

Division of Corporations

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FLORIDA NON-PROFIT CORPORATION

Valencia Pointe Property Owners Association, Inc.

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ARTICLES OF INCORPORATION
OF
VALENCIA POINTE PROPERTY OWNERS ASSOCIATION, INC.
(A Corporation Not-For-Profit)

In compliance with the requirements of the laws of the State of Florida, the undersigned hereby associate themselves together for the purpose of forming a corporation not-for-profit under Chapter 817, Florida Statutes, and do hereby certify:

ARTICLE I
NAME

The name of the corporation is:

VALENCIA POINTE PROPERTY OWNERS ASSOCIATION, INC.

(hereinafter called the "Association").

ARTICLE II
REGISTERED OFFICE

The street address of the Association is 2293 W. Eau Gallie Boulevard, Melbourne, FL 32935.

ARTICLE III
PURPOSES OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for operation, maintenance and preservation of the Common Area and improvements thereon, within that certain real property (and any additions thereto) described in the Declaration of Covenants, Restrictions, Easements, Charges and Liens for VALENCIA POINTE PROPERTY

OWNERS ASSOCIATION, INC. as recorded in the Public Records of Indian River County, Florida (the "Declaration"), and to promote the health, safety and welfare and mutual enjoyment of the members of the Association.

**ARTICLE IV
PURPOSE AND POWERS OF THE ASSOCIATION**

The Association shall have all the powers and duties reasonably necessary to operate and maintain the Association, including, but not limited to, the following:

A. Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration and as the same may be amended from time to time as therein provided;

B. Fix, levy, collect and enforce payment by any lawful means, of all charges or assessments pursuant to the terms of the Declaration or By-Laws of the Association; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

C. Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer or otherwise dispose of real or personal property in connection with the affairs of the Association including, without limitation, the Common Area;

D. The Association shall operate, maintain and manage the surface water or stormwater management system(s) in a manner consistent with the St. Johns River Water Management District permit no. 4-009-87812-1 requirements and applicable District rules, and shall assist in the enforcement of the Declaration of Covenants and Restrictions which relate to the surface water or stormwater management system; The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system.

E. With the assent of two-thirds (2/3) of the Membership Interests at a duly called meeting of the Association, borrow money and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and only if the prior written consent of Declarant is obtained for so long as Declarant holds any Membership Interest in the Association;

F. Dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective without obtaining consent of two-thirds (2/3) of the Membership Interests; and only if the prior written consent of Declarant is obtained for so long as Declarant holds any Membership Interest in the Association;

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G. Participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional Common Area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of the Membership Interests of the Association; and only if the prior written consent of Declarant is obtained for so long as Declarant holds any Membership Interest in the Association;

H. To promulgate or enforce rules, regulations, by-laws, covenants, restrictions or agreements to effectuate all of the purposes for which the Association is organized;

I. To have and to exercise any and all powers, rights and privileges which a non-profit corporation organized under the laws of the State of Florida may now or hereafter have or exercise;

J. To contract for management of the Association and to delegate in such contract all or any part of the delegable powers and duties of the Association, and to contract for services to be provided to the Owners, including cable television service. All Members of the Association shall be bound by such contracts regardless of whether they desire or use the services rendered thereunder.

K. To sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person;

L. All powers and duties of a not-for-profit corporation under Chapter 617, Florida Statutes.

ARTICLE V MEMBERSHIP AND QUORUM

A. Every Owner of a Lot within the Property subject to the Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

B. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, equal to thirty percent (30%) of the total voting interests of the Association shall constitute a quorum for any action.

ARTICLE VI VOTING RIGHTS

A. There shall be one Membership Interest in the Association appurtenant to each Lot. Initially, Declarant shall be entitled to all Membership Interests in the Association. The Membership Interest appurtenant to each Lot shall automatically pass upon recordation in the public records of each instrument effectuating a sale, conveyance or transfer of said Lot.

B. The Association shall have two (2) classes of membership:

Class A. Class A Members shall be all Owners of Lots (except the Declarant) and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall have a Membership Interest in the Association. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class "B" members shall be the Declarant, its successors and/or assigns who shall be entitled to three (3) 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) three (3) months after seventy-five (75%) percent of the Lots in the Subdivision that will ultimately be operated by the Association have been conveyed to members other than the Declarant (or a successor Declarant) ("members other than the Declarant" shall not include builders, contractors or others who purchase a lot for the purpose of constructing improvements thereon for resale); or (b) upon the election of the Declarant or a successor Declarant.

