

N44070

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

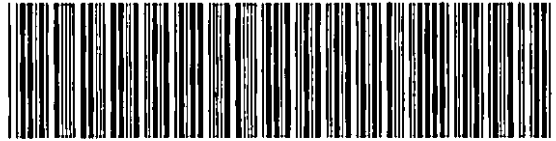
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



500293672295

08/03/18--01000--027 \*\*70.00

**FILED**  
2018 JUL 30 PM 1:51  
SECRETARY OF STATE  
TALLAHASSEE, FL

*Merger*

*8-1-18*

*DC*



# Clayton & McCulloh

ATTORNEYS AT LAW

[www.clayton-mcculloh.com](http://www.clayton-mcculloh.com)

**ATTORNEY NAME**

Attorney & Counselor at Law  
[attorney email]@clayton-mcculloh.com

Clayton & McCulloh, P. A.

Servicing 25 Counties  
Respond to: Orlando Office

July 25, 2018

Darlene M. Connell, Regulatory Specialist Supervisor II  
Division of Corporations  
P. O. Box 6327  
Tallahassee, Florida 32314

**Re: Final Judgment for merger of non-profit homeowners associations by court order**

Dear Ms. Connell:

Enclosed herewith please find the "FINAL JUDGMENT" in the case of MORGAN POINT PROPERTY OWNERS ASSOCIATION INC. vs. LAKESIDE ESTATES MASTER COMMUNITY ASSOCIATION, INC., a Florida not for profit corporation, to be filed with the Florida Secretary of State. Also enclosed is this firm's check no. 51305 in the amount of \$70.00 for cost of said filing and for the cost of a certified copy of same. Please mail the certified copy to my attention at our Orlando address, as provided below.

Should you have any questions or require additional information, please feel free to contact me at your earliest convenience.

Sincerely,

CLAYTON & McCULLOH

Donella Donahay  
Paralegal  
:dmd

Enclosure

RECEIVED  
18 JUL 30 PM 2:14  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**Orlando Office:**

The Clayton & McCulloh Building  
1065 Maitland Center Commons Blvd  
Maitland, FL 32751  
Phone: (407) 875-2655  
Fax: (407) 875-3363

Toll Free: (888) 793-1486

**Melbourne Office:** Suntree/Viera

Baytree Corporate Park  
1301 Bedford Drive, Suite 101  
Melbourne, FL 32940  
Phone: (321) 751-3449  
Fax: (321) 751-3450

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN  
AND FOR OSCEOLA COUNTY,  
FLORIDA

MORGAN POINT PROPERTY  
OWNERS ASSOCIATION, INC.

CASE NO.: 2017-CA-001126-OC

Plaintiff,

vs.

LAKESIDE ESTATES MASTER COMMUNITY  
ASSOCIATION, INC., a Florida not for profit corporation

Defendant.

---

**FILED**  
2018 JUL 30 PM 1:51  
SECRETARY OF STATE  
TALLAHASSEE, FL

**FINAL JUDGMENT**

THIS ACTION having come before the Court on Defendant's, LAKESIDE ESTATES MASTER COMMUNITY ASSOCIATION, INC.'s, Motion for Summary Judgment (hereinafter referred to as the "Motion"), and after the Court having considered all the Pleadings, documents and evidence submitted, and being otherwise fully advised, the Court hereby makes the following findings of fact determinations:

1. Except as otherwise provided for herein, each of the terms used herein shall have the meaning and/or definition given to it in the Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates, recorded in O.R. Book 1009, Page 692 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Original Master Declaration"), as validly amended. The Original Master Declaration as validly amended shall hereafter sometimes be referenced as the "Master Declaration" or the "Composite Declaration".

2. The Master Association is the entity delegated and assigned the powers if not the duties of operating, maintaining and administering all of the Common Area and/or Common Property, as well as enforcing the covenants, conditions and restrictions in the Master Declaration.

### PROPERTY

3. This action and judgement involve certain properties which are included within and defined by the term "Property" as that term is defined in the Original Master Declaration, as validly amended, which Property is located in Osceola County, Florida.

4. The term "Property", as well as the term "Lakeside Estates" include the properties described in the following Plats:

- i. FLAMINGO LAKES, as recorded in Plat Book 7, Page 5 of the Public Records of Osceola County, Florida;
- ii. SHELBY PLACE, as recorded in Plat Book 8, Page 53 of the Public Records of Osceola County, Florida;
- iii. SHELBY PLACE, PHASE 2, as recorded in Plat Book 8, Page 116 of the Public Records of Osceola County, Florida;
- iv. MARISOL, as recorded in Plat Book 9, Page 120 of the Public Records of Osceola County, Florida;
- v. MARISOL PHASE 2, as recorded in Plat Book 10, Page 127 of the Public Records of Osceola County, Florida;
- vi. MARISOL PHASE 3, as recorded in Plat Book 13, Page 16 of the Public Records of Osceola County, Florida;
- vii. MARISOL PHASE 4, as recorded in Plat Book 11, Page 127 of the Public Records of Osceola County, Florida;
- viii. MARISOL PHASE 5, as recorded in Plat Book 13, Page 18 of the Public Records of Osceola County, Florida;
- ix. MARISOL PHASE 3, 4, AND 5, as recorded in Plat Book 11, Page 125 of the Public Records of Osceola County, Florida;
- x. PARSON'S POND, as recorded in Plat Book 7, Page 119 of the Public Records of Osceola County, Florida;
- xi. PARSON'S POND PHASE II, as recorded in Plat Book 8, Page 6 of the Public Records of Osceola County, Florida;
- xii. PARSON'S POND PHASE III, as recorded in Plat Book 8, Page 58 of the Public Records of Osceola County, Florida;

- xiii. PARSON'S POND PHASE IV, as recorded in Plat Book 8, Page 59 of the Public Records of Osceola County, Florida;
- xiv. SHEFFIELD AT LAKESIDE ESTATES PHASE I, as recorded in Plat Book 7, Page 44 of the Public Records of Osceola County, Florida;
- xv. SHEFFIELD AT LAKESIDE ESTATES PHASE II, as recorded in Plat Book 7, Page 166 of the Public Records of Osceola County, Florida;
- xvi. SHEFFIELD AT LAKESIDE ESTATES PHASE III, as recorded in Plat Book 8, Page 167 of the Public Records of Osceola County, Florida;
- xvii. REMINGTON POINTE SUBDIVISION, as recorded in Plat Book 8, Page 178 of the Public Records of Osceola County, Florida;
- xviii. REMINGTON – PHASE 2, as recorded in Plat Book 11, Page 28 of the Public Records of Osceola County, Florida;
- xix. REMINGTON POINTE PHASE 3, as recorded in Plat Book 9, Page 72 of the Public Records of Osceola County, Florida;
- xx. REMINGTON POINTE PHASE 4, as recorded in Plat Book 10, Page 8 of the Public Records of Osceola County, Florida;
- xxi. WESTLAKE HAMMOCK, as recorded in Plat Book 8, Page 89 of the Public Records of Osceola County, Florida;
- xxii. WESTLAKE HAMMOCK PHASE II, as recorded in Plat Book 9, Page 127 of the Public Records of Osceola County, Florida;
- xxiii. MALLARD CREEK, as recorded in Plat Book 9, Page 43 of the Public Records of Osceola County, Florida;
- xxiv. MALLARD CREEK PHASE 2, as recorded in Plat Book 10, Page 19 of the Public Records of Osceola County, Florida;
- xxv. MALLARD CREEK PHASE 3, as recorded in Plat Book 11, Page 100 of the Public Records of Osceola County, Florida;
- xxvi. MONTEREY VILLAGE PHASE I UNIT 1, as recorded in Plat Book 7, Page 143 of the Public Records of Osceola County, Florida;
- xxvii. MONTEREY VILLAGE PHASE I UNIT 2, as recorded in Plat Book 8, Page 39 of the Public Records of Osceola County, Florida;

- xxviii. SHANNON LAKES SUBDIVISION, as recorded in Plat Book 9, Page 39 of the Public Records of Osceola County, Florida;
- xxix. SHANNON LAKES PHASE 3, as recorded in Plat Book 10, Page 41 of the Public Records of Osceola County, Florida;
- xxx. EMERALD POINTE, as recorded in Plat Book 12, Page 9 of the Public Records of Osceola County, Florida (hereinafter referred to as "Emerald Pointe Phase 1");
- xxxi. EMERALD POINTE PHASE 2, as recorded in Plat Book 13, Page 9 of the Public Records of Osceola County, Florida (hereinafter referred to as "Emerald Pointe Phase 2");
- xxxii. EMERALD POINTE PHASE 3, as recorded in Plat Book 13, Page 51 of the Public Records of Osceola County, Florida (hereinafter referred to as "Emerald Pointe Phase 3");
- xxxiii. MORGAN POINT PHASE I, as recorded in Plat Book 6, Book 205 of the Public Records of Osceola County, Florida;
- xxxiv. MORGAN POINT PHASE II, as recorded in Plat Book 7, Page 103, of the Public Records of Osceola County, Florida;
- xxxv. CYPRESS LAKES PHASE ONE, as recorded in Plat Book 8, Page 45 of the Public Records of Osceola County, Florida;
- xxxvi. CYPRESS LAKES TOWNHOMES PHASE TWO, UNIT 1, as recorded in Plat Book 15, Page 178 of the Public Records of Osceola County, Florida; and
- xxxvii. CYPRESS LAKES TOWNHOMES PHASE TWO, UNIT 2, as recorded in Plat Book 17, Page 69 of the Public Records of Osceola County, Florida as well as the real property described above in Section 6 C, all of which shall collectively sometimes be referred to as the "Lakeside Estates", "Lakeside Estates Subdivision" or "Subdivision".

#### **GOVERNING DOCUMENTS & HISTORY**

5. On March 28, 1991, The Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates, was recorded in Official Records Book 1009, Page 692, *et seq.*, of the Public Records of Osceola County, Florida.

6. The Original Master Declaration delineates that Lakeside Venture, Ltd. (hereafter sometimes referred to as the "Original Developer"), a Florida limited partnership, was the declarant.

7. Section 1.12 of the Original Master Declaration defined the term "Declarant" as Lakeside Venture Ltd. and its express successors and assigns (hereafter the Original Developer and its express successors and assigns shall sometimes be referred to as the "Master Developers").

8. The Master Developers are the developers of the Property [i.e., those certain properties located in Osceola County, Florida commonly and collectively known as "Lakeside Estates" or the "Lakeside Estates Subdivision" (hereinafter sometimes referred to as the "Subdivision" or "Lakeside Estates")].

9. On or about June 20, 1991, an amendment to the Original Master Declaration entitled First Amendment to Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates was recorded in Official Records Book 1020, Page 1037 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "First Amendment to the Master Declaration").

10. On or about April 28, 1997, an amendment to the Master Declaration, as amended, entitled Second Amendment to Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates was recorded in Official Records Book 1397, Page 0219 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Second Amendment to the Master Declaration").

