



INST # 6731795 OR BK 04659 Page 2914 - 2874; (61pgs) RECORDED 04/11/2005 03:52:52 PM
CHARLIE GREEN, CLERK OF COURT, LEE COUNTY, FLORIDA
REC FEE \$20.00
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**DECLARATION OF COVENANTS, EASEMENTS
AND RESTRICTIONS FOR HORSE CREEK**

This Declaration is made this 11 day of April, 2005, by Buckingham 225 Development, Inc., a Florida corporation, for itself, its successors, and assigns ("Declarant")

WITNESSETH:

WHEREAS, Declarant is the owner of that real property located in Lee County, Florida, and more particularly described on Exhibit "A" attached hereto (the "Property" or "Horse Creek"); and

WHEREAS, Declarant intends to develop on the Property a residential neighborhood, including certain common areas, to be known as "Horse Creek;" and

WHEREAS, Declarant desires to insure that a general plan of development is adhered to and to establish certain continuing relationships in the form of mutual rights and obligations among the Declarant and the persons who acquire ownership of Lots and Units (hereinafter defined) developed in Horse Creek and their respective successors, with respect to use, enjoyment, and maintenance of certain Common Areas (hereinafter described); and

WHEREAS, Declarant desires to provide for the preservation of property values in Horse Creek, contribute to the general health, safety, and welfare of the residents, and provide for the maintenance of the land and improvements thereon, and to this end desires to subject Horse Creek to the protective covenants, conditions, restrictions, and other provisions hereinafter set forth; and

WHEREAS, Declarant has determined that this Declaration of Covenants, Easements, and Restrictions, establishing certain easements, servitudes, restrictions, and conditions in the form of covenants running with the land, shall be binding upon, enforceable against, and inure to the benefit of all such present and future owners of the Property and shall run with the land hereby and hereafter subjected to it; and

WHEREAS, Declarant desires to hereby subject the Property to the terms and conditions of this Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the Property described in Exhibit "A," together with such improvements as may hereafter be made thereto, are and shall be owned, used, sold, conveyed, encumbered, and occupied subject to the easements, covenants, conditions, restrictions, and all other provisions of this Declaration as covenants which shall run with the land and be binding on all parties having any right, title, or interest in Horse Creek or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1 DEFINITIONS

- 1.1 The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, unless the context clearly requires another meaning.
- (1) "Articles" means and refers to the Articles of Incorporation of the Association.
 - (2) "Association" or "Homeowners Association" means and refers to the Horse Creek Homeowners Association, Inc., a nonprofit Florida corporation, its successors and assigns.
 - (3) "Board" or "Board of Directors" means and refers to the Board of Directors of the Association as it exists from time to time.
 - (4) "Bylaws" means and refers to the "Bylaws of the Association."
 - (5) "Common Area" means and refers to all real property now or hereafter owned by the Association for the common use and enjoyment of the Owners including, without limitation or obligation, ingress/egress easements, roads and streets, all open spaces, stormwater management and drainage areas, buffer areas, the park area, the tortoise preserve area, conservation easements, and utility easements including those for sewer and water.
 - (6) "Horse Creek" or "Property" means and refers to the real property more particularly described in Exhibit "A" attached hereto.
 - (7) "Declarant" or "Developer" means and refers to Buckingham 225 Development, Inc. and its successors and assigns.
 - (8) "Institutional Lender" and/or "First Mortgagee" means and refers to a commercial or savings bank, savings and loan association, mortgage company, life insurance company, pension fund, business trust, governmental agency or corporation, or a lender generally recognized in the community as an institutional lender, or any assignee of a loan made by any such lender, or any private or governmental agency, corporation, or institution which has insured or acquired the loan of the lender or any combination of the foregoing entities. Institutional Lender shall also refer to Daniel Wayne Homes, Inc. or the Developer, as long as any of said entities hold a mortgage encumbering a Lot or Unit.
 - (9) "Lot" means and refers to the real estate underlying and surrounding a Unit and shown as a Lot on the Plat, but excluding any common areas.

- (10) "Members" means and refers to those persons who are entitled to membership in the Association as provided herein.
- (11) "Community Documents" means this Declaration, the Articles, the Bylaws, the rules and regulations established by the Board, and all modifications, amendments, and supplements thereto.
- (12) "Owner" means and refers to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot or Unit within any portion of the Property, but shall not mean or refer to any holder of a mortgage encumbering a Lot or Unit unless and until such holder has acquired title thereto pursuant to foreclosure or any other proceedings or conveyance in lieu of foreclosure. Owner shall include the Declarant.
- (13) "Unit" means and refers to a constructed dwelling unit (together with any interests in commonly or individually owned real property appurtenant thereto) which is intended to be and may be used and occupied only as a single family residence.
- (14) "Surface Water Management System" means those portions of Horse Creek that are designed or intended to be used as part of the water management system for Horse Creek and which are designated by Declarant or by the Homeowners Association, or which are so provided for in the applicable water management permits pertaining to Horse Creek.
- (15) "Turnover" means and refers to the point at which the non-developer Lot Owners are entitled to elect the Board of Directors of the Association.

ARTICLE 2

PROPERTY RIGHTS AND EASEMENTS

- 2.1 Owner's Easement of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Areas for appropriate purposes which shall be appurtenant to and shall pass with the title to such Lot, subject to the following rights:
 - (1) The right of the Association to establish rules and regulations regarding the use of the Common Areas.
 - (2) The right of the Association to suspend the voting rights of any Owner for: (i) any period during which any assessment by the Association against that Owner's Lot remains unpaid for more than thirty (30) days after notice, and (ii) for a period not exceeding ninety (90) days for each single violation of any rules and regulations of the Association.

- (3) The right of the Association (or Declarant prior to Turnover) to dedicate or transfer all or any part of the Common Areas to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. After Turnover, no such dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3) of the members agreeing to such dedication, or transfer, has been duly recorded.
 - (4) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities, and in aid thereof to mortgage said property; the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.
 - (5) The right of the Declarant, with regard to the Property which may be owned for the purpose of development, to grant easements in and to the Common Areas contained within the respective Property to any public agency, authority, or utility for such purposes as benefits only the Property or portions thereof and Owners of Lots contained therein.
 - (6) The rights and privileges of the Declarant hereunder.
- 2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, and social invitees.
- 2.3 Owner's Right to Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon, and across the roadway serving Horse Creek as shown on the Plat necessary for access to his or her Lot and such right shall be appurtenant to and pass with the title to each Lot.
- 2.4 Use of Lots. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for a single family residence only and no structure shall be erected or permitted to remain on any Lot other than one single family residence and an attached and/or detached garage. No trade or commercial activity shall be carried on upon any residential Lots. Lease or rental of a Lot for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with the provisions of this Declaration and all such reasonable rules and regulations as the Board of Directors may promulgate. A Lot and residence located thereon may not be leased for less than a thirty (30) day term and may not be leased more than two (2) times per calendar year. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Bylaws, and the rules and regulations adopted thereunder. Nothing herein shall be construed to permit the use of any portion of any residence as an apartment for rent. No more than seven (7) persons may reside in a residence.

Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept in or upon any Lot or on the Common Areas or any part thereof to increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay. Noxious, destructive or offensive activity or any activity constituting an unreasonable source of annoyance, shall not be conducted in or upon any Lot or on the Common Areas or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

2.5 Use of Common Areas. No planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon the Common Areas, except in accordance with the initial construction of the improvements located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the Owners of Lots may use the property outside the boundaries of their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

2.6 Homeowners Associations' Rights and Powers.

- (1) The Declarant has organized the Homeowners Association primarily to insure that Horse Creek will be maintained in the manner herein required. The Homeowners Association will operate, maintain, and repair the Common Areas, which may include without limitation, Water Management Areas, conservation easements, roadways, irrigation systems, and sidewalks. The Homeowners Association shall operate, maintain, and repair all property designated by the Declarant as Common Areas of Horse Creek. The Homeowners Association is responsible for the perpetual maintenance of the Common Areas, and shall be required to take such action as is necessary to enforce compliance with the terms and conditions hereof and with the terms and conditions of any easements that may have been granted to appropriate regulatory agencies over and in respect to any such land and of the conditions of any applicable permits including, but not limited to, any monitoring, maintenance, or reporting requirements of the easements or permits.
- (2) Subject to this Declaration, the Association shall have the right, and the power, to develop, promulgate, and enforce reasonable rules and regulations for the use and enjoyment of the Common Areas. The Association shall have the authority to impose reasonable monetary fines and other sanctions for violations of any existing rules or regulations regarding the use and enjoyment of the Common Areas, including the suspension of the right to use the Common Areas. Monetary fines

may be collected by lien and foreclosure in the same manner as provided for in this Declaration for the collection of delinquent assessments.

- (3) No Common Areas shall be used in violation of any rule or regulation or any other requirement of the Homeowners Association established pursuant to the provisions of this Declaration, the Bylaws, or the Articles.

2.7 Declarant's Reserved Easement. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to the Property and Additional Land for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the Property, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with the Property and any other property now owned or which may in the future be owned by Declarant (such other property is hereinafter referred to as Additional Land). The reserved easement shall constitute a burden on the title to the Property and specifically includes, but is not limited to:

- (1) The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Property; and the right to tie into any portion of the Property with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Property.
- (2) The right, but not the obligation, to enter into cross easement agreements with owners of adjoining properties.
- (3) The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction and sale by Declarant of residences in Horse Creek or in any portion of the Additional Land.
- (4) No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Property and the Additional Land, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a Quit Claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

- 2.8 Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above, and under all property within Horse Creek (except under buildings) for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, cable, telephone, telecommunications receiving and distribution systems, alarm systems, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system or security system which the Association might decide to have installed to serve the Property. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Board shall have the right to grant such easement.

No trees may be planted or maintained in such a way as to interfere with public utility poles, wiring or drainage, or that may change the direction of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easements shall be placed or permitted to remain within these easements. The easement areas of each Lot and all improvements therein shall be maintained continuously by the Association, except for those improvements for which a public authority or utility company is responsible.

In addition to any other remedies herein provided, the Declarant, its successors and assigns, or any utility company maintaining such utilities, shall have the right without prior notice to the Lot Owner, to enter the Lot and trim or remove said tree or shrubbery so interfering. Additional drainage and utility easements, which are likewise so reserved with the Declarant, his heirs, assigns or successors, are set forth in the recorded subdivision plat referenced herein.

- 2.9 Service Easement. Declarant hereby grants to delivery, pick-up, fire protection services, police, other authorities of the law, United States Mail carriers, representatives of electrical, telephone, cable, telecommunications, and other utilities that service Horse Creek, and to such other persons as the Declarant or Association may from time to time designate, the non-exclusive, perpetual right to ingress and egress over and across Horse Creek for the sole purpose of performing their authorized services.
- 2.10 Water Management Easement. Declarant hereby declares and grants to the Association a non-exclusive easement over and across those portions of the Property constituting water management facilities as well as reasonable access thereto over other unimproved portions of the Property for the purpose of performing its water management maintenance and repair obligations.

- 2.11 Construction and Sale Period. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Areas such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model lots, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant and facilities located in the Common Areas, if any, which may be owned by the Association, as models and sales offices.
- 2.12 Easement for Encroachments. All of the Lots within the Property shall be subject to easements for encroachments, which now or hereafter exist, caused by settlement or movement of any improvements upon the Lots or improvements contiguous thereto, or caused by minor inaccuracies in building or rebuilding of such improvements or for the encroachment of common facilities upon any of the property within the subdivision. The above easements shall continue until such encroachments no longer exist.

ARTICLE 3 ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

- 3.1 Articles of Incorporation. A copy of the Articles of Incorporation for the Association is attached hereto as Exhibit "B."
- 3.2 Bylaws. The Bylaws of the Association shall be the Bylaws attached as Exhibit "C," as they may be amended from time to time.
- 3.3 Delegation of Management. The Association may contract for the management and maintenance of the Common Areas and employ a licensed manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submissions of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of common elements with funds made available by the Association for such purposes.
- 3.4 Membership. Every person or entity who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association, and shall be governed and controlled by the Articles of Incorporation and the Bylaws thereof. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership.

