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**FLORIDA NON-PROFIT CORPORATION**

Whispering Trails Homeowners Association of Winter H

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**ARTICLES OF INCORPORATION  
OF  
WHISPERING TRAILS HOMEOWNERS ASSOCIATION  
OF WINTER HAVEN, INC.**

In compliance with the requirements of Florida Statutes, Chapter 617, the undersigned incorporator has executed, adopted and caused to be delivered for filing these Articles of Incorporation for the purpose of forming a corporation not for profit and does hereby certify:

**ARTICLE I  
NAME OF CORPORATION**

The name of the corporation is **WHISPERING TRAILS HOMEOWNERS ASSOCIATION OF WINTER HAVEN, INC.** (hereinafter called the "Association").

**ARTICLE II  
PRINCIPAL OFFICE OF THE ASSOCIATION**

The principal place of business and the mailing address of the Association is located at 3100 Clay Avenue, Suite 275, Orlando, Florida 32804.

**ARTICLE III  
REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the registered office of the Association is One Independent Drive, Suite 1300, Jacksonville, FL 32202-5017, and the name of the initial registered agent to accept service of process within the State of Florida at that address is F&L Corp.

**ARTICLE IV  
DEFINITIONS**

Unless otherwise provided herein to the contrary, all terms used in these Articles shall have the same definitions and meanings as those set forth in that certain Declaration of Covenants, Conditions and Restrictions for Whispering Trails recorded or to be recorded in the Public Records of Polk County, Florida, as it may from time to time be amended (hereinafter called the "Declaration").

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

**Section 1.** The Association 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 Association is chartered, and all of the powers and privileges which may be granted unto said Association 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 Association, including, but not limited to, the following:

(i) To make and establish reasonable rules and regulations governing the use of the Lots, Common Property and Areas of Common Responsibility in accordance with the terms as may be defined in the Declaration.

(ii) To levy and collect assessments against Members of the Association to defray the Common Expenses of the maintenance and operation of the Common Property and Areas of Common Responsibility as may be provided in the Declaration and in the Bylaws of this Association 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 Property, the Areas of Common Responsibility and in accomplishing the purposes set forth in the Declaration.

(iii) To maintain, repair, replace, operate and manage the Common Property and Areas of Common Responsibility of Whispering Trails and the property comprising same, including the right to reconstruct improvements after casualty and to make further improvement of said property.

(iv) To enforce the provisions of the Declaration and these Articles, the Bylaws of the Association which may be hereafter adopted, and the rules and regulations governing the use of the Common Property and the Areas of Common Responsibility as the same may be hereafter established.

(v) Subject to the limitations set forth in Section 720.31, Florida Statutes, as amended from time to time, to now or hereafter acquire and enter into leases and agreements of every nature, whereby the Association acquires leaseholds, memberships and other possessory or use interests in land or facilities, including recreational facilities, whether or not contiguous to lands of Whispering Trails, to provide enjoyment, recreation, or other use of benefit to the owners of the property within Whispering Trails, all as may be deemed by the Board of Directors to be in the best interests of the Association.

(vi) To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the Association pursuant to the Declaration.

(vii) To operate, maintain, repair and manage the Master Surface Water Management System in a manner consistent with the Permit requirements and applicable District rules, and to assist in the enforcement of the restrictions and covenants contained therein.

(viii) To levy and collect adequate assessments against Members of the Association for the costs of operation, maintenance and repair of the Master

Surface Water Management System, including but not limited to, work within retention areas, drainage structures and drainage easements.

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

(x) To borrow money, and with the assent of the representatives of two-thirds (2/3rds) of each class of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; except that no vote or other consent shall be required for the loan and mortgage against the Clubhouse Tract and Clubhouse Tract Improvements set forth in Article IV, Section 8 of the Declaration.

(xi) To dedicate, sell or transfer all or any part of the Common Property 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, sale or transfer shall be effective unless an instrument has been signed by the representatives of two-thirds (2/3rds) of each class of Members, agreeing to such dedication, sale or transfer; provided, however, that there shall be no requirement of participation by or agreement of the Members in the event the dedication, sale or transfer is incidental to a replatting of any portion of the Common Property.

