

## SPECIAL WARRANTY DEED

O.R. 855 PG 0640

THIS INDENTURE, made this 5th day of May, 1998, between TESDORPF AND JAMES DEVELOPMENTS, INC., a Florida corporation, GRANTOR, and HERON CREEK II HOMEOWNERS ASSOCIATION, a Florida corporation, GRANTEE, whose Post Office Address is: 515 Carcaba Road, St. Augustine, Florida 32084;

## WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), to it in hand paid by the said Grantee, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained and sold to the said Grantee, its successors and assigns forever, the following described land situate, lying and being in the County of St. Johns and State of Florida, to wit:

PROPERTY MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND, BY REFERENCE, MADE A PART HEREOF.

TOGETHER WITH all tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

SUBJECT TO: Easements, Covenants and Restrictions of record, and to ad valorem taxes subsequent to December 31, 1989.

And, the said Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons claiming by, through or under the Grantor.

Grantor reserves unto itself and its successors and assigns, all rights granted to it as "Developer" under Declaration of Covenants, Conditions and Restrictions for Heron Creek II being recorded contemporaneously with this Special Warranty Deed, including, but not limited to, the right to create and convey easements for access, ingress, drainage and utilities over all or any portion of said lands for the benefit of others as that term is defined in the Declaration.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be executed in its name by its President the day and year first above written.

TESDORPF AND JAMES DEVELOPMENTS, INC.

BY: John Tesdorpf  
John Tesdorpf, President

Witness  
Carol "Bud" Murrell

STATE OF FLORIDA

COUNTY OF ST. JOHNS

THE FOREGOING was acknowledged before me this 5th day of May, 1998 by John Tesdorpf, President of Tesdorpf and James Developments, Inc. on behalf of said corporation.

This Instrument Prepared by: [seal]

Linda F. Kishner  
10000 1st Street  
St. Augustine, FL 32084

NOTARY PUBLIC, State of Florida  
My Commission Expires 12/31/99

## OVERALL HERON CREEK PHASE II (O.R.B. 788, PG. 1438)

Being in the County of St. Johns and State of Florida, known and described as:

A tract of land in Section 32, Township 6 South, Range 38 East, described as follows:

Commence at an iron pipe on West line of right-of-way of State Road No. 78 at its intersection with North line of Section 32; thence run southerly along West right-of-way of said Road No. 78 being 33 feet from center line thereof, a distance of 864 feet to South line of a thirty foot road; thence run westerly along the South line of road at right angles to State Road 78, 1200 feet; thence continue along South line of road North 85 degrees West, 333 feet to the POINT OF BEGINNING, continue westerly on South line of road 124.49 feet; thence South 2 degrees 01 minutes 24 seconds East, 304.18 feet; thence North 89 degrees 02 minutes 20 seconds East, 201.89 feet; thence North 17 degrees West; 302.99 feet to the POINT-OF-BEGINNING.

LESS AND EXCEPT:

## UNIT ONE, HERON CREEK PHASE II

A parcel of land lying in Section 32, Township 6 South, Range 38 East, St. Johns County, Florida, described as follows:

Commence at the intersection of the North Line of said Section 32 with the westerly right-of-way line of State Road A-1-A (66 foot wide right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line for a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (30 foot wide right-of-way as now established); thence South 74 degrees 18 minutes 55 seconds West along said southerly right-of-way line for a distance of 1200.69 feet; thence North 85 degrees 00 minutes 00 seconds West continuing along said southerly right-of-way line a distance of 333.00 feet; thence South 17 degrees 00 minutes 00 seconds East for a distance of 106.79 feet; thence South 73 degrees 00 minutes 00 seconds West for a distance of 23.28 feet to the POINT-OF-BEGINNING of the herein described parcel; thence South 12 degrees 11 minutes 03 seconds East for a distance of 27.2 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 2.1 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 12.9 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 5.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 4.1 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 7.0 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 4.0 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 15.0 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 10.2 feet; thence North 57 degrees 11 minutes 03 seconds West for a distance of 2.7 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 60.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 14.4 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.9 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 8.2 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 9.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 1.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 6.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 3.2 feet to the POINT-OF-BEGINNING.