ARTICLE VII BOARD OF DIRECTORS

A. The affairs of the Association shall be managed by a Board of at least three (3) Directors. The Declarant shall have the right to appoint all of the Directors until the Turnover Date.

B. Within sixty (60) days after the Class A Members are entitled to elect a Director, the Association shall call, and give not less than thirty (30) days' nor more than forty (40) days' notice of, a meeting of the Class A Members for this purpose. Such meeting may be called and a notice given by any Class A Member if the Association fails to do so.

C. Directors appointed by Declarant may only be removed and replaced by Declarant.

D. The Declarant shall be entitled to appoint one (1) Director as long as Declarant is the holder of at least five percent (5%) of the lots that will ultimately be operated by the Association. when the Declarant no longer holds at least five (5%) percent of the Lots, all Directors shall be selected by the Class A Members.

E. Any Director appointed by the Declarant shall serve at the pleasure of the Declarant, and may be removed and substituted by Declarant, at its sole option and discretion.

F. At such time as the Class A Members of the Association are permitted to elect Directors, any Director elected by the Class A Members, may be removed from the Board with or without cause, by a two-thirds (2/3) vote of the Class A Members of the Association entitled to vote. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve the unexpired term of his predecessor.

G. 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:

<u>NAME</u>	<u>ADDRESS</u>
Richard Hawkes	2293 W. Eau Gallie Boulevard Melbourne, FL 32952
Gregory T. Wood	2293 W. Eau Gallie Boulevard Melbourne, FL 32952
R. Parker Rushnell	2293 W. Eau Gallie Boulevard Melbourne, FL 32952

H. The number of Directors may be increased or decreased from time to time as provided in the By-Laws, but shall never be less than three (3) in number.

I. The Directors shall serve for a term of one (1) year. Any Director may be re-elected for successive terms.

J. The provisions of this Article VII shall control over the provisions of Article VI.

**ARTICLE VIII
DURATION**

The Association shall have perpetual existence. If the Association is dissolved, its assets shall be dedicated to a public body or conveyed to a non-profit organization with similar purposes. Furthermore, in the event the Association is dissolved, the surface water management system shall be conveyed to an appropriate agency of local government. If it is not accepted, then the surface water management system must be dedicated to a similar non-profit corporation. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Sec. 40C-42.027, F.A.C. and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

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ARTICLE IX AMENDMENTS

These Articles of Incorporation may be altered, amended, or rescinded only in the following manner:

A. Amendments While Developer Holds Two-Thirds (2/3) of Total Membership Votes. At any time Developer holds two-thirds (2/3) of the total membership votes (Class A and Class B combined for all phases of the Subdivision that will ultimately be operated by the Association), these Articles of Incorporation may be amended only by the affirmative vote of the Developer, and may be amended without a meeting.

B. Amendments While Developer Does Not Hold Two-Thirds (2/3) of Total Membership Votes. At any time the Developer does not hold two-thirds (2/3) of the total membership votes (Class A and Class B combined for all phases of the Subdivision that will ultimately be operated by the Association), amendments to these Articles of Incorporation may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by members of the Association owning not less than one-third (1/3) of the Lots, whether meeting as members or by instrument in writing signed by them. Upon any Amendment to the Articles of Incorporation being proposed by said Board of Directors, or members, such proposed Amendment or Amendments shall be transmitted to the President of the Association or, in the absence of the President, such other Officer of the Association who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from the receipt by him or her 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 special meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such special meeting. If mailed, such notice shall be deemed to have been given when deposited in the United States mail addressed to the member at his post office address as it appears on the records of the Association, the postage thereon prepaid. Any member may waive such notice, by written waiver of notice. And, when such waiver of notice is filed in the records of the Association (whether before or after the holding of the meeting), it shall be deemed equivalent to the giving of such notice to such member.

