2005 11:30AM
KAREN NICOLAI, Clerk

This instrument was prepared by:
Charles S. Liberis, Esquire
Liberis & Associates, P.A.
1610 Barrancas Avenue
Pensacola, FL 32501
(850) 438-9647
Our File No. 65-01-01

OFFICIAL RECORDS
BK: 2090 PG: 1025

R

**FIRST AMENDMENT TO
DECLARATION OF MASTER COVENANTS, CONDITIONS AND RESTRICTIONS
FOR HERNANDO OAKS, A RESIDENTIAL GOLF COMMUNITY**

THIS FIRST AMENDMENT TO DECLARATION OF MASTER COVENANTS CONDITIONS AND RESTRICTIONS (this "Amendment") is made this the ____ day of May, 2005, by HERNANDO OAKS, LLC, a Florida limited liability company, (the "Developer"), joined by HERNANDO OAKS MASTER ASSOCIATION, INC., a Florida corporation not-for-profit (the "Master Association").

RECITALS

WHEREAS, Developer executed its Declaration of Master Covenants, Conditions and Restrictions (the "Declaration") dated September 19, 2002 and has recorded the Declaration in the Official Records of Hernando County, Florida, in Book 1573 at Page 1432; and

WHEREAS, Developer has the right to amend certain provisions of the Declaration pursuant to Article XVIII, Section 16 of the Declaration;

NOW, THEREFORE, Developer hereby amends the Declaration as follows:

1. Article I, Section 3 of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 3. **Duration**. The Covenants and Restrictions of this Declaration shall run with and bind the Committed Property, and shall inure to the benefit of and be enforceable by the Master Association, the Developer or the Owner of any Committed Property, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date that this Declaration is recorded. Upon the expiration of said thirty (30)-year period, this Declaration may be extended for successive additional periods if at least two-thirds (2/3) of the Directors approve such extension at a duly held meeting of the Board. The length of each such extension shall be established by such Directors' approval. The written notice to Members of any Directors' meeting at which a proposal to extend this Declaration is to be considered shall set forth the fact that such a proposal will be considered at such meeting. The President and Secretary of the Master Association

shall execute a certificate which shall set forth any Resolution of Extension adopted by the Directors and the date of the Directors' meeting at which such Resolution was adopted. Said certificate shall be recorded in the Public Records of the County.

2. Article II, Section 18, the definition of "Golf Course," is hereby amended by adding to the end thereof:

However, as further provided in Article XVII, Section 9, every Lot Owner must purchase a residential social membership in the Hernando Oaks Golf & Country Club on demand by the Golf Course Owner, and shall pay such monthly dues as may be assessed by the Golf Course Owner in respect of such Owner's Lot.

3. Article II, Section 42, the definition of "Uncommitted Property", is hereby renumbered as Section 43. A new Section 42, captioned "Turnover Date", is hereby added to Article II, to read, in its entirety, as follows:

Section 42. "Turnover Date" means the date on which the Developer relinquishes control of the Association to the Owners other than the Developer, which date must be no later than three months after the date on which 90% of the Lots in phases which will ultimately be operated by the Association have been conveyed to Owners other than the Developer.

3. Article VI, Section 9, is hereby deleted in its entirety and replaced with the following:

Section 9. **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or in any Lot, Dwelling Unit, or Parcel except that cats and /or dogs(not to exceed four (4) animals), may be kept provided they are kept within the Dwelling Unit and are not kept, bred, or maintained for any commercial purposes or become a nuisance to the Community. No person owning or in custody of an animal shall allow it to stray or go upon another's Lot, Dwelling Unit, or Parcel without the consent of the Owner of such other Lot, Dwelling Unit or Parcel. All animals shall be on a leash when outside the Owner's Dwelling Unit. No animals shall be allowed on the Common Areas. No dogs of the breed of Akita, Chow, Doberman, Pit Bull, Rottweiler, or other aggressive, vicious breeds listed by insurance carriers as uninsurable or high risk shall be permitted on the property. No barking or vicious dogs which may be declared a nuisance may be kept on the Property. Dogs, cats, or other household pets may be kept, provided they are not bred or maintained in such number or in such manner so that such shall constitute an annoyance or nuisance or shall in any way be detrimental or injurious to the health of the community or adjacent neighbors. No livestock, swine, or poultry of any kind shall be raised, kept or bred upon any portion of said Property.

