

**ARTICLES OF INCORPORATION**  
**OF**  
**WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC.**

(a corporation not for profit)

In order to form a corporation under and in accordance with the provisions of the laws of the State of Florida for the formation of corporations not for profit, we, the undersigned, hereby associate ourselves into a corporation for the purpose and with the powers hereinafter mentioned: and to that end we do, by these Articles of Incorporation, set forth:

**ARTICLE I - NAME**

The name of the corporation shall be WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC.

**ARTICLE II - PURPOSE**

The purposes and objects of the corporation shall be to administer the operation and management of the common areas of WINDOVER FARMS OF MELBOURNE, to be established by EKS PROPERTIES, INC., (*Homeowners Association*) a Florida corporation (the "Developer"), upon the following described property, situate, lying and being in Brevard County, Florida, to wit:

See Exhibit A (*N, inclusive*) which ~~is~~ (*are*) attached hereto and incorporated herein and to undertake the performance of the acts and duties incident to the administration of the operation and maintenance of said common areas and in accordance with the terms, provisions, conditions and authorizations contained in these articles and which may be contained in the Declaration of Restrictions, which will be or which has been recorded in the Public Records of Brevard County, Florida, at the time said property, and the improvements now or hereafter situate thereon are submitted for platting; and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient in the administration of said common areas. The corporation shall be conducted as a non-profit organization for the benefit of its members.

**ARTICLE III - POWERS**

The corporation shall have the following powers:

A. All of the powers and privileges granted to corporations not for profit under the law pursuant to which this corporation is chartered, and all of the powers and privileges which may be granted unto said corporation or exercised by it under any other applicable laws of the State of Florida.

B. All of the powers reasonably necessary to implement and effectuate the purposes of the corporation, including, but not limited to:

1. Making and establishing reasonable rules and regulations governing the use of common areas in accordance with the terms as may be defined in the Declaration of Restrictions.
2. Levying and collecting assessments against members of the corporation to defray the common expenses of the maintenance and operation of the common areas as may be provided in the Declaration of Restrictions and in the By-Laws of this corporation which may be hereafter adopted, including the right to levy and collect assessments for the purposes of acquiring, operating, leasing, managing and otherwise trading and dealing with such property, whether real or personal, which may

be necessary or convenient in the operation and maintenance of the common areas and in accomplishing the Purposes set forth in the Declaration of Restrictions.

3. Maintaining, repairing, replacing, operating and managing the common areas of this subdivision and the property comprising same, including the right to reconstruct improvements after casualty and to make further improvement of said property.
4. Enforcing the provisions of the Declaration of Restrictions and these Articles of Incorporation, the By-Laws of the corporation which may be hereafter adopted, and the rules and regulations governing the use of the common areas as the same may be hereafter established.
5. To now or hereafter acquire and enter into leases and agreements of every nature, whereby the corporation acquires leaseholds, memberships and other possessors or use interests in land or facilities, including recreational facilities, whether or not contiguous to lands of this subdivision, to provide enjoyment, recreation, or other use of benefit to the owners of the property within this subdivision, all as may be deemed by the Board of Directors to be in the best interests of the corporation.
6. To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the corporation pursuant to the Declaration of Restrictions.

#### ARTICLE IV - MEMBERS

The qualification of the members, the manner of their admission to membership, termination of such membership, and voting by members shall be as follows:

- A. The owners of all lots in the subdivision shall be members of the corporation, and no other persons or entities shall be entitled to membership, except as may be provided herein.
- B. The interest of a member in the funds and assets of the corporation cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to his lot. The funds and assets of the corporation shall belong solely to the corporation, 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 of Restrictions and in the said By-Laws.
- C. That Association shall have two classes of voting membership:
  1. CLASS A. Class A members shall be all owners, with the exception of the declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.
  2. CLASS B. Class B members shall be the Developer and shall be entitled to eight (8) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
    - (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
    - (b) On August 31st, 1997.

ARTICLE V - TERM

The corporation shall have perpetual existence.

ARTICLE VI - LOCATION

The principal office of the corporation shall be located at 400 High Point Drive, Cocoa, Florida 32926, but the corporation may maintain offices and transact business in such other places within or without the State of Florida as may from time to time be designated by the Board of Directors.

ARTICLE VII - DIRECTORS

The affairs of the corporation shall be managed by the Board of Directors. The number of members of the first Board of Directors of the corporation shall be three (3). The number of members of succeeding boards of directors shall be three (3) except as changed from time to time by the By-Laws of the corporation. The members of the Board of Directors shall be elected as provided by the By-Laws of the corporation, which provide for election of directors at the annual meeting to be held on the second Tuesday of January each year. The first annual meeting shall be held on or before the 31st day of August, 1987. The Board of Directors shall be members of the corporation or shall be authorized representatives, officers or employees of a corporate member of this corporation.

Any vacancies in the Board of Directors occurring before the first election will be filled by the remaining directors.

The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

|                    |   |
|--------------------|---|
| LARRY MCDANIEL     | 400 Highpoint Drive<br>Cocoa, Florida 32926 |
| BILL HICKOCK       | 400 Highpoint Drive<br>Cocoa, Florida 32926 |
| SALLY A. HUTCHISON | 400 Highpoint Drive<br>Cocoa, Florida 32926 |

ARTICLE VIII - OFFICERS

The Board of Directors shall elect a President, Vice President and Secretary/Treasurer and as many additional Vice Presidents and Assistant Secretary/Treasurers as the Board shall determine. The President shall be elected from among the membership of the Board of Directors but no other officer needs to be a director. The same person may hold two (2) offices, the duties of which are not incompatible; provided, however, that the office of the President and Vice President shall not be held by the same person, nor shall the office of President and Secretary/Treasurer or Assistant Secretary/Treasurer be held by the same person.

The affairs of the corporation shall be administered by the officers designated in the By-Laws of this corporation. Said officers will be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and, with the approval of the Board of Directors, may employ a managing agent and/or such other managerial and supervisory personnel or entities to administer or assist in the administration of

the operation and management of the common areas and the affairs of the corporation, and any such person or entity may be so employed without regard to whether such person or entity is a member of the corporation or a director of the corporation.

The names and addresses of the officers who will serve until their successors are designated are as follows:

|                    |   |
|--------------------|---|
| LARRY MCDANIEL     | 400 Highpoint Drive<br>Cocoa, Florida 32926 |
| BILL HICKOCK       | 400 Highpoint Drive<br>Cocoa, Florida 32926 |
| SALLY A. HUTCHISON | 400 Highpoint Drive<br>Cocoa, Florida 32926 |

#### ARTICLE IX - SUBSCRIBERS

The subscribers to these Articles of incorporation are the three (3) persons herein named to act and serve as members of the first Board of Directors of the corporation, the names of which subscribers and their respective addresses are more particularly set forth in Article VII above.

#### ARTICLE X – BY-LAWS

The original By-Laws of the corporation shall be adopted by the Board of Directors and thereafter, such By-Laws may be altered or rescinded by the Board in such manner as said By-Laws may provide.

#### ARTICLE XI – INDEMNIFICATION

Every director and every officer of the corporation shall be indemnified by the corporation against all expenses and liabilities, including counsel 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 of the corporation, whether or not he is a director or officer at the time such expenses are incurred, except in such cases wherein 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 of indemnification hereunder based upon & settlement by the director or officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interests of the corporation. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

#### ARTICLE XII - AMENDMENTS

Any amendment or amendments to these Articles of incorporation may be proposed by the Board of Directors of the corporation acting upon a vote of the majority of the directors, or by the members of the corporation owning a majority of the lots in the subdivision, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to these articles being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the corporation or other officer of the corporation in the absence of the President, who shall thereupon call a special meeting of the members of the

corporation for a date not sooner than twenty (20) days not later than sixty (60) days from the receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting, stating the time and place of the meeting and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed or presented personally to each member not less than ten (10) days nor more than thirty (30) days before the date set for such meeting. If mailed, the notice of the membership meeting shall be sent by certified mail, return receipt requested, which mailing shall be deemed notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver when filed in the records of the corporation, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. At such meeting, the amendment or amendments proposed must be approved by an affirmative vote of the members owning not less than two-thirds (2/3) of the lots in the subdivision in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments of these articles shall be transcribed and certified in such form as may be necessary to register the same in the office of the Secretary of State of Florida; and upon the registration of such amendment or amendments with said Secretary of State, a certified copy thereof shall be recorded in the Public Records of Brevard County, Florida, within ten (10) days from the date on which the same are so registered. At any meeting held to consider such amendment or amendments of these articles, the written vote of any member of the corporation shall be recognized, if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the corporation at or prior to such meeting.