11. On or about June 16, 1998, an amendment to the Original Master Declaration, as amended, entitled Third Amendment to Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates was recorded in Official Records Book 1506, Page 2442 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Third Amendment to the Master Declaration").

12. On or about May 27, 1999, an amendment to the Original Master Declaration, as amended, entitled Fourth Amendment to Master Declaration of Covenants, Conditions and

Restrictions for P.U.D. Lakeside Estates was recorded in Official Records Book 1619, Page 2929 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Fourth Amendment to the Master Declaration").

13. On or about August 23, 1999, an amendment to the Original Master Declaration, as amended, entitled Fifth Amendment to Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates was recorded in Official Records Book 1648, Page 589 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Fifth Amendment to the Master Declaration").

14. On or about June 20, 2001, an amendment to the Original Master Declaration, as amended, entitled Amendment to Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates was recorded in Official Records Book 1890, Page 226 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Sixth Amendment to the Master Declaration").

15. The Original Master Declaration as validly amended including by the First Amendment to Master Declaration, Second Amendment to the Master Declaration, Third Amendment to the Master Declaration, Fourth Amendment to the Master Declaration, Fifth Amendment to the Master Declaration and Sixth Amendment to the Master Declaration, constitutes the "Master Declaration".

16. On or about June 24, 1991, the Articles of Incorporation of Lakeside Estates Master Community Association, Inc., was filed with the Florida Secretary of State (hereinafter sometimes referred to as the "Original Articles").

17. On or about May 17, 1999, an amendment to the Original Articles entitled the Certificate of First Amendment to Articles of Incorporation of Lakeside Estates Master Community Association, Inc., was recorded in Official Records Book 1619, Page 2935 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "First Amendment to Articles").

18. Section 1.29 of the Master Declaration defines "Subassociation" as "an association formed for an individual, recorded subdivision or plat of real property within the Property and referenced in a separate declaration of restrictive covenants of the real property being subjected to such separate declaration" (hereinafter sometimes referred to as "Neighborhood Association" or "Subassociation").

19. Flamingo Lakes Property Owners Association, Inc., Shelby Place Property Owners' Association, Inc., Marisol Property Owners' Association, Inc., Parsons Pond Property Owners' Association, Inc., Sheffield Property Owners' Association, Inc., Remington Pointe Property Owners' Association, Inc., Westlake Hammock Property Owners' Association, Inc., Mallard Creek Property Owners' Association, Inc., Monterey Village Property Owners' Association, Inc. and Parson's Pond II Homeowners' Association, Inc. (hereinafter sometimes collectively referred to as "Original Merged Associations"), are and/or were Subassociations.

20. On or about November 16, 1999, Articles of Merger of Flamingo Lakes Property Owners Association, Inc., Shelby Place Property Owners' Association, Inc., Marisol Property Owners' Association, Inc., Parsons Pond Property Owners' Association, Inc., Sheffield Property Owners' Association, Inc., Remington Pointe Property Owners' Association, Inc., Westlake Hammock Property Owners' Association, Inc., Mallard Creek Property Owners' Association, Inc., Monterey Village Property Owners' Association, Inc. and Parson's Pond II Homeowners' Association, Inc., into the Master Association, were recorded in Official Records Book 1674, Page 273 of the Public Records of Osceola County, Florida (hereinafter sometimes collectively referred to as the "Original Articles of Merger").

21. On or about December 6, 1999, the Original Articles of Merger were filed with the Secretary of State.

22. On or about June 20, 2001, the Sixth Amendment to the Master Declaration, ostensibly completing the merger of the Merged Associations into the Master Association, was recorded in the Public Records of Osceola County, Florida.

23. On or about November 25, 1996, Articles of Incorporation of Shannon Lakes Homeowners Association, Inc., (hereinafter sometimes referred to as the "Articles of Shannon Lakes"), were filed with the Florida Secretary of State.

24. Shannon Lakes Homeowners Association, Inc. (hereinafter sometimes referred to as "Shannon Lakes Association"), is and/or was one of the Subassociations.

25. On or about August 15, 2000, Articles of Merger merging Shannon Lakes Association, into the Master Association, Inc. (hereinafter sometimes referred to as "Shannon Lakes Articles of Merger") were filed with the Florida Secretary of State.

26. The Original Articles of Merger, together with Shannon Lakes Articles of Merger, shall sometimes collectively be referred to as the "Articles of Merger."

27. Upon information and belief, the Shannon Lakes Articles of Merger were to be for Shannon Lakes Homeowners Association, Inc., not Shannon Lakes Property Owners' Association, Inc.

28. Upon information and belief, the reference to "Shannon Lakes Property Owners' Association" in the Shannon Lakes Articles of Merger was a scrivener's error and such reference should have recited the "Shannon Lakes Property Owners' Association, Inc.".

29. On or about October 15, 2001, the Articles of Incorporation of Emerald Pointe Phase 3 Homeowners Association, Inc. (hereinafter sometimes referred to as "Emerald Pointe Articles"), were filed with the Florida Secretary of State.

30. The Emerald Pointe Homeowners Association has been administratively dissolved.

31. Certain Subassociations within the Lakeside Estates subdivision were merged and/or attempted to be merged with and into the Master Association while others were not.

32. With the exception of the Emerald Pointe Homeowners Association, Inc., the mergers were accomplished and/or attempted via various approvals and amendments in and to various Subassociations' governing documents and the Master Association governing documents.

33. Hereafter the Original Articles as properly amended, including by the Original Articles of Merger and the Shannon Lakes Articles of Merger, shall collectively sometimes be referred to as the "Master Articles" or "Master Association's Articles of Incorporation".

34. The Original Merged Associations, Emerald Pointe Homeowners Association and the Shannon Lakes Association, shall sometimes collectively be referred to as the "Merged Associations."

35. On or about June 26, 1991, the Bylaws of Lakeside Estates Master Community Association, Inc. (hereinafter sometimes referred to as the "Original Bylaws", were duly adopted at a meeting of the Board of Directors thereof.

36. On or about May 27, 1999, an amendment to the Original Bylaws entitled the Certificate of First Amendment to Bylaws of Lakeside Estates Master Community Association, Inc., was recorded in Official Records Book 1619, Page 2937 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "First Amendment to Bylaws").

37. On or about May 30, 2001, an amendment to the Original Bylaws, as amended, entitled the Certificate of Second Amendment to Bylaws of Lakeside Estates Master Community Association, Inc., was recorded in Official Records Book 1877, Page 2567 of the Public Records

of Osceola County, Florida (hereinafter sometimes referred to as the "Second Amendment to Bylaws").

38. On February 25, 2002, an amendment to the Original Bylaws, as amended, entitled the Certificate of Third Amendment to Bylaws of Lakeside Estates Master Community Association, Inc., was recorded in Official Records Book 2007, Page 1883 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Third Amendment to Bylaws").

39. On or about August 11, 2011, a Notice of Unenforceability of Certificate of Second Amendment to Bylaws of Lakeside Estates Master Community Association, Inc., was recorded in Official Records Book 4164, Page 0383 of the Public Records of Osceola County, Florida, (hereinafter sometimes referred to as the "Notice of Unenforceability of Certificate of Second Amendment to Bylaws").

40. On or about August 11, 2011, a Notice of Unenforceability of Certificate of Third Amendment to Bylaws of Lakeside Estates Master Community Association, Inc., was recorded in Official Records Book 4164, Page 0390 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Notice of Unenforceability of Certificate of Third Amendment to Bylaws").

41. The Original Bylaws, as validly amended and supplemented (which would exclude the Second Amendment to Bylaws and Third Amendment to Bylaws) shall sometimes be collectively referred to as the "Master Association Bylaws" or "Master Bylaws".

42. On or about October 31, 1989, a Lakeside Estates Development Order, City of Kissimmee, Lakeside Estates A Development of Regional Impact, Findings of Fact was recorded in Official Records Book 943, Page 1455 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Lakeside Estates Development Order").

43. On or about October 31, 1989, a Lakeside Estates Development Agreement was recorded in Official Records Book 943, Page 1480 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Lakeside Estates Development Agreement").

44. On or about October 31, 1989, the Commitments for the Lakeside Estates Planned Unit Development in the City of Kissimmee, Florida, was recorded in Official Records Book 943, Page 1483 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Commitments").

45. On or about March 19, 1991, the First Amendment to Commitments for the Lakeside Estates Planned Unit Development in the City of Kissimmee, Florida, was recorded in Official Records Book 1008, Page 138 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "First Amendment to Commitments").

46. On or about November 21, 1994, the First Amendment to the Development Order Lakeside Estates Development of Regional Impact, was recorded in Official Records Book 1223, Page 2476 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "First Amendment to the Development Order Lakeside Estates").

47. On or about November 21, 1994, the First Amendment to Lakeside Estates Development Agreement, was recorded in Official Records Book 1223, Page 2666 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "First Amendment to Lakeside Estates Development Agreement").

48. On or about January 18, 1996, the Second Amendment to the Development Order Lakeside Estates Development of Regional Impact, was recorded in Official Records Book 1303, Page 1381 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Second Amendment to the Development Order").

49. On or about May 29, 1997, the Second Amendment to Lakeside Estates Development Agreement; and Second Amendment to Commitments for Lakeside Estates Planned Unit Development in the City of Kissimmee, Florida, was recorded in Official Records Book 1404, Page 100 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Second Amendment to Lakeside Estates Development Agreement and Second Amendment to Commitments").

50. On or about April 28, 2000, the Assignment and Assumption of Declarant's Rights, was recorded in Official Records Book 1731, Page 895 of the Public Records of Osceola County, Florida (hereinafter sometimes referred to as the "Assignment and Assumption").

## **LAKESIDE ESTATES, ITS DEVELOPMENT AND IMPACT ON SUBASSOCIATION**

### **MERGERS**

51. The scheme of development for the Lakeside Estates Subdivision contemplated that a Master Association would be created as well as Subassociations as that term is used and defined in the Master Declaration (see Section 1.29 thereof).

52. The Original Developer's scheme of development for the Lakeside Estates Subdivision contemplated that separate Subassociations and Condominium Associations would be formed with respect to portions of the Property, and that such Subassociations and Condominium Associations would be members of the Master Association.

53. The Declarant in the Original Master Declaration contemplated adding and/or annexing additional property in and to the original Lakeside Estates Subdivision.

54. The Declarant contemplated that each Lot or Unit would be subject to a Subassociation.

55. Pursuant to the Original Declaration, the creation of A Subassociation was a condition precedent to the sale of the first Lot or Unit within each Parcel.

56. The Original Developer and the Original Master Declaration, in Article IV, Section 1 contemplate that each Subassociation and Condominium Association would be a Member of the Master Association.

57. The Original Master Declaration provided for and delineated how voting within the Master Association would transpire and provided the Subassociations, not the individual Lot Owners, with the right to vote.