TOGETHER WITH a 10 by 15 foot parcel of land lying in Section 32, Township 6 South, Range 38 East, St. Johns County, Florida, being a part of lands described in Official Records Book 788, pages 1438 and 1439 of the public records of St. Johns County, Florida, being described as follows:

Commence at the intersection of the North line of said Section 32 with the westerly right-of-way line of State Road A-1-A (a 66 foot wide right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (a 30 foot wide right-of-way as now established); thence South 74 degrees 10 minutes 55 seconds West along said southerly right-of-way line a distance of 1200.69 feet; thence North 85 degrees 00 minutes 00 seconds West, continuing along said southerly right-of-way line a distance of 333.00 feet; thence South 17 degrees 00 minutes 00 seconds East a distance of 106.79 feet; thence South 73 degrees 00 minutes 00 seconds West a distance of 23.28 feet to the POINT-OF-BEGINNING of the herein described parcel of land: thence North 77 degrees 48 minutes 57 seconds East a distance of 10.00 feet; thence South 12 degrees 11 minutes 03 seconds East a distance of 15.00 feet; thence South 77 degrees 48 minutes 57 seconds West a distance of 10.00 feet; thence North 12 degrees 11 minutes 03 seconds West a distance of 15.00 feet to the POINT-OF-BEGINNING.

## UNIT TWO, HERON CREEK PHASE II

A parcel of land lying in Section 32, Township 6 South, Range 30 East, St. Johns County, Florida, described as follows:

Commence at the intersection of the North line of said Section 32 with the westerly right-of-way line of State Road A-1-A (66 foot wide right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line for a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (30 foot wide right-of-way as now established); thence South 74 degrees 10 minutes 55 seconds West along said southerly right-of-way line for a distance of 1200.69 feet; thence North 85 degrees 00 minutes 00 seconds West continuing along said southerly right-of-way line for a distance of 333.00 feet; thence South 17 degrees 00 minutes 00 seconds East for a distance of 87.35 feet; thence South 73 degrees 00 minutes 00 seconds West for a distance of 49.14 feet to the POINT-OF-BEGINNING of the herein described parcel; thence South 12 degrees 11 minutes 03 seconds East for a distance of 48.1 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 9.5 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.8 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 3.9 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 8.8 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 11.8 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 10.1 feet; thence North 57 degrees 11 minutes 03 seconds West for a distance of 2.7 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 60.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 14.4 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.9 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 8.2 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 9.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 1.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 6.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 2.9 feet to the POINT-OF-BEGINNING.

## UNIT THREE, HERON CREEK PHASE II

A parcel of land lying in Section 32, Township 6 South, Range 30 East, St. Johns County, Florida, described as follows:

Commence at the intersection of the North line of said Section 32 with the westerly right-of-way line of State Road A-1-A (66 foot wide right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line for a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (30 foot wide right-of-way as now established); thence South 74 degrees 10 minutes 55 seconds West along said

(2)

southerly right-of-way line for a distance of 1288.69 feet; thence North 85 degrees 00 minutes 00 seconds West continuing along said southerly right-of-way line a distance of 333.00 feet; thence South 17 degrees 00 minutes 00 seconds East for a distance of 67.93 feet; thence South 73 degrees 00 minutes 00 seconds West for a distance of 74.78 feet to the POINT-OF-BEGINNING of the herein described parcel; thence South 12 degrees 11 minutes 03 seconds East for a distance of 48.1 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 9.5 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 3.4 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 3.9 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 3.4 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 11.8 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 18.1 feet; thence North 57 degrees 11 minutes 03 seconds West for a distance of 2.7 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 68.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 14.4 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.9 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 8.2 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 9.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 1.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 6.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 2.9 feet to the POINT-OF-BEGINNING.