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**BY-LAWS OF**  
**WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

The name of the corporation is the WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association". The current office of the corporation is 4025 Windover Way Melbourne, Florida 32934, all meetings of members and directors shall be held at the current office of the corporation or in special circumstances, within a reasonable distance to the current office.

**ARTICLE II**  
**DEFINITIONS**

All terms and definitions used herein are to be further defined and clarified as set forth in and according to the WINDOVER FARMS OF MELBOURNE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, as recorded in the Public Records of Brevard County, Florida.

**SECTION 1.** "Association" shall mean and refer to the WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC., its successors and assigns.

**SECTION 2.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any lot, tract or parcel which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 3.** "Properties" shall mean and refer to that certain real property described in Exhibit A attached hereto and incorporated herein, and such additions thereto as may hereafter be brought within the Jurisdiction of the Association.

SECTION 4. "Common Area" shall mean all real and personal property (including improvements thereto) owned by the Association, in fee simple, by virtue of dedication to the Association, or otherwise, for the common use and enjoyment of the owners.

SECTION 5. "Lot" shall mean and refer to any unit, dwelling, home, parcel, tract or plot of land in any stage or phase of or in the overall WINDOVER FARMS OF MELBOURNE subdivision on file with the County of Brevard with the exception of the Common Area, and/or road right-of-ways as shown or subsequently shown on any recorded subdivision map or stage of the overall properties if dedicated to a public authority or the Association for maintenance. Each lot is subject to assessment and entitles each owner to voting rights as hereinafter defined.

SECTION 6. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration and Articles of Incorporation of the Association.

SECTION 7. "Declaration" shall mean and refer to that set of Declaration of Restrictions as applicable to WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC., and to any part of WINDOVER OF MELBOURNE.

SECTION 8. "WINDOVER FARMS OF MELBOURNE" shall mean the overall WINDOVER FARMS OF MELBOURNE subdivision on file with the County of Brevard.

SECTION 9. The use of any gender shall include all genders.

### ARTICLE III MEETING OF MEMBERS

SECTION 1. Annual Meetings. The first annual meeting of the members shall be held within one (1) year from the date turnover is completed to the Association, as provided for in the Declaration, and each subsequent regular annual meeting of the members shall be held on the second Tuesday of the month of January with thirty (30) days written notice given to the membership.

SECTION 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors or upon written request of ten percent (10%) of the membership. All special meetings must meet notice requirement of Section 3 of this Article.

SECTION 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least twenty-one (21) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purposes of notice. Such notices shall specify the place, day and hour of the meeting, and in the case of a special meeting the purpose of the meeting.

SECTION 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-third (1/3) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to postpone the meeting, until a quorum as aforesaid shall be present or represented. Should such postponement be made, notice for a subsequent meeting shall be given in accordance with Section 3 of this Article.

SECTION 5. Proxies. At all meeting 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 this Association shall be managed by a Board of five (5) directors and one (1) alternate director, who must be members of the Association.

SECTION 2. Term of Office. The directors shall be elected at the annual meeting for a two-year staggered term. All terms will be for period of two years.<sup>1</sup>

SECTION 3. Removal. Any director may be removed from the Board, with or without cause, by a sixty percent (60%) vote of the members of the Association. In the event of death, resignation or removal of a director, the alternate shall serve for the unexpired term of his predecessor. The remaining members of the Board shall select a successor to serve the unexpired term of the alternate director.

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 of the directors or by obtaining verbal approval by telephone. Any action so approved shall have the same effect as though taken at a meeting of the directors. All such actions shall be recorded in the form of minutes and must be presented at the next meeting of the Board.

ARTICLE V  
NOMINATION AND ELECTION OF DIRECTORS

SECTION 1. Nomination Period. Nomination for election to the board of directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairman, who shall be a member of the board of directors (but who may not be the president) 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. The nominating committee shall make as many nominations for election to the board of directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations must be made from among members.<sup>2</sup>

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

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<sup>1</sup> Amended 11/16/93

<sup>2</sup> Amended 1/7/97

## MEETING OF DIRECTORS

SECTION 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at a minimum once every month with notice of such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be rescheduled within that month.<sup>3</sup>

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 transaction 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. In the event there are less than five (5) Directors at a meeting, the alternate director, if present, shall sit as a regular member of the Board for all purposes, including voting and quorum determination.

## 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 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 sixty (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, the Declaration or any applicable Florida Statute;
- (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 meetings of the Board of Directors;
- (e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties;
- (f) mortgage and encumber Common Areas as set forth in the Declaration and assign such assessments or portions thereof to owners. Encumbrances greater than \$20,000.00 require a majority vote of the membership for approval;
- (g) to contract for the management of the Association and common area and to delegate to such contractor all of the powers and duties of the Association, if so approved by the Board of Directors;
- (h) to employ personnel to perform the services required for proper administration of the Association; and
- (i) the undertakings and contracts authorized by said first Board of Directors shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by the first Board of Directors duly elected by the membership.

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<sup>3</sup> Amended 9/5/97



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 at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of all the members who are entitled to vote;
- (b) supervise all offices, 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 unit or projected unit 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 of 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 employees having fiscal responsibilities to be bonded as it may deem appropriate;
- (g) cause the Common Area to be maintained, except for the Board of Directors-contracted maintenance and/or improvements of the Common Areas within Windover Farms of Melbourne, no group or individual may alter a common area, either by editing to the area or removing materials from the area, without the express written permission of the Windover Farms of Melbourne Homeowners' Association Board of Directors.

This policy will take effect immediately upon approval by the members of the Windover Farms of Melbourne Board of Directors;<sup>4</sup>
- (h) protect all property rights, interests, easements or rights-of-way, or otherwise, which are acquired by or conveyed to this Association, now or hereafter; and
- (i) mortgage or encumber common arena as set forth in the Declaration, and assign such assessments or portions thereof to owners.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

SECTION 1. Enumeration of Offices. The officers of this Association shall be President, Vice President, Secretary, and Treasurer who shall, at all times, be members of the Board of Directors, and such other officers as the Board may, from time to time, by resolution, create.

SECTION 2. Election of Officers. The members shall elect five directors.

SECTION 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless they 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, having such authority, and perform such duties as the board may, from time to time, determine.

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<sup>4</sup> Amended 4/20/94

SECTION 5. Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of 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 officer he replaces.

SECTION 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person.

SECTION 8. Duties. The duties of the officers are as follows:

- (a) **PRESIDENT:** The President shall preside at all meetings 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 shall co-sign all promissory notes.
- (b) **VICE PRESIDENT:** 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.
- (c) **SECRETARY:** The Secretary 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 meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.
- (d) **TREASURER:** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disperse such funds as directed by resolution of the board of directors; shall sign all promissory notes of the Association; keep proper books of accounts; engage a CPA to examine the books as required; 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.
- (e) Two signatures must be on each check, 1 being the President or Treasurer and the other, any board member.

#### ARTICLE IX COMMITTEES

The Association shall appoint an Architectural Review Committee as provided in the Declaration, and a nominating committee, as provided in these By-Laws. In addition, the Board of 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 all times, during reasonable business hours, be 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 shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum, and the Association may bring an action at law against the owner or owners personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added.

ARTICLE XII  
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC., a corporation not for profit.

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 every year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XV  
FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Declaration and Articles of Incorporation shall be supplemented by the following provisions:

- (a) The Association shall maintain accounting records for each property it maintains in the county where the property is located, according to good accounting practices. The records shall be open for inspection by owners or their authorized representatives during normal business hours. The records shall include, but are not limited to:
  - i A record of all receipts and expenditures.
  - ii An account for each lot and unit designating the name and current address of the lot and unit owner, the amount of each assessment, the date on which the assessments come due, the amount paid upon the account and the balance due.
  
- (b) The Board of Directors shall adopt a budget for each fiscal year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to the common expense budget, which shall include, without limiting the generality of the foregoing, the estimated amounts

necessary for maintenance, and operation of common arena, landscaping, streets and walkways, office expense, utility services, replacements and operating reserve, casualty insurance, liability insurance, administration and salaries. The Board of Directors shall also establish the proposed assessments against each member as more fully provided in the Declaration. Delivery of a copy of any budget to each member shall not affect the liability of any member for any such assessments nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of said budget as originally adopted.