58. The Second "Whereas Clause" of the Original Master Declaration recites the following:

"WHEREAS, the Declarant desires to develop and sell the Property as a planned unit development known as "Lakeside Estates", consisting of various parcels of land which shall be developed for residential, multifamily, commercial or governmental purposes, together with roadways, recreational areas, conservation areas, common areas, drainage systems and other related facilities; and"

59. The Fourth "Whereas Clause" of the Original Master Declaration recites the following:

"WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create a master association to which will be delegated and assigned the powers and duties of operating, maintaining and administering the median areas, open spaces, lakes/retention areas, drainage systems, Conservation Areas, Common Areas, recreational areas and common facilities, which the Declarant has created or may in the future create on the Property, and administering and enforcing the covenants, conditions and restrictions set forth herein, and collecting and disbursing the assessments and charges hereinafter created; and"

60. The Fifth "Whereas Clause" of the Original Master Declaration recites the following:

"WHEREAS, the Declarant has deemed it necessary and desirable to provide that separate Subassociations and Condominium Associations (as hereinafter defined) be formed with respect to portions of the Property, and that such Subassociations and Condominium Associations shall be members of the Master Association; and"

61. Article I, Section 1.21 of the Original Master Declaration recites the following:

1.21 "Member" shall mean and refer to (a) each Subassociation, (b) each Condominium Association and (c) the Owners of Parcels, provided, however, that the term "Member" shall not include the Owners of Commercial Property or Government Property.

62. Article I, Section 1.22 of the Original Master Declaration recites the following:

1.22 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, Unit, Parcel, Commercial Property or Government Property, and the Owner's heirs, devisees, personal representatives, successors and assigns. Notwithstanding any applicable theory of the law of mortgages, however, "Owner" shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

63. The Declarant in the Original Master Declaration contemplated adding and/or annexing additional property in and to the original Lakeside Estates Subdivision. More specifically, Article II, Section 12 of the Original Master Declaration provides the following:

Section 12. Annexation. Additional residential property, Common Areas and Conservation Areas may be annexed to the Property with the consent of two-thirds (2/3) of the votes of each class of the Members provided, however, that as long as there exists any Class C membership,

any such annexation must first receive the prior written approval of the FHA and VA.

64. The Original Master Declaration defines "Lot" in Article I, Section 1.19 thereof as follows:

1.19 "Lot" shall mean and refer to any plot or parcel of land shown on a recorded subdivision plat of a portion of the Property, with the exception of the Common Areas, Conservation Areas, Commercial Property, Government Property and Condominium Property. The term "Lot" shall include both a platted site and any residence or other buildings located thereon.

65. The Original Master Declaration defines "Parcel" in Article I, Section 1.23 thereof as follows:

1.23 "Parcel" shall mean any portion of the Property, other than Conservation Areas, Common Areas, Commercial Property or Governmental Property which is unplatted, undeveloped, or which has been developed as Rental Units.

66. The Original Master Declaration defines "Unit" in Article I, Section 1.30 thereof as follows:

1.30 "Unit" shall mean and refer to any condominium unit located within the Property, as such term is defined in the Florida Condominium Act, Florida Statutes, Ch. 718 (1989), and as defined in a declaration of condominium submitting a portion of the Property to the condominium form of ownership.

67. Pursuant to the Original Declaration, each Lot or Unit was to be subject to a Subassociation.

68. Morgan Point Subassociation is and/or was the Subassociation for the real property legally described by the following Plats, MORGAN POINT PHASE I, as recorded in Plat Book 6, Book 20 of the Public Records of Osceola County, Florida, and MORGAN POINT PHASE II, as recorded in Plat Book 7, Page 103, of the Public Records of Osceola County, Florida.

69. Article III, Section (A) of the Original Master Declaration provides the following:

(A) Prior to the sale of the first Lot or Unit within each Parcel, the Owner must form a separate local Subassociation or Condominium Association, as the case may be, and record a declaration of restrictive covenants (the "Subassociation Declaration") or declaration of condominium (the "Condominium Declaration"). The Subassociation Declarations or Condominium Declarations shall provide that the

Subassociations and Condominium Associations will be members of the Master Association, will collect assessments from their members on behalf of the Master Association, and will designate a single voting representative to cast all the votes of the members of the Subassociation or Condominium Association in the Master Association. Notwithstanding the foregoing, however, the provisions of this Article shall not be applicable to the Declarant until Class C Membership has terminated in accordance with Article IV, Section 2(C)(3). (Emphasis added)

70. The Original Master Declaration, in Article IV, Section 1 dealt with and provided for membership in the Master Association. Article IV, Section 1 of the Original Master Declaration provided the following:

Section 1. Membership. Each Subassociation and Condominium Association shall be a Member of the Master Association. The Owners of Parcels shall also be Members of the Master Association; provided, however, that Owners of Commercial Property and Government Property shall not be Members. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. (Emphasis added)

71. Article IV, Section 2 of the Original Master Declaration provided for and delineated how voting within the Master Association would transpire. Article IV, Section 2 of the Original Master Declaration provides the following:

Section 2. Voting Rights. The Master Association shall have the following three (3) classes of voting membership:

(A) Class A.

Each Subassociation and Condominium Association shall be a Class A Member, entitled to appoint, elect or designate one (1) voting representative of the Subassociation or Condominium Association to the Master Association. The voting representative of each Class A Member shall be entitled to one (1) vote for each Lot or Unit within the Subassociation and Condominium Association. Each Subassociation or Condominium Association shall provide in its Subassociation Declaration or Condominium Declaration, its articles of incorporation or bylaws, how its voting representative to the Master Association will be selected and how such voting representative will be permitted to cast the votes on behalf of the Subassociation or Condominium Association, as the case may be.

(B) Class B.

(1) The Owners of Parcels or other real property subject to this Master Declaration, but not included within a Subassociation or Condominium Association, other than (a) the Declarant and (b) the Owners of Commercial Property or Government Property, shall be Class B Members. The Owners of constructed Rental Units shall be Class B Members.

(2) Each Class B Member shall initially be entitled to one (1) vote for the estimated number of Lots, Units, or Rental Units that would be permitted to be developed on the Member's property, as set forth in Exhibit "C", attached hereto and made a part hereof. The number of Lots, Units or Rental Units set forth on Exhibit "C" are a good faith estimate by the Declarant of the number of such Lots, Units or Rental Units which may be platted or constructed on such Parcels, and may be changed from time to time by the Declarant in the event the Declarant shall determine, in its sole, reasonable discretion, that the number of Lots, Units or Rental Units set forth thereon are not accurate. The Declarant shall give the Owner of any Parcel for which such a change is made written notice of any such change. Thereafter, the number of votes the Owner of such Parcel shall be entitled to cast shall be determined as follows:

(a) At such time as a preliminary plat of the Parcel is accepted by the City, the number of votes shall be equal to the number of Lots set forth on the preliminary plat.

(b) At such time as the City has accepted the final plat thereof, the number of votes shall be equal to the number of Lots set forth on the final plat.

(c) At such time a final plat, or a Declaration of Condominium, is recorded in the Public Records of Osceola County, Florida, the Owner thereof shall no longer be a Class B Member with respect to such Parcel or portion thereof, and the voting rights with respect to thereto shall automatically convert to Class A membership, to be held by the Subassociation or Condominium Association established in connection therewith, and subject to the terms and conditions of Section 2(A), above.

(3) For Parcels to be developed for rental purposes, the number of votes shall be as set forth in Exhibit "C", until the completion of the development of such Parcel for rental purposes, after which the number of votes shall be the number of Rental Units that are actually constructed on the Parcel.

(C) Class C.

(1) The Class C Member shall initially be entitled to five (5) votes for the estimated number of Lots, Units or Rental Units that would be permitted to be developed on the Declarant's property, as set forth in Exhibit "C", attached hereto and made a part hereof. Thereafter the number of votes which the Class C Member shall be entitled to cast for each Parcel it owns shall be determined as follows:

(a) At such time as a preliminary plat of a Parcel is accepted by the City, the number of votes for such Parcel shall be equal to five (5) times the number of Lots set forth on the preliminary plat.

(b) At such time as the City has accepted the final plat thereof, the number of votes shall be equal to five (5) times the number of Lots set forth on the final plat.

(2) For Parcels which the Declarant develops for rental purposes, the number of votes shall be equal to five (5) times the number set forth in Exhibit "C" with respect to such Parcel, until such time as the Declarant completes the development thereof for rental purposes, after which the number of votes shall be five (5) times the number of Rental Units that are actually constructed on the Parcel.

(3) The Class C membership shall cease and be converted to Class A or B membership, whichever is appropriate, on the happening of either of the following events, whichever occurs earlier:

- (i) when the total votes outstanding in the Class A and Class B memberships equal the total votes outstanding in the Class C membership; or
- (ii) on January 1, 2005.

(D) Notwithstanding the foregoing, nothing herein shall be construed to require that an Owner must construct or develop a Parcel into the number of Lots, Units or Rental Units which are set forth from time to time in Exhibit "C".

72. Article IX, Section 5 of the Original Master Declaration provided the Declarant (as that term is defined in the Original Master Declaration) with certain rights to amend the Master Declaration, Articles of Incorporation and the Bylaws (as those terms are defined in the Original Master Declaration).

73. Article IX, Section 5 of the Original Master Declaration provides the following:

Section 5. Amendment by Declarant.

(A) Notwithstanding anything to the contrary contained herein, the Declarant shall have the right to amend this Master Declaration without the consent, approval or joinder of any other person, Member or Owner, except the FHA, the VA, the SFWWMD, the FDER, the City, the County, the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), as the case may be, if such amendment is required in order to cause this Master Declaration to comply with applicable FHA, VA, SFWWMD, FDER, FNMA and/or FHLMC requirements.

(B) As long as there exists a Class C membership in the Master Association, the Declarant may amend this Master Declaration, the Articles of Incorporation or the By-Laws of the Master Association to correct any omission or error, or to effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would, in the reasonable opinion of the Declarant, materially and adversely affect substantial property rights of Owners without the consent of the affected Owners.

(C) The amendment of this Master Declaration, the Articles of Incorporation or By-Laws of the Master Association pursuant to this Section need be signed and acknowledged only by the Declarant and need not be approved by any Member, the Master Association, Owner, or lienors or mortgagees, whether or not elsewhere required for an amendment.

(D) All amendments hereto shall be recorded in the Public Records of Osceola County, Florida and shall not be valid until recorded. (Emphasis added)

74. The Original Master Declaration provided for the assignment of Declarant's rights and obligations in Article IX, Section 9, which provision provides the following:

Section 9. Assignment of Declarant's Rights and Obligations. Any and all rights, powers and reservations of the Declarant may be assigned to any person, corporation or association which will assume the duties of the Declarant pertaining to the particular rights, powers and reservations assigned. At such time as such assignee evidences its consent in writing to accept such assignment and to assume such duties, the assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarant herein. Further, the Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate. The Declarant may designate as a Class C member of the Master Association an express successor or assignee who acquires a Parcel or Parcels,

provided that such designation shall be only as to those Parcels acquired by such express successor or assign. (Emphasis added)

75. The Original Master Declaration, as amended, supersedes and takes precedence over any and all Subassociation(s)' Declaration, Articles of Incorporation or Bylaws.