(xii) To participate in mergers and consolidations with other not-for-profit corporations organized for the same purposes or annex additional residential property and Common Property.

(xiii) To sue and be sued in a court of law.

(xiv) To have and to exercise any and all powers, rights and privileges which a corporation organized under the not-for-profit Corporation Law of the State of Florida by law may now or hereafter have or exercise.

**ARTICLE VI  
MEMBERSHIP**

**Section 1. Members.** Every person or entity who is a record Owner of a fee interest in any Lot in the Property shall be a Member of the Association. Declarant shall also be a Member for so long as Declarant owns any portion of the Property. Notwithstanding anything else to the contrary set forth in this Article, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. The Association membership of each Owner (other than Declarant) shall be appurtenant to and may not be separated from the Lot giving rise to such membership, and shall not be transferred except upon the transfer of title to said Lot and then only to the transferee of title thereto. Any prohibited separate transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

**Section 2. Classes.** The Association shall have two (2) classes of voting membership:

(a) **Class "A".** Class "A" Members shall be all Owners, with the exception of Declarant for so long as Declarant retains Class "B" voting rights. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member.

(b) **Class "B".** The sole Class "B" Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Lot in the Property owned by Declarant, plus three (3) votes for each potential subdivision lot that has not yet been annexed but which could be developed upon the lands eligible for annexation to the Property under the terms of the Declaration. Upon the execution of these Articles of Incorporation, Declarant shall have Nine Hundred (900) Class "B" votes representing three (3) votes for each of the One Hundred Five (105) Lots in the Phase 1 Property, plus three (3) votes for each of the One Hundred Ninety-Five (195) potential residential subdivision lots not yet included in the Property but which could be developed and annexed to the Property. In all, Declarant expects but shall not be required to develop and submit a total of Three Hundred (300) residential lots to this Declaration and to the jurisdiction of the Association. In the event Declarant elects at any time or from time to time, for any reason whatsoever, not to develop and annex any one or more of the One Hundred Ninety-Five (195) potential subdivision lots not included in the Phase 1 Property, then Declarant will give written notice to the Association of that election and Declarant's Class "B" votes shall be reduced by three (3) votes for each one of the potential residential subdivision lots so excluded from eligibility for annexation by Declarant.

(c) **Termination of Class "B" Membership.** As each Lot in the Property is conveyed by Declarant to a Class "A" Member, Declarant's votes for that Lot shall lapse. The Class "B" membership shall cease and terminate resulting in "Turnover" of the Association to the Members and become converted to Class "A" membership upon the earlier of the following:

(i) When the total outstanding Class "A" votes in the Association equals or exceeds the total outstanding Class "B" votes; or

(ii) Ten (10) years from the date of recording the Declaration; or

(iii) At such earlier time as Declarant, in its discretion, may so elect.

Upon the happening of any one of these events, Declarant shall call a special meeting of the Members to advise of the termination of Class "B" membership and Turnover of control of the Association to the Members.

**Section 3. Multiple Owners.** Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. If joint or multiple Owners are unable to agree among themselves as to how their vote is to be cast, or if more than one (1) Class "A" vote is cast for any Lot, none of the votes for that Lot shall be counted. If any Owner casts a vote on behalf of a Lot, it shall be conclusively presumed that Owner was acting with the authority and consent of all other Owners of that Lot. If more than one Class "A" vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

**ARTICLE VII  
BOARD OF DIRECTORS**

The affairs of this Association shall be managed and administered by a Board of Directors consisting of three (3), five (5), or seven (7) members. Initially, the Board shall consist of three (3) members, with the number in subsequent years to be determined by the members of the Board; provided that there shall always be an odd number of directorships created. The number of directors may be changed by amendment to the Bylaws of the Association. The names and addresses of persons who are to act in the capacity of director until appointment or election of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Stuart A. Kramer	3100 Clay Avenue, Suite 275 Orlando, Florida 32804
Dwayne R. Hamner	3100 Clay Avenue, Suite 275 Orlando, Florida 32804
Evelyn Levy	3100 Clay Avenue, Suite 275 Orlando, Florida 32804

Any other provision of this Article VII to the contrary notwithstanding, Owners other than Declarant shall be entitled to elect at least a majority of the members of the Board of Directors not later than three (3) months after ninety percent (90%) of the Lots for all phases of Whispering Trails that will ultimately be operated by the Association have been conveyed to Owners. Until then, Declarant shall be entitled to appoint all members of the Board of Directors. Thereafter, Declarant shall be entitled to elect at least one member of the Board of Directors as long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of Whispering Trails.