- (c) The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by check signed by such person or persons as authorized by the directors.
- (d) A compilation of the accounts of the Association shall be made annually by a public accountant. (e) Fidelity bonds may be required by the Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the directors, but shall be at least the amount of the total annual assessments against Members for common expenses. The premiums on such bonds shall be paid by the Association.

ARTICLE XVI  
PARLIAMENTARY RULES

Robert's Rules of Order (latest edition) shall govern the conduct of the corporate meetings when not in conflict with the Articles of Incorporation and these By-Laws or with statutes of the State of Florida.

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WINDOVER FARMS OF MELBOURNE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, EKS PROPERTIES, INC., a Florida corporation (the "Developer") is the owner of land in the County of Brevard, State Of Florida, more particularly described below; and

WHEREAS, the Developer desires that all of the land be subject to restrictions for the benefit and protection of itself and all persons, both real and corporate, who hereafter purchase or acquire the land or any part thereof, or any interest in or lien upon the land or any part thereof,

NOW, THEREFORE, in consideration of the premises, the Developer hereby declares the real property described below to be subject to the following restrictions, covenants, reservations and conditions, binding upon the Developer and upon each and every person, both real and corporate, who or which shall acquire hereafter the real property or any part thereof, and their respective heirs, personal representatives, successors and assigns. These covenants, conditions and restrictions shall run with the title to the real property and be binding on all parties having any right, title or interest in the property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. The covenants, conditions and restrictions are as follows:

**I. DEFINITIONS; PROPERTY SUBJECT TO THIS DECLARATION: AMENDMENTS; GENERAL PROVISIONS.**

SECTION 1. DEFINITIONS

- A. "Developer" means EKS PROPERTIES, INC., its successors or assigns.
- B. "Lot" means the individual platted lots in WINDOVER FARMS OF MELBOURNE.
- C. "Association" means the WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation.
- D. "Owner" means the record owner of a fee simple title to any Lot in WINDOVER FARMS OF MELBOURNE.
- E. "ARC" means the Architectural Review Committee established under Article VI hereof.
- F. "Board" means the Board of Directors of the Association.
- G. "WINDOVER FARMS OF MELBOURNE" means the platted subdivision known as "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE I" as recorded in Plat Book 33, Page 52, and also the platted subdivision known as "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE II" as recorded in Plat Book 34, Page 2; and also the subdivision known as "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE III" (the plat of which will be subsequently recorded in the Public Records of Brevard County, Florida; see Exhibit C attached hereto). The legal description of the plat of "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE III, UNIT ONE," is attached hereto as Exhibit D, and is included within that certain legal description shown as Exhibit C on the Third Amendment to Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 2895, Page 2510, Public Records of Brevard County, Florida. Therefore, as partially restated, "WINDOVER FARMS OF MELBOURNE" also includes the platted subdivision known as "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE III, UNIT ONE," as recorded in Plat Book 34, Page 87; "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE III, UNIT TWO," as recorded in Plat Book 34, Page 93; "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE IV, UNIT ONE," as recorded in Plat Book 35, Page 71; "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE III, UNIT THREE", as recorded in Plat Book 36, Pages 6 and 7; "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE IV, UNIT TWO", as recorded in Plat Book 36, Pages 14 and 15, "WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE IV, UNIT THREE, as recorded in Plat Book 36, Pages 57 and 58; WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE V, UNIT ONE, as recorded in Plat Book 37, Page 31; WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE V, UNIT TWO, as recorded in Plat Book 37, Page 98; and WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE III, UNIT FOUR, as recorded in Plat Book 39, Pages 56 and 57; and WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE V, UNIT THREE, as recorded in Plat Book 40, Pages 91 and 92; and WINDOVER FARMS OF MELBOURNE, P.U.D., PHASE V, UNIT FOUR, as recorded in Plat Book 41, Pages 93-94, all of the Public Records of Brevard County, Florida. (19<sup>th</sup> Amendment)
- H. "Conservation Easement Area" means all that portion of the property described as follows: Tracts A, B and C in WINDOVER FARMS OF MELBOURNE P.U.D., PHASE V, UNIT III, a subdivision of a portion of Section 35, Township 26 South, Range 36 East in Brevard County, Florida, as shown in Plat Book 40, Pages 91 and 92. (20<sup>th</sup> Amendment)

**SECTION 2. LEGAL DESCRIPTION.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and the restrictions herein is located in Brevard County, Florida, and is legally described as:

See Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M and N which is attached hereto and incorporated herein. The real property shown in Exhibits D, E and G is included within the real property shown in Exhibit C. (19<sup>th</sup> Amendment)

SECTION 3. AMENDMENTS. So long as Developer, or its assigns owns ten (10%) percent or more of the Lots in the Subdivision, it may change any provision of this Declaration in whole or in part by executing a written instrument making the changes and having the same recorded in the Public Records of Brevard County, Florida. At any time after the Developer or its assigns no longer owns ten (10%) percent or more of the Lots above-described, the then owners of at least two-thirds (2/3) of the voting interests of the Association may change these covenants and restrictions in whole or in part by executing a written instrument making Said changes and having the same duly recorded in the Public Records of Brevard County, Florida.

*Any amendment to this Declaration, which would affect the surface water management system, including the water management portion of the common areas, must have the prior approval of St. John; River Water Management District. (1<sup>st</sup> Amendment)*

## II. PROPERTY RIGHTS

SECTION 1. TITLE TO COMMON AREA AND PROPERTY. The common area and property shall include, without limitation, the planting areas, the recreation area, walkways and easements for the retention system, if any, as more specifically designated on the recorded plat. Developer shall transfer the legal title to the common areas prior to or simultaneously with the conveyance by Developer of the Lot which would cause the Developer to own less than ten (10%) percent of the Lots in the Subdivision. The Association shall be responsible for maintaining and repairing the common area and common property.

SECTION 2. OWNER'S EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every Lot, subject to suspension by the Association for the following:

- A. Violation of rules and regulations governing use and enjoyment of the common areas adopted by the Association: or
- B. For any period during which any assessment remains unpaid.

## III. HOMEOWNERS ASSOCIATION

SECTION 1. MEMBERSHIP. Every person or entity who is a record Fee Simple Owner of a Lot in the Subdivision, including the Developer at all times as long as it owns all or any part of the property subject to this Declaration, shall be a member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to cast one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the multiple Owners determine, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B. The Class B member shall be the Developer, which shall be entitled to cast eight (8) votes for each Lot. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On August 31, 1997.

SECTION 2. ESTABLISHMENT or HOMEOWNERS ASSOCIATION. There shall be established a homeowners' association, hereinafter sometimes referred to as the Association, composed of the Owners of each Lot. The Association shall be the WINDOVER FM MS OF MELBOURNE HOMEOWNERS' ASSOCIATION, INC., a corporation not for profit, organized and existing under the laws of the state of Florida. The Association shall administer the operation and maintenance of the common areas and property of the Subdivision and other duties hereafter provided for. The Association shall have all the powers and duties set forth in this Declaration and in the Articles of Incorporation and By-Laws and as granted by the laws of the State of Florida to non-profit corporations.

The Association shall be governed by a Board of Directors consisting of at least three (3) members, who need not be members of the Association. The Developer shall have the right to appoint any or all of the members of the Board of Directors or such lesser number as it may choose, as long as Developer owns ten (10%) percent of the Lots in the Subdivision. Members of the Board of Directors as to whom Developer may relinquish the right to appoint, and all members of the Board of Directors after Developer no longer owns ten (10%) percent of the Lots in the Subdivision, shall be elected by and shall serve at the pleasure of a majority vote of the general membership of the Association. A majority of the Board of Directors shall constitute a quorum to transact business at any meeting of the Association's Board of Directors, and the action of a majority present at the meeting at which a quorum is present shall constitute the action of the Board of Directors and Association. Upon Developer transferring or conveying the Lot which would cause the Developer to own less than ten (10%) percent of the total number of Lots in the subdivision, then and in that event, the Developer and its appointed board members shall resign and the general membership shall elect a successor Board of Directors to administer and govern the Association in accordance with this Declaration, the Association's Articles of Incorporation and By-Laws.

The Board of Directors of the Association shall approve annual budgets in advance for each fiscal year and the budget shall project anticipated income and estimated expenses in sufficient detail to show separate estimates for operating expenses, maintenance expenses, repairs, replacement reserve and reasonable operating reserve for the common property, in addition to reasonable reserves for the continued maintenance and operation of any other items deemed necessary for the protection of all Owners. Each Owner shall be liable for the payment to the Association of his share of the common expenses as determined in the budget.