76. Article IX, Section 10 of the Original Master Declaration provides the following:

Section 10. Conflict with Subassociation or Condominium Association Documents. In the event of any conflict between the provisions of this Master Declaration and any Subassociation Declaration or Declaration of Condominium affecting any portion of the Property, the provisions of this Master Declaration shall prevail. In the event of any conflict between this Master Declaration and the articles of incorporation or bylaws of a Subassociation or Condominium Association, the provisions of this Master Declaration shall prevail. (Emphasis added)

77. The Original Master Declaration contemplated that the Master Association could merge or consolidate with other homeowners and/or condominium associations, as Article II, Section 2 of the Original Master Declaration provides the following:

Section 2. Mergers. The Master Association reserves and retains the right to merge or consolidate with any other homeowners, condominium or property owners association, provided such association is a part of a FHA or VA approved subdivision and provided that the FHA, VA, FDER, and SFWMD, as appropriate, approve such merger. Such merger or consolidation shall be evidenced by an amendment to the Master Declaration as recorded among the Public Records of Osceola County, Florida, describing the property to which the Master Declaration, as amended, will apply. Upon a merger or consolidation of the Master Association with another association as provided in the Articles of Incorporation, the properties, rights, and obligations of the Master Association may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Master Association as a surviving corporation, pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Master Declaration within the property together with the covenants and restrictions established upon any other properties as the overall plan or scheme. No such merger or consolidation, however, shall cause any revocation, change or addition to the Covenants and Restrictions established by this Master Declaration within the Property, except as hereinafter provided. (Emphasis added)

78. As Article II, Section 2 of the Original Master Declaration expressly provided for the ability of the Master Association to merge with other homeowners, condominium or property owners associations, and as each of the Subassociations is one of these types of associations, the original Master Declaration permitted the Subassociations to merge into and with the Master Association.

79. Subassociations which merged with and/or into the Master Association could no longer qualify as Members of the Master Association.

80. Voting representatives, whose Subassociations merged with and/or into the Master Association, could no longer cast votes on Master Association issues.

81. The Master Association does not have the right, power and authority to cast the votes previously able to be cast by the Subassociations that merged with or into the Master Association.

82. Pursuant to the Original Master Declaration, the methodology for voting was the same for each of the Subassociations and their Members (i.e., all votes for Owners of Lots within Subassociations would be cast on Master Association issues by the Subassociations, not the Owners themselves).

83. Pursuant to the Original Declaration, a series of checks and balances existed which precluded one or a few Subassociations (or their members) from being able to control the Master Association.

84. When some but not all of the Subassociations merged in and/or with the Master Association, the voting methodology for Owners who were still Members of unmerged Subassociations differed from those whose Subassociations had merged with and into the Master Association.

85. Voting rights are vested or constitutionally protected rights

86. The 4<sup>th</sup> Amendment to the Master Declaration endeavored to modify voting rights and afford the Owners of Lots not subject to a Subassociation the ability to cast votes, however, it failed to equitably and properly deal with the voting rights of Morgan Point and its members.

87. The Original Declaratory Action (*Maria I. Padilla and Dermott D. Kerr vs. Lakeside Estates Master Community Association, Inc.*, case no: 12-CA-4337-OC, Fla. 9<sup>th</sup> Judicial Circuit Court) confirmed the ability of Subassociations to merge with and into the Master Association.

88. The Original Declaratory Action confirmed that Emerald Pointe Homeowners Association merged with and into the Master Association despite not having fulfilled the merger requirements of either the Emerald Point Homeowners Association, Inc.'s governing documents nor those of the Master Association's governing documents.

89. The Original Declaratory Action confirmed the propriety of Subassociation(s) merging with and into the Master Association despite the merger requirements of such Subassociation(s)' governing documents and those of the Master Association's governing documents not being fulfilled.

90. Lakeside Estates was originally set up as a Planned Unit Development (i.e., P.U.D.).

91. Section 1.7 of the Original Master Declaration discussed and/or provided for a "Concept Plan" for the development of Lakeside Estates Planned Unit Development.

92. Section 1.17 of the Original Master Declaration discussed and/or provided for a Development Agreement with the City of Kissimmee.

93. Section 1.18 of the original Declaration provided for a Development Order for Lakeside Estates Development of Regional Impact.

94. Lakeside Estates was to be made up of and/or comprised of different and multiple Neighborhoods, each with its own Subassociation which would ensure parity in voting and that no one Subassociation (or its members) would have disproportionate voting power.

95. The Original Master Declaration defines "PUD Commitments" in Article I, Section 1.25 thereof as follows:

1.25 "PUD Commitments" shall mean and refer to that certain document entitled "Commitments for Lakeside Estates Planned Unit Development in the City of Kissimmee", Florida as executed by the City of Kissimmee, Florida on August 29, 1989 and filed on October 31, 1989 in Official Records Book 0943, Page 1483 et seq., Public Records of

Osceola County, Florida, as amended by the First Amendment thereto dated January 29, 1991, as recorded on March 19, 1991 in Official Records Book 1008, Page 0138, Public Records of Osceola County, Florida, together with all modifications and amendments thereto, the terms and conditions of which are incorporated herein by reference and made a part hereof.

96. Section 1.7 of the Original Master Declaration provides:

1.7 "Concept Plan" shall mean the Preliminary Concept Plan for development of the Lakeside Estates Planned Unit Development, as approved by the Osceola County Board of County Commissioners, and City of Kissimmee Board of Commissioners, together with any amendments thereto. A copy of the Concept Plan, as presently approved, is attached hereto as Exhibit "B" and made a part hereof. The Concept Plan identifies the general number and location of the Parcels within the Property but shall not serve as conclusive evidence of the final number and location of the Parcels.

97. Section 1.17 of the Original Master Declaration provides:

1.17 "Lakeside Estates Development Agreement" shall mean that certain Development Agreement executed on August 29, 1989, by the City Commissioners of Kissimmee, Florida and filed on October 31, 1989, in Official Records Book 0943, Page 1480 et seq., of the Public Records of Osceola County, Florida, together with all modifications and amendments thereto, the terms and conditions of which are incorporated herein by reference and made a part hereof.

98. Section 1.18 of the Original Master Declaration provides:

1.18 "Lakeside Estates Development Order" shall mean that certain Development Order for Lakeside Estates Development of Regional Impact, executed on August 29, 1989 by the City Commission of Kissimmee, Florida, and executed by the Board of County Commissioners of Osceola County, Florida on August 29, 1989, and filed on October 31, 1989, in Official Records Book 0941, Page 1455 et seq., of the Public Records of Osceola County, Florida, together with all modifications and amendments thereto, the terms and conditions of which are incorporated herein by reference and made a part hereof.

99. Pursuant to the Lakeside Estates Development Order, the Original Developer applied for and obtained approval from the City of Kissimmee to make Lakeside Estates a Development of Regional Impact (hereinafter sometimes referred to as "DRI").

100. Pursuant to the Original Commitments, the Developer was required to create a homeowner's association system which not only included the Master Association, but also local homeowner associations (i.e., Subassociations) for each Lot within Lakeside Estates.

101. Pursuant to the Original Commitments, each residential tract of land was required to have a local homeowner association, and each Owner of a Lot therein was required to belong to such Subassociation (e.g., be a Member thereof).

102. Pursuant to the Original Commitments, ostensibly each local association was required to be a Member of the Master Association.

103. Article X of the Original Commitments provided the following:

#### HOMEOWNERS ASSOCIATIONS

The Developer shall create or cause to be created a Homeowner's Association system as follows:

1. The Lakeside Master Homeowners Association.

The Master Association will be responsible for maintaining the landscaping, irrigation, signs, entrance walls and master drainage systems that serve the project as a whole.

2. Local Homeowners Association:

Each Individual residential tract of land must have a Local Homeowners Association. Each owner of a lot within said parcel must belong to the Association. The Local association shall be responsible for entryways, walls, signs, landscaping, irrigation and other such matters that pertain to the individual unit within the Lakeside Estates. The Local Association must be a member of the Master Association.

104. While the method of development for Lakeside Estates commenced in accordance with the P.U.D., the "Concept Plan", the Development Agreement with the City of Kissimmee, the Development Order and the Original Declaration, this was ultimately changed.

105. Subassociations were merged with and into the Master Association altering and destroying the theretofore organizational structure and division of Association responsibility for Lakeside Estates, as well as the neighborhoods and/or communities within Lakeside Estates.

106. The term "Neighborhood" as well as the term "Community" used herein shall refer to a community shown on a separate recorded subdivision or plat of real property within Lakeside Estates.

107. The Second Amendment to Lakeside Estates Development Agreements and Second Amendment to Commitments amended the Commitments for Lakeside Estates and eliminated the requirement that each Lot had to be subject to a Local Homeowners Association. More specifically, said Article X, as amended, provided the following:

#### HOMEOWNERS ASSOCIATIONS

The Developer shall create or cause to be created a Homeowner's Association system, as follows:

1. The Lakeside Estates Master Homeowners Association:  
The Master Association will be responsible for maintaining the landscaping, irrigation, signs, entrance walls and master drainage systems that serve the project as a whole.
2. Local Homeowners Association:  
Each individual residential tract of land may have a Local Homeowners Association. If an individual residential tract of land does have a Local Homeowners Association, then each owner of a lot within such residential tract of land must belong to such Local Homeowners Association and the Local Homeowners Association must be a member of the Master Association. In addition, if the individual residential tract of land has a Local Homeowners Association, the Master Association may permit such Local Homeowners Association to maintain any entry feature within the individual residential tract of land governed by such Local Homeowners Association.

108. The Fourth Amendment to the Master Declaration expanded the definition of the term "Member" as provided in Article I, Section 1.21 of the Original Master Declaration to include "The Owners of Lots not subject to a Subassociation".

109. The Fourth Amendment to the Master Declaration eliminated the requirement for a Lot or Unit to be part of and/or subject to a Subassociation as a result of amending Article III, Section (A) of the Original Master Declaration, as amended.

110. The Fourth Amendment to the Master Declaration also amended Article IV, Section 1 to provide that each Owner of a Lot not subject to a Subassociation or condominium association shall be a Member of the Master Association.

111. Article VI, Section 2(A) of the Fourth Amendment to the Master Declaration further provided that each Owner of a Lot not subject to a Subassociation shall be a Class A Member, entitled to one vote per Lot owned.

112. The merger of Subassociations with and into the Master Association was pursued to afford the Master Association not only the ability to maintain entranceways and common areas of Subassociations, but also to avoid duplicative expenses as well as to achieve economies of scale.

113. The Commitments were amended or modified to eliminate the requirement of local homeowners associations (i.e., Subassociations) for each Lot within Lakeside Estates.

114. The Commitments were amended or modified in part to permit the local Associations (i.e., the Subassociations) to merge with and into the Master Association and thereby eliminate the separate existence of such local Associations (i.e., Subassociations).