- 3.5 Initial Control. The affairs of the Association shall be managed by a Board of Directors. The initial Board of Directors shall consist of three (3) Directors, all of whom shall be appointed by the Declarant. The Declarant shall have the right to designate and appoint all of the Directors until Turnover which shall be the earliest of the following to occur: (i) after the Declarant has sold and conveyed ninety (90%) percent of the lots contained within the Property, including lots in any Additional Land, or (ii) at such earlier time as Declarant may relinquish control.

After Declarant relinquishes control (Turnover), the Board shall consist of five (5) Directors, to be elected in accordance with the Bylaws.

Members, other than the Declarant, will be entitled to elect at least a majority of the Members of the Board of Directors of the Association commencing three (3) months after ninety (90%) percent of all lots in the Association having conveyed to Members. For all purposes herein, the term Members does not include builders, contractors, or others who have purchased a Lot for the purpose of constructing improvements thereon for resale.

The Declarant shall be entitled to elect one (1) Member of the Board of Directors of the Association as long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots in the Association. After the Declarant has relinquished control of the Association, the Developer may exercise the right to vote in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting a majority of the Members of the Board of Directors.

- 3.6 Voting. The Association shall have two (2) classes of voting members as follows:

- (1) Class A Members shall be all Lot owners. Lot owners shall be entitled to one (1) vote of each Lot owned. Class A Members shall be entitled to vote only after relinquishment of control by Developer at Turnover. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be executed as such Members may determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.
- (2) The Class B Member shall be the Developer. The Class B Member shall be the sole Class of Members entitled to vote until the Developer relinquishes control at Turnover. Upon relinquishment of control by the Developer, Class B Membership shall cease and be converted to Class A Membership.

- 3.7 Acts of Association. Unless approval or affirmative vote of the Members is specifically made necessary by some provision of the law, this Declaration, the Bylaws, or Articles, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors. A Member does not have the authority to act for the Association by reason of being a Member.

- 3.8 Powers and Duties. The Association has all the rights, powers, and duties provided by law, this Declaration, the Articles, and the Bylaws. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers or duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, the management, and operation of the Common Areas. The Association may impose reasonable fees for the use of Association property. The Association has the power to adopt and enforce rules and regulations applicable to Horse Creek in accord herewith and to enforce compliance with this Declaration, the Articles, the Bylaws, and all applicable water management and permit conditions and easements applicable thereto.
- 3.9 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by Members or their authorized representatives at all reasonable times. The right to inspect the records include a right to make or obtain photocopies at the reasonable expense of the Member seeking copies.
- 3.10 Acquisition of Property. The Association has the power to acquire property, both real and personal. The Association may acquire additional real property that is contiguous to Horse Creek or additional real property that is not contiguous to Horse Creek. The power to acquire personal property shall be exercised by the Board of Directors. The power to acquire ownership interest in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interest of the Association.
- 3.11 Disposition of Property. Any property owned by the Association, whether real, personal, or mixed, may be mortgaged, sold, leased, or otherwise encumbered or disposed of by the same authority as would be required to acquire it under paragraph 3.10 above.
- 3.12 Limitation on Liability. Notwithstanding its duty to maintain and repair the Common Areas, the Association shall not be liable to individual Members for personal injury or property damage by any latent condition of the Common Areas, or caused by the elements or Owners or other persons.
- 3.13 Maintenance. The Association shall be responsible for the maintenance, repair, replacement, and control of all Common Areas, and shall keep the same in good, safe, clean, attractive, and sanitary condition, and in good working order at all times.

ARTICLE 4 NO PARTITION

There shall be no judicial partition of the Common Areas; nor shall Declarant or any Owner or any other person acquiring any interest in the planned development or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

ARTICLE 5 ASSESSMENTS

5.1 Creation of Lien and Personal Obligation for Assessments. Subject to the provisions of this Declaration, the Declarant hereby covenants, and each Owner of a Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association the following:

- (1) Annual Assessments for common expenses;
- (2) Special Assessments for capital improvements and other special assessments;
- (3) Annual or Special Lot Assessments or Charges; and

Such assessments to be established and collected as herein provided, but Lots owned by Declarant shall be exempt therefrom. All such assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which the assessment is made. Each assessment levied upon an Owner shall constitute a personal obligation of that Owner and, except as otherwise provided herein, an obligation of his successors and assigns. The obligation of each Owner to pay assessments as herein above provided shall commence when title to a Lot is transferred by the Developer to the Owner.

5.2 Annual Assessments.

- (1) Purpose of Assessment. The Annual Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and, in particular, for the maintenance, operation, and replacement of the Common Areas, for maintenance, operation, and replacement of any portions of each Lot for which the Association is responsible for maintenance and care, and the payment of common expenses.
- (2) Basis for Assessment.
 - (i) Owner Parcels. Except as provided otherwise, each Lot which has been conveyed to an Owner shall be assessed at a uniform rate. For the purpose of all assessments, the term "Owner" shall exclude the Declarant.
 - (ii) Lots Owned by Declarant. Notwithstanding any provisions herein to the contrary, the Association shall not assess any Lots located within the Property owned by the Declarant. Declarant, as long as it is not being assessed, shall have the responsibility to fund any deficits created as a result

of any shortfall between common assessments collected and common expenses.

- (3) Method of Assessment. By a vote of a majority of the Board of Directors of the Association, said Board shall fix the annual assessment upon the basis provided above, provided however, that the annual assessments shall be sufficient to meet the obligations imposed by this Declaration. The Board shall set the date or dates such assessments shall become due. The Board may provide for collection of assessments annually or in monthly, quarterly, or semi-annual installments, provided however, that upon default in the payment of any one (1) or more installments, the entire balance of said assessment may be accelerated at the option of the Board and be declared due and payable in full.
- 5.3 Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to the year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements upon the Common Areas, or which serve all Lots whether or not located on the Common Areas, including fixtures and personal property related thereto, and provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Class A Members voting in person or by proxy at a special meeting duly called for that purpose, and the assent of the Developer so long as the Developer owns any Lot or Unit in Horse Creek. In addition, the Association may levy a special assessment in the same manner as hereinabove described for the purpose of defraying, in whole or in part, the cost of any unusual or emergency matters that affect the Members of the Association.
- 5.4 Special Lot Assessments. In addition to the assessments authorized above, the Association may levy in any assessment year a special assessment against a particular Lot for the purpose of defraying, in whole or in part, the cost of any repair or replacement of a capital improvement upon such Lot, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the votes of the Class A Members voting in person or by proxy at a meeting duly called for this purpose.
- 5.5 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence with respect to the assessable Lots on the day of conveyance of the first Lot to an Owner who is not the Declarant. The initial assessment for any fractional year on any assessable Lot shall be collected at the time of closing when title to said Lot is conveyed to the Owner.
- 5.6 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date will bear interest from the due date at a percentage rate not to exceed eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any

such action will be added to the amount of such assessment and lien. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association. The Association, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at such foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

- 5.7 Annual Budget. By a majority vote of the Board of Directors of the Association, the Board shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. Each Lot subject to assessments will be liable for an equal share of the total Common Expenses set forth in such annual budget. Each annual budget shall include line items for reserve accounts for capital expenditures and deferred maintenance. These reserve accounts shall be adequately funded for roof replacement, building painting, and for any other item for which the deferred maintenance expense or replacement cost exceeds Ten Thousand and No/100 Dollars (\$10,000.00). However, the Declarant/Class B Member hereby waives and is hereby released from the requirement to fund reserve accounts for the first three (3) years of operation of the Association.
- 5.8 Certificate of Payment. The Treasurer or any other officer of the Association, upon demand of any Owner liable for an assessment, shall furnish to said Owner a certificate in writing signed by the President or Vice-President, setting forth whether such assessment has been paid. Such certificate, when co-signed by the Secretary of the Association, shall be conclusive evidence of payment of any assessment therein stated to have been paid. The Owner shall pay to the Association an administrative fee of Twenty-Five and No/100 Dollars (\$25.00), or such other fee as may be properly established by the Association, for each certificate of payment he or she requests from the Association. That fee shall accompany the Owner's request. The Association will not be required to respond to the Owner's request until the administrative fee referenced above is paid.
- 5.9 Real Estate Taxes. In the event the Common Areas are taxed separately from Lots, the Association shall include such taxes as part of the Common Assessments. In the event the Common Areas are taxed as a component of the value of the Lot owned by each Owner, it shall be the obligation of each Owner to promptly pay such taxes prior to their becoming a lien on the Lot.

- 5.10 Special Assessments for Negligent Actions. The Association may, subject to the provisions of Section 5.4 of this Article, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests, or agents or due to actions taken by the Association to correct a violation by said Owners, their guests, or agents, of the terms and conditions of this Declaration.
- 5.11 Submission of Budget to Members. The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause a copy of each such statement to be distributed to each Member, and to each First Mortgagee which has filed a written request for copies of the same with the Board of Directors, in the manner provided by the Bylaws of the Association. At least forty-five (45) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership of the Association a written, itemized budget of the expenses to be incurred by the Association during such year in performing its functions under this Declaration, which may include reasonable provisions for contingencies and deposits into a reserve fund for maintenance of the Common Areas. The membership shall have fifteen (15) days to review the proposed budget and to provide written comments to the Board of Directors. The Board shall adopt a budget at least twenty-five (25) days prior to commencement of the new fiscal year.
- 5.12 Exempt Property. Common Expenses and assessments, special assessments for capital improvements, other special assessments, and annual or special Lot assessments or charges, shall only be assessed against Lots which are subject to assessment under the provisions hereof. All other portions of Horse Creek, including without limitation Lots owned by the Declarant, are exempt from such assessments.
- 5.13 Claim of Lien. If any assessment is not paid within thirty (30) days following the due date, the Association may declare the entire assessment immediately due and payable. The Association may at any time thereafter record a Claim of Lien in the office of the Clerk of the Circuit Court of Lee County, Florida, against the Lot for which the assessment was due. The Claim of Lien shall include a description of the property encumbered, the Owner's name, the amount then due, and the date when due, and shall be signed and acknowledged by an officer or authorized agent of the Association. The Lien shall continue until fully paid or otherwise satisfied.
- 5.14 Foreclosure Sale. The assessment lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through duly authorized agents, shall have the power to bid on any Lot at a foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

- 5.15 Cumulative Remedies. The assessment liens and the right to foreclose and sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit against an Owner to recover a money judgment for unpaid assessments, as above provided.
- 5.16 Subordination of the Lien to Mortgage. The lien securing the assessments provided for herein shall be subordinate to the lien of any Mortgage held by a First Mortgagee made in good faith and for value and recorded prior to the date the Claim of Lien is recorded. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or conveyance by deed in lieu thereof of a First Mortgage, shall extinguish the lien of such assessment as to installments which became due prior to such sale or transfer, except to the extent a Claim of Lien therefore was filed prior to the recording of such mortgage.