After adoption of a budget and determination of the annual assessment per Lot, the Association shall assess such sum by promptly notifying all Owners by delivering or mailing notice thereof to the voting member representing each Lot, at such member's most recent address as shown by the books and records of the Association. One-twelfth (1/12) of the annual assessment shall be due and payable in advance to the Association on the first day of each month regardless of whether or not members are sent notice thereof. Provided, however, that if the total annual assessment is less than Three Hundred (\$300.00) Dollars, the Association may collect the assessment, in the sole discretion of the Board of Directors of the Association, in one annual payment and for up to one year in advance.

Special assessments may be made by the Board of Directors of the Association from time to time to meet other needs or requirements of the Association in the operation and management of the common areas, and to provide for emergencies, repairs or replacements, and infrequently recurring items of maintenance. In the event that the Board of Directors levies a special assessment pursuant to this Paragraph, the funds collected from such special assessment shall be maintained in a separate fund, which will be named the Cash/Contingency Reserve.' The funds contained in the Cash Contingency Reserve may not be expended by the Board of Directors for any purpose, without the prior approval of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for the purpose of approving the expenditure of the funds, which written notice of such meeting shall be sent to all members at least thirty (30) days prior to the date of the meeting, and which notice shall set forth the purpose of the meeting, as well as the proposed nature of the expenditures. (15<sup>th</sup> Amendment)

The liability for any assessment or portion thereof may not be avoided by any Lot Owner or waived by reason of such Owner's waiver of the use and enjoyment of any of the common areas or by his abandonment of his Lot.

The Owner of each Lot shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, made by the Association, and for all costs of collection of delinquent assessments. In the event assessments against a Lot are not paid within sixty (60) days after their due date, the Association shall

have the right to foreclose its lien for such assessments. There shall be a Twenty-Five (\$25.00) Dollar late fee for each assessment that is unpaid for more than ten (10) days after due date. In addition to the late fee, assessments and late fees that are unpaid for more than thirty (30) days after the due date shall bear interest at the rate off eighteen (18%) percent per annum until paid.

The Association shall have a lien on each Lot for any unpaid assessments, and interest thereon which has been assessed against the Lot Owner of such property. The lien shall be effective from and after the time of recording a claim of lien in the Public Records of Brevard County, Florida. Any and all such liens herein provided for shall be subordinate to the lien of a mortgage or other lien recorded prior to the time of recording of the claim of lien. The Board of Director may take such action as it deems necessary to collect assessments, or by enforcing and foreclosing said lien, and may settle and compromise the same If in the best interests of the Association. The delinquent Owner shall pay all costs, including reasonable attorney fees, {or filing any action or suit enforcing and foreclosing a lien, and the lien shall be deemed to cover and secure all such costs and fees. The Association shall be entitled to bid at any sale pursuant to a suit to foreclose an assessment and to apply, as credit against the bid, all sums due the Association which are covered by the lien enforced.

As to priority between the lien of a recorded mortgage and the lion for an assessment, the lien for an assessment shall be subordinate to and inferior to any recorded institutional first mortgage, or mortgage of Developer, regardless when the assessment was due, but not to any other mortgage. For the purposes of this instrument, an institutional first mortgage shall be defined as a first mortgage originally executed and delivered to a bank, savings and loan association, mortgage company, Developer or insurance company authorized to transact business in the State of Florida.

#### **IV COVENANTS FOR MAINTENANCE ASSESSMENTS**

**SECTION 1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The Developer, for each Lot owned by it within the Subdivision, hereby covenants, and each Owner of any Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments or charges, and any special assessments for capital improvements or major repair: such assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments and late fees, together with interest thereon from the due date at the rate of eighteen (18%) percent per annum and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot(s) against which each such assessment is made, and shall also be the personal obligation of the Owner. In the event the highest rate of interest allowed by law is increased from eighteen (18%) percent, the Board, in its sole discretion, shall have the right to increase the interest rate on unpaid assessments to the highest rate allowed by law.

**SECTION 2. PURPOSE OF ASSESSMENTS.** The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents, and in particular for the improvement and maintenance of common area and any easement in favor of the Association, including, but not limited to, the cost of taxes, insurance, labor, equipment, materials, management, maintenance and supervision thereof, as well as for such other purposes as are permissible activities of, and undertaken by, the Association.

**SECTION 3. MEMBERS' APPROVAL OF ANNUAL ASSESSMENTS.** Annual assessments set by the Board of Directors must be approved by simple majority of members of the Association present at the meeting called to approve such assessments.

**SECTION 4. UNIFORM RATE OF ASSESSMENT.** All regular and special assessments shall be at a uniform rate for each Lot in WINDOVER of MELBOURNE.

**SECTION 5. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS AND MAJOR REPAIRS.** In addition to any annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or



replacement of a capital improvement as approved by the Board of Directors of the Association, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of any meeting.

SECTION 6. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATE. The assessments for which provision is herein made shall commence on the date or dates (which shall be the first day of the month) fixed by the Board of Directors of the Association to be the date of commencement. The due date of any assessment shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as determined by the Board.

SECTION 7. 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 for each assessment period 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 sent to each Owner at his last known address. written notice of the assessment shall be sent to every owner subject thereto not later than seven (7) days after fixing the date of commencement thereof.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

SECTION 8. AFFECT OF NON-PAYMENT OF ASSESSMENT: THE LIEN, THE PERSONAL OBLIGATION, REMEDIES OF ASSOCIATION. If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with such interest thereon and the cost of collection thereof, become a continuing lien on the Lot(s) against which such assessment is made that shall bind such Lot(s) in the hands of the owner(s), his heirs, devisees, personal representatives and assigns, and shall also be the continuing personal obligation of the Owners) against whom the assessment is levied.

If the assessment and late fee, if any, are not paid within thirty (30) days after the delinquent date, which shall be set by the Board of Directors of the Association, the assessment and late fee shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum, and the Association may, at any time thereafter, bring an action to Foreclose the lien against the Lot(s) in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation against the Owner(s), and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, including a reasonable attorney's fees, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

SECTION 9. SUBORDINATION TO LIEN OF MORTGAGES. The lien of the assessments for which provision is herein made, as well as in any other article of this Declaration, shall be subordinate to the lien of any first mortgage to the Developer, a bank, life insurance company, federal or state savings and loan association, or real estate investment trust. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No sale or transfer shall relieve any Lot from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment. The written opinion of either the Developer of the Association that the lien is subordinate to a mortgage shall be dispositive of any questions on subordination.

SECTION 10. EXEMPT PROPERTY. All property except that which is legally platted into individual Lots as per the recorded plat of WINDOVER OF MELBOURNE, shall be exempt from assessments. Furthermore, all property owned by the Developer, in the ordinary course of business, including individually platted Lots, shall be exempt from assessments.

## **V. EXTERIOR MAINTENANCE ASSESSMENT**

SECTION 1. EXTERIOR MAINTENANCE. In addition to maintenance upon the common area, the Association may provide upon any Lot requiring same, when necessary in the opinion of the Board of Directors of the Association to preserve the beauty, quality of the neighborhood, maintenance, including but not limited to, paint, repair, roof repair and replacement, gutters, downspouts, exterior building surfaces, and yard clean-up and/or maintenance.

SECTION 2. ASSESSMENT OF COSTS. The cost of such maintenance shall be assessed against the Lot(s) upon which such maintenance is performed. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board or Directors of the Association. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessments shall not be considered part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot and the personal obligation of the Owner and shall become due and payable in all respects, together with interest and fees for the cost of collection, as provided for the other assessments of the Association, and shall be subordinate to mortgage liens to the extent provided by Section 9 of Article IV hereinabove.

SECTION 3. ACCESS AT REASONABLE HOURS. For the purpose of performing the maintenance authorized by this article, the Association, through its duly authorized agents or employees, shall have the right, after giving three days' notice in writing to the owner, to enter upon any lot or the exterior of any improvements thereon between the hours of 9:00 a.m. and 5:00 p.m. on any day except Saturday or Sunday and such entry shall not be deemed a trespass. In the event there is a serious health or safety hazard, the three days' notice requirement shall be waived.

## **VI. ARCHITECTURAL CONTROL**

SECTION 1. NECESSITY OF ARCHITECTURAL REVIEW AND APPROVAL. No improvement or structure of any kind, including without limitation, any grading, clearing, extensive interference with the landscape, building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement shall be commenced, erected, placed or maintained upon any Lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in writing by, the Architectural Review Committee hereinafter referred to as ARC. All plans and specifications shall be evaluated as to environmental compatibility, harmony of external design, and location in relation to surrounding structures and topography and as to conformance with the Architectural Planning Criteria of the Association, a copy of which are attached hereto as Exhibit B, as the same may from time to time be amended by the WINDOVER OF MELBOURNE HOMEOWNERS' ASSOCIATION.