115. Pursuant to the terms of the Commitments, they were required to govern the development of the Lakeside Estates P.U.D. In fact, said Commitments provide in pertinent part the following:

“This agreement shall govern the development of the Lakeside Estates P.U.D.”

116. The DRI, the P.U.D., the Lakeside Estates Development Order, the Commitments, the Master Declaration, the Master Articles and the Master Bylaws, in conjunction with the merger of the Subassociations with and into the Master Association demonstrate that in equity and/or fairness, Morgan Point Subassociation must be determined to be merged with and into the Master Association.

117. The DRI, the P.U.D., the Lakeside Estates Development Order, the Commitments, the Master Declaration, the Master Articles and the Master Bylaws in conjunction with the merger of Subassociations with and into the Master Association demonstrate that the Master

Association, in fairness and/or equity, must treat Morgan Point Subassociation as having merged with and into the Master Association.

118. The amendment(s) to the Commitments create for Morgan Point Subassociation vested or constitutionally protected rights to be and/or be treated as having been effectively merged with and into the Master Association.

119. The Amendments to the Commitments for Lakeside Estates modified and/or altered the scheme of development with respect to having mandatory Subassociations and thereby, in equity and/or fairness, require Morgan Point Subassociation to be merged, or be treated as having been effectively merged, with and into the Master Association.

120. Given the merger(s) of Subassociations (to wit the Merged Associations) with and into the Master Association, Morgan Point Subassociation should not separately exist from the Master Association.

121. Unless the court rules that Morgan Point Subassociation has effectively merged with and into the Master Association and/or that the Master Association and Morgan Point Subassociation can act as if such merger has properly transpired, controversies, challenges and/or litigation would perpetuate, given the inequities delineated herein.

122. Unless the court rules that Morgan Point Subassociation has effectively merged with and into the Master Association and/or that the Master Association and Morgan Point Subassociation can act as if such merger has properly transpired, controversies, challenges and/or litigation will continue as each Owner of a Lot or Unit within Morgan Point will have and retain potential claims of being unfairly and inequitably treated.

123. Unless this suit is successful, the Master Association will be forced to treat the Morgan Point Subassociation and its Members differently than the other Master Association Members.

124. Unless this suit is successful, the Master Association will be forced to forgo enforcing the Morgan Point Subassociation's governing documents.

125. The Morgan Point Subassociation Members, unlike those of the merged Associations, are forced to pay an additional and separate assessment for its Subassociation to perform numerous services, which the Master Association performs for the Members of the Merged Associations.

126. Unless Morgan Point Subassociation is merged with and into the Master Association, the Morgan Point Subassociation and its Members will be inequitably treated and bear a disproportionate amount of the Master Association's expenses as services performed for the Merged Associations and/or their membership by and at the expense of the Master Association will not be performed for the Morgan Point Subassociation or its Members.

#### **THE DESIGNATED CLASS, ASSOCIATION MEMBERSHIP & OTHER ISSUES**

127. All of the Members of the class are members of the Master Association.

128. All of the Members of the Association except Plaintiff shall hereafter sometimes be referred to as the "Class Members".

129. All of the Class Members are or will be Members of the Master Association and/or Members of a Subassociation which is a Member of the Master Association.

130. The Members of the Master Association are:

A. Morgan Point Property Owners Association, Inc., Cypress Lake Townhomes Association, Inc., and Cypress Lakes Townhomes Phase II Homeowners Association, Inc. (hereinafter sometimes collectively referred to as the "Non-Merged Associations"); and

B. The owners of record as of the date of the above entitled action, or who may become owners during the pendency of this action, of the residential lots located in Osceola County, Florida, depicted on and legally described by the following plats:

- i. FLAMINGO LAKES, as recorded in Plat Book 7, Page 5 of the Public Records of Osceola County, Florida;
- ii. SHELBY PLACE, as recorded in Plat Book 8, Page 53 of the Public Records of Osceola County, Florida;
- iii. SHELBY PLACE, PHASE 2, as recorded in Plat Book 8, Page 116 of the Public Records of Osceola County, Florida;
- iv. MARISOL, as recorded in Plat Book 9, Page 120 of the Public Records of Osceola County, Florida;
- v. MARISOL PHASE 2, as recorded in Plat Book 10, Page 127 of the Public Records of Osceola County, Florida;

- vi. MARISOL PHASE 3, as recorded in Plat Book 13, Page 16 of the Public Records of Osceola County, Florida;
- vii. MARISOL PHASE 4, as recorded in Plat Book 11, Page 127 of the Public Records of Osceola County, Florida;
- viii. MARISOL PHASE 5, as recorded in Plat Book 13, Page 18 of the Public Records of Osceola County, Florida;
- ix. MARISOL PHASE 3, 4, AND 5, as recorded in Plat Book 11, Page 125 of the Public Records of Osceola County, Florida;
- x. PARSON'S POND, as recorded in Plat Book 7, Page 119 of the Public Records of Osceola County, Florida;
- xi. PARSON'S POND PHASE II, as recorded in Plat Book 8, Page 6 of the Public Records of Osceola County, Florida;
- xii. PARSON'S POND PHASE III, as recorded in Plat Book 8, Page 58 of the Public Records of Osceola County, Florida;
- xiii. PARSON'S POND PHASE IV, as recorded in Plat Book 8, Page 59 of the Public Records of Osceola County, Florida;
- xiv. SHEFFIELD AT LAKESIDE ESTATES PHASE I, as recorded in Plat Book 7, Page 44 of the Public Records of Osceola County, Florida;
- xv. SHEFFIELD AT LAKESIDE ESTATES PHASE II, as recorded in Plat Book 7, Page 166 of the Public Records of Osceola County, Florida;
- xvi. SHEFFIELD AT LAKESIDE ESTATES PHASE III, as recorded in Plat Book 8, Page 167 of the Public Records of Osceola County, Florida;
- xvii. REMINGTON POINTE SUBDIVISION, as recorded in Plat Book 8, Page 178 of the Public Records of Osceola County, Florida;
- xviii. REMINGTON – PHASE 2, as recorded in Plat Book 11, Page 28 of the Public Records of Osceola County, Florida;
- xix. REMINGTON POINTE PHASE 3, as recorded in Plat Book 9, Page 72 of the Public Records of Osceola County, Florida;

- xx. REMINGTON POINTE PHASE 4, as recorded in Plat Book 10, Page 8 of the Public Records of Osceola County, Florida;
- xxi. WESTLAKE HAMMOCK, as recorded in Plat Book 8, Page 89 of the Public Records of Osceola County, Florida;
- xxii. WESTLAKE HAMMOCK PHASE II, as recorded in Plat Book 9, Page 127 of the Public Records of Osceola County, Florida;
- xxiii. MALLARD CREEK, as recorded in Plat Book 9, Page 43 of the Public Records of Osceola County, Florida;
- xxiv. MALLARD CREEK PHASE 2, as recorded in Plat Book 10, Page 19 of the Public Records of Osceola County, Florida;
- xxv. MALLARD CREEK PHASE 3, as recorded in Plat Book 11, Page 100 of the Public Records of Osceola County, Florida;
- xxvi. MONTEREY VILLAGE PHASE I UNIT 1, as recorded in Plat Book 7, Page 143 of the Public Records of Osceola County, Florida;
- xxvii. MONTEREY VILLAGE PHASE I UNIT 2, as recorded in Plat Book 8, Page 39 of the Public Records of Osceola County, Florida;
- xxviii. SHANNON LAKES SUBDIVISION, as recorded in Plat Book 9, Page 39 of the Public Records of Osceola County, Florida;
- xxix. SHANNON LAKES PHASE 3, as recorded in Plat Book 10, Page 41 of the Public Records of Osceola County, Florida;
- xxx. EMERALD POINTE, as recorded in Plat Book 12, Page 9 of the Public Records of Osceola County, Florida (hereinafter referred to as "Emerald Pointe Phase 1");
- xxxi. EMERALD POINTE PHASE 2, as recorded in Plat Book 13, Page 9 of the Public Records of Osceola County, Florida (hereinafter referred to as "Emerald Pointe Phase 2"); and
- xxxii. EMERALD POINTE PHASE 3, as recorded in Plat Book 13, Page 51 of the Public Records of Osceola County, Florida (hereinafter referred to as "Emerald Pointe Phase 3").
- xxxiii. MORGAN POINT PHASE 1, as recorded in Plat Book 6, Book 205 of the Public Records of Osceola County, Florida;

xxxiv. MORGAN POINT PHASE II, as recorded in Plat Book 7, Page 103, of the Public Records of Osceola County, Florida;

xxxv. CYPRESS LAKES PHASE ONE, as recorded in Plat Book 8, Page 45 of the Public Records of Osceola County, Florida;

xxxvi. CYPRESS LAKES TOWNHOMES PHASE TWO, UNIT 1, as recorded in Plat Book 15, Page 178 of the Public Records of Osceola County, Florida; and

xxxvii. CYPRESS LAKES TOWNHOMES PHASE TWO, UNIT 2, as recorded in Plat Book 17, Page 69 of the Public Records of Osceola County, Florida as well as the real property described above in Section 6 C, all of which shall collectively sometimes be referred to as the "Lakeside Estates", "Lakeside Estates Subdivision" or "Subdivision".

131. The claims of the Plaintiff raise questions of law or fact common to each Member of the class.

132. In the same manner as all other Class Members, the Class Representative owns property within Lakeside Estates (as that term is used herein), more specifically, the Class Representative owns "Common Areas" as that term is defined in the Original Master Declaration (hereinafter sometimes referred to as "Common Property").

133. In the same manner as all other Class Members, the Class Representative has an interest in the preservation, protection and maintenance of the "Property" as that term is defined in Section 1.24 of the Original Master Declaration, as validly amended (herein sometimes referred to as the "Property").

134. In the same manner as all other Class Members, the Class Representative has an interest in the well-being of the individual owners of lots and/or units within the Property.

135. In the same manner as all other Class Members, the Class Representative has an interest in determining the proper, ethical and fair course of action of the Master Association under and pursuant to its governing documents, (to wit the Master Declaration, Master Articles and the Master Bylaws) with respect to the mergers of Subassociations with and into the Master Association.

136. In the same manner as all other Class Members, the Class Representative has continuously relied upon the Master Association to equitably and fairly enforce the governing documents for the equal benefit of all Members.

137. In the same manner as all other Class Members, the Class Representative has an interest in determining whether the Master Association should treat the Owners of lots in Morgan Point (i.e., members of the Morgan Point Subassociation) the same as Owners whose Subassociations have merged with and into the Master Association (to wit the merged Associations).

138. In the same manner as all other Class Members, the Class Representative has an interest in determining whether it would be unfair for the Master Association at its expense to enforce the declaration(s) of Subassociations (hereinafter sometimes referred to as "Subassociation Declarations") which have merged in and with the Master Association but not enforce the declaration of Morgan Point Subassociation (hereinafter sometimes referred to as "Morgan Point Declaration").

139. In the same manner as all other Class Members, the Class Representative has an interest in determining whether the Morgan Point Subassociation, in equity and/or fairness, should be treated as having been validly and properly merged with and into the Master Association.