ARTICLE 6

ARCHITECTURAL CONTROL

- 6.1 The Architectural Review Board. The Architectural Review Board shall be comprised of not less than three (3) members who need not be members of the Association. At least one (1) of the members of the Architectural Review Board shall be an architect, engineer, or building contractor. The majority of the Architectural Review Board shall constitute a quorum to transact business at any meeting.
- 6.2 Purpose. The Architectural Review Board shall regulate the external design, construction materials, appearance, use, location, and maintenance of the Property and any improvements thereon in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.
- 6.3 Conditions. No improvements, alterations, repairs, painting of the exterior of any Home or improvements, regardless of whether such painting involves the change of paint colors, excavation, changes in grade, or other work, structure, or improvement which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner, shall be made, erected, or done by the Owner without the prior written approval of the Architectural Review Board. No building, fence, wall, landscaping, planting, swimming pool, mailbox, viewing platforms, Lot lighting, tennis courts, screen enclosures, garage, residence, or other structure or improvement of any kind shall be commenced, erected, maintained, or improved, altered, made, or done by the Owner without the prior written approval of the Architectural Review Board. The Architectural Review Board shall be permitted to employ aesthetic values in making its determinations.
- 6.4 Powers and Duties of the Architectural Review Board. The Architectural Review Board shall have the following powers and duties:

- (1) To recommend from time to time to the Board of Directors of the Association modifications or amendments to the Design Review Guidelines. Such modifications shall be consistent with the provisions of this Declaration and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association and the Developer.
- (2) To require submission to the Architectural Review Board of two (2) complete sets of all plans and specifications for any improvements or structure of any kind on any Lot in Horse Creek, including a specific site plan showing the location of the house, other improvements, and any major vegetation to be removed. The Architectural Review Board may also require submission of samples of building materials proposed for use on any Lot or any other additional information as reasonably necessary for the Architectural Review Board to completely evaluate the proposed structural improvement in accordance with the Declaration.
- (3) To adopt a reasonable schedule of fees to be paid for by the submitter for processing requests and for reviewing subsequent compliance inspections by the Architectural Review Board for approval of improvements. Such fees, if any, shall be payable to the Architectural Review Board at the time the plans and specifications are submitted to the Architectural Review Board for approval. The Architectural Review Board shall have the right to inspect construction which shall be done by a representative of the Developer or any other knowledgeable person designated by the Board of Directors of the Association, and accompanied by at least one member of the Architectural Review Board. Such inspection shall take place as follows:
 - (i) Stake out of home site, including corners and house foundation.
 - (ii) Completion of foundation and/or first portion of structure above grade.
 - (iii) Completion of first floor slab which shall include a certified elevation survey to be provided by the Owner.
 - (iv) Completion of roof construction.
 - (v) Final color and landscaping.
- (4) Any person desiring approval of any plans or specifications shall submit the same addressed to the "Architectural Review Board," Horse Creek, 12860 Banyan Creek Drive, Fort Myers, FL 33908 (or at such other address as the Board may designate). Approval or disapproval by the Architectural Review Board shall only be evidenced by a written instrument executed by at least one (1) member of the Board, provided, however, that should the Board fail to act upon any submission

within thirty (30) days from the receipt thereof by the Board, such inaction shall be deemed approval of the submission. Notwithstanding such approval, all other conditions and requirements of this Declaration, the Articles, and Bylaws will remain in full force and effect. In the event that the Board disapproves any proposed structure or exterior additional change or alteration, the Board shall state with specificity the reasons for the disapproval.

- (5) The Architectural Review Board shall not be held responsible for approving plans that may be inconsistent with local, state, or federal regulations. Any inconsistencies or discrepancies with local, state or federal permits are the responsibility of the Lot Owner and home builder.

- 6.5 Architectural Approval by Horse Creek Development. So long as Declarant owns any property in Horse Creek for development, no improvement may be constructed, altered, planted, removed, or maintained anywhere in Horse Creek without Declarant's prior written approval. Once Declarant no longer owns any property in Horse Creek, the Association shall be responsible for such matters. The Association may promulgate "Design Review Guidelines" and require that improvements be constructed in accordance therewith, and may charge reasonable fees for processing approval requests. Prior to commencing any improvement, an Owner or the Association, whichever is applicable, shall submit whatever plans and specifications and material samples are required by Declarant, which Declarant shall approve, reject, or approve subject to change in writing. If any improvement is constructed or altered without such approval, Declarant may demand its removal, remodeling, or restoration, at the Owner's or the Association's cost, whichever is applicable, including any attorneys' fees incurred by Declarant. Declarant may enter the property, including any Lot, on which an improvement is being constructed in order to ensure compliance. Further, Declarant and the Association have the power to also enforce the provisions of this Declaration with respect to architectural review and control. The Design Guidelines of the Association shall take priority over any conflicting design or development standard adopted by the Architectural Review Board; provided, the Architectural Review Board may adopt and enforce standards that are more restrictive than those of the Design Guidelines.

ARTICLE 7

LAND USE RESTRICTIONS

- 7.1 Restrictions. In order to maintain the Property as a desirable place to live for all Owners, the following land use restrictions are made a part of this Declaration and shall be considered as the initial rules and regulations of the Association. The Declarant shall not be bound by any rules and regulations not set forth herein unless and until it has approved same in writing.

- (1) Antenna. No aerial or antenna shall be placed or erected upon any Lot or affixed in any manner to the exterior of any building in Horse Creek without the written approval of the Architectural Review Board, it being the intent that such service shall be provided by cable television.
- (2) Boats and Motor Vehicles. Passenger automobiles and vans and mini-trucks (used for personal transportation and not commercially) are permitted. No boats, boat trailers, commercial vehicles, full sized trucks, campers, motor homes, trailers, motorcycles or other non-passenger motor vehicles shall be placed, parked, or stored upon any portion of a Lot for longer than twenty four hours except where totally isolated from public view, such as in a garage.
- (3) Trees. The landscape plans of each Owner, including any plans for removal or alteration of the natural vegetation on any Lot, shall require prior approval by the Architectural Review Board and by the "Reviewer" under the Community Declaration, as that term is defined in the Community Declaration. No indigenous tree measuring four (4) or more inches in diameter at a point two (2) feet above ground level, nor any species of oak, regardless of size, may be removed, unless such tree is located within five feet of a structure or driveway approved by the Architectural Review Board or the Reviewer.
- (4) Artificial Vegetation. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot unless approved by the Architectural Review Board.
- (5) Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on a Lot or behind a screened area to be approved by the Architectural Review Board.
- (6) Landscaping. A basic landscaping plan, including any plans for removal or alternation of the natural vegetation, for each home must be submitted to and approved by the Architectural Review Board. All shrubs, trees, grass and planting of every kind shall be kept well maintained, properly cultivated, and free of trash and other sightly material. Seventy percent (70%) of all shrubs, bushes, plants, ground cover, trees, and palms (excluding lawns) must be native plant material. A minimum of two (2) canopy trees must be incorporated into the front yard of each landscape design. All landscaping must be installed prior to occupancy of a Unit or thirty days after completion, whichever comes first. All portions of Lots not improved with structures or paving shall be kept as lawns or grass, except those portions planted with trees, shrubs, bushes and mulched plantings. In addition, all lands forming portions of a public right-of-way between the boundary of a Lot and the pavement installed within the right-of-way, shall be grassed by the adjacent and

abutting Owner and maintained by him as a portion of his lawn. Rock or gravel yards are prohibited.

- (7) Parking and Garage Areas. Adequate off-street parking must be provided for all residential units. Single family residential units must provide at least two (2) car garage plus additional off-street parking areas for at least two (2) automobiles unless otherwise approved by the Architectural Review Board. Passenger vehicles shall only be parked on paved driveways. Side loading garages are encouraged but are not required.
- (8) Service, Screening, Storage Areas. Garbage and refuse shall be placed in suitable containers which shall be concealed and contained within buildings or shall be concealed by means of a screening wall or materials similar to and compatible with that of the building or buildings on the Lot or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year. Unless specifically approved by the Architectural Review Board, no materials, supplies, or equipment shall be stored on any Lot except inside a closed building or behind a visual barrier which shall screen such areas so that they are not visible from neighboring streets or Lots or Common Areas.
- (9) Storage Tanks. Other than well pressure tanks and pumps, no above ground storage tanks, including but not limited to, those used for storage of water, gasoline, oil, or other liquid or gas shall be permitted on the Lot outside of the building except as approved by the Architectural Review Board.
- (10) Outside Equipment. All well equipment, air conditions units, and trash receptacles must be screened from the front elevation view.
- (11) Signs. No commercial signs of any kind including "For Rent" or "For Sale" may be erected on any Lot without written approval of the Architectural Review Board or as may be required by legal proceedings, and it being understood that the Architectural Review Board will not grant permission for any signs larger than six (6) square feet unless their erection is necessary to avert serious hardship to Owners. In addition, until Developer has sold and closed on all Lots in the subdivisions, all signs must have the prior written approval of the Developer. The provisions of this Section 13.10, shall not be applicable to the Developer during the time it owns one (1) or more Lots in the Subdivision.
- (12) Exterior Colors. Colors should be harmonious and compatible with colors of natural surrounding and other adjacent buildings. The Architectural Review Board shall have the sole right to approve or disapprove colors so controlled and may make such decisions on purely aesthetic grounds, based solely on its own judgment.

- (13) Exterior Materials. Finish building materials shall be applied to all sides of the exteriors of the buildings. Exterior surfaces of all buildings are to be Hardi-Plank siding, stucco, brick, or a combination of the foregoing materials. Vinyl siding is specifically prohibited from being used on the exterior surfaces of the buildings.
- (14) Roofing. Unless otherwise approved by the Architectural Review Board, the roofs for all buildings shall consist of one of the following roofing materials: standing seam metal roofing, 5-V metal roofing, or color thru concrete tiles.
- (15) Driveways. Driveways shall consist of four inch (4") travel finished concrete, four inch (4") stamped concrete, or interlocking brick pavers.
- (16) Nuisances. No unsightly growth shall be permitted to grow or remain upon any Lot and no refuse pile or other unsightly object shall be allowed to be placed or remain anywhere thereon. In the event any Owner shall fail or refuse after a thirty (30) day notice mailed to his last known address to keep his Lot free of such unsightly growths or objects, then the Association may enter upon said Lot and remove the same at the expense of the Owner and such entries shall not be deemed a trespass. Said expense shall be added to and become part of the assessment to which said Lot is subject.
- (17) Mineral Exploration. The properties shall not be used in any manner to explore for or use commercially any water or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other such substances located in or under the ground.
- (18) Building Exterior. All windows, porches, balconies, and exteriors of all buildings on any Lot shall at all times be maintained in a neat and orderly manner. Exterior of all homes and other structures must be completed within one (1) year after the construction is commenced, except where such completion would result in a great hardship to the Owner due to strikes, fires, or natural calamities. No hurricane or storm shutters shall be installed except as approved by the Architectural Review Board.
- (19) Filling of Lots. No Lot which abuts any waterway or Common Area shall be altered in size by filling nor excavating of such waterway or Common Area. No fill may be placed on any Lot without prior approval by the Architectural Review Board and the Reviewer under the Design Review Guidelines.
- (20) Temporary Structures, Outbuildings. No structure of a temporary character, trailer, tent, shack, barn, shed, or other outbuildings shall be permitted on any Lot at any time.

- (21) Air-Conditioning Units. Only central air-conditioning units are permitted without the prior written consent of the Architectural Review Board.
- (22) Play or Swing Sets. All play or swing sets shall be placed in the rear portion of each lot behind the residence.
- (23) Swimming Pools. No above-ground swimming pools, spas, or the like shall be installed without the prior written consent of the Architectural Review Board. All pool screen cages must stay behind the side site lines on the main structure unless approved in writing by the Architectural Review Board. All pool screen cages shall be constructed with bronze aluminum framing.
- (24) Pool Screen Cages. All pool screen cages shall only be constructed out of white or bronze aluminum.
- (25) Window Treatments. Window treatments shall consist of drapery, blinds, shutters, decorative panels, or other tasteful window covering, of the type customarily found in single family homes, and no newspaper, aluminum foil, sheets, or other temporary window treatments are permitted, except for periods not exceeding two (2) weeks after an Owner moves into a Unit or when permanent window treatments are being cleaned or repaired.
- (26) Multiple Lots and Subdividing. Two or more adjacent lots may be used as a single building site with the approval of the Architectural Review Board. However, such a site may not be subdivided without the written consent of the Developer, and no single Lot may be subdivided under any circumstances except that the Developer may do so as part of modifying or amending the subdivision plat of the Properties.
- (27) Minimum Building Elevation. The first living floor of any building shall be at the minimum requirement to conform with then existing Federal Flood Insurance Regulations, but not less than nine feet two inches (9'2") above mean sea level ("Base Elevation"). Buildings will be elevated on suitable substructure compatible with the design of the home and Architectural Review Board shall have the authority to restrict the height above sea level to which the ridge of the roof or any element of the building excluding chimneys, flues, and vents on the particular Lots may extend. The purpose of such height restriction is to preserve views and aesthetics for the overall benefit of the community. No structure shall exceed thirty-five (35) feet above the base flood elevation, unless approved by Seller.
- (28) Setbacks. The minimum setback requirements for structures shall consist of a ten foot (10') side setback, a thirty foot (30') front setback, and a twenty-five foot (25') rear setback.