At such meeting, if the Developer maintains a Class B membership, the Amendment or Amendments proposed must be approved by the Developer and an affirmative vote of members holding at least two-thirds (2/3) of the total membership votes (Class A and Class B combined for all phases of the Subdivision that will ultimately be operated by the Association), in order for such Amendment or Amendments of the By-Laws to become effective. Thereupon, such amendment or amendments shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted and the original or an executed copy of such

Amendment or Amendments so certified and executed with the same formalities as a deed shall be filed with the Secretary of the State of Florida and also recorded in the Public Records of Indian River County within twenty (20) days from the date on which the same became effective, such Amendment or Amendments to refer specifically to the recording data identifying the Articles of Incorporation. Thereafter, a copy of said Amendment or Amendments in the form in which the same were placed of record by the Officers of the Association shall be mailed or delivered to all of the members of the Association, but mailing or delivering a copy thereof shall not be a condition precedent to the effectiveness of such Amendment or Amendments. At any meeting held to consider such Amendment or Amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented there at by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

At such meeting, if the Developer no longer maintains a Class B membership, the Amendment or Amendments proposed must be approved solely by an affirmative vote of members holding at least two-thirds (2/3) of the total membership votes, and the above referenced procedure for certification, filing and recording shall be followed.

The Developer specifically reserves the absolute and unconditional right, as long as Developer owns any Lot, to amend these Articles of Incorporation without the consent or joinder of any party to (i) conform to the requirements of the St. Johns River Water Management District, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Department of Housing and Urban Development, or any other generally recognized institution involved in the purchase and sale of home loan mortgages, or pursuant to any requirement of any federal, state or local governmental entity, agency or authority; (ii) conform to the requirements of mortgage lenders or title insurance companies; or (iii) perfect, clarify, or make internally consistent the provisions herein.

Notwithstanding any other terms or conditions contained herein, no amendments may be made to this Articles of Incorporation amending or terminating the rights of the Developer without the prior written consent of the Developer.

Notwithstanding anything in these Articles of Incorporation to the contrary, as long as there exists a Class "B" membership, if any one more of HUD, FHA or VA requires approval or consent by it or them to annexation of additional property, any merger or consolidation involving the Association, the place of any mortgage lien on the Common Area, dedication to public of any Common Area, any amendment of these Articles, or dissolution of the Association, by any one or more of said agencies, as a condition of making, insuring or purchasing loans on Units in the Property, and any such loan has been approved, insured or purchased by the agency at the time of the proposed annexation, merger, consolidation, mortgaging, dedication, amendment or dissolution, then the required consent or approval shall be obtained.

**ARTICLE X
SUBSCRIBERS**

The names and street addresses of the Subscribers to these Articles of Incorporation are the same as the Directors listed in ARTICLE VII hereof.

**ARTICLE XI
OFFICERS**

A. The Board of Directors shall elect the President, Secretary, Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board of Directors shall from time to time determine.

B. The names and addresses of the Officers who shall serve until their successors are designated by the Board of Directors are as follows:

- President: Richard Hawkes
2293 W. Eau Gallie Boulevard
Melbourne, FL. 32952
- Secretary: R. Parker Rushnell
2293 W. Eau Gallie Boulevard
Melbourne, FL. 32952
- Treasurer: Gregory T. Wood
2293 W. Eau Gallie Boulevard
Melbourne, FL. 32952

**ARTICLE XII
BY-LAWS**

A. The By-Laws of this Association shall be adopted by the Board of Directors and attached to the Declaration to be filed among the Public Records of Indian River County, Florida. The By-Laws may be amended by the Members in the manner provided in said By-Laws.

B. No amendment to the By-Laws shall be passed without the consent or joinder of the Declarant so long as Declarant holds a Membership Interest in the Association.

C. No amendment to the By-Laws shall be passed which would operate to impair or prejudice the rights or liabilities of any Mortgagee holding a lien upon a Lot or Unit.

D. No By-law shall be revised or amended by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be

amended; new words shall be inserted in the text underlined, and the words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-law. See By-law _____ for present text". Nonmaterial errors or omissions in the By-law process shall not invalidate an otherwise properly promulgated amendment.

ARTICLE XIII INDEMNIFICATION OF OFFICERS AND DIRECTORS

Exclusive of the developer or Directors appointed to the Association by the developer, The Association shall and does hereby agree to indemnify, defend and hold harmless every Director and every Officer, their heirs, personal representatives, executors and administrators, against all loss, cost and expenses reasonably incurred in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or Officer of the Association, including reasonable counsel fees, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to, and not exclusive of, all other indemnification rights to which such Director or Officer may be entitled, by law or otherwise.