140. In the same manner as all other Class Members, the Class Representative has the same interest in determining in equity and/or fairness whether the Morgan Point Subassociation's Bylaws should be treated as having been merged with and into the Master Association's.

141. The Class Representative and all Class Members have the same interest in determining whether the Master Association should treat the Morgan Point Subassociation as having been merged with and into the Master Association.

142. The Class Representative and all Class Members have the same interest in determining whether the contemplated future practice(s) of the Master Association with respect to treating the Morgan Point Subassociation as having been merged with and into the Master Association is proper, correct and/or justifiable.

143 Individuals were made members of the Master Association by way of amendments to the Master Declaration and the Master Association's Articles of Incorporation, as well as court confirmation. As such, the Class Representative and all Class Members have the same interest in

determining whether the members of the Morgan Point Subassociation by court confirmation should likewise be added and/or treated as having been added as members of the Master Association.

144. The Class Representative, and all Class Members, have the same interest in determining whether the Morgan Point Subassociation should be and/or has been merged with and into the Master Association.

145. The Class Representative, and all Class Members, have the same interest in determining, in fairness and/or equity, whether the Morgan Point Subassociation's Articles of Incorporation should be and/or has been merged with and into the Master Association's Articles.

146. The Class Representative, and all Class Members, have the same interest in ensuring that the Master Association can and does operate in accordance with Florida Law.

147. The Class Representative, and all Class Members, have the same interest in ensuring that the Master Association can and does operate in accordance with the Master Declaration.

148. The Class Representative, and all Class Members, have the same interest in ensuring that the Master Association can and does operate in accordance with the Master Association's Articles of Incorporation.

149. The Class Representative, and all Class Members, have the same interest in ensuring that the Master Association can and does operate in accordance with the Master Association's Bylaws.

150. Unless this suit is successful, regardless of whether the Master Association treats the Morgan Point Subassociation as having been merged with and into the Master Association, it will be exposed to significant risk, challenges and potential liability for its actions.

151. Unless this suit is successful, regardless of whether the Master Association treats the Morgan Point Subassociation as having been merged with and into the Master Association, the Members will derivatively be exposed to risk, challenges and potential liability for the Master Association's actions.

152. Regardless of the Master Association's actions, the Master Association is and will continue to be in jeopardy of violating Florida law unless and until this suit is successful.

153. Unless this suit is successful and the court rules on the matters raised herein, the Master Association will be in jeopardy of violating the Master Declaration.

154. Unless this suit is successful and the court rules on the matters raised herein, the Master Association will be in jeopardy of violating the Master Association's Articles of Incorporation.

155. Unless this suit is successful and the court rules on the matters raised herein, the Master Association will be in jeopardy of violating the Master Association's Bylaws.

156. Unless this suit is successful, including confirming that in fairness and equity, the Morgan Point Subassociation has merged with and into the Master Association, the Class Representative and all Class Members will be subject to significant negative economic consequences including with respect to continuing challenges, continued litigation, and lowered property values.

157. The Class Representative and all Class Members have the same interest in determining whether the Morgan Point Subassociation Bylaws have been merged with and into the Master Association's Bylaws.

158. The Class Representative and all Class Members have the same interest in determining whether the Morgan Point Subassociation Articles of Incorporation have been merged with and into the Master Association's Articles of Incorporation.

159. The Class Representative and all Class Members have the same interest in confirming that the Morgan Point Subassociation Bylaws are not separately valid, binding and enforceable.

160. The Class Representative and all Class Members have the same interest in confirming that the Morgan Point Subassociation Articles of Incorporation are not separately valid, binding and enforceable.

161. The Class Representative and all Class Members have the same interest in determining whether the Morgan Point Subassociation needs to continue electing a separate Board of Directors.

162. The Class Representative and all Class Members have the same interest in determining whether the Master Association can enforce the Morgan Point Subassociation's Declaration.

163. The Class Representative and all Class Members have the same interest in determining whether the Morgan Point Subassociation must operate separate and distinct from the Master Association.

164. The Class Representative and all Class Members have the same interest in determining whether the Master Association has the right, power and authority to treat the Morgan Point Subassociation as having merged with and into the Master Association.

165. Regardless of the Master Association's actions, unless this suit is successful and the court clarifies and rules on the matters raised herein, the Master Association will be in jeopardy of violating Florida Law.

166. Unless this suit is successful and the court clarifies and rules on the matters raised herein, the Master Association will be in jeopardy of violating the Master Declaration.

167. Unless this suit is successful and the court clarifies and rules on the matters raised herein, the Master Association will be in jeopardy of violating the Master Articles.

168. Unless this suit is successful and the court clarifies and rules on the matters raised herein, the Master Association will be in jeopardy of violating the Master Bylaws.

169. As the body charged in the Master Association's governing documents and under Florida Law as the entity responsible for operating and conducting the Master Association (of which each Member of the Class is a Member), the Class Representative needs to determine whether the Morgan Point Subassociation Articles of Incorporation should be treated as having been merged with and into the Master Articles.

170. As the body charged in the governing documents and under Florida Law as the entity responsible for preserving and protecting the Common Property, the Class Representative needs to determine the Master Association's rights, powers, duties and authority under the Master Declaration, Master Articles and Master Bylaws with respect to Morgan Point Subassociation and its members.

171. As the body charged in the Master Declaration and under Florida Law as the entity responsible for the equal and fair treatment of its Members and performing the duties and responsibilities delegated to it in the Master Declaration, Master Articles and Master Bylaws, the Class Representative needs to determine the membership status of the Members of the Association (e.g., Morgan Point).

172. As the body charged in the Master Declaration and under Florida Law as the entity responsible for the equal and fair treatment of its Members and performing the duties and responsibilities delegated to it in the Master Declaration, Master Articles and Master Bylaws, the

Class Representative needs to determine whether the Morgan Point Subassociation should be treated as having been merged with and into the Master Association.

173. The Class Representative has the same interest and desire as all Class Members to determine who constitutes its Members.

174. The Class Representative's interests and those of all Class Members are not in conflict but, rather, are co-extensive with one another.

175. The Class Representative has expended significant time and effort in attempting to resolve the issues underlying this Complaint, including pursuing and paying for attempted but failed amendments to properly address and resolve the issues referenced herein.

176. The Class Representative has the same interest and desire as all Class Members to ensure that the property values within the property are protected.

177. The Class Representative has the same interest and desire as all Class Members to ensure that the Master Association is operating properly, lawfully and validly.

178. The Class Representative has the same interest and desire as all Class Members to ensure that the Master Association equitably, fairly, properly, lawfully and validly carries out its role, responsibilities and duties.

179. The Class Representative has the same interest and desire as all Class Members to ensure that the Master Association equitably and fairly treats each and every one of its Class Members.

180. Given its vested right(s), and/or a constitutionally protected rights, Morgan Point Subassociation has the right to be treated by the Master Association equitably, fairly and the same as the Merged Associations given the Original Declaration, P.U.D., DRI, Original Commitments, Concept Plan, Development Agreement and Development Order;

181. The members of Morgan Point Subassociation (sometimes referred to as Morgan Point Members herein) have the right to be treated, equitably, fairly and the same as the Members who were formerly members of the Merged Associations given the vested right(s) and/or a constitutionally protected rights of the Morgan Pointe Members as well as the provisions in the the Original Declaration, P.U.D., DRI, Original Commitments, Concept Plan, Development Agreement and Development Order;

182. Disparate, disproportionate and a fundamental shift in relative rights and power has occurred and will continue to occur if Morgan Point Subassociation is not deemed to have been merged with and into the Master Association;

183. It would be unfair and inequitable to only require Morgan Point Subassociation, as the only non-merged Subassociation, without private roads, to operate separately and independently from the Master Association;

184. It would be unfair and inequitable to require Morgan Point Subassociation to fulfill for itself, and its members, all the obligations and tasks which are now performed by the Master Association for the Merged Associations and their former members;

185. Equity and fairness requires an adjudication that Morgan Point Subassociation is effectively merged with and into the Master Association;

186. Equity and fairness requires an adjudication that the Master Association can act as if the merger of the Morgan Point Subassociation with and into the Master Association has been effectively accomplished;

187. Fairness and/or equity requires the Master Association to treat Morgan Point Subassociation as having merged with and into the Master Association;

188. The actions of the Master Association in accepting the merger of the Merged Subassociations require the Master Association to treat Morgan Point Subassociation as having merged with the Master Association;

189. If the Master Association fails to enforce the Morgan Point Subassociation Declaration, the Master Association will be subject to risk and liability;

190. The Master Association will be at risk if it fails to treat the members of Morgan Point Subassociation as being proper and authorized Members of the Master Association;

191. The Master Association will be subject to liability if the Master Association fails to treat the members of Morgan Point Subassociation as proper and authorized Members of the Master Association;

192. Equity necessitates the merger of Morgan Point with and into the Master Association;

193. The Master Declaration need not be amended to effectively merge Morgan Point Subassociation with and into the Master Association;

194. The Master Articles need not be amended to effectively merge Morgan Point Subassociation with and into the Master Association;

195. The Morgan Point Subassociation' s Articles need not be amended to effectively merge it with and into the Master Association;

196. The Master Association will not be able to properly, equitably and fairly treat Morgan Point Subassociation, its membership and/or the balance of the Master Association's Members unless the court establishes, determines and/or confirms that Morgan Point Subassociation has been effectively merged with and into the Master Association.

197. The Master Association and Morgan Point Subassociation will be at risk with respect to how they handle their respective association's operations, unless the court establishes, determines and/or confirms that Morgan Point Subassociation has been effectively merged with and into the Master Association.

198. The property values of the Lots subject to the Master Declaration will decline if it is determined that Morgan Point Subassociation, in equity and/or in fairness, is not merged with and into the Master Association.

199. The property values of the Lots subject to the Morgan Point Subassociation Declaration will decline if it is determined that Morgan Point Subassociation, in equity and/or fairness is not merged with and into the Master Association.

200. It is critical for the Master Association to act as if a proper merger of Morgan Point Subassociation with and into the Master Association transpired.

201. It is critical for the members of Morgan Point Subassociation to be treated as Members of the Master Association.

202. It is critical that the Master Association be permitted to enforce all the covenants and restrictions of the Morgan Pont Subassociation Declaration.

203. To preserve the property values within the property subject to the Master Declaration, it is imperative that the Morgan Point Subassociation be merged with and into the Master Association, by court order and/or judgment.

204. To preserve the property values of the land and property subject to Morgan Point Subassociation' s Declaration, it is imperative that Morgan Point Subassociation be merged with and into the Master Association by court order and/or judgement.

205. The health, safety and welfare of all the Members of the Master Association, requires that Morgan Point Subassociation be merged with and into the Master Association.

206. The health, safety and welfare of the members of Morgan Point Subassociation, requires that the Master Association be allowed to act as if Morgan Point Subassociation has merged with and into the Master Association.

207. The Master Association should have the power, right and ability to act as if Morgan Point Subassociation has merged with and into the Master Association.