- (29) Utilities and Easements. A six (6) foot easement and right of way is expressly reserved along the side Lot lines of all Lots to permit the construction and maintenance by the Declarant, its successors and assigns and/or public utility companies of water, gas, drainage, telephone and other services of like nature. Owners may not grant easements on their Lots without written consent and approval of the Declarant or the Association.
- (30) **COMMENCEMENT OF CONSTRUCTION AND COMPLETION.** AN OWNER SHALL COMMENCE CONSTRUCTION ON HIS LOT WITHIN TWO (2) YEAR FROM THE DATE OF CLOSING. IF AN ORIGINAL OWNER RESELLS HIS LOT WITHIN THE INITIAL TWO (2) YEAR PERIOD, THE NEW OWNER(S) WILL BE REQUIRED TO COMMENCE CONSTRUCTION WITHIN TWO (2) YEAR OF THE DATE OF CLOSING BETWEEN THE DECLARANT AND THE ORIGINAL OWNER. IF THE OWNER DOES NOT COMMENCE CONSTRUCTION WITHIN THAT PERIOD OF TIME, THEN THE DECLARANT SHALL HAVE THE RIGHT TO PURCHASE THE LOT FROM THE OWNER AT NINETY PERCENT (90%) OF THE ORIGINAL PURCHASE PRICE LESS ALL SELLING AND CLOSING COSTS INCURRED BY DECLARANT IN ORIGINALLY SELLING THE LOT AND IN SUBSEQUENTLY REPURCHASING THE SAME, INCLUDING BUT NOT LIMITED TO REAL ESTATE COMMISSIONS, ATTORNEYS' FEES, TITLE INSURANCE PREMIUMS, DOCUMENTARY TAXES, AND RECORDING FEES. WHEN THE CONSTRUCTION IS ONCE BEGUN, WORK THEREON MUST BE PROSECUTED DILIGENTLY AND COMPLETED WITHIN ONE (1) YEAR. IF, FOR ANY REASON, WORK IS DISCONTINUED AND THERE IS NO SUBSTANTIAL PROGRESS TOWARD COMPLETION FOR A CONTINUOUS THREE (3) MONTH PERIOD, THEN THE ASSOCIATION SHALL HAVE THE RIGHT TO NOTIFY THE OWNER OF RECORD OF THE PREMISES OF ITS INTENTIONS HEREIN, INVADE THE PREMISES, AND TAKE SUCH STEPS AS MAY BE REQUIRED TO CORRECT AN UNDESIRABLE STRUCTURE AND REMOVE THE DEBRIS FROM THE LOT; THE REASON FOR SUCH CORRECTION SHALL BE SOLELY IN THE DISCRETION OF THE ASSOCIATION AND MAY INCLUDE, BUT NOT BE LIMITED TO, PURELY AESTHETIC GROUNDS. THE OWNER IN FACT OF THE PROPERTY SHALL BE LIABLE FOR ALL COSTS INCURRED IN ANY SUCH ACTION. THE TOTAL COST THEREOF WILL BE A LIEN ON HIS PROPERTY, WHICH LIEN MAY BE FORECLOSED IN THE MANNER PROVIDED FOR IN THESE COVENANTS AND THE BY-LAWS FOR THE FORECLOSURE OF ASSESSMENT LIENS.

- (31) **ALL LOT OWNERS MUST USE ONE OF THE DECLARANT'S APPROVED BUILDERS FOR THE CONSTRUCTION OF SINGLE FAMILY RESIDENCES IN HORSE CREEK. A LIST OF APPROVED BUILDERS CAN BE OBTAINED FROM THE DECLARANT.**
- (32) All dwelling units are required to have a minimum of two thousand one hundred (2,100) square feet of air conditioning living space.

7.2 Enforcement.

- (1) Compliance. It shall be the responsibility of each Owner, family members of Owners, and their authorized guests, agents, and tenants, to conform and abide by these Restrictions in regard to the use of the Property, as well as those additional Rules and Regulations which may be adopted in writing from time to time by the Board of Directors of the Association and the Architectural Review Board, and to see that all persons using Owner's Home by, through, and under him do likewise.
- (2) Violation. Upon violation of any of the Restrictions, adopted as herein provided, or upon violations of any of the provisions of this Declaration by an Owner, or his family, tenants, agents, or guests, the Association may bring an action for breach of contract, quantum meruit, declaratory decree, injunction, or any other applicable cause of action. The successful party may recover costs and attorney's fees in such suit. The Association shall also have the right to enter upon any Lot and correct any violation of the Restrictions and to assess the Owner for any charges incurred by such association. In addition, the Association, after providing written notice and an opportunity for a hearing before the Board, may impose a reasonable fine against an offending Owner for a Rule violation, and may enforce said fine by lien and foreclosure in the same manner as for unpaid assessments as set forth herein. The Association may, in addition, after reasonable notice and opportunity for hearing, suspend an offending Owner's voting rights in the Association or may suspend an offending Owner's right to use the Common Areas for up to ninety (90) days for a single infraction of Association Rules and Regulations.
- (3) Enforcement Against Association. Each Owner shall have standing to enforce these covenants and restrictions against the Association by any proceeding at law or in equity.

- 7.3 Additional Rules and Regulations. The Declarant, until it conveys the Common Areas, and thereafter (or earlier at the option of the Declarant exercised on one or more occasions) the Board of Directors of the Association, may establish such additional Restrictions as may be deemed to be in the best interests of the Association and its Members.

ARTICLE 8 MAINTENANCE, REPAIRS, AND REPLACEMENTS

Responsibility for maintenance, repairs, and replacement of the improvements within the Property and upon the Lots of Owners shall be as follows:

- 8.1 Obligation of Owners. Except as otherwise provided herein, each Home, and the fixtures, equipment, and appliances comprising a part thereof, located therein, or exclusively serving the same, including, but not limited to, screens, screen doors, glass windows, window caulking, driveways, garages, garage doors and openers, roofs, landscaping and/or sodded areas within any Lot, exterior painting, all mechanical and electrical systems, heating and air conditioning systems, air-conditioning compressors, sewer line from clean-out to residence, water line from meter to residence, and porches and walkways serving individual homes, shall be maintained, kept in good repair, and replaced by and at the expense of the respective Owners thereof. All maintenance, repairs, or replacements for which Owners are responsible and obligated to perform, which, if not performed or omitted, would affect other Homes or the appearance of the Owner's Home, shall be performed promptly as the need arises, and if the Lot Owner fails to promptly perform these, the Association shall have the right to perform these obligations and to assess the Lot Owner for the charges therefor which charges shall include administrative and financial expenses related to the Association's performance and enforcement of such obligations and such assessments, as well as any penalty which the Association may impose. The cost of any such work performed by the Association shall be secured by a lien upon the Lot on which the work was performed.
- 8.2 Obligation of Association. The Association shall be responsible for, and shall assess against and collect from the Owners of all Lots within the Property (except Lots owned by Declarant which are exempt), the costs of maintaining, repairing, replacing, and keeping in clean and orderly condition all of the Common Areas, including but not limited to, entry features and landscaping along such entry features, common area landscaping including within street medians and cul de sacs, street maintenance, street lighting operation and maintenance, sign maintenance, and drainage maintenance, as well as individual Lot landscaping maintenance.

ARTICLE 9 INSURANCE

- 9.1 Maintained by Association. The Association shall obtain and keep in force at all times the insurance coverage which it is required hereby to carry and may obtain and keep in force any or all of such other or additional insurance coverage as it deems appropriate hereby to carry. All insurance obtained by the Association shall be purchased for the benefit of the Association, Declarant, Lot Owners and their mortgagees, as their interests may appear. The Association shall purchase and carry insurance coverage as follows:

- (1) Public liability insurance with respect to the Common Areas and with respect to operations on the Lots carried on by the Association, in such amounts, with such coverage, and in such forms as shall be required by the Board of Directors of the Association to protect the Association and the Owners, including non-owned automobile coverage, off-premises employee coverage, water damage coverage, and legal liability coverage, with cross-liability endorsements to cover liability of all Owners as a group to each Owner;
- (2) Worker's compensation insurance to meet the requirements of law;
- (3) Hazard and Casualty Insurance with respect to the Common Areas, nothing herein shall be construed to require the Association to maintain hazard, casualty, liability, or any other form of insurance coverage with respect to injuries or damages occurring within a Unit or on a Lot. Each Owner is required to maintain such property insurance as he deems necessary for all improvements constructed on a Lot or for any furnishings, personal property, or other items serving a Unit or located within a Unit.
- (4) Officer's and Director's liability insurance for Officers and Directors of the Association.

The Association may purchase and carry such other insurance coverage as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interest of the Association and Owners.

Premiums for all insurance obtained and purchased by the Association shall be paid by the Association. The cost of insurance premiums, and other incidental expenses, incurred by the Association in administering and carrying out the provisions of this Article, shall be assessed against and collected from Owners as Common Expenses.

All policies of insurance obtained and purchased by the Association shall be for the benefit of the Declarant and the Association (including Directors and Officers if applicable), the Owners, as their interests may appear.

All persons beneficially interested in the insurance coverage obtained, purchased, and maintained by the Association shall be bound by the Association's selection of its insurer(s) and the amount of insurance coverage carried and kept in force by the Association.

- 9.2 The Association as Agent. The Association is irrevocably appointed agent for each Owner and for each holder of a mortgage or lien upon real property, and for each Owner of any other interest in the Association property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases for payment of claims.

- 9.3 Other Insurance. Each Owner shall obtain insurance coverage at their own expense upon their own property and for their own personal liability.
- 9.4 Reconstruction and Repair After Casualty. The repair and reconstruction of the Common Areas after casualty shall be governed by the following provisions:
- (1) If in the event of damage or destruction to the Common Areas, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause the damaged Common Areas to be repaired and reconstructed substantially as they previously existed.
 - (2) If the insurance proceeds are within Ten Thousand and No/100 Dollars (\$10,000.00) of being sufficient to effect total restoration to the Common Areas, then the Association shall cause the damaged Common Areas to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as an assessment against each Lot in equal shares.
 - (3) If the insurance proceeds are insufficient by more than Ten Thousand and No/100 Dollars (\$10,000.00) to effect total restoration to the Common Areas, then by written consent or vote of a simple majority of the Owners, they shall determine whether (i) to rebuild and restore damaged Common Areas in substantially the same manner as they existed prior to damage and to raise the necessary funds in excess of insurance proceeds by levying special assessments against all Lots in equal shares; (ii) to rebuild and restore the damaged Common Areas in a manner which utilizes all available insurance proceeds, as well as an additional amount, not to excess of Ten Thousand and No/100 Dollars (\$10,000.00), assessable to all the Owners as aforesaid but which is less expensive than replacing the damaged Common Areas in substantially the same manner as they existed prior to being damaged; or (iii) not to restore the damaged Common Areas and to redistribute the available insurance proceeds equally to the Owners of Lots.
 - (4) Each Owner shall be liable to the Association for any damage to the Common Areas, which may be sustained by reason of the negligence or willful misconduct of such Owner or of his tenants, family or guests. Such liability may be collectible by the Association in the manner provided in Article 5 for the collection of special assessments. The Association reserves the right to charge a special assessment equal to the increase, if any, in insurance premiums attributable to the practices and damaged caused by such Owner.