SECTION 2. ARCHITECTURAL REVIEW COMMITTEE. The architectural and control review functions as provided for in this Article shall be administered and performed by an Architectural Review Committee (the "ARC").

The ARC shall consist of three (3) members, who need not be members of the Association. The Developer shall have the right to appoint any or all of the members of the ARC or such lesser number as it may choose, as long as it owns ten (10%) percent or more of the Lots in the Subdivision. Developer further expressly reserves the absolute right, in its sole discretion, to adopt, amend, modify or waive, in whole or in part, the Architectural Planning Criteria, or compliance therewith, for as long as it owns ten (10%) percent or more of the Lots in the subdivision. Members of the ARC as to whom Developer may relinquish the right to appoint, and all members of the ARC after Developer no longer owns ten (10%) percent or more of the Lots in the Subdivision, shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association. A majority of the ARC shall constitute a quorum to transact business at any meeting of the ARC, and the action of a majority present at the meeting at which a quorum is present shall constitute the action of the ARC. Any vacancy occurring on the ARC because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors except that Developer, to the exclusion of the Board, shall fill any vacancy created by the death, resignation, removal or other termination of services of any member of the ARC appointed by a Developer. Upon Developer transferring or conveying the Lot which would cause the Developer to own less than ten (10%) percent of the total number of Lots in the Subdivision, then and in that event, the appointment, and/or administration of the ARC shall be performed by the Association or its appointed committee, in accordance with Section 3 below.

### SECTION 3. POWERS AND DUTIES OF THE ARC.

- A. Prior to Developer transferring or conveying the Lot which would cause the Developer to own less than ten (10%) percent of the total number of Lots in the Subdivision. the ARC appointed by said Developer shall operate independent of the Association and shall expressly be empowered to undertake all actions and make all decisions on all matters of concern which may come before the ARC. Approving, disapproving, modifying or waiving the same upon the majority vote of its committee members.
- B. Upon Developer transferring or conveying the Lot which would cause the Developer to own less than ten (10%) percent of the total number of Lots in the Subdivision, the ARC shall then come under the control of, and shall be administered by the Association. The ARC shall have the following powers and duties:

To recommend, from time to time, to the Board of Directors of the Association, modifications and/or amendments to the Architectural Planning Criteria. Any modification or amendment to the Architectural Planning Criteria shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present and voting.

SECTION 4. PURPOSE OF THE ARC. The ARC shall provide for a systematic and uniform review of all proposed improvements and construction of any type or nature whatsoever within the Subdivision. The ARC shall review all plans for said improvements, it being the intent of the developer to provide for sound and aesthetically pleasing development of the subdivision. The ARC shall assure itself of the soundness of the proposed improvements in order to prevent, to the extent possible, rapid and early deterioration. In addition, the ARC shall evaluate the proposed improvements with emphasis upon their harmonious incorporation into the community as a whole and with specific emphasis on external design, location of the improvement in relation to surrounding structures and/or improvements, topography, and conformity to the restrictive covenants imposed hereunder.

SECTION 5. PROCEDURE BEFORE THE ARC. Prior to the commencement of any work on the premises contemplated for improvement, an applicant must submit to the ARC two complete sets of plans and specifications for any improvement or structure of any kind, together with such fully executed application form and fees as may then be required by the ARC and such additional information as required by this Declaration. No later than thirty (30) business days after receipt of such plans and specifications, the ARC shall respond to the application in writing by approving the application, or disapproving the application. In the event the ARC fails to respond within said thirty (30) day period, the plans and specifications shall be deemed approved. In the event of disapproval of plans and/or specifications as submitted, no work or construction shall be commenced in furtherance of the proposed improvement the initial address of the ARC shall be: 400 High Point Drive, Cocoa, Florida 32922.

SECTION 6. TRASH PICKUP FEE. A general trash pickup fee of up to ONE HUNDRES (\$100.00) DOLLARS shall be charged to each owner at the time of application for approval is submitted to the Architectural Review Committee. The ARC Board shall establish equitable fees based upon the types of construction. (6<sup>th</sup> Amendment)

## VII. RESTRICTIONS

SECTION 1. RESIDENTIAL USE. The property subject to these covenants and restrictions may be used for residential purposes and for no other purpose. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. No building or other improvement shall be erected nor shall any improvements or construction commence upon any Lot without prior ARC approval thereof as elsewhere herein provided. No Lot shall be divided, subdivided or reduced in size.

SECTION 2. NO TEMPORARY BUILDINGS. No tents, trailers, vans, shacks, sheds, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without the prior written consent of the ARC.

SECTION 3. BUILDING TYPE. No building shall be erected, altered, placed or permitted to remain on any Lot other than residential homes.

SECTION 4. BOATS AND MOTOR VEHICLES.

A. For the purpose of this section, the following definitions shall apply:

1. "Vehicle", shall include any automobile, truck, motorhome, camper, motorcycle, tractor, boat, trailer or any other type of vehicle owned or otherwise used by the Lot Owner's or a member of his family.
2. "Commercial vehicle" shall be considered to be any vehicle which is used in the production of income, or for a commercial purpose, and displays any corporation, trade name or trademark for the purpose of identifying a business.
3. "Personal vehicle" shall be considered any automobile, passenger van, or non-commercial pickup truck less than 3/4 ton.

B. No vehicle shall be parked on public right-of-way or front or side yards, except in unusual circumstances or under very temporary conditions, e.g., a social gathering. No vehicle shall remain overnight in the road right-of-way or front or side yards of any lot.

C. No commercial vehicle shall be on any portion of any lot at any time, except for the purpose of rendering a service or making a delivery to the Lot Owner, unless it is parked in the Lot Owner's garage.

D. No unlicensed or inoperative motor vehicle, whether personal or commercial, may be parked in the road right-of-way or upon any lot at any time.

E. Vehicles may be temporarily parked on driveways during daytime hours. However, personal vehicles may be parked on driveways overnight if the Lot Owner's enclosed garage has two vehicles stored in it at the same time. When space is available, all vehicles must be kept in an enclosed garage or similar enclosure. The garage or enclosure must conform with the guidelines of the ARC, and construction requires written approval from the ARC.

F. Vehicle maintenance and minor repair only are permitted provided such maintenance or repair is limited to Owner's family vehicles and is being performed on the Owner's property within an enclosure or an area screened from adjoining streets.

G. No vehicle or any other type of equipment or vehicle shall be used for living, sleeping or housekeeping purposes when properly parked or stored on any Lot or property within the subdivision. (17<sup>th</sup> Amendment)

SECTION 5. TREES. NO TREE OR SHRUB, THE TRUNK OF WHICH EXCEEDS THREE (3) INCHES IN DIAMETER AT ONE FOOT (1') ABOVE THE NATURAL GRADE SHALL BE CUT DOWN OR OTHERWISE DESTROYED WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF THE ARC. THE BOARD, IN ITS SOLE DISCRETION, SHALL HAVE THE RIGHT TO ASSESS A ONE THOUSAND (\$1,000.00) DOLLAR PENALTY PER TREE FOR VIOLATION OF THIS SECTION.

SECTION 6. ARTIFICIAL VEGETATION. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved in advance and in writing by the ARC.

SECTION 7. AUTOMOBILE STORAGE AREAS. (See SECTION 4)

SECTION 8. CLOTHES DRYING AREA. No portion of any Lot shall be used for a drying or hanging area for laundry of any kind. Nothing in this section shall be construed, however, to limit the reasonable use of renewable resource energy devices as described in Section 163.04, Florida Statutes (1985).

SECTION 9. LANDSCAPING. A comprehensive landscaping plan (THE "PLAN") for each home must be submitted to and approved by the ARC prior to the commencement of any construction. Lot clearing or landscaping. The plan shall show the location of all trees and shrubs, the trunks of which exceed three (3") inches in diameter at one foot (1') above the natural grade of the land. The plan shall be prepared by a landscape architect or qualified landscape designer

SECTION 10. NUISANCES. Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the neighborhood. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors of the Association, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

SECTION 11. SIGNS. No sign of any kind other than the name and address of the Owner shall be displayed to the public view on any Lot or improvements thereon except for the following:

- A. Owners may display one sign per lot provided such signs do not exceed four (4) square feet in area, and provided such sign is approved in advance and in writing by the ARC. Notwithstanding this provision, however, owners may display one standard real estate type sign without consent of the ARC.
- B. The size, design and color(s) of all signs shall be subject to approval by the ARC.
- C. This provision shall not apply to the Developer, its successors or assigns.