4. Article VI, Section 13, is hereby deleted in its entirety and replaced with the following:

Section 13. **Antennas.** There shall be no rooftop or exterior antennas, or “earth stations” or similar signal receiving devices installed on any Lot or Dwelling Unit, or Parcel.

5. Article VI, Section 15, is hereby deleted in its entirety and replaced with the following:

Section 15. **Fences.** No fences of any description shall be allowed on Golf Course Lots. Fences shall be permitted on Lots other than Golf Course Lots only if approved by the Architectural Review Committee, or if on Architectural Review Committee has then been established, by the Board.

6. Article VII, Section 5, is hereby deleted in its entirety and replaced with the following:

Section 5. **Easement for Unintentional Encroachment.**

(a) The Developer hereby reserves an exclusive easement for the unintentional encroachment by any Lot, Dwelling Unit, or Parcel caused by or resulting from construction, reconstruction, repair, shifting, settlement or movement of any portion of the Committed Property, which exclusive easement shall exist as an easement appurtenant to the encroaching property, to the extent of such encroachment.

(b) The Developer hereby reserves an easement for the benefit of the Developer, its successors, assigns and designees, upon, across, over, through, and under any portion of a Lot, Dwelling Unit, or Parcel which is encroached upon by any structure, roadway, golf cart path, pedestrian or bicycle path or walkway, or other permanent structure or improvement effected above, on or under ground by or on behalf of the Developer or the Golf Course Owner on Committed Property adjacent to such Lot, Dwelling Unit, or Parcel, to the extent of such encroachment. The Developer hereby further reserves an easement for the benefit of the Developer, its successors, assigns and designees, upon, across, over, through, and under any portion of a Lot, Dwelling Unit, or Parcel which is encroached upon by any shifting, settlement or movement of, any portion of the Committed Property adjacent to such Lot, Dwelling Unit, or Parcel, to the extent of such encroachment. Any easement resulting from circumstances described in this Section shall exist as an easement appurtenant to the Committed Property, or, after future subdivisions of the Committed Property, appurtenant only to such subdivided portion of the Committed Property as continues to abut the servient estate.

7. Article VIII, Section 1, paragraph D is hereby deleted in its entirety and replaced with the following:

D. The right of the Master Association to suspend, for a reasonable period of time, not to exceed 60 days, the rights of an Owner and an Owner’s tenants, guests, or invitees, to use common areas and facilities and to levy reasonable fines, not to exceed \$100 per violation, against any member or any Owner, guest, or invitee for

any violation of its published rules and regulations; provided, however, that a fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director or employee; and provided further that a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$10,000 in the aggregate; all of this subsection D being subject to the proviso that if Florida Statutes s. 720.305 should be amended in a way that renders any of the provisions of this subsection D impermissible, then this subsection D shall be deemed to conform to the requirements of such statutory amendment;

8. Article XI, Section 1, paragraph E of the Declaration is hereby deleted in its entirety; and paragraphs F through I are redesignated E through H, respectively.

9. Article XII, Section 6, paragraph H of the Declaration is hereby deleted in its entirety and replaced with the following:

H. The "**Real Estate Transfer Assessment Rate**" shall be \$200 unless and until the Executive Board adopts a different rate. In no event shall the Real Estate Transfer Assessment Rate exceed \$1,000.