ARTICLE 10
PROVISIONS RELATED TO DEVELOPER

- 10.1 Appointment of Directors. The Declarant shall have the right to appoint all of the members of the Board of Directors of the Association until Turnover.
- 10.2 Title to Common Areas. The Declarant will initially retain the legal title to the Common Areas, to the extent Declarant has such title. On or before Turnover, the Declarant will convey the Common Areas it owns other than as may be dedicated on the plat of Horse Creek, to the Association by quit claim deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations, and easements of record and any easements reserved herein. Beginning on the date this Declaration is recorded in the Public Records of Lee County, the Association shall be responsible for maintenance and operation of the Common Areas, and for payment of any ad valorem taxes assessed against the Common Areas. The Developer shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent properties, and for the purpose of construction of any facilities on the Common Areas that Developer elects to build.
- 10.3 Subdivision and Regulation of Land. No Owner or other entity shall inaugurate or implement any variation from, modification to, or amendment of any governmental plans, land development regulations, development orders or development permits applicable to the Common Areas, or to Horse Creek, without the prior written approval of Declarant.
- 10.4 Declarant's Exculpation. Declarant may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without any liability of any nature or kind to any Owner or other entity or any other Person for any reason whatsoever, and any permission or approval granted shall be binding upon all persons.
- 10.5 Sales Activity. While Declarant holds property for sale or lease in the ordinary course of business within Horse Creek as defined herein, Declarant and its designees shall have the right to use the Common Areas (including, but not limited to, all recreational facilities) to establish, modify, maintain and utilize, as it and they deem appropriate, models, sales facilities, sales offices, or other offices for use in selling or leasing, as applicable, any part of Horse Creek. Without limiting the generality of the foregoing, the Declarant and its designees may show models or the Common Areas to prospective purchasers or tenants, erect signs and other promotional material to advertise, and take all other action helpful for sales, leases, and promotion of Horse Creek.
- 10.6 Assignment of Rights to Subsequent Developer. Except as otherwise specifically provided herein, Declarant reserves the right and the power to delegate or assign, either exclusively or non-exclusively, partially or completely, to any person or entity, any or all of its

development rights, powers, duties, privileges created or provided for by this Declaration or by any other recorded instrument. Such assignments shall not in any way lessen the Developer's rights herein.

10.7 Enforcement. Declarant reserves the right, and the power:

- (1) to enforce the covenants, conditions, restrictions, and other provisions of this Declaration;
- (2) to delegate or assign, either exclusively or non-exclusively, any or all of its rights, powers, duties or privileges hereunder to the Association, or to any other persons or entity; and
- (3) The Declarant shall have the right and the power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any person violating or attempting to violate any such provisions, to restrain any violation or attempted violation of such provisions, to require specific performance of such provisions, to recover damages for violations of such provisions, and against the land to enforce any lien created by this Declaration. Failure by Declarant, or the Association, or an Owner, or any other persons, to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter.

10.8 Other Rights and Powers of Declarant.

- (1) Declarant shall have the right and the power to regulate and control the external design and appearance of Horse Creek in such a manner as to:
 - (i) Promote a quality environment which will preserve the value of the property within Horse Creek; and
 - (ii) Foster the attractiveness and functional utility of Horse Creek as a place to live, including a harmonious relationship among structure, vegetation, and topography.
- (2) No nuisance or obnoxious or offensive activity shall be conducted or permitted on any Common Areas. The Declarant shall have the right and the power in the exercise of its reasonable discretion to determine the activities or the uses which constitute nuisances or obnoxious or offensive activity.

- (3) Any use of Horse Creek other than the uses intended pursuant to this Declaration shall be subject to the prior written approval of the Declarant so long as it holds any Unit for sale in the ordinary course of business within Horse Creek.
- (4) Declarant reserves the right to add additional improvements, at its cost and expense to the Common Areas.

10.9 Withdrawal or Addition of Property. The Declarant reserves the right, in its sole discretion, to add or withdraw real property from the submission to this declaration by a supplemental declaration hereto, except that property may not be withdrawn after it has been conveyed to the Association as provided in paragraph 10.2 above. Any such action to add or withdraw property must be approved by Declarant.

ARTICLE 11

DURATION OF COVENANTS AND AMENDMENTS

11.1 Duration of Covenants. The covenants, conditions, easements and restrictions in this Declaration shall run with and bind the property within Horse Creek, and shall inure to the benefit of and be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the fiftieth (50th) anniversary of the date of recording in the Public Records of Lee County, Florida. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration as amended being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, until terminated as provided below.

11.2 Termination. This Declaration may be terminated at any time if not less than eighty percent (80%) of the Owners of Lots subject to this Declaration vote in favor of terminating this Declaration. Written notice of any meeting at which a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Owners vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the Association meeting at which the resolution was adopted, the date that notice of the meeting was given, the total number of votes cast in favor of the resolution, and the total number of votes cast against the resolution. The certificate shall be recorded in the Public Records of Lee County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. The termination shall be effective on the date the certificate is recorded in the Public Records. Termination will not however extinguish any easements declared hereby that are necessary for egress,

utilities, and parking, nor will it affect the applicability or enforceability of the Community Declaration.

- 11.3 Amendments. This Declaration may be amended. However, the prior written approval from the Southwest Florida Water Management District is a condition precedent to the effectiveness of any amendment that will affect any aspect of a Water Managed Area or the Water Management System, including water management portions of common areas. Except as otherwise specifically provided herein, amendments to this Declaration may be proposed by the Board of Directors or by written petition of at least one-fourth (1/4) of the Owners. Provided, however, and notwithstanding the foregoing, for so long as the Developer owns any property within Horse Creek, the Developer reserves and retains the right to unilaterally amend this Declaration without joinder or consent of any Owner, Member, or other party, other than Declarant.
- 11.4 Amendment of Provision Relating to Developer. As long as the Developer holds any property for sale in the ordinary course of business within Horse Creek, no amendment shall have the effect of changing any provision relating specifically to the Developer without the Developer's written consent.
- 11.5 Procedure. If an amendment to this Declaration is proposed, the appropriate notices and copies of the full text of the proposed amendments shall be mailed to all Owners with notice of a meeting at which the amendments will be voted on.
- 11.6 Vote Required. Except as otherwise provided, this Declaration may be amended if a proposed amendment is approved by at least two-thirds (2/3) of the Owners at any meeting called for this purpose.
- 11.7 Certificates; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County. The certificate must set forth the location in the Public Records of Lee County where this Declaration was originally recorded.

ARTICLE 12

STORM WATER MANAGEMENT SYSTEM

The Property is located within the boundaries of the South Florida Water Management District. The Surface Water Management System shall constitute a portion of Common Area and shall be maintained by the Association as such.

The Association and the South Florida Water Management District shall have a non-exclusive easement over, upon and for use of Surface Water Management System, and an easement for reasonable ingress, egress and access to enter upon any unimproved portion of the Property in order to construct, maintain or repair, as necessary, any portion of the Surface Water Management System.

Any amendment of this Declaration which would affect the Surface Water Management System must be approved by South Florida Water Management District.

Any amendment to the Surface Water Management System must be approved by the South Florida Water Management District prior to implementation of the change.

The beneficiaries of the Surface Water Management System, including but not limited to all Owners, shall have the legal right to enforce the assurances that the drainage system, easements and rights-of-way will be continuously maintained.

ARTICLE 13 MORTGAGEE RIGHTS

- 13.1 Cure of Delinquent Assessments. A first Mortgagee will be entitled to cure any delinquency of the Owner of any Lot encumbered by the first Mortgagee in the payment of Assessments. In that event, the Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.
- 13.2 Title Taken By First Mortgagee. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the first Mortgage, including foreclosure of the first mortgage, will be liable for all Assessments due and payable as of the date title to the Lot vests in the first Mortgagee under the Statutes of Florida governing foreclosures. Except as otherwise provided by law, such first Mortgagee will not be liable for any unpaid dues and charges attributable to the Lot or Parcel which accrued prior to the date such title vests in the first Mortgagee, except to the extent a claim of lien therefor was recorded prior to the recordation of the Mortgage.

ARTICLE 14 MISCELLANEOUS

- 14.1 Other Documents. Declarant and the Association shall have such rights, powers, duties, and privileges as set forth herein or in the Articles of Incorporation and Bylaws; however, no entity may have rights, duties, powers, or privileges that are in conflict with the provisions of this Declaration, and this Declaration shall prevail in all events of conflict.
- 14.2 Severability. If any covenant, conditions, restriction, or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, then such

holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

- 14.3 Dissolution. In the event of dissolution of the Association, the property and improvements previously dedicated or conveyed to the Association shall be conveyed or dedicated to a similar nonprofit organization or entity to assure continued maintenance and operation of the property as provided herein. In the event of dissolution of the Association, each Member shall continue to be subject to the annual assessment specified in Section 5.2 and each Member shall continue to be personally obligated to Declarant or the successor or assigns of the Association as the case may be for such assessment to the extent that such assessments are required to enable Declarant or any such successors or assigns acquiring any real property previously owned by the Association to properly maintain, operate, and preserve it.
- 14.4 Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, first class postpaid, to the last known address of the person who appears as the Owner on the records of the Association at the time of such mailing.
- 14.5 Condition and Appearance of Units. While it is the responsibility of each Unit Owner to maintain, replace and repair at his own expense his Unit and all appurtenances thereto, including without limitation the roof, air conditioner, sidewalk, stoops, screen porch, pool enclosure, and driveway, the overall appearance and condition of the buildings has a direct effect upon the value of all Units and the desirability of Horse Creek as a residence. Each Unit Owner shall, therefore, maintain his Unit in a good, safe and presentable condition at all times. Failure to do so shall be ground for the Association to perform the necessary work at the expense of the offending Owners and to secure payment as a special assessment.
- 14.6 Enforcement. These covenants and restrictions may be enforced by the Association or any Owner by any proceeding at law or in equity against any person or persons including lessee and guests violating or attempting to violate any covenant or restriction, either to restrain the violation, to enjoin compliance, or to recover damages, and against the Units to enforce any lien created by these covenants; and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party shall recover costs and reasonable attorneys' fees at all trial and appellate levels.
- 14.7 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

- 14.8 Partial Invalidity. If any provision or any portion of any provision of this Declaration, or the application of any such provision or portion thereof to any person or circumstance, shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Declaration, or the application of such provision held invalid or unenforceable to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 14.9 Binding Nature. This Declaration shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, administrators, successors and assigns. No assignment of this Declaration or of any rights hereunder shall relieve the assigning party of any of its obligations or liabilities hereunder.
- 14.10 Number and Gender. Wherever in this Declaration the context so requires the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.
- 14.11 Construction. The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general development plan for Horse Creek and the purposes set forth herein.
- 14.12 Captions, Headings, and Titles. Captions, headings, and titles inserted throughout this Declaration are for convenience only, and in no way shall such captions, headings, or titles define, limit, or in any way affect the subject matter, content, or interpretation of the terms and provisions of this Declaration.
- 14.13 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions of this Declaration and of any of the exhibits attached hereto. Their interpretation shall be binding upon all parties unless unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.
- 14.14 Applicable Statutes. The validity, application, and construction of this Declaration and its exhibits shall be governed by the laws of the State of Florida as they exist on the date of the recording of this Declaration.

IN WITNESS WHEREOF, the Declarant hereby executes this Declaration by and through its duly authorized officer.

Signed, sealed, and delivered
in the presence of:

Chastity S. Stafford
Witness Signature
Print Name: Chastity S. Stafford
Karen M. Dodrill
Witness Signature
Print Name: KAREN M DODRILL

BUCKINGHAM 225 DEVELOPMENT, INC.,
a Florida corporation

Daniel W. Dodrill
Daniel W. Dodrill, President

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 11 day of April, 2005, by Daniel W. Dodrill, as President of Buckingham 225 Development, Inc.