SECTION 12. PETS. No Owner shall keep more than two animals on any one Lot without the prior written approval of the Board. In no event may any animal be kept on the property for any commercial use or purpose. All pets must be kept under control at all times and must not become a nuisance by barking or other acts. Upon the receipt or written complaint from two or more owners, the Board of Directors may order that any animal creating a nuisance be removed from WINDOVER FARMS OF MELBOURNE. Horses shall not be kept on any lots less than one one-half (1 ½) acre in size.

SECTION 13. BOARDING UP. There shall be no 'boarding up' of houses while the homes are vacant for a long period of time. There shall be allowed storm protection only in the event of and during the period of time of a storm likely to cause damage to the house.

SECTION 14. TOPOGRAPHY. THERE SHALL BE NO CHANGE IN THE TOPOGRAPHY OF ANY LOT EITHER FOR CONSTRUCTION OR LANDSCAPING WITHOUT PRIOR WRITTEN PERMISSION OF THE ARC, HOWEVER, NEITHER THE ARC NOR ANY OWNER SHALL BE PERMITTED TO FILL ANY RETENTION AREA. THIS PROVISION SHALL NOT APPLY TO DEVELOPER, ITS SUCCESSORS OR ASSIGNS.

SECTION 15. AIR CONDITIONING. No window or wall air conditioning units shall be permitted.

SECTION 16. EXTERIOR STAIRWAYS. Exterior stairways shall be permitted if approved by the ARC.

SECTION 17. RENTALS. Owners shall not rent their property for periods of less than one year, and any homeowner desiring to rent his property shall first have the proposed tenant approved in advance and in writing by the Board.

SECTION 18. FILLING-IN PROHIBITED. No Lot or parcel shall be increased in size by filling-in the water on which it abuts. The elevation of the Lot shall not be changed so as to materially affect the surface grade of the surrounding Lots, or obstruct the drainage in any manner. This provision shall not apply to the Developer, its successors, or assigns.

SECTION 19. CERTAIN VEHICLES. No unlicensed or non-operative motor vehicle may be parked on any Lot at any time. No commercial vehicle, truck, bus or similar vehicle shall be parked on any Lot except when rendering a service or making a delivery, nor shall any motor vehicle be parked overnight in the road right-of-way.

SECTION 20. PROHIBITION ON VACATING LOTS. The Association and any Lot Owner and successor in interest to a Lot Owner or Association shall be prohibited from vacating any Lots to become roads that would interfere with the private use and overall concept of the WINDOVER OF MELBOURNE community as is being established in accordance with the Declaration of Covenants and Restrictions.

SECTION 21. MISCELLANEOUS. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any lot; and in the event that any Owner shall fail or refuse to keep his Lot free of weeds, or refuse piles or other unsightly growths or objects, then the association may enter upon the Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be placed in walled-in areas so that they shall not be visible from adjoining Lots or public areas.

SECTION 22. ROOFS. All roofs structures shall be composed only of materials that are approved in advance by the ARC.

SECTION 23. BLOCK. There shall be no unfinished exposed block.

SECTION 24. SQUARE FEET. The minimum square footage for a single family residence shall be 1,800 square feet of living space.

SECTION 25. DRIVEWAYS. Driveways must have a culvert with proper engineering and drainage.

SECTION 26. SATELLITE DISHES. Satellite dishes are permitted, provided they are shielded from view of the roads and surrounding Owners and the placement thereof must be approved by the ARC.

SECTION 27. GARAGE DOORS. No garage door shall be made of fiberglass.

SECTION 28. OFF-TERRAIN VEHICLES. No 'three-wheelers, dune buggies, motocross type motorcycles or other off-terrain vehicles shall be operated on the property.

Paragraph 29. ADDITIONAL LOT MAINTENANCE. Lots 835 through 840 and Lots 844 through 847, inclusive, have rear property boundaries which extend into the lake and are below the high water mark of the lake. The owners of these lots shall be responsible for maintaining the grass and landscaping along the lakeside bank down to water level consistent with the condition of other grass and landscaping throughout Windover. In the event a lot owner fails to properly maintain the lake bank, the Association reserves the right to contract the maintenance work to be done and assess the owner in accordance with Article V of the Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 2784, Page 19;25, Public Records of Brevard County, Florida. (18<sup>th</sup> Amendment)

SECTION 29. CONSERVATION EASEMENT AREA. The Conservation Easement Area shall and is hereby declared to be subject to a Conservation Deed Restriction pursuant to Section 704.06, F.S., in favor of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT ("DISTRICT"), for the purpose of retaining and maintaining the Conservation Easement Area in its predominantly natural condition as a water recharge, detention, percolation and environmental conservation area. In furtherance of this Conservation Deed Restriction, all the following uses of the Conservation Easement Areas are hereby prohibited and restricted without the prior written consent of the DISTRICT, to wit:

- A. The construction, installation or placement of signs, buildings, fences, walls, roads or any other structures and improvements on or above the ground of the Conservation Easement Areas;
- B. The dumping or placing of soil or other substances or materials as landfill or the dumping or placing of trash, waste or unsightly or offensive materials;
- C. The removal or destruction of trees, shrubs or other vegetation from the Conservation Easement Area;
- D. The excavation, dredging or removal of loam, peat, gravel, rock, soil, or other material substance in such a manner as to affect the surface of the Conservation Easement Area;

- E. Surface use, except for purposes that permit the land or water area to remain in its predominantly natural condition; and
- F. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- G. Acts or uses detrimental to such retention of lands or water areas.
- H. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archeological, or cultural significance.

The Conservation Easement Area hereby created and declared shall be perpetual.

The DISTRICT, its successors or assigns, shall have the right to enter upon the Conservation Easement Area at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibitions and restrictions.

The Association and all subsequent owners of the Conservation Easement Areas shall be responsible for the periodic removal of trash and other debris which may accumulate on such Conservation Easement Area.

The prohibitions and restrictions upon the Conservation Easement Areas as set forth in this section may be enforced by the DISTRICT or its successor agency by proceedings at law or in equity including, without limitation, actions for injunctive relief. The provisions of this Conservation Easement Area restriction may not be amended without prior approval from the DISTRICT.

All rights and obligations arising hereunder are appurtenances and covenants running with the land of the Conservation Easement Areas, and shall be binding upon and shall inure to the benefit of the DISTRICT and its successors and assigns. Upon conveyance by the Developer to third parties of any land within the Conservation Easement Area, the Developer shall have no further liability or responsibility hereunder, provided this document is properly recorded. (20<sup>TH</sup> Amendment)

## **VIII. GENERAL PROVISIONS**

**SECTION 1. DURATION AND REMEDIES FOR VIOLATION** The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and be enforceable by the Developer, the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors or assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change or terminate said covenants and restrictions, in whole or in part. Violation or breach of any condition, covenant or restriction herein contained shall give Developer and/or Association and/or Owner(s) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants and restrictions, and to prevent the violation or breach of any of them, and the expense of such litigation shall be borne by the then Owner(s) of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants and restrictions. Expenses of litigation shall include attorney's fees and costs incurred by the Developer and/or the Association in seeking such enforcement.

**SECTION 2. NOTICES.** Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member or Owner on the records of the Association at the time of such mailing.

**SECTION 3. SEVERABILITY.** Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect

SECTION 4. USAGE. Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

SECTION 5. EFFECTIVE DATE. This Declaration shall become effective upon its recordation in the Public Records of Brevard County, Florida.

**IX. PROTECTED AREAS.**

It is expressly understood and agreed that portions of the property are inhabited by red cockaded woodpeckers, which are an endangered species. In order to insure the well-being of such woodpeckers, the following restrictions shall apply:

1. No development or construction of any kind shall be commenced within 200 feet of any designated colony site, nesting tree, or active tree. (11<sup>th</sup> Amendment)
2. All development and construction of any kind shall be undertaken with the protection of the woodpeckers in mind. No trees shall be removed except as required for house sites. (11<sup>th</sup> Amendment)

It is also expressly understood and agreed that portions of the property are 'wetlands' and are subject to the jurisdiction of various state and federal agencies. In order to ensure that the wetlands shall be protected, the following restrictions shall apply:

1. No development or construction of any kind shall be commenced upon or within any portion of the property which is designated "wetlands" by any state or federal authority.
2. All development and construction of any kind shall be undertaken with the protection of the wetlands in mind.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed the day and year first above written.