208. The Master Association will be forced to treat the Morgan Point Subassociation as not having merged with and into the Master Association unless the court confirms and rules that:

- a. Morgan Point Subassociation merged with and into the Master Association as a matter of law;
- b. Morgan Point Subassociation merged with and into the Master Association as a matter of equity; and/or
- c. The Master Association has the right to act as if Morgan Point Subassociation merged with and into the Master Association.

209. The Master Association will not be able to enforce Morgan Point Subassociation's covenants and restrictions unless the court confirms and rules that:

- a. Morgan Point Subassociation merged with and into the Master Association as a matter of law;
- b. Morgan Point Subassociation merged with and into the Master Association as a matter of equity; and/or
- c. The Master Association has the right to act as if Morgan Point Subassociation merged with and into the Master Association.

210. The Master Association will be precluded from treating the members of Morgan Point Subassociation as Members of the Master Association unless the court confirms and rules that:

- a. Morgan Point Subassociation merged with and into the Master Association as a matter of law;
- b. Morgan Point Subassociation merged with and into the Master Association as a matter of equity; and/or

c. The Master Association has the right to act as if Morgan Point Subassociation merged with and into the Master Association.

211. Pursuant to this Court's order, the Association endeavored to provide each Association member as listed on its official records (e.g., each owner of a lot in Lakeside Estates) Notice of this action and the opportunity to opt out;

212. The Association sent such Notice (i.e., Notice of Pendency of Class Action and of Rights of Class Members) by U.S. Mail to each and every Association member as depicted on the Association's records. The Notice of Pendency of Class Action and of Rights of Class Members shall sometimes be referred to herein as the "Notice";

213. The U.S. Post Office has provided documentation indicating that 2278 Notice(s) were mailed to the Association Members;

214. Well over 45 days has elapsed since the last Notice was mailed by U.S. Mail to any Member;

215. Record(s) furnished by the U.S. Post Office, substantiate that well over 45 days has elapsed since the date the Notice was sent to the Master Association Member(s);

216. The Association made a good faith effort if not an extraordinary effort to provide its members with the Notice.

217. Upon information and belief, further efforts by the Association to provide its Members with such Notice will be a waste of time and money.

218. The Affidavit In Support Of Plaintiff's Motion for Summary Judgment of Virginia Osterberg, President of the Master Association and Affidavit In Support Of Plaintiff's Motion for Summary Judgment of Leslie Ludlam attached hereto as Exhibit A and Exhibit B respectively, support Defendant's Motion for Summary Judgment.

NOW THEREFORE, in consideration of the above findings of facts and the Court being otherwise fully advised in the premises, the Motion is GRANTED and it is here by ORDERED & ADJUDGED as follows:

1. that Morgan Point Subassociation in fairness has merged with and into the Master Association;

2. that as a matter of law, Morgan Point Subassociation has been merged with and into the Master Association;

3. that as a matter of equity, Morgan Point Subassociation has been merged with and into the Master Association;

4. that the Master Association has the requisite right, power and authority to act for and on behalf of Morgan Point Subassociation;

5. that, in fairness and/or equity, the facts presented herein require that the Morgan Point Subassociation be merged with and into the Master Association or at a minimum, such merger be deemed to have effectively transpired;

6. that the merger of Morgan Point Homeowners Association with and into the Master Association does not require the Master Association and Morgan Point Subassociation to meet the requirements set forth in each of their respective governing documents;

7. that the merger of the other Subassociations with and into the Master Association, while denying the merger of Morgan Point Subassociation into and with the Master Association, would be inequitable and unfair;

8. that the merger of Morgan Point Subassociation into and with the Master Association has effectively occurred in fairness and/or equity;

9. that the Master Association would be at risk and potentially subject to liability if the Morgan Point Subassociation is not deemed to have effectively been merged with and into the Master Association;

10. that the Master Association would be at risk and potentially subject to liability if it failed to treat Morgan Point Subassociation as having merged with and into the Master Association;

11. that the Master Association would be at risk and potentially subject to liability if it failed to treat the members of Morgan Point Subassociation as proper and authorized members of the Master Association;

12. that equity effectively necessitates and/or validates such merger;

13. that neither the Master Association governing documents nor the Morgan Point Subassociation governing documents need to be amended to effectively merge Morgan Point Subassociation into and with the Master Association;

14. that Morgan Point Subassociation, in equity and/or fairness, merged with and into the Master Association;

15. that the Master Declaration did not need to be amended to effectively merge Morgan Point Subassociation with and into the Master Association;

16. that the Master Articles did not need to be amended to effectively merge Morgan Point Subassociation with and into the Master Association;

17. that Morgan Point Subassociation Articles did not need to be amended to effectively merge the Morgan Point Subassociation with and into the Master Association;

18. that Articles of Merger did not and do not need to be approved and recorded to effectively merge Morgan Point Subassociation with and into the Master Association;

19. that the Master Association has the power, right and authority to act as if Morgan Point Subassociation merged with and into the Master Association;

20. that Morgan Point Subassociation has the right, power and authority to act as if it has merged with and into the Master Association;

21. that the Master Association has the right, power and authority to operate in the place and stead of Morgan Point Subassociation;

22. that the Master Association has the right, power and authority to enforce the covenants and restrictions of Morgan Point Subassociation.

DONE and ORDERED in Chambers in Osceola County, Florida this \_\_\_\_ day of

\_\_\_\_\_, 2018.


JUDGE OF THE CIRCUIT COURT  
Original Order Signed

MAR 27 2018

MARGARET H. SCHREIBER  
Margaret H. Schreiber  
Circuit Court Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to Neal McCulloh, Esquire, Clayton & McCulloh, 1065 Maitland Center Commons Boulevard, Maitland, Florida 32751 and Christopher F. Torchia, Esq., on behalf of Morgan Point Property Owners Association, Inc., 522 S Hunt Club Blvd., #326, Apopka, FL 32703, on this 27 day of March 2018.

  
Judicial Assistant/Attorney

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN  
AND FOR OSCEOLA COUNTY, FLORIDA

MORGAN POINTE PROPERTY  
OWNERS ASSOCIATION, INC.

CASE NO.: 2017-CA-001126-OC

Plaintiff,

vs.

LAKE\$IDE ESTATES MASTER COMMUNITY  
ASSOCIATION, INC., a Florida not for profit corporation

Defendant.

---

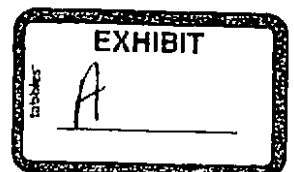
**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR SUMMARY JUDGMENT**

STATE OF FLORIDA  
COUNTY OF OSCEOLA

BEFORE ME personally appeared Virginia Osterberg, who, having been duly sworn  
deposes and says:

1. All terms used herein which are not expressly defined shall have the meaning given to them in the Complaint or if the meaning is not expressly set forth therein, then such term(s) shall have the meaning set forth in the Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates, recorded in O.R. Book 1009, Page 0692 of the Public Records of Osceola County, Florida, as amended and supplemented (hereinafter sometimes referred to as the "Master Declaration" and/or the "Composite Declaration"), except as otherwise noted.

2. Affiant is a Board member and the President of the Lakeside Estates Master Community Association, Inc., (hereinafter sometimes referred to as the "Master



Association").

3. Affiant is an Owner of a Unit within the Lakeside Estates subdivision.

4. Upon information and belief, the Master Declaration is and remains binding and enforceable as to the Lakeside Estates Subdivision, as more particularly described in Plaintiffs' Complaint.

5. Upon information and belief, the Original Developer's scheme of development for the Lakeside Estates Subdivision contemplated that a Master Association would be created as well as Subassociations as that term is used and defined in the Master Declaration.

6. Upon information and belief, the Original Developer's scheme of development for the Lakeside Estates Subdivision contemplated that separate Subassociations and Condominium Associations would be formed with respect to portions of the Property, and that such Subassociations and Condominium Associations would be members of the Master Association.

7. Upon information and belief, the Declarant in the Original Master Declaration contemplated adding and/or annexing additional property in and to the original Lakeside Estates Subdivision.

8. Upon information and belief, the Declarant contemplated that each Lot or Unit would be subject to a Subassociation.

9. Upon information and belief, pursuant to the Original Declaration, the creation of A Subassociation was a condition precedent to the sale of the first Lot or Unit within each Parcel.

10. Upon information and belief, the Original Developer and the Original Master Declaration, in Article IV, Section I contemplate that each Subassociation and Condominium Association would be a Member of the Master Association.

11. The Original Master Declaration provided for and delineated how voting within the Master Association would transpire and provided the Subassociations not the individual Lot Owners with the right to vote.

12. Upon information and belief, the Original Master Declaration, as amended, supersedes and takes precedence over any and all Subassociation(s)' Declaration, Articles of Incorporation or Bylaws.

13. Upon information and belief, the Developer and the Original Master Declaration contemplated that the Master Association could merge or consolidate with other homeowner associations and/or condominium associations.

14. Upon information and belief, the Subassociations could merge into and with the Master Association.

15. Upon information and belief, Subassociations which merged with and/or into the Master Association could no longer separately constitute Members of the Master Association.

16. Upon information and belief, voting representatives of Subassociations which merged with and/or into the Master Association could no longer cast votes on Master Association issues.

17. Upon information and belief, the Master Association does not have the right, power and authority to cast the votes previously able to be cast by those Subassociations that merged with or into the Master Association.

18. Upon information and belief:

a. Lakeside Estates was originally set up as a Planned Unit Development (i.e., P.U.D.);

b. the Original Developer in Section 1.7 of the Original Master Declaration discussed

and/or provided for a "Concept Plan" for the development of Lakeside Estates Planned Unit Development; and

- c. Lakeside Estates was contemplated to be made up of and/or comprised of essentially different and multiple Neighborhoods, each with its own Subassociation which further would ensure parity in voting.

19. Upon information and belief, voting rights are vested rights.

20. Upon information and belief, voting rights are constitutionally protected rights.

21. Upon information and belief, the Original Governing Documents for the Master Association set up a voting structure which provided for parity among the potentially numerous Owners and/or Members.

22. Upon information and belief, the Original Governing Documents for the Master Association set up a voting structure which provided for parity among and between the various Subassociations.

23. Upon information and belief, the Original Governing Documents for the Master Association set up a voting structure which provided for the balance of power among and between the numerous Owners and/or Members.

24. Upon information and belief, the Original Governing Documents for the Master Association set up a voting structure which provided for the balance of power among and between the various Subassociations.

25. Upon information and belief, the merger of most of the Subassociations (to wit the Merged Associations) with and into the Master Association was valid, binding and proper.

26. Upon information and belief, if the Non-Merged Subassociation(s)' voting representatives are permitted to cast votes on behalf of the Owners within their Subassociation(s) on Master Association issues, then a disparate, disproportional and fundamental shift in power

will occur.