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## UNIT FOUR, HERON CREEK PHASE II

*See "Bund" Map*  
CLERK OF CIRCUIT COURT

A parcel of land lying in Section 32, Township 6 South, Range 30 East, St. Johns County, Florida, described as follows:

Commence at the intersection of the North Line of said Section 32 with the westerly right-of-way line of State Road A-1-A (66 foot right-of-way as now established); thence South 15 degrees 36 minutes 00 seconds East along said westerly right-of-way line for a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (30 foot wide right-of-way as now established); thence South 74 degrees 18 minutes 55 seconds West along said southerly right-of-way line for a distance of 1288.69 feet; thence North 85 degrees 00 minutes 00 seconds West continuing along said southerly right-of-way line a distance of 333.00 feet; thence South 17 degrees 00 minutes 00 seconds East for a distance of 48.52 feet; thence South 73 degrees 00 minutes 00 seconds West for a distance of 100.26 feet to the POINT-OF-BEGINNING of the herein described parcel; thence South 12 degrees 11 minutes 03 seconds East for a distance of 48.1 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 6.8 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 21.5 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 12.7 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 1.9 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 6.5 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 33.5 feet; thence North 57 degrees 11 minutes 03 seconds West for a distance of 2.7 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 68.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 14.4 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.9 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 8.2 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 9.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 1.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 6.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 2.9 feet to the POINT-OF-BEGINNING.

SUBJECT TO A 20 FOOT EASEMENT TO MICHAEL W. BOLES AND DARIA F. BOLES, HUSBAND AND WIFE, OF EVEN DATE HERewith.

(3)

*[Handwritten signature]*  
VERIFIED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HERON CREEK II

THIS DECLARATION, made the 24 day of April, 1990, by TESDORFF & JAMES DEVELOPMENTS, INC., a Florida corporation, (hereinafter called "Developer") and HERON CREEK II HOMEOWNERS ASSOCIATION, a Florida corporation, (hereinafter "Association"), both having their principal places of business at 515 Carcaba Road, St. Augustine, Florida 32084.

W I T N E S S E T H:

WHEREAS, Developer is the Owner of certain real Property described in Exhibit "A" attached hereto, and Developer desires to create thereon a development community known as HERON CREEK II and

WHEREAS, Developer is contemporaneously herewith conveying to the Association certain real Property as described in Exhibit "B", hereinafter referred to as "Association Land"; and

WHEREAS, Developer and Association desire to provide for the preservation of the values and amenities in this community and for the care and maintenance of the common areas and to this end, desire to subject the real Property described in Exhibit "A" attached hereto, together with such additions thereto as may hereafter be made, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of said Property and each and every owner of any and all parts thereof.

NOW, THEREFORE, Developer declares that the real Property described on Exhibit "A", is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which are for the purpose of protecting the value and desirability of the Property and which shall run with the title to the Property, shall be binding upon all parties having any right, title or interest in the Property or any part thereof and their respective heirs, successors and assigns and which shall inure to the benefit of each Owner of a Lot within the Property.

ARTICLE I. DEFINITIONS

Section 1. Articles. "Articles" shall mean and refer to the Articles of Incorporation of the Association.

Section 2. Assessment. The term "Assessment" as used herein shall mean and refer to a share of Association Expenses required for the payment of the Association Expenses which from time to time shall be assessed against the Lots and the Owners and the Authorized Users.

Section 3. Assessment Period. "Assessment Period" shall be the same period as a calendar year, from January 1 to December 31 of any given year.

Section 4. Association. "Association" shall mean and refer to HERON CREEK II HOMEOWNERS ASSOCIATION, INC., a corporation not-for-profit, organized or to be organized

pursuant to Chapter 617, Florida Statutes, and its successors and assigns.

**Section 5. Association Expenses.** "Association Expenses" shall mean and refer to the expenses and charges described in this Declaration incurred or to be incurred by the Association and assessed or to be assessed against the Lots and the Owners thereof.

**Section 6. Board of Directors.** "Board of Directors" shall mean and refer to the Association's Board of Directors.

**Section 7. Common Area.** "Common Area" shall mean and refer to such Property, intended for the common use and enjoyment of the owners, as may be conveyed by Developer to the Association pursuant to the provisions of this Declaration. Such Common Area Property shall be included within the Property described in Exhibit "B" attached hereto.

**Section 8. Developed Lot.** "Developed Lot" shall mean and refer to any Lot on which permanent improvements, including a single family dwelling, are located.