**X. ADDITIONAL PHASES**

Developer shall have the right to add any additional phases to WINDOVER FARMS OF MELBOURNE as it deems appropriate for as long as Developer owns one (1) Lot in the subdivision of WINDOVER FARMS OF MELBOURNE, and such decision to add any additional phases shall be at the sole discretion of Developer and shall not require the consent of any of the other Owners. (12<sup>th</sup> Amendment)

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**EXHIBIT B**

**ARCHITECTURAL PLANNING CRITERIA**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for WINDOVER FARMS OF MELBOURNE, provides that a committee known as the Architectural Review Committee (the "ARC") be initially established and administered by the Developer; and

WHEREAS, the above-referenced Declaration for WINDOVER FARMS OF MELBOURNE provides that upon the Developer transferring the lot which would cause the Developer to own less than ten (10%) percent of the total number of lots in WINDOVER FARMS OF MELBOURNE, that the Board of Directors of the WINDOVER FARMS OF MELBOURNE HOMEOWNERS' ASSOCIATION ("the Association") shall appoint, oversee and/or administer the ARC, and further that the Association, on recommendation of said committee, shall adopt and modify or amend from



time to time Architectural Planning Criteria for WINDOVER FARMS OF MELBOURNE, which criteria are to be set forth in writing and made known to all owners and all prospective owners in WINDOVER FARMS OF MELBOURNE,

NOW, THEREFORE, the Developer has appointed a committee to be known as the Architectural Review Committee (ARC) in accordance with the duties and obligations imposed upon said committee by the Declaration of Covenants, Conditions and Restrictions for WINDOVER FARMS OF MELBOURNE. The ARC does hereby adopt the following Architectural Planning Criteria, putting all on notice of the same:

1. It is the plan of the Developer to develop WINDOVER FARMS OF MELBOURNE into a highly restricted community of quality homes. The ARC shall evaluate the proposed improvements with emphasis upon their harmonious incorporation into the natural environment and the community as a whole and with specific emphasis on external design, location of the improvement in relation to the surrounding structures and/or improvements, topography and conformity to the restrictive covenants imposed hereunder.
2. **BUILDING TYPE.** No building shall be erected, altered, placed, or permitted to remain on any lot in WINDOVER FARMS OF MELBOURNE other than a residence or detached or semi-detached buildings that conform to ARC standards and are of the same architectural design, elevation and materials as the principal residence.
3. **REQUIRED PLAN.** Two sets of plans for the following lot improvements, both of which will be the property of the ARC, must be submitted to and will require review and approval by the ARC before any implementation can begin:
  - A. **Clearing, Grading, Excavating, Trenching or other Extensive Interference with the Natural Terrain and Landscape.** A plan for listed improvements will consist of a lot plan at a scale not less than 1 to 100, showing all easements of record and all trees over three inches (3") in diameter at one foot (1') above the natural grade of the land. All changes to be made to the lot, including preparation for the pouring of concrete, must be included on said plan. Cuts in the natural grade of the lot of more than one-foot (1') variation from the original grade, or which will result in a final grade variation of over one foot (1') from the original grade should be shown by a presentation of an original and a final map of topography.
  - B. **Construction Plans.** All plans for construction should be submitted at a scale not less than 1 to 20, should show all setbacks, location of pad with outer wall dimensions including position of garage, location of driveways and walkways, and any other proposed lot improvements. In addition, the plans should show elevations to scale, of all sides of contemplated structures, the floor plan and a summary specifications list of proposed construction materials. Samples of external construction materials, which cannot be adequately described, should be included.
  - C. **Landscaping.** All plans submitted should be at a scale not less than 1 to 20 and should show and locate all landscape improvement contemplated, including but not limited to such items as plant types and sizes, sprinkler systems, and driveway(s), walkway(s), pond(s), path(s), wall(s) and fence(s) and types of materials to be used. A comprehensive landscaping plan prepared by a landscape architect or other qualified landscape engineer shall be submitted to the ARC prior to the commencement of any clearing, landscaping or construction.
4. **BUILDER AND CONSTRUCTION APPROVAL.** All builders or contractors must be approved in advance in writing by the ARC. Any construction done in WINDOVER FARMS OF MELBOURNE by any builder or contractor even though the builder or contractor has been approved by the ARC which is done in a poor and unworkmanlike manner may be stopped by the ARC, and further work on the job will cease until the work has been corrected to the satisfaction of the ARC. Each owner or his assigns by purchasing property in WINDOVER FARMS OF MELBOURNE hereby gives his permission to the ARC or its representative to inspect the work being done on his property at such reasonable time and manner so as to assure conformity with these guidelines and restrictions.
5. **LAYOUT.** No foundation for any building shall be poured, nor shall any construction commence in any manner or respect, until the layout for the building is approved by the ARC. It is the purpose of this approval to assure that no trees or unnecessarily disturbed and that any building is placed on the lot in its most advantageous position.

6. EXTERIOR COLOR PLAN. The ARC shall have final approval of all exterior color plans and each owner must submit to the ARC a color plan showing the color of the roof, exterior walls, shutters, trims, etc. The ARC shall consider the extent to which the color plan is consistent with the homes in the surrounding areas and the extent to which the color plan conforms with the color scheme of WINDOVER FARMS OF MELBOURNE and the surrounding environment.
7. ROOFS. All roof structures shall be composed only of materials that are approved in advance by the ARC.
8. BLOCK. There shall be no unfinished exposed block. Block shall be covered with stone, brick or stucco.
9. SIGNS. No sign of any kind other than the name and address of the Owner shall be displayed to the public view on any Lot or improvements thereon except for the following:
- a Owners may display one sign per lot provided such signs do not exceed four (1) square feet in area, and provided such sign is approved in advance and in writing by the ARC. Notwithstanding this provision, however, owners may display one standard real estate type sign without consent of the ARC.
  - b The size, design and color(s) of all signs shall be subject to approval by the ARC.
  - c This provision shall not apply to the Developer, its successors or assigns.
  - d Any sign not conforming to the above sign restrictions can be removed by the ARC, after giving the Owner three (3) days verbal notice. Each Owner or Owner's assigns, by purchasing property in WINDOVER FARMS OF MELBOURNE, hereby gives permission to the ARC, or its representative, to obtain access to Owner's property to remove non-conforming signs at a reasonable time and manner so as to assure conformity with these guidelines and restrictions." (6<sup>th</sup> Amendment)
10. GAMES AND PLAY STRUCTURES. Any fixed game and play structure, excluding basketball backboards, shall be located at the rear of the dwelling or on the inside portion of corner lots within said back lines. No platform, doghouse, playhouse, or structure of a similar kind or nature shall be constructed on any part of the Lot located in the front of the rear line of the residence constructed thereon, and any such structure must have the prior written approval of the ARC. (14<sup>th</sup> Amendment)
11. FENCES AND WALLS. The composition, location and height of any fence or wall to be constructed on any lot shall be subject to approval by the ARC. No boundary wall or fence shall be constructed greater than six (6') feet high. In no event shall the ARC approve chain-link fences that are visible from a road. There is now an existing 'horse fence' located within the existing utility easement at the rear of certain contiguous lots abutting Post Road. No individual lot owner may remove, paint or otherwise change said fence or any portion or section, of said fence. (6<sup>th</sup> Amendment)
12. SWIMMING POOLS AND TENNIS COURTS. Any swimming pool or tennis court to be constructed on any lot shall be subject to the approval of the ARC. Any lighting of a pool or other recreational areas shall be designed so as to buffer the surrounding residences from the lighting and must be approved by the ARC.
- A. ~~Construction may be only of concrete or a concrete type material for pools or concrete or asphalt for tennis courts.~~ No "above-ground" type pools are permitted. (6<sup>th</sup> Amendment)
  - B. In cases where the backyard surrounding a pool is not fenced in, the pool itself must be enclosed with a fence not less than four (4) feet in height. The entrance gate to the backyard or the pool itself, as the case may be, is to be constructed with a self-closing latch placed at least forty (40") inches above the ground.
13. GARBAGE AND TRASH CONTAINERS. No lot shall be used or maintained as a dumping ground for rubbish, tread or other waste. All trash, garbage and other waste shall be kept in sanitary containers and, except during

pick-up, if required to be placed at the curb, all containers shall be kept out of view from the road.

14. TEMPORARY STRUCTURES. No structure of a temporary character such as a trailer, basement, tent, shack, garage, barn, or other out building shall be used on a lot at any time as a residence either temporarily and permanently.