Chastity S. Stafford
Signature of Notary Public - State of Florida
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ☒ OR — Produced Identification ☐
Type of Identification Produced: _____



Chastity Stafford
My Commission DD149974
Expires November 03, 2006

EXHIBIT "A"

HORSE CREEK LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN SECTION 6, TOWNSHIP 44 SOUTH, RANGE 26 EAST AND LYING IN SECTION 31, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 6;
THENCE NORTH 89°20'50" EAST ALONG THE NORTHERLY LINE OF SAID SECTION 6 AND THE SOUTHERLY LINE OF THE AFOREMENTIONED SECTION 31 A DISTANCE OF 31.83 FEET TO AN INTERSECTION WITH THE MAINTAINED RIGHT OF WAY LINE OF WILLIAMSON ROAD AND THE POINT OF BEGINNING OF THE PARCEL HEREIN BEING DESCRIBED;
THENCE CONTINUING ALONG SAID NORTHERLY AND SOUTHERLY LINE NORTH 89°20'50" EAST A DISTANCE OF 1948.96 FEET;
THENCE LEAVING SAID NORTHERLY AND SOUTHERLY LINE NORTH 0°36'37" WEST A DISTANCE OF 1287.13 FEET TO THE SOUTHERLY MEAN HIGH WATER LINE OF THE ORANGE RIVER;
THENCE ALONG SAID MEAN HIGH WATER LINE SOUTH 61°41'46" EAST A DISTANCE OF 75.08 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 48°40'36" EAST A DISTANCE OF 103.09 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 52°34'01" EAST A DISTANCE OF 47.30 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 71°03'25" EAST A DISTANCE OF 46.32 FEET;
THENCE CONTINUING ALONG SAID LINE NORTH 71°18'45" EAST A DISTANCE OF 7.89 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 81°25'57" EAST A DISTANCE OF 10.06 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 37°30'18" EAST A DISTANCE OF 12.33 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 56°31'41" EAST A DISTANCE OF 55.58 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 59°06'40" EAST A DISTANCE OF 42.28 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 74°03'27" EAST A DISTANCE OF 42.50 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 78°25'27" EAST A DISTANCE OF 49.00 FEET;
THENCE CONTINUING ALONG SAID LINE NORTH 89°08'05" EAST A DISTANCE OF 42.10 FEET;
THENCE CONTINUING ALONG SAID LINE NORTH 84°17'02" EAST A DISTANCE OF 47.85 FEET;
THENCE CONTINUING ALONG SAID LINE NORTH 69°28'05" EAST A DISTANCE OF 55.76 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 15°22'45" EAST A DISTANCE OF 10.67 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 07°45'42" EAST A DISTANCE OF 68.12 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 16°33'10" EAST A DISTANCE OF 49.10 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 26°57'36" EAST A DISTANCE OF 77.80 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 69°37'48" EAST A DISTANCE OF 27.82 FEET;
THENCE CONTINUING ALONG SAID LINE NORTH 60°29'23" EAST A DISTANCE OF 8.27 FEET;
THENCE CONTINUING ALONG SAID LINE NORTH 05°25'34" WEST A DISTANCE OF 9.86 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 83°46'43" EAST A DISTANCE OF 5.35 FEET TO AN INTERSECTION WITH THE EASTERLY LINE OF THE SOUTHWEST ONE QUARTER (1/4) OF SAID SECTION 31 SAID INTERSECTION BEING 883.92 FEET NORTHERLY FROM THE SOUTH 1/4 CORNER OF SAID SECTION 31;
THENCE SOUTH 0°44'23" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 43.07 FEET TO AN INTERSECTION WITH THE MEAN HIGH WATER LINE OF THE ORANGE RIVER;
THENCE LEAVING SAID EASTERLY LINE SOUTH 58°53'49" WEST ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 10.41 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 9°44'34" WEST A DISTANCE OF 38.70 FEET;
THENCE CONTINUING ALONG SAID SOUTH 8°59'15" EAST A DISTANCE OF 32.58 FEET;
THENCE CONTINUING ALONG SAID SOUTH 37°00'37" EAST A DISTANCE OF 19.18 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED EASTERLY LINE;
THENCE ALONG SAID EASTERLY LINE SOUTH 0°44'23" EAST A DISTANCE OF 334.82 FEET;
THENCE LEAVING SAID EASTERLY LINE SOUTH 89°20'50" WEST A DISTANCE OF 28.00 FEET;
THENCE SOUTH 0°44'23" EAST A DISTANCE OF 383.13 FEET TO AN INTERSECTION WITH THE MAINTAINED RIGHT OF WAY LINE OF ORANGE RIVER LOOP ROAD;
THENCE ALONG SAID MAINTAINED RIGHT OF WAY LINE SOUTH 84°52'55" WEST A DISTANCE OF 37.95 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 37°04'13" WEST A DISTANCE OF 36.55 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 74°07'40" WEST A DISTANCE OF 17.61 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 0°49'03" EAST A DISTANCE OF 757.18 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 0°49'03" EAST A DISTANCE OF 2809.38 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 13°01'15" WEST A DISTANCE OF 152.00 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 30°36'03" WEST A DISTANCE OF 39.95 FEET TO AN INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF ORANGE RIVER BOULEVARD (50' R.O.W.);
THENCE NORTH 79°56'14" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 2496.05 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED MAINTAINED RIGHT OF WAY LINE OF WILLIAMSON ROAD;
THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE NORTH 0°59'28" WEST ALONG SAID MAINTAINED RIGHT OF WAY LINE A DISTANCE OF 645.01 FEET TO AN INTERSECTION WITH THE EAST / WEST 1/4

SECTION LINE OF SAID SECTION 6;
THENCE CONTINUING ALONG SAID MAINTAINED RIGHT OF WAY LINE NORTH 0°59'28" WEST A DISTANCE
OF 400.02 FEET;
THENCE CONTINUING ALONG SAID MAINTAINED RIGHT OF WAY LINE NORTH 0°36'59" WEST A DISTANCE
OF 2243.89 FEET TO AN INTERSECTION WITH THE AFOREMENTIONED NORTHERLY LINE OF SAID
SECTION 6 AND THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

CONTAINING 219.3 ACRES OF LAND, MORE OR LESS;
SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

EXHIBIT "B"

ARTICLES OF INCORPORATION OF HORSE CREEK HOMEOWNERS ASSOCIATION, INC.

Pursuant to Section 617.02011, Florida Statutes, these Articles of Incorporation are created by Daniel W. Dodrill, as sole incorporator, for the purposes set forth below.

ARTICLE I

NAME AND ADDRESS: The name of the Corporation is Horse Creek Homeowners Association, Inc. (the "Corporation"), and its initial principal office and mailing address is 12860 Banyan Creek Drive, Fort Myers, FL 33908.

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Corporation is organized is to provide an entity for the ownership, maintenance and operation of certain areas serving the Horse Creek Subdivision ("Horse Creek"), located in Lee County, Florida. Horse Creek consists of the land described in Exhibit "A" to the Declaration of Covenants, Easements, and Restrictions for Horse Creek to which these Articles of Incorporation are attached as Exhibit "B" (the "Declaration of Covenants"), and the improvements to be constructed thereon.

The Corporation is organized and shall exist on a non-stock basis as a Florida corporation not for profit. No income of the Corporation shall be distributed or inure to the private benefit of any member, director, or officer. All funds and the title to all property acquired by the Corporation shall be held for the benefit of the Owners and Members in accordance with the provisions of these Articles of Incorporation and the Bylaws. For the accomplishment of its purposes, the Corporation shall have all of the common law and statutory powers and duties of a Florida corporation not for profit, except as limited or modified by the Declaration of Covenants, and these Articles or the Bylaws, including without limitation the following powers:

- (A) To own, acquire and convey land, and to operate, maintain, and manage those lands owned or to be owned by the Corporation and such other lands which the Corporation is responsible to maintain.
- (B) To operate, maintain, manage, and keep in good repair, all improvements and amenities which may be placed upon lands owned by the Corporation, or and upon lands which the Corporation is responsible to maintain, which may include, without limitation, landscape buffers, surface water drainage facilities to include a surface water management system permitted by the

South Florida Water Management District, lakes, common roads, streets, and parking areas, all located within Horse Creek for the use of the Corporation's Members.

- (C) To landscape all lands owned by the Corporation, and all lands which the Corporation is responsible to maintain, and to contribute to the artistic and architectural building and standards of all lands owned or maintained by the Corporation, and all buildings and improvements thereon.
- (D) To make available to the Members of the Corporation services and facilities for the enjoyment of the properties herein mentioned, and to promote the social welfare, security, and common good of the Members.
- (E) To assess fees against the Members of the Corporation for the operation and maintenance of the Corporation in order to enable the Corporation to perform its purposes as set forth in the Declaration of Covenants, herein, and in the Bylaws of the Corporation, and such other purposes as may be allowed by law.
- (F) To borrow or raise money for any of the purposes of the Corporation and from time to time without limit as to amount; to draw, make, accept, endorse, execute, and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness; and to secure the payment of any thereof, and of the interest thereon, by mortgage, pledge, conveyance or assignment in trust, of the whole or any part of the rights or property of the Corporation.
- (G) To make and adopt rules for the operation, regulation and maintenance of the lands it is designated to maintain or own and to enforce such regulations.
- (H) To sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.
- (I) Generally to take all action necessary and appropriate to the fulfillment of the foregoing purposes and powers.

ARTICLE III

MEMBERSHIP:

- (A) The Members of this Corporation shall be the owners of legal title to any lot, unit or other real property within Horse Creek as provided in the Bylaws.

- (B) Whenever a vote of the Members is required, each Member shall be entitled to the number of votes as set forth in the Bylaws. The manner of exercising voting rights shall be as set forth in the Bylaws.
- (C) The share of a Member in the funds and assets of the Corporation cannot be assigned, withdrawn or transferred in any manner except as an appurtenance to the property the Association operates.

ARTICLE IV

DIRECTORS AND OFFICERS: The affairs of the Corporation shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors. Directors shall be appointed or elected by the Members in the manner set forth in the Bylaws. Directors may be removed, and vacancies on the Board of Directors shall be filled, in the manner provided by the Bylaws. The business of the Corporation shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its annual organizational meeting, and shall serve at the pleasure of the Board.

ARTICLE V

TERM: The term of the Corporation shall be perpetual.

ARTICLE VI

BYLAWS: The Bylaws of the Corporation may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

AMENDMENTS:

- (A) These Articles of Incorporation may be altered or amended at any regular or special meeting of the Members, provided that:
 - (1) Written notice of the meeting is given in the manner provided for in the Bylaws, and the notice contains the full text of the proposed alteration or amendment; and
 - (2) The proposed alteration or amendment is approved by the affirmative vote of at least a majority of the voting interests.

- (B) No amendment of these Articles or of the Bylaws shall be effective to change the voting rights of any Member, or to change the proportion or percentage by which a Member shares the expenses of the Corporation, unless that Member consents thereto.
- (C) An amendment shall become effective after filing with the Secretary of State and after being recorded in the Public Records of Lee County, Florida. For recording purposes, the amendment shall be attached to a certificate executed by the officers of the Corporation with the formalities of a deed. The certificate must identify the book and page of the Public Records where the Declaration of Covenants was originally recorded.

ARTICLE VIII

INITIAL DIRECTORS: The initial Directors of the Corporation shall be:

Daniel W. Dodrill
12860 Banyan Creek Drive
Fort Myers, FL 33908

Karen Dodrill
12860 Banyan Creek Drive
Fort Myers, FL 33908

John Bill
12860 Banyan Creek Drive
Fort Myers, FL 33908

ARTICLE IX

INITIAL REGISTERED AGENT:

The initial registered office of the Corporation shall be at:

12860 Banyan Creek Drive
Fort Myers, FL 33908

The initial registered agent at said address shall be:

Daniel W. Dodrill

ARTICLE X

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Corporation shall indemnify and hold harmless every Director, officer and volunteer of the Corporation against all expenses and liabilities, including attorneys' fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Corporation. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) Willful misconduct or a conscious disregard for the best interests of the Corporation in a proceeding by or in the right of the Corporation to procure a judgment in its favor.
- (B) Violation of criminal law, unless the person seeking indemnification had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the person seeking indemnification derived an improper personal benefit.
- (D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property, in an action by or in the right of someone other than the association or a member.
- (E) Wrongful conduct by Directors or officers appointed by the Developer in a proceeding brought by or on behalf of the Corporation.