**Section 9. Developer.** "Developer" shall mean and refer to TRSDORFF & JAMES DEVELOPMENTS, INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot for the purpose of development.

**Section 10. Lot.** "Lot" shall mean and refer to any of the improved or unimproved Lots or Units (as depicted on the survey) located on the Property with the exception of the Common Area and dedicated roads.

**Section 11. Member.** "Member" shall mean and refer to all those Owners who are members of the Association as provided in Section 1 of Article II hereof.

**Section 12. Owner.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property including contract sellers, but excluding those having such interests merely as security for the performance of any obligation. The term "Owner" shall not mean or refer to any mortgagee or grantee or beneficiary under a deed of trust or security deed unless and until such mortgagee, grantee or beneficiary has acquired title pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

**Section 13. Property.** "Property" shall mean and refer to that certain real Property more particularly described on Exhibit "A" attached hereto, containing Four (4) Lots and additional lands as shown on the Plat of Property, which Plat is being recorded simultaneously herewith.

**Section 14. Undeveloped Lot.** "Undeveloped Lot" shall mean and refer to any Lot which does not contain any permanent improvements.

## **ARTICLE II. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Membership.** Every Owner of a Lot in the Property shall be a Member of the Association. Such membership shall be coincident with the ownership of the Lot, and shall not be separately transferable. Membership shall cease upon the transfer or termination of ownership. Persons or entities who or which own a Lot merely as security for the performance of an obligation shall not be

Members of the Association; rather, the beneficial owner in such cases shall be the Member.

**Section 2. Associate Membership.** Every person who is entitled to possession and occupancy of any Lot as a tenant or lessee of a Lot may be an Associate Member of the Association, and shall be privileged to use the Common Areas and facilities subject to this Declaration, as amended from time to time, and subject to the rules and regulations of the Association. Associate Member shall not be entitled to a vote in the Association.

**Section 3. Voting Rights.** The Association shall have two classes of voting membership:

**Class A - Class A Members** shall be all Owners who have taken title to one or more Lots from the Developer, or from a successor in title to the Developer. Class A Members shall be entitled to one vote for each Lot in which they hold an interest required for membership. When more than one person holds such interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine but in no event shall more than one vote be cast with respect to any Lot.

**Class B - The Class B Member** shall be Developer, which shall be initially entitled to four (4) votes, with the number of votes decreasing by one with the sale of each lot. Class B membership shall terminate upon the happening of one of the following events, whichever occurs earlier: (i) when Developer has conveyed one hundred percent (100%) of the Lots located on the Property (ii) February 1, 1995.

**Section 4. Membership and Voting Procedure.** The Articles and Bylaws of the Association shall more specifically define and describe the procedural requirements for Association Membership meetings and voting procedures, but shall not substantially alter or amend any of the rights or obligations of the Developer as set forth herein.

### ARTICLE III. PROPERTY RIGHTS IN THE COMMON AREAS

**Section 1. Members' Easement of Enjoyment.** Subject to the provisions of Section 3 of this Article III, every Member shall have right and easement of enjoyment in and to the Common Areas. Such easement shall be appurtenant to and shall pass with the title to each Lot, whether or not the same shall be referred to in any deed conveying title to any Lot.

**Section 2. Title to Common Areas.** Developer shall convey to the Association the fee simple title by Special Warranty Deed to the Common Area prior to the conveyance of the first Lot in the development.

**Section 3. Extent of Member's Easements.** The right and easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer, and of the Association in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and in aid thereof, to mortgage said properties. In the event of a default upon such mortgage, the lender's rights thereunder shall be limited to the rights of the Members as described herein; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Property against foreclosure; and

(c) The right of the Association to suspend the enjoyment of the Common Area by, and voting rights of, any Member for any period during which any assessment remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, that no such dedication, transfer or determination as to the purposes or as to the conditions thereof shall be effective until agreed to by a vote of the majority of the Members of each class present at an Association meeting called in accordance with the Articles of Incorporation and By-Laws of the Association for the purpose of discussing such dedication or transfer and unless an instrument has been recorded, signed and sworn to by the Secretary of the Association stating that such a vote was duly held and that the majority of the members present at the meeting favored such dedication, transfer, purpose, or condition; and

#### ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, however, the delinquent assessment shall remain a lien against the Property until paid.