15. REMOVAL OF TREES:

A. Review of Building Plans. In reviewing building plans, the ARC shall take into account the natural landscaping, such as trees and shrubs, and encourage the Owner to incorporate such trees and shrubs into their landscaping plan. No trees of three (3") inches in diameter at one (1') foot above the natural grade shall be cut, removed or destroyed, without the approval of the ARC, which approval may be given when such removal is necessary for the construction of a home or other improvement.

B. Preservation of Trees During Construction.

(1) All lot Owners shall comply with the following requirements before receiving final approval from the ARC to start clearing and construction. The ARC may adjust these requirements from time to time, depending upon current government regulations and new effective methods of tree preservation:

- a. Spray trees with a combination of Lindane and Dursban. Provide ARC with written confirmation by a company in business and licensed to do such work, which confirmation shall be attached to the application submitted to the ARC.
- b. Install barricades around each tree or tree group. Barricades shall be located at the "Drip Line". Barricades shall be constructed of 2" by 2" posts, 6' on center with a 1" by 4" top rail no lower than 4' above ground level. Sixty (60) days after the clearing of the lot, all trees to be preserved shall be resprayed according to subparagraph (a) above.
- c. Upon installation of barricades, all preserved trees shall be fertilized by an approved method and the ARC provided with a written confirmation by a company in business and licensed to do such work, which confirmation shall be attached to the application submitted to the ARC.

(2) The Owner or Owner 's agents shall not conduct any construction activities within any barricaded area which will endanger the tree(s). Any tree on the Owner's lot which dies, as either a direct or indirect result of any construction activities carried on by Owner or Owner's agents, shall be considered "destroyed," and subject to the penalty provided for in Article VII, Restrictions, Section 5, Trees, if the death of the tree occurs thin six (6) months after the completion of construction.

(3) The above requirements shall apply to trees on any neighboring property, or rights of way, if the "Drip Line" extends over the lot Owner's property line.

(4) Where trees are located Significantly beyond the construction area on the lot, the ARC may waive the requirements of Paragraphs (1), (2) and (3) above. However, this waiver shall not relieve the Owner or Owner's agents of any liability for penalties which may be assessed for the destruction of any tree(s) which is the direct or indirect result of construction on the lot.

(5) Owners of lots which contain trees located next to or in a "to be filled" area, shall construct a "tree well" around any such trees. The "tree wells" should be of sufficient size to protect and preserve the tree(s). A barricade as described in Paragraph l(b) above shall also be installed.

C. Tree Replacement.

(1) Owners of lots which are less than one acre (less than 43,560 square feet in size) shall not be required to replace any tree(s) removed due to the construction of their homes if, after the removal of such trees, there remains twenty (20) or more trees on the lot, and such trees are over three (3") inches in diameter (as measured at one (1') foot above the natural grade).

- (2) Owners of lots one acre or greater (43,650 square feet or more in size) shall not be required to replace any tree(s) removed due to construction of their homes if, after the removal of such trees, there remains forty (40) or more trees on the lot, and such trees are over three (3") inches in diameter (as measured at one (1') foot above the natural grade).
- (3) Replacement of trees shall be required when a lot Owner removes any tree for any reason other than construction of their home. Replacement of trees shall also be required when less than the required number of trees are remaining on the lot (see Paragraphs (2) and (3) above) due to the removal of trees for the home construction.
- (4) Twenty-five (25%) percent of the diameter of any removed pine (softwood) tree which is three (3") inches or greater in diameter shall be replaced by the lot Owner within thirty (30) days after the removal of the tree in accordance with the guidelines contained in Paragraph (10) below. The lot Owner shall notify the ARC in writing within thirty (30) days after the removal of a pine (softwood) tree, that the tree has been replaced. More than one replacement tree can be used to meet the 25% requirement.
- (5) Fifty (50%) percent of the diameter of any removed hardwood (deciduous) tree which is three (3") inches or greater in diameter, shall be replaced by the lot Owner within thirty (30) days after the removal of the tree in accordance with the guidelines contained in Paragraph (10) below. The lot Owner shall notify the ARC in writing within thirty (30) days after removal of a hardwood (deciduous) tree, that the tree has been replaced. More than one replacement tree can be used to meet the 50% requirement.
- (6) Any tree removed which is less than three (3") inches in diameter but greater than one (1") inch in diameter shall be replaced with a similar size tree.
- (7) After the lot Owner has planted replacement tree(s), the tree(s) and lot shall be subject to inspection by the ARC for compliance with this policy.
- (8) Lot Owners who plant or have planted trees (which trees were not required to be planted to replace other removed or destroyed trees) shall be given credit for such trees, if tree replacement is ever required on the Owner's lot. Provided, however, that those trees must meet the tree replacement requirements and guidelines in effect at the time replacement is required.
- (9) No palm trees or myrtles shall be used to replace any removed or destroyed tree.
- (10) Guidelines for Tree Replacement:

Pines (Softwoods)

| Diameter | Height | Spread |
|----------|--------|--------|
| 2 1/2-3" | 10-12' | 4'     |
| 2"       | 8-10'  | 2'     |
| 1"       | 4- 6'  | 1'     |

Hardwoods (Deciduous)

|    |        |      |
|----|--------|------|
| 3" | 12-15' | 4-7' |
| 2" | 7-8'   | 3-4' |
| 1" | 4-6'   | 2-3' |

(13<sup>th</sup> Amendment)

16. WINDOW AIR CONDITIONING UNITS. No window or wall air conditioning units shall be permitted.

17. UTILITY CONNECTIONS. Building connections for all utilities, including, but not limited to, water, electricity, telephone and television shall be run underground from the lot lines to the building structure in such a manner to be acceptable to the ARC.
18. EXPOSED METAL. Bronzed or painted finishes are required on all metal finishes, including, but not limited to, windows, window screens, roof flashings, garage doors and screened pool enclosures. No Mill finish. windows or "plain" aluminum windows are permitted.
19. AMENDMENTS. The Developer reserves the right to modify the provisions herein at its sale discretion, so long as it owns ten (10%) percent or more of the lots in WINDOVER FARMS OF MELBOURNE.
20. CULVERTS, DITCHES AND SWALES. Owners shall preserve and protect the existing ditches and/or swales located in the road right-of-way. At the location where the driveway crosses the ditch or swale, the owner shall place a corrugated metal pipe, with a mitered end section, at each end. The pipe will be placed at an invert elevation to match existing ditch or aware elevations. Only mitered ends will be allowed, headwalls are prohibited. The pipe will be steel, asphalt coated of a size designated by the ARC and Brevard County. The pipe shall be not less than five (5') feet wide on each side from the edge of the pavement to the start of the metered end section. All areas between road pavement and the property line which have been disturbed due to construction shall be re-sodded and restored. No other structure, sign or decoration shall be erected in the road right-of-way except one mailbox as defined below. Under special conditions or circumstances, the Architectural Review Committee can adopt and approve other design criteria as may be required to resolve such special circumstances or conditions. Special circumstances or conditions shall be as are determined by the Architectural Review Committee. (6<sup>th</sup> Amendment)
21. MAILBOXES. Mailboxes shall be of standard size, painted black with the address in white paint. The box shall be supported by a 4 x 4 post. Materials for the posts shall be rough-cut cedar, stained dark brown. The boxes shall be located at a height above ground and distance from road pavement acceptable to postal authorities. The M C may from time to time change the design and/or provide detailed drawings.
22. SETBACK. Front and rear lot lines will have a 40-foot setback unless otherwise approved by the ARC.
23. LAKES AND PONDS. Any pond or lake dug, constructed or maintained must provide for constantly flowing water, proper drainage so the water will not become stagnant, and shall be kept free at all times of snakes and other aesthetic nuisances.
24. GARAGES. No garage door shall face a road unless expressly approved by the ARC.
25. BASKETBALL BACKBOARDS. \*
- (a) Generally. Basket Backboards ("Backboards") shall not be permitted to be constructed on any lot, unless they meet the criteria provided for in this paragraph 25.
- (i) Backboards shall not be mounted on, or attached to, any residence.
- (ii) Backboards shall be kept in good condition at all times and not allowed to deteriorate
- (iii) Backboards shall either be white in color or made of clear plastic.
- (iv) All Backboards shall be made of a "manufactured type" installation and not "homemade"
- (b) Location. A Backboard located on a lot shall not be installed forward of the front face of the residence. For special circumstances including, but not limited to corner lots, and irregular shaped lots, other locations may be submitted to the ARC for consideration.
- (c) Other. Portable Backboards shall be permitted.

\*As amended by Amendment 21