In the event of a settlement, the right to indemnification is subject to the finding by at least a majority of the disinterested Directors that the settlement is in the best interest of the Corporation. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

IN WITNESS WHEREOF on this ____ day of _____, 2005.



Daniel W. Dodrill, Incorporator

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 7th day of
February, 2005, by Daniel W. Dodrill.




Chastity Stafford
My Commission DD149974
Expires November 03, 2006

Chastity Stafford
Signature of Notary Public - State of Florida
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ☒ -- OR -- Produced Identification ☐
Type of Identification Produced: _____

ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for Horse Creek Homeowners Association, Inc., at a place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.



Daniel W. Dodrill

EXHIBIT "C"
BYLAWS
OF
HORSE CREEK HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
GENERAL

These are the Bylaws of the Horse Creek Homeowners Association, Inc., a Florida corporation not for profit, hereinafter the "Association" or the "Corporation."

- 1.1 Principal Office. The initial principal office of the Corporation shall be 12860 Banyan Creek Drive, Fort Myers, Florida 33908, and thereafter shall be at such location as the Board of Directors may determine.
- 1.2 Seal. The seal of the Corporation shall be inscribed with the name of the Corporation, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the Corporation where a seal may be required.
- 1.3 Definitions. The definitions set forth in the Declaration of Covenants, Easements, and Restrictions for Horse Creek shall apply to the terms used in these Bylaws, unless another meaning is clearly required by the context.

ARTICLE II
MEMBERSHIP

- 2.1 Qualifications. The members ("Member" or "Members") shall be the record owners ("Owner" or "Owners") of legal title to any Lot located within Horse Creek. Membership shall become effective upon the recordation of a deed or other instrument evidencing the transfer of legal title to a Lot located in Horse Creek, Lee County, Florida, to a Member. In the case of a Lot subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the property solely for the purpose of determining voting and use rights.
- 2.2. Classes of Membership and Voting Rights. There shall be two (2) types of Members of the Corporation: Class A Members and Class B Members.

- (A) Class A Members shall be all lot owners. Lot owners shall be entitled to one (1) vote of each Lot owned. Class A Members shall be entitled to vote only after relinquishment of control by Developer as provided in Article X below. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be executed as such Members may determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.
- (B) Buckingham 225 Development, Inc. ("Developer") shall be the Class B Member. The Class B Member shall be the sole Class of Members entitled to vote until the Developer relinquishes control as provided in Article X below. Upon relinquishment of control by the Developer, Class B Membership shall cease and be converted to Class A Membership.
- (C) The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a Lot is owned by one natural person, his right to vote is established by the record title to the Lot. If a Lot is owned jointly by two or more persons, the vote may be cast by any of the record owners of the Lot. If two or more owners of the Lot do not agree among themselves how their one vote shall be cast, that vote shall not be counted. If the owner of a Lot is a corporation, the vote of that Lot may be cast by the president or vice-president of the owning corporation. If a Lot is owned by a limited liability company, the vote of that Lot may be cast by a president, vice-president, manager or managing member of the company. If a Lot is owned by a partnership, its vote may be cast by any general partner.

2.3 Approval or Disapproval of Matters. Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such unit at an Association meeting as stated in Section 2.2 above, unless the joinder of all record Owners is specifically required.

2.4 Termination of Membership. The termination of membership in the Association does not relieve or release any former Member from liability or obligation incurred under or in any way during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.

ARTICLE III MEMBERS' MEETINGS

- 3.1 Annual Meeting. An annual meeting shall be held in Lee County, Florida, each calendar year not later than the month of March, at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the Members. At the time of the annual meeting all ballots cast in the annual election of Directors shall be counted and the election results announced.
- 3.2 Special Members' Meetings. Special Members' meetings must be held whenever called by the President or by a majority of the Board of Directors, and may also be called by Members having at least ten percent (10%) of the voting interests entitled to vote. Business at any special meeting shall be limited to the items specified in the request and contained in the notice of meeting.
- 3.3 Notice of Meetings. Notice of all Members' meetings must state the time, date, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each Member at the address which appears on the books of the Association, or may be furnished by personal delivery. The Member bears the responsibility for notifying the Association of any change of address. The notice must be mailed or delivered at least fourteen (14) days before the meeting. Notice of any meeting may be waived in writing by any person entitled to receive such notice.
- 3.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on Common Area property within Horse Creek for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda of the annual meeting shall also be sent by first class mail to each Owner, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may be delivered in person to any Owner, instead of by mail, if a written waiver of mailing is obtained. The notice and agenda of the annual meeting must be mailed or delivered to Owners at least fourteen (14) days before the annual meeting.
- 3.5 Quorum. A quorum at a Members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least one-third (1/3) of the voting interests entitled to vote.

- 3.6 Vote Required. Except for the election of Directors as provided in Paragraph 4.6 below, the acts approved by a majority vote of the voting interests entitled to vote cast at a duly called meeting of the Members at which a quorum has been attained shall be binding upon all Owners for all purposes, except where a greater or different number of votes is required by law or by any provision of the Articles or Declaration.
- 3.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a Members meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. "Limited proxies" shall be used for votes taken to waive reserves or financial statement requirements, to amend the Articles or Declaration, and for all other matters for which a vote of the Members is required or permitted by law. "General proxies" may be used to establish a quorum, for procedural votes, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the Lot, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. Holders of proxies need not be Members. No proxy shall be valid if it names more than one person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.
- 3.8 Adjourned Meetings. Any duly called meeting of the Members may be adjourned to be reconvened at a specific later time by vote of the majority of the voting interests of the Membership class entitled to vote, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.
- 3.9 Order of Business. The order of business at Members' meetings shall be substantially as follows:
- (A) Counting of ballots in annual election (if necessary)
 - (B) Call of the roll or determination of quorum.
 - (C) Reading or disposal of minutes of last Members meeting
 - (D) Reports of Officers
 - (E) Reports of Committees

- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

- 3.10 Minutes. Minutes of all meetings of the Members, and of the Board of Directors, shall be kept in a businesslike manner, available for inspection by Members or their authorized representatives at all reasonable times, and for at least seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.
- 3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.
- 3.12 Action by Members Without Meeting. Except the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the Members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by Members, entitled to vote, having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the Members at a meeting of the Members entitled to vote held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all Members entitled to vote who have not consented in writing. If the vote is taken by the method described in this Section 3.12, the list of Owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

ARTICLE IV

BOARD OF DIRECTORS

- 4.1 Powers. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the Owners only when

such is specifically required. The powers of the Board of Directors shall specifically include, but are not limited to, the following:

- (A) To levy and collect fees and assessments in accordance with the provisions of the Articles of Incorporation and these Bylaws, and to establish the time and manner within which payment of same are due;
- (B) To use and expend the fees and assessments collected for those purposes set forth in the Articles of Incorporation and as may be permitted by law;
- (C) To perform all functions set forth in the Articles of Incorporation and as may be permitted by law, and in conjunction with the foregoing, to purchase the necessary equipment, furnishings, fixtures, accessories and tools necessary or incidental to the maintenance of the Corporation Property;
- (D) To collect delinquent fees and assessments by suit or otherwise;
- (E) To employ such personnel as may be necessary or incidental in order to carry out the purposes and functions of the Corporation; and
- (F) To enter into such contracts and bind the Corporation thereby as the Board of Directors may deem reasonable in order to carry out the powers and functions of the Board of Directors, including the power to borrow money.

4.2 Limitation on Powers. From and after the date that control of the Association is transferred to Members other than the Developer, the Board of Directors may not purchase any land, nor make any material alterations of, or substantial additions to, the Common Areas or the facilities located thereon, costing more than Fifteen Thousand and No/100 Dollars (\$15,000.00) in the aggregate in any calendar year, without the prior written approval of a majority of the voting interests of the Class A Members. However, if work necessary to insure, protect, maintain, repair or replace the Common Areas or facilities also constitutes a material alteration or substantial addition, the foregoing limitation shall not apply.

4.3 Compensation. Directors and officers shall not receive compensation for their services as such, but may, at the discretion of the Board of Directors, receive reimbursement for so-called "out-of-pocket" expenses incurred in the actual performance of their duties.

4.4 Number and Terms of Service.

- (A) The Directors shall be elected by the Members entitled to vote. Initially the number of Directors which shall constitute the whole Board of Directors shall be three (3). To provide for a larger board and a continuity of experience, at the first election in which Owners other than the Developer elect a majority of the Directors, the number of Directors to be elected shall be increased to five (5) and a system of staggered terms of office shall be established. The three (3) candidates receiving the highest number of votes shall each be elected for a term which expires at the annual election after the next annual election. The two (2) candidates receiving the next highest number of votes shall be elected for a term which expires at the next annual election. If there are five (5) or fewer candidates, the determination of who is elected to serve the longer terms shall be made among them by agreement or by lot. Thereafter, all Directors shall be elected for two (2) year terms. A Director's term ends at the annual election at which his successor is to be duly elected, or at such other time as may be provided by law.
- (B) Directors shall be elected by the Class A Members as described in Section 4.6 below, or in the case of a vacancy, as provided in Section 4.7 below.
- (C) Directors shall have a fiduciary relationship with all Members of the Corporation.

4.5 Qualifications. Except for Directors appointed by the Developer, each Director must be a Member or the spouse of a Member.

4.6 Elections. Beginning with the first election in which Members other than the Developer elect a majority of the Directors, the Class A Members shall annually elect by written, secret ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

- (A) First Notice; Candidates. Not less than sixty (60) days before the election, the Association shall mail or deliver to each Owner entitled to vote, a first notice of the date of the election. Any Owner or other eligible person wishing to be a candidate may qualify as such by giving written notice to the Association at least forty (40) days before the annual election
- (B) Second Notice; Candidate Information Sheets. If there are more candidates than there are Directors to be elected, balloting is required. Together with the written notice and agenda for the meeting, the Association shall mail or

deliver a second notice of election to all Owners entitled to vote in the contested election, together with a ballot listing all qualified candidates in alphabetical order, by surname. This notice may also include the notice of the annual meeting required by Section 3.4 above. Upon timely request of a candidate, the Association shall also include an information sheet (no larger than 8-1/2 inches by 11 inches, furnished by the candidate) in the mailing. The costs of mailing and copying the candidate information sheet are borne by the Association.

- (C) Balloting. Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20 %) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, each Owner shall have as many votes as there are Directors to be elected, but no Owner may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, or by any other method required or permitted by law.

4.7 Vacancies on the Board. Except for the filling of vacancies during the time when the Developer is entitled to appoint the Directors, if the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected as follows:

- (A) If a vacancy is caused by the death, disqualification, or resignation of a Director, other than a Director appointed by the Developer, a majority of the remaining Directors, not less than a quorum, shall appoint a successor who shall hold office until the next regularly scheduled election, unless otherwise provided by law. In the event a vacancy is caused by the death, disqualification, or resignation of a Director appointed by the Developer, the Developer shall select the Director's successor.
- (B) If a vacancy occurs as a result of a recall then the vacancy will be filled by a special election of the Class A Members. Such election shall occur no later than thirty (30) days after the vacancy.

4.8 Removal of Directors. Any or all Directors, except those appointed by the Developer, may be removed with or without cause by a majority vote of the Class A Members that elected the Director either by a written petition or at any meeting called for that purpose. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each

Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests of the Class A Members for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given.

- 4.9 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed and announced by the Directors at the meeting in conjunction with which they were elected. Owners shall receive notice of the organizational meeting of the new Board in accordance with the provisions of Paragraph 4.8 above.
- 4.10 Other Meetings. Meetings of the Board may be held at such time and place in Lee County, Florida, as shall be determined from time to time by a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days prior to the day named for such meeting.
- 4.11 Notice to Owners. All meetings of the Board of Directors shall be open to all Members. A notice and agenda for each Board meeting shall be posted conspicuously on Common Area property within Horse Creek for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which a non-emergency special assessment will be considered shall be mailed to each owner at least fourteen (14) days before the meeting, and an affidavit of mailing shall be retained as proof of mailing. Notice of any Board meeting at which a budget will be adopted or amended shall conform to the requirements of Paragraph 7.5, below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.
- 4.12 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.
- 4.13 Quorum of Directors. A quorum at a Board meeting exists only when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation in a meeting by such means is equivalent to

presence in person. Directors may not vote or participate in Board meetings by proxy or by secret ballot, except that officers may be elected by secret ballot.