After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other Owner, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors. Interim vacancies in the Board of Directors shall be filled by Declarant until Declarant has no authority to appoint Directors and thereafter by the majority of the remaining Directors, and any such appointed Director shall serve for the remaining term of his predecessor. After Declarant relinquishes its right to appoint the Board of Directors, the Members shall elect the directors by majority vote, for staggered terms of three (3) years each. To create the staggered terms, one post shall become vacant in one (1) year and a successor director shall be elected. The second post shall be deemed vacant at the end of the second year, and a successor director shall be elected. The third post shall be deemed vacant at the end of the third year, and a successor director shall be elected. All successor directors shall serve for terms of three (3) years each. In the event that the number of people comprising the Board of Directors

is changed, such change in number shall be implemented in such a manner as to have as nearly equal in number as possible the number of directors whose terms expire in any given year.

**ARTICLE VIII  
OFFICERS**

The day-to-day affairs of the Association shall be administered, subject to the direction and authority of the Board of Directors, by the officers of the Association, which may include a President, Vice President, Secretary and Treasurer and such other officers as permitted by the Bylaws. The officers shall be appointed by the Board of Directors and they shall serve at the pleasure of the Board of Directors. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

<u>NAME</u>		<u>ADDRESS</u>
President:	Stuart A. Kramer	3100 Clay Avenue, Suite 275 Orlando, Florida 32804
Vice President:	Dwayne R. Hamner	3100 Clay Avenue, Suite 275 Orlando, Florida 32804
Secretary:	Evelyn Levy	3100 Clay Avenue, Suite 275 Orlando, Florida 32804
Treasurer:	Dwayne R. Hamner	3100 Clay Avenue, Suite 275 Orlando, Florida 32804

**ARTICLE IX  
DURATION**

The Association shall commence to exist upon the filing of these Articles with the Florida Department of State, and the Association shall thereafter exist in perpetuity.

**ARTICLE X  
AMENDMENTS**

Amendments to these Articles shall be proposed and adopted in the following manner:

**Section 1. Notice.** Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

**Section 2. Adoption.** Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes. Subject to the terms of Articles XIV, any amendment to these Articles of Incorporation shall require the assent of two thirds (2/3) of the votes of the entire membership without regard to class.

**Section 3. Recording.** A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Polk County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded.

**Section 4. Limitations.** No amendment shall be made that is in conflict with the Declaration.

**ARTICLE XI  
BYLAWS**

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided in the Bylaws.

**ARTICLE XII  
INDEMNIFICATION OF OFFICERS AND DIRECTORS**

**Section 1.** The Association shall defend, indemnify and hold harmless any person of the Association who is made a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceedings, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, committee member, employee or agent of the Association:

(a) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with an action, suit, or proceeding (other than one by or in the right of the Association), if he acted in good faith, and, with respect to any criminal action or proceedings, he had no reasonable cause to believe his conduct was unlawful; and

(b) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings) actually and reasonably incurred by him in connection with the defense or settlement of an action or suit by or in the right of the Association, if he acted in good faith.

**Section 2.** The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, or, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

**Section 3.** Notwithstanding any other provision hereof to the contrary, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association.

**Section 4.** Any indemnification under Section 1 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director or officer, committee member, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding, or (b) if such quorum is not obtainable, or even if obtainable and a quorum of disinterested Directors so directs, by a majority vote of Members of the Association.

**Section 5.** Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association from time to time as incurred rather than only after the final disposition of such action, suit, or proceeding. Payment of such expenses shall be authorized by the Board of Directors in each specific case only after receipt by the Association of an undertaking by or on behalf of the director or officer to repay such amounts if it shall later develop that he is not entitled to be indemnified by the Association.