ARTICLE XIV HUD/FHA/VA AND DISTRICT APPROVAL RIGHTS

Notwithstanding anything in these Articles of Incorporation to the contrary, as long as there exists a Class "B" membership, if any one or more of HUD, FHA or VA requires approval or consent by it or them to annexation of Additional Property, any merger or consolidation involving the Association, the placing of any mortgage lien on the Common Property, dedication to the public of any Common Property, any amendment of these Articles of Incorporation, or dissolution of the Association, by any one or more of said agencies as a condition of making, insuring or purchasing loans on Dwellings in the Property, and any such loan has been approved, insured or purchased by the applicable agency at the time of the proposed annexation, merger, consolidation, mortgaging, dedication, amendment or dissolution, then the required consent or approval shall be obtained. In addition, any amendment to these Articles of Incorporation which alters the [Master Surface Water Management System] [Surface Water Management System Facilities] beyond maintenance in its original condition, including the surface water management portions of the Common Property, must have the prior approval of the District. These Articles of Incorporation may not be amended without the prior written consent of the District if such amendment would change any of the provisions of these Articles of Incorporation governing or affecting the operation, maintenance or repair of the [Master Surface Water Management System] [Surface Water Management System Facilities] for the Property.

IN WITNESS WHEREOF, for the purpose of forming this Association under the Laws of the State of Florida, we the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this 3rd day of December, 2004.

Signed, Sealed and Delivered in the Presence of:

Three sets of handwritten signatures on lines, likely representing the incorporators mentioned in the text above.

Handwritten signature of Richard Hawkes.

Print Name: Richard Hawkes
(Date of Execution: 12/20/2004)

Handwritten signature of Gregory T. Wood.

Print Name: Gregory T. Wood
(Date of Execution: 12/20/2004)

Handwritten signature of R. Parker Rushnell.

Print Name: R. Parker Rushnell
(Date of Execution: 12/03, 2004)

STATE OF FLORIDA

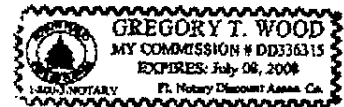
SS:

COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 20th day of December 2004, by Richard Hawkes, who is personally known to me.

Handwritten signature of Gregory T. Wood.

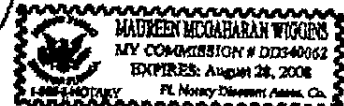
Notary Public, State of Florida
Print Name: Gregory T. Wood
My commission expires:



The foregoing instrument was acknowledged before me this 20th day of December 2004, by Gregory T. Wood, who is personally known to me.

Handwritten signature of Madreen McCarahan Wiggins.

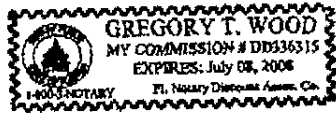
Notary Public, State of Florida
Print Name:
My commission expires:



The foregoing instrument was acknowledged before me this 20th day of December, 2004, by R. Parker Rushnell who is personally known to me.



Notary Public, State of Florida
Print Name: Gregory T. Wood
My commission expires:



CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR THE SERVICE OF PROCESS WITHIN FLORIDA, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED

In compliance with section 48.081, Florida Statutes, the following is submitted:

VALENCIA POINTE PROPERTY OWNERS ASSOCIATION, INC., desiring to organize or qualify under the laws of the State of Florida with its principal place of business at Brevard County, State of Florida, has named:

Richard Hawkes
at 2293 W. Eau Gallie Boulevard, Melbourne, FL. 32935

as its agent to accept service of process within Florida.

SIGNATURE:



Richard Hawkes, President

DATE:

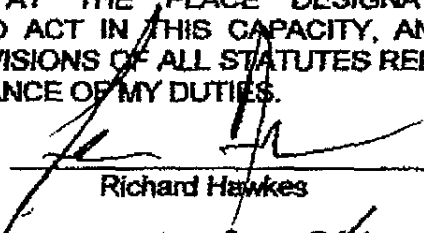
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HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY AGREE TO ACT IN THIS CAPACITY, AND I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES.



Richard Hawkes

DATE:

12-20-04