- 4.14 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Articles, Declaration, or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted with the majority on any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.
- 4.15 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.
- 4.16 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of the Directors present.
- 4.17 Compensation of Directors and Officers. Neither Directors nor Officers shall receive compensation for their services as such. Directors and Officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.
- 4.18 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. To the extent required by law, committee meetings shall be noticed and conducted in the same manner as provided for Board meetings in this Section 4.

ARTICLE V OFFICERS

The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The President must be a Director. Any two of said officers may be held by one person, except

that the President shall not hold any other office. The Board of Directors may appoint such other officers as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The officers of the Corporation have a fiduciary duty to the members.

- 5.1 Tenure of Officers. All officers of the Corporation shall hold office until their successors are elected and qualified. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of the Directors. Any officer may resign at any time by giving written notice to the Corporation and unless otherwise specified therein, the resignation shall become effective upon receipt. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.
- 5.2 The President. The President shall preside at all meetings of the Directors; he shall have general and active management of the business of the Corporation; he shall see that all orders and resolutions of the Board of Directors are carried into effect; he shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by statute to be otherwise signed and executed, and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The President shall have general superintendency and direction of all the other officers of the Corporation and shall see to the best of his ability that their duties are performed properly; he shall submit a report of the operations of the Corporation for the fiscal year to the Board of Directors whenever called for by the Board; and from time to time shall report to the Board all matters within his knowledge which the best interest of the Corporation may require to be brought to their notice; he shall be an *ex officio* member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of the president of a corporation.
- 5.3 The Vice-President. The Vice-President, or if there be more than one, the Vice-Presidents, according to the order of their election appointment, shall be vested with all powers and duties required to perform the duties of the President in his absence, and such other duties as may be prescribed by the Board of Directors.
- 5.4 The Secretary. The Secretary shall be responsible for the keeping of the minutes of the meetings of the Board of Directors and of the Members in one or more books provided for that purpose; he shall see that all notices of meetings are duly given in accordance with these Bylaws, or as required by statute; he shall be the custodian of the corporate records and of the seal of the Corporation and shall see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of

the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws or as required by statute; he shall keep a register of the post office address of each Member; in general, he shall perform all duties incident to the office of Secretary and such other duties as from time to time may be prescribed by the President or the Board of Directors.

- 5.5 The Treasurer. The Treasurer shall be responsible for keeping full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall cause all monies and other valuable effects to be deposited or kept in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of funds of the Corporation, taking proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all transactions and of the financial condition of the Corporation. He shall be the chairman of the Budget Committee, if any. He may be required to give the Corporation a bond in a sum and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and the restoration of the Corporation in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Corporation. The Corporation shall pay all premiums for issuance of the bond. In general, he shall perform all duties incident to the office of Treasurer and such other duties as from time to time may be prescribed by the President or the Board of Directors.

ARTICLE VI RULES AND REGULATIONS

All Common Areas shall be available to the Owners, their tenants and invited guests for the uses intended, subject to the right of the Corporation to suspend use rights as provided in Paragraph 8.2, below. Reasonable rules and regulations pertaining to the use of the Common Areas may be made and amended from time to time by the Board of Directors. Copies of such regulations and amendments thereto shall be made available to all Owners. No entity or entities shall unreasonably restrict any Owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak on the Common Areas. Any Owner prevented from exercising rights guaranteed by this Article 6 may bring an action in the appropriate court of Lee County and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any Corporation document or rule that operates to deprive the owner of such rights.

ARTICLE VII FINANCIAL MATTERS

- 7.1 Fiscal Year. The Corporation shall operate on a fiscal year beginning on the first day of January of each year. The Board of Directors is authorized to change to a different fiscal year basis if deemed expedient for the best interest of the Corporation, in accordance with the Regulations of the Internal Revenue Service.
- 7.2 Checks. All checks or demands for money and notes of the Corporation shall be signed by any of the following officers: President, Vice President, Secretary or Treasurer or by such officer or such other person or persons as the Board of Directors may from time to time designate.
- 7.3 Annual Financial Statement. The Board shall provide a written financial statement to the Board of Directors of each member within ninety (90) days after the end of each fiscal or calendar year as to the total fees and assessments and other income as to the method of disbursement of said funds.
- 7.4 Depository. The Corporation shall maintain its funds in such federally insured accounts in financial institutions in the State of Florida as are selected from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Corporation funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.
- 7.5 Budget. A proposed budget for the next fiscal year shall be submitted to the Board not later than November 1 of each year for the next fiscal year. The proposed budget shall be detailed and shall show the amounts budgeted for income and expense by accounts. The Board of Directors shall, not later than November 30 of each year, adopt an annual budget for the next fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting at which the budget will be considered shall be mailed to or served on each Director and each member Association not less than fourteen (14) days prior to that meeting.
- 7.6 Assessments; Installments. Regular annual assessments based on an adopted budget shall be payable in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to all Members at least fifteen (15) days prior to the due date, but failure to send (or receive) the notice does not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such

installment is the same as the last quarterly payment, and payments shall be continued at such rate until a budget is adopted and new quarterly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each Lot's next due quarterly installment.

- 7.7 Reserves. In addition to the operating expenses provided in the budget, the Board may establish one or more reserve accounts for contingencies, operating expenses, repairs, improvements, capital expenditures, or deferred maintenance. The purpose of reserves is to provide financial stability and to minimize the need for special assessments. The amounts proposed to be so reserved shall be shown in the annual budget.
- 7.8 Special Assessments. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected or unbudgeted expenses, or for such other purposes as are authorized by the Articles or Declaration. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The notice of any special assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the Members.
- 7.9 Official Records. The Corporation shall maintain each of the following items, when applicable, which shall constitute the official records of the Corporation:
- (A) A copy of the plans, permits, warranties, and other items provided by the Developer or obtained by the Corporation.
 - (B) A copy of the Bylaws of the Corporation and of each amendment to the Bylaws.
 - (C) A certified copy of the Articles of Incorporation of the Corporation, and of each amendment thereto.
 - (D) A copy of the current Rules and Regulations.
 - (E) A book or books that contain the minutes of all meetings of the Members and of the Board of Directors, which minutes shall be retained for not less than seven (7) years.
 - (F) A current roster of all Lot owners and their mailing addresses, parcel identifications, and, if known, their telephone numbers.

- (G) All current insurance policies of the Corporation, or a copy thereof.
- (H) A current copy of any management agreement, lease, or other contract to which the Corporation is a party, or under which it has an obligation or responsibility.
- (I) The financial records and accounts.
- (J) All contracts for work to be performed. Bids for work to be performed shall be maintained for a period of one (1) year.

The official records shall be kept in Lee County, Florida, and shall be open to inspection by Owners or their authorized representatives at reasonable times. The failure of the Corporation to permit inspection of its official records by Owners or their authorized representatives entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the books and records who, directly or indirectly, knowingly denied access to the books and records for inspection. The right to inspect includes the right to make or obtain photocopies, at the reasonable expense of the person requesting copies.

ARTICLE VIII COMPLIANCE AND DEFAULT REMEDIES

In addition to any other remedies provided by law or in the Declaration of Covenants, Easement, and Restrictions for Horse Creek, the following provisions shall apply:

8.1 Fines. The Board of Directors may levy reasonable fines against Class A Members whose Lot owners commit violations of the rules and regulations, or condone such violations by their family members, guests or lessees. Each fine shall be in an amount deemed necessary by the Board to deter future violations, but no fine may exceed \$100 per violation. The procedure for imposing fines shall be as follows:

- (A) Notice: The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:
 - (1) A statement of the date, time and place of the hearing;
 - (2) A specific designation of the provisions of the Declaration, Bylaws or rules which are alleged to have been violated;

- (3) A short and plain statement of the facts giving rise to the alleged violation(s); and
 - (4) The possible amount of any proposed fine.
- (B) Hearing: At the hearing the party against whom the fine may be levied shall have a reasonable opportunity to present evidence, to provide written and oral argument on all issues, and to review, challenge, and respond to any evidence or testimony presented by the Corporation. The hearing shall be conducted before a panel of three (3) Owners appointed by the Board, none of whom may then be serving as Directors. If the panel, by majority vote, does not agree with the fine, it may not be levied.

8.2 Suspension of Use Rights. To the maximum extent lawful, the Board of Directors may suspend the right of any Owner or his guests, tenants, or family members, to use Corporation Property during any period of time the Owner shall have failed to pay any fine levied under Paragraph 8.1 above, or for a reasonable time as punishment for infractions of Association rules and regulations by the Owner, his family, guests or tenants. No such suspension shall affect an Owner's right to have access to his property.

ARTICLE IV AMENDMENT OF BYLAWS

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

- 9.1 Proposal. Amendments to these Bylaws may be proposed by the President or by any two (2) Directors.
- 9.2 Procedure. Upon any amendment or amendments to these Bylaws being proposed, the appropriate notices and copies of the text of the proposed amendments shall be mailed to all Directors with notice of a meeting at which the amendments will be voted on.
- 9.3 Vote Required. Except as otherwise provided herein, these Bylaws may be amended by concurrence of at least two-thirds (2/3) of the Directors at any meeting called for the purpose. The text of any proposed amendment shall be contained in the notice of such meeting.
- 9.4 Certificate; Recording. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by

officers of the Corporation with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Covenants, Easements, and Restrictions for Horse Creek was originally recorded.

- 9.5 Condition Precedent. The prior written approval from the Southwest Florida Water Management District is a condition precedent to the effectiveness of any amendment that will affect any aspect of a Water Managed Area or the Water Management System, including water management portions of common areas.

ARTICLE X

TRANSFER OF ASSOCIATION CONTROL; DEVELOPER'S RIGHTS.

- 10.1 Members' Rights to Elect Directors. Three months after ninety percent (90%) of all Lots within Horse Creek have been conveyed to Owners other than the Developer, the Class A Members other than the Developer shall be entitled to elect a majority of the members of the Board of Directors. As long as the Developer in the ordinary course of business holds at least five percent (5%) of the Lots for sale at Horse Creek, the Developer will retain the right to appoint one member to the Board of Directors.
- 10.2 Notice of Election. Within seventy-five (75) days after Owners other than the Developer are entitled to elect a majority of the Board of Directors, the Association shall call, upon not less than sixty (60) days notice, a meeting of the Members for an election in which the Owners shall elect those Directors that the Owners are entitled to elect. The election and the meeting in conjunction with which the election is to be held may be called and the required notice given by an Owner if the Association fails to do so. All non-developer Owners may vote in the election of Directors. The meeting in conjunction with which Owners other than the Developer first elect a majority of the Directors is referred to as the "turnover meeting."
- 10.3 Transfer of Association Control. When Owners other than the Developer elect a majority of the Directors of the Association, the Developer relinquishes control of the Association, and the Owners assume control. At that time the Developer shall deliver to the Association all property of the Association held or controlled by the Developer, and all items and documents that the Developer is required to deliver or turn over to the Association under Florida law. The Developer may turn over control of the Association to Owners other than the Developer prior to the above-mentioned date, in its sole discretion, by causing all of its appointed Directors to resign, whereupon it becomes the affirmative obligation of Owners


ether than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of the Developer's decision to cause its appointees to resign is given to Owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations, even if Owners other than the Developer refuse or fail to assume control of the Association.

ARTICLE XI MISCELLANEOUS

- 11.1 Gender & Number. Whenever the masculine or singular forth of the pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.
- 11.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.
- 11.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of the Bylaws.

The foregoing constitute the first Bylaws of the Horse Creek Homeowners Association, Inc., adopted by the Board of Directors at its initial organizational meeting on ___ day of January, 2005.

HORSE CREEK HOMEOWNERS
ASSOCIATION, INC.,
a Florida corporation not for profit

By: 
Daniel W. Dodrill, President