27. Upon information and belief, if the remaining Subassociation(s)' [to wit the Non-Merged Subassociation(s)] voting representatives are allowed to cast the votes for the Owners within their Subassociation(s), then parity among and between the various Neighborhoods, each of which was to have its own Subassociation(s), will be extinguished.

28. Upon information and belief, if the remaining Subassociation(s)' [to wit the Non-Merged Subassociation(s)] voting representatives are allowed to cast the votes for the Owners within their Subassociation(s), then parity among and between the various Owners will be eliminated.

29. Upon information and belief, if the owners of lots from the Non-Merged Subassociation(s) are required to have their votes cast by voting representatives, then this would require that:

- a. each of such voting representatives would only get one ballot; and
- b. that such voting representative could only cast one vote for each of the director positions up for election.

30. Upon information and belief, allowing each of the voting representatives of the Non-Merged Subassociation(s) to only have one ballot, which ballot only allows one vote for each Master Association director position available, would be unfair and inequitable to each of the Non-Merged Subassociation(s).

31. Upon information and belief, allowing each of the voting representatives of the Non-Merged Subassociation(s) to only have one ballot, which ballot only allows one vote for each Master Association director position available, would be unfair and inequitable to the members of the Non-Merged Subassociation(s).

32. Upon information and belief, the First Amendment to the Bylaws required and/or

limited each voting representative to one ballot.

33. The First Amendment to the Bylaws required that the election of directors be predicated on the plurality of ballots cast.

34. Upon information and belief, the First Amendment to Bylaws permitted the voting representatives to cast only one ballot, which ballot had to be identical to all the other ballots.

35. Upon information and belief, to the extent that a voting representative could cast a ballot, it needed to be the same as those of the individual Owners entitled to vote [i.e., those who are no longer members of a Subassociation]. Consequently, each of the voting representative(s) would only be able to cast one vote for each of the director positions up for election.

36. Upon information and belief, the only fair and equitable method of voting is to have each Owner of a Lot or Unit cast his, her or its vote independently and not through a voting representative.

#### **ASSOCIATION MERGER(S)**

37. Upon information and belief, the Master Declaration was not amended to merge Morgan Pointe Homeowners Association, Inc. (hereinafter sometimes referred to as "Morgan Point" and/or "Morgan Pointe Homeowners Association") into and with the Master Association.

38. Upon information and belief, the Master Articles were not amended to merge Morgan Pointe Homeowners Association into and with the Master Association.

39. Upon information and belief, the Morgan Pointe Articles of Incorporation were not amended to merge Morgan Pointe Homeowners Association into and with the Master Association.

40. Upon information and belief, by operation of law and/or in equity, Morgan Pointe Homeowners Association should be deemed to have been merged with and into the Master

Association, and the Master Association should not be at risk or liable for actions it takes on behalf of said Subassociation(s).

41. Upon information and belief, the Morgan Pointe Homeowners Association Articles of Incorporation, the Master Articles and the Master Declaration should be deemed to have been modified to the degree necessary to render such merger valid, binding and effective.

42. Upon information and belief, the Master Association should be able to treat the members of Morgan Pointe Homeowners Association as Members of the Master Association.

43. Upon information and belief, the Master Association should be able to fulfill the role previously fulfilled by Morgan Pointe Homeowners Association.

44. Upon information and belief, the Master Association need not take any additional or further action to ensure that Morgan Pointe Homeowners Association is and has been properly merged with and into the Master Association.

45. Upon information and belief, Morgan Pointe Homeowners Association need not take any additional or further action to ensure that the Master Association can act on Morgan Pointe Homeowners Association's behalf and in its stead.

46. Upon information and belief, the owners of lots within the Morgan Pointe Subdivision should constitute and qualify as Members of the Master Association.

47. Upon information and belief, the Master Association should be able to treat Morgan Pointe Homeowners Association as having been properly merged with and into the Master Association.

48. Upon information and belief, amending the Master Declaration, the Master Articles and/or the Morgan Pointe Articles should not be required to merge the Morgan Pointe Homeowners Association with and into the Master Association.

49. Upon information and belief, obtaining the requisite approval to amend the Master

Declaration, the Master Articles and the Morgan Pointe Articles to authorize the merger of Morgan Pointe Homeowners Association with and into the Master Association is impractical and not realistically feasible.

50. Upon information and belief, the property values of the Lots subject to the Master Declaration will decline if Morgan Pointe Homeowners Association is not merged with and into the Master Association.

51. Upon information and belief, the property values of the Lots subject to the Morgan Pointe Declaration could substantially decline if Morgan Pointe Homeowners Association is not merged with and into the Master Association.

52. Upon information and belief, it is necessary and beneficial for the Master Association to act as if a proper merger of Morgan Pointe Homeowners Association with and into the Master Association transpired.

53. Upon information and belief, it is necessary and beneficial that the members of Morgan Pointe Homeowners Association be treated as Members of the Master Association.

54. Upon information and belief, it is necessary and beneficial that the Master Association be permitted to enforce all the covenants and restrictions of the Morgan Pointe Declaration.

55. Upon information and belief, in order to promote the health, safety and welfare of the Members of the Master Association, the Master Association needs to be allowed to act as if Morgan Pointe Homeowners Association has merged with and into the Master Association.

56. Upon information and belief, in order to promote the health, safety and welfare of the members of Morgan Pointe Homeowners Association, the Master Association needs to be allowed to act as if Morgan Pointe Homeowners Association has merged with and into the Master Association.

57. Upon information and belief, the Master Association should have the power, right and ability to act as if Morgan Pointe Homeowners Association has merged with and into the Master Association.

58. Upon information and belief, it would be unfair and inequitable for Morgan Pointe Homeowners Association not to be merged with and into the Master Association.

59. Upon information and belief, unless the court confirms and rules that the merger of Morgan Pointe Homeowners Association with and into the Master Association has occurred, the Master Association will be at risk.

60. Upon information and belief, if the merger of Morgan Pointe Homeowners Association with and into the Master Association does not occur, then:

- a. a disparate, disproportional and fundamental shift in relative rights and power will occur; and
- b. the members of Morgan Pointe may be denied equal treatment by the Master Association.

61. Upon information and belief, if Morgan Pointe Homeowners Association, Inc. is not merged with and into the Master Association, then the Master Association will be at risk for its disparate treatment of Morgan Pointe and its Members.

#### NOTICE

62. Pursuant to this Court's order, the Association endeavored to provide each Association member as listed on its official records (e.g., each owner of a lot in Lakeside Estates) Notice of this action and the opportunity to opt out;

63. Pursuant to this Court's order, the Association sent a copy of the Notice of Pendency of Class Action and of Rights of Class Members [hereinafter sometimes referred to as

"Notice(s)") by U.S. Mail, postage pre-paid to each and every Association member as depicted on the Association's records;

64. Upon information and belief, the Association sent out 2,278 Notices to its members by U.S. Mail;

65. Well over 45 days has elapsed since the last Notice was sent by U.S. Mail to any Association Member;

66. According to the documentation furnished by the U.S. Post Office, well over 45 days has elapsed since the date the last Notice was sent by U.S. Mail to any Association Member;

67. The Association made a good faith effort if not an extraordinary effort to provide its members with the Notice;

68. Upon information and belief, further efforts by the Association to provide its members with such Notice will be a waste of time and money.

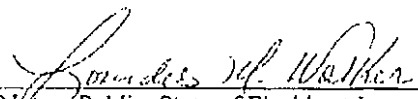
FURTHER AFFIANT SAYETH NOT.

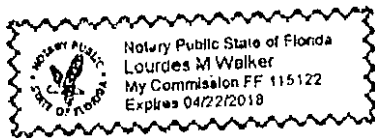
STATE OF FLORIDA  
COUNTY OF ORANGE

  
VIRGINIA OSTERBERG

The foregoing instrument was acknowledged before me this 30 day of January, 2018, by VIRGINIA OSTERBERG, who is personally known to me or who has produced \_\_\_\_\_ as identification.

(Seal)

  
Notary Public, State of Florida at Large  
My Commission Expires: 04/22/2018



IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN  
AND FOR OSCEOLA COUNTY,  
FLORIDA

MORGAN POINTE PROPERTY  
OWNERS ASSOCIATION, INC.

CASE NO.: 2017-CA-001126-OC

Plaintiff,

vs.

LAKESIDE ESTATES MASTER COMMUNITY  
ASSOCIATION, INC., a Florida not for profit corporation

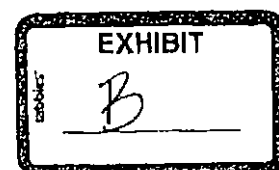
Defendant.

**AFFIDAVIT IN SUPPORT OF**  
**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

STATE OF FLORIDA  
COUNTY OF OSCEOLA

BEFORE ME personally appeared LESLIE LUDLAM, who, having been duly sworn deposes and says:

1. All terms used herein which are not expressly defined shall have the meaning given to them in the Complaint or if the meaning is not expressly set forth therein, then such term(s) shall have the meaning set forth in the Master Declaration of Covenants, Conditions and Restrictions for P.U.D. Lakeside Estates, recorded in O.R. Book 1009, Page 0692 of the Public Records of Osceola County, Florida, as amended and supplemented (hereinafter sometimes referred to as the "Master Declaration" and/or the "Composite Declaration"), except as otherwise noted;
2. Affiant is the Manager for the Lakeside Estates Master Community Association, Inc. (hereinafter referred to as the "Master Association");
3. Affiant has been the Manager for the Master Association throughout the pendency of this action;
4. At the direction of the Association and pursuant to this Court's order,



Affiant (on behalf of the Association), endeavored to provide each Association member as listed on its Official Records (e.g., each owner of a lot in Lakeside Estates) by U.S. Mail, Notice of this action and the opportunity to opt out;

5. At the direction of the Association and pursuant to this Court's order, Affiant, on behalf of the Association, sent a copy of the Notice of Pendency of Class Action and of Rights of Class Members [hereinafter sometimes referred to as "Notice(s)"] by U.S. Mail to each and every Association member as depicted on the Association's records;

6. The U.S. Post Office has provided documentation indicating 2278 Notice(s) were sent by U.S. Mail to the Association Members;

7. Well over 45 days has elapsed since the last Notice were sent by U.S. Mail to Association Members;

8. According to the records furnished by the U.S. Post Office, well over 45 days has elapsed since the date the last Notice was sent by U.S. Mail to one of the Association Members;

9. The Association and Affiant have made a good faith effort if not an extraordinary effort to provide its members with the Notice; and

10. Upon information and belief, further efforts to provide the Association's members with such Notice will be a waste of time and money.

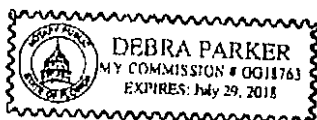
FURTHER AFFIANT SAYETH NOT.

Leslie Ludlam  
LESLIE LUDLAM

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 23rd day of January, 2018, by LESLIE LUDLAM, who is personally known to me or who has produced \_\_\_\_\_ as identification.

(Seal)



Debra Parker  
Notary Public, State of Florida at Large  
My Commission Expires: 7/29/18