**Section 6.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which the Association's directors, officers, committee members, employees or agents may be entitled under the Association's bylaws, agreement, vote of Members or disinterested directors, or otherwise, both as to actions in their official capabilities and as to action in another capacity while holding such offices or positions, and shall continue as to a person who has ceased to be a director, officer, committee member, agent or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 7.** Notwithstanding the foregoing provisions, indemnification provided under this Article shall not include indemnification for any action of a director, officer, committee member, agent or employee of the Association for which indemnification is deemed to be against public policy. In the event that indemnification provided under this Article is deemed to be against public policy, such an event shall not invalidate or affect any other right or indemnification herein provided.

**Section 8.** The Association shall have the power, but shall not be obligated, to purchase and maintain indemnification insurance to provide coverage for any liability asserted against any director, officer, committee member, agent or employee of the Association in any of his capacities as described in Section 1, whether or not the Association would have the power to indemnify him or her under this Article.

**Section 9.** Any person requesting indemnification shall first look to any insurance maintained by the Association for indemnification against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement (as described above). The Association shall be obligated to indemnify such person (if entitled to indemnification by the Association) only to the extent such insurance does not indemnify such person. In the event that any expenses, judgments, fines, or amounts paid in settlement are paid pursuant to insurance maintained by such Association, the Association shall have no obligation to reimburse the insurance company.

**ARTICLE XIII  
INCONSISTENCY**

In the event of any inconsistency between the terms and provisions contained in the Declaration and those contained in these Articles of Incorporation, the terms and provisions of the Declaration shall prevail.

**ARTICLE XIV  
REQUIRED APPROVALS**

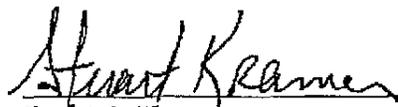
Notwithstanding anything in these Articles to the contrary, as long as there exists a Class "B" membership, if any one or more of HUD, FHA or VA requires approval or consent by it or them to annexation of additional property, any merger or consolidation involving the Association, the placing of any mortgage lien on the Common Property, dedication to the public of any Common Property, any amendment of the Declaration or 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 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, in the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Master Surface Water Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C., and be approved by the Southwest Florida Water Management District prior to such termination, dissolution or liquidation.

**ARTICLE XV  
INCORPORATOR**

The name and street address of the sole incorporator to these Articles of Incorporation is as follows:

Stuart A. Kramer  
3100 Clay Avenue  
Suite 275  
Orlando, Florida 32804

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the sole incorporator of this Association, has executed these Articles of Incorporation this 12th day of May, 2005.

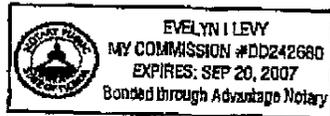
  
\_\_\_\_\_  
Stuart A. Kramer  
Incorporator

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STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing Articles of Incorporation were acknowledged before me this 12<sup>th</sup> day of May, 2005, by STUART A. KRAMER, who is personally known to me.



*Evelyn I. Levy*  
 \_\_\_\_\_  
 NOTARY PUBLIC  
 Print Name: EVELYN I. LEVY  
 My Commission Expires: SEP. 20, 2007

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**CERTIFICATE DESIGNATING REGISTERED AGENT FOR SERVICE OF PROCESS**

Pursuant to Chapters 48 and 617, Florida Statutes, the following is submitted in compliance with said Acts.

WHISPERING TRAILS HOMEOWNERS ASSOCIATION OF WINTER HAVEN, INC., desiring to organize as a corporation under the laws of the State of Florida, with its registered office at One Independence Drive, Suite 1300, Jacksonville, FL 32202-5017, has named F&L Corp., located at the above-registered office, as its Registered Agent to accept service of process within this State.

ACKNOWLEDGMENT:

Having been named to accept service of process for the above-stated corporation at the place designated in this Certificate, I hereby accept to act in this capacity and agree to comply with the provisions of said Acts relative to keeping open said office.

Registered Agent:

F&L CORP.

By: 

Print: John A. Sanders, Agent

Authorized Signatory

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