10. Article XIV, Section 3, is hereby deleted in its entirety and amended as follows:

Section 3. **Date of Commencement of Annual Assessments:** The Annual Assessments shall commence on the day of conveyance to an Owner other than the Developer. The Assessment for the month of closing shall be prorated. The first annual assessment shall be adjusted according to the number of months remaining in that calendar year. The Board of Directors shall fix the amount of the annual assessment (to be paid monthly, quarterly, or as otherwise determined by the Board) against each Lot, Dwelling unit, or Parcel as least thirty (30) days in advance in each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be on the first day of each month or on such other dates as may be established by the Board of Directors. The Association shall, upon demand, within seven (7) days thereof, and for a reasonable uniform charge, furnish a certificate signed by an officer of the Association setting forth whether assessments or any installments on a specified Lot, Dwelling unit, or Parcel have been paid or are delinquent and, if so, the particulars of the delinquencies. A properly executed certificate of the Association as to the status of assessments on a Lot, Dwelling unit, or Parcel is binding upon the Association as of the date of its issuance.

11. Article XIV, Section 6, is hereby added as follows:

Section 6. **Reserve Fund.** The Master Association shall maintain a Reserve Fund to be used solely for making expenditures in connection with the Common Properties

(“**Reserve Fund**”). The Board shall determine the appropriate level of the Reserve Fund based on a periodic review of the useful life of the improvements to the Common Properties, the purchase of equipment to be used by the Master Association in connection with its duties hereunder, or performance of required maintenance. Each budget shall disclose that percentage of the General Assessment which shall be added to the Reserve Fund and each Member shall be deemed to make a contribution to the Master Association equal to such percentage multiplied by each installment of the General Assessment paid by such Member. At the time of conveyance to an owner other than the Developer, the owner shall pay at closing to the Association a sum equal to three (3) months’ maintenance assessment as set forth in the operating budget in place as of the date of closing, as a capital contribution or one time start up fee. Such contribution is not to be considered as a prepayment of maintenance assessments and is non-refundable. In addition owner shall pay the prorated portion of the monthly maintenance payment for the month in which the sale closes.

11. Article XV, Section 6, is hereby added as follows:

Section 6. **Fines.** The Master Association shall have the power, but not the duty, to impose fines against an Owner, a Homeowners Association, or Member for each and any violation of the provisions of this Declaration, the Articles, the By-Laws and/or the rules and regulations promulgated by the Master Association, provided that any such fine shall only be levied in accordance with the applicable provisions of Chapter 720, Florida Statutes. The maximum fine to be levied against an Owner, a Homeowners Association, or a Member shall not exceed the lesser of \$100 per violation per day or the maximum amount of \$1,000.00. A fine may be levied against an Owner for violations committed by any tenant, guest, licensee, or invitees of such Owner.

12. Article XVII is hereby amended as follows. (a) The following sentence is added at the end of the first paragraph thereof:

NOTWITHSTANDING THE FOREGOING, ALL LOT OWNERS WILL BE REQUIRED TO PURCHASE A MANDATORY SOCIAL MEMBERSHIP IN THE HERNANDO OAKS GOLF & COUNTRY CLUB UPON.

- (b) The existing paragraph of Section 8 is hereby designated subsection 8.1, and the following subsection 8.2 is added:

Section 8.2 **Resort-Related Activities.** Each Owner understands and agrees that such Owner’s Lot is adjacent to or near golf courses and other resort facilities and that resort-related activities, including without limitation tournaments and concerts, may be held within the Committed Property. Each Owner acknowledges that the location of such Owner’s Lot within the Committed Properties may result in nuisances or hazards to persons and property on such Lot as a result of normal golf course operations or other

resort-related activities. Each owner covenants for itself, its heirs, successors, successors-in-title and assigns that it shall assume all risks associated with such location, including but not limited to the risk of property damage or personal injury arising from stray golf balls or actions incidental to resort-related activities and shall indemnify and hold harmless the Association and the Declarant from any liability, claims or expenses, including attorneys fees arising out of such property damage or personal injury. Each Owner further covenants that the Association and the Developer shall have the right, in the nature of an easement, to subject all or any portion of the Committed Property to nuisances incidental to the maintenance, operation, or use of the golf courses, and to the carrying out of resort-related activities. Notwithstanding the foregoing, any Owner or group of Owners engaging in resort-related activities shall respect neighboring residential properties in scheduling and holding such events so as not unreasonably to disturb Owners and occupants of the neighboring property.