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Area also herein referred to as Association Land.

Section 3. There shall be two classes of assessments:

Class "A" - "Developed Lots": The initial annual assessment for Developed Lots and Authorized Users shall be Seven Hundred Eighty Dollars (\$780.00) payable by monthly assessments of SIXTY-FIVE DOLLARS (\$65.00).

Class "B" - "Undeveloped Lots": The initial annual assessment for Undeveloped Lots shall be N/A (\$N/A) payable by monthly assessments or N/A (\$N/A).

Section 4. Maximum Annual Assessment. Until October 1, 1990 the annual assessment shall be SEVEN HUNDRED EIGHTY DOLLARS



N/A (\$780.00) per Developed Lot and N/A  
N/A (\$N/A) per Undeveloped Lot.

(a) From and after Oct. 1, 1990, the maximum annual assessment may be increased each year, by the Board of Directors of the Association, not more than fifteen percent (15%) above the maximum assessment for the previous year without a unanimous vote of the membership.

**Section 5. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal Property related thereto, provided that any such assessment shall have the assent of not less than three fourths (3/4) of the membership at a duly convened meeting.

**Section 6. Notice and Quorum for Any Action Authorized Under Sections 2 and 3.** Written notice of any meeting called for the purpose of taking any action authorized under Section 2 or 3 shall be sent to all members not less than fourteen (14) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast a majority of all the votes of each class of membership shall constitute a quorum.

**Section 7. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Developed Lots and Undeveloped Lots shall be uniformly assessed at a lower rate than the Developed Lots. Assessments on Developed Lots will be collected on a monthly basis payable one month in advance, with the first monthly assessment being prorated from the date of closing to the end of the month in which the closing takes place. Assessments on Undeveloped Lots shall also be collected on a monthly basis.

**Section 8. Date of Commencement of Assessments: Due Dates.** The assessments provided for herein shall commence as to all Lots on the first day following the conveyance of the Common Area. Said monthly assessments shall be based on one-twelfth (1/12th) of the annual assessment levied on each Lot based on a budget approved by the Board of Directors in accordance with this Declaration, the Articles of Incorporation and By-Laws of the HERON CREEK II HOMEOWNERS ASSOCIATION. The Board of Directors shall fix the amount of the annual assessment requirements against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property of the Owner. No owner may waive or otherwise escape liability for the assessments provided for

herein by non-use of the Common Area or abandonment of his Lot.

**Section 10. Subordination of the Lien to Mortgages.** The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### **ARTICLE V. COVENANTS AND RESTRICTIONS**

**Section 1.** No structures of any kind shall be erected, altered, placed or permitted to remain on any of the Lots other than: (i) one single family dwelling, not to exceed two stories in height; and (ii) one patio and/or deck; and (iii) one garage attached to the living Unit on the ground floor level.

**Section 2.** No building, fence, wall or other structure shall be erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made.

**Section 3.** No structure or other improvement or change in the topography of the land shall be erected or made which interferes in any respect with the drainage or utility easements shown on the subdivision Plat.

**Section 4.** Not trade, or business or noxious activity based upon the sole determination of the Developer, shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No mobile homes, tents or shacks shall be placed on any Lot except mobile homes used temporarily as sales offices and construction offices with the Developer's approval.

**Section 5.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that no more than one (1) dog, or one (1) cat, or one (1) other household pets may be kept by an owner-occupant, provided they are not kept, bred or maintained for any commercial purposes. While outside the dwelling Unit they shall be leashed at all times.

**Section 6.** No clothes or laundry shall be hung or clothes lines erected.

**Section 7.** No fence, wall, hedge, shrub or trees shall be planted without the approval of the Association.

**Section 8.** A perpetual, alienable and releasable easement is hereby reserved to the Developer over all the Association Land as herein defined. The Developer shall have the right to grant subordinate easements to utility companies, governmental bodies and such other persons as Declarant may from time to time