(c) Article XVII is hereby amended by adding the following Section 9:

Section 9. **Hernando Oaks Golf and Country Club.** The Golf Course Owner may (but shall not be required to) create The Hernando Oaks Golf & Country Club as a social club (the "Club"), which, when and if created, may establish reasonable rules and regulations for Club membership (including the creation of classes of membership) and for the use of the Club facilities; and any such classification shall include a class styled "mandatory social membership" or a similar name, and such class of membership shall comport the right of its members to use only the Clubhouse (if any) and other facilities not designed for any specific sport or activity. Upon notice from the Golf Course Owner, every Lot Owner shall be required to become a social member of the Club, and shall be required to pay to the Club all fees and dues associated with social membership, as established by the Golf Course Owner from time to time in its sole discretion. All Club fees and dues established by the Golf Course Owner are hereby declared to be a charge and a continuing lien upon the Lots, Dwelling Units and Parcels owned by the respective Owners who are Club members of any class. All such fees and dues shall be enforceable through the means prescribed in Article XV hereof, to the same extent and by the same procedures as Assessments may be enforced pursuant to Article XV. All the provisions of Article XV are hereby declared applicable to the enforcement and collection of such fees and dues as if the term 'fees and dues' were used therein instead of 'Assessments', and as if the Golf Course Owner were referred to instead of the Master Association.

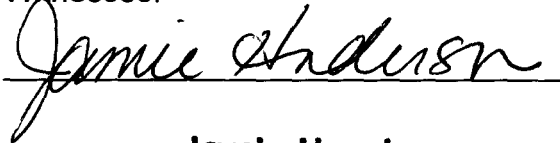
Section 9.1 **Mandatory Membership in Hernando Oaks Golf & Country Club.** At the time of conveyance of a Lot or Dwelling Unit to an owner, other than Developer or Builder, the owner must become a social member of the Hernando

Oaks Golf & Country Club. At the closing of the conveyance the owner shall pay the initiation fee in effect at the time, and the prorated amount of the monthly assessment due at the time of the closing.

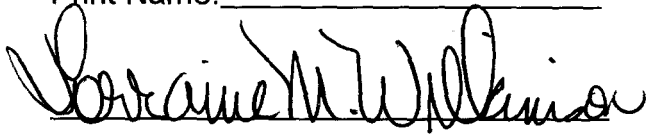
IN WITNESS WHEREOF, this First Amendment to Declaration of Master Covenants, Conditions, and Restrictions has been executed by the Developer and the Master Association on the day and year first above set forth.

Signed, Sealed and Delivered in the Presence of:

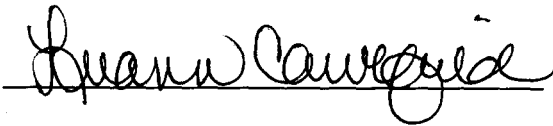
Witnesses:



Print Name: Jamie Henderson



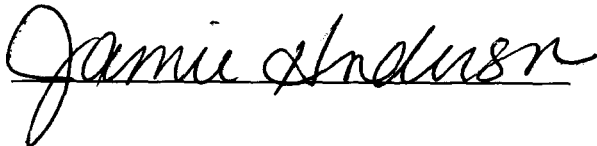
Print Name: Lorraine M. Wilkinson



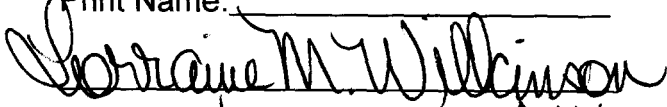
Print Name: JUANN CAWLFIELD



Print Name: ROBERT KRYDER



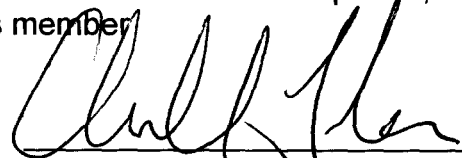
Print Name: Jamie Henderson




Print Name: Lorraine M. Wilkinson

HERNANDO OAKS, LLC., a Florida Limited liability company


By: Liberis - Brannen Development, LLP, as its member

By: 
Charles S. Liberis, Manager

By: 
Frederic C. Streck, Manager

HERNANDO OAKS II, LLP., a Florida Limited liability partnership

By: Liberis - Brannen Development, LLP

By: 
Charles S. Liberis, Manager

Luann Cawfield

By: [Signature]
Frederic C. Streck, Manager

Print Name: LUANN CAWLFIELD

Robert Kryder

Print Name: ROBERT KRYDER

STATE OF FLORIDA
COUNTY OF Hillsborough Escambia

The foregoing instrument was acknowledged before me this 27 day of May, 2005, by Charles S. Liberis, as a Manager of Hernando Oaks, LLC, a Florida limited liability company, as a Manager of Liberis-Brannen Development, LLP, a Florida limited liability partnership, as a Manager of Hernando Oaks, II, LLP a Florida limited liability partnership, on behalf of the companies. He is personally known to me.



Jamie Henderson
Notary Public
Jamie Henderson

STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 25th day of May, 2005, by Frederic C. Streck, as a Manager of Hernando Oaks, LLC, a Florida limited liability company, as a Manager of Hernando Oaks II, LLP, a Florida limited liability partnership, on behalf of the companies. He is personally known to me or has produced
_____ as identification.

Luann Cawfield
Notary Public



Luann Cawfield
Notary Public, State of Florida
Commission No. DD 241973
My Commission Expires 08/19/07

CONSENT OF MASTER ASSOCIATION

The undersigned President of Hernando Oaks Master Association, Inc. (the "Association"), a Florida not-for-profit corporation, hereby consents on behalf of the Association to all the terms and provisions set forth in this First Amendment to Declaration of Covenants, Conditions and Restrictions.

In witness whereof the undersigned sets its hand and seal this 5 day of May, 2005.

Signed, sealed and delivered

Hernando Oaks Master Association, Inc.,
a Florida not-for-profit corporation

Jamie Henderson

By Charles S. Libeers

Print Name: Jamie Henderson

Print Name: Charles S. Libeers

Horraine M. Wilkinson

Its: Vice President

Print Name: Horraine M. Wilkinson

STATE OF FLORIDA
COUNTY OF

This instrument was acknowledged before me this 5 day of May, 2005, by Charles S. Libeers, the Vice President of Hernando Oaks Master Association, Inc., a Florida not-for-profit corporation, who is personally known to me or who has produced _____ as identification.



Jamie Henderson
Notary Public
Jamie Henderson

CONSENT OF MORTGAGEE

The undersigned Sr. Vice President of Bank Atlantic (the "Mortgagee"), hereby consents on behalf of the bank to all the terms and provisions set forth in this First Amendment to Declaration of Covenants, Conditions and Restrictions.

In witness whereof the undersigned sets its hand and seal this 25th day of May, 2005.

Signed, sealed and delivered

Luann Cawfield
Print Name: LUANN CAWLFIELD

Bank Atlantic

By: Warren W. Toole
Print Name: WARREN W TOOLE

Its: SENIOR VICE PRESIDENT

Robert Kryder
Print Name: ROBERT KRYDER

STATE OF FLORIDA
COUNTY OF Hillsborough

This instrument was acknowledged before me this 25th day of May, 2005, by Warren W. Toole, the Sr. Vice President of Bank Atlantic, who is personally known to me or who has produced _____ as identification.

Luann Cawfield
Notary Public



Luann Cawfield
Notary Public, State of Florida
Commission No. DD 241973
My Commission Expires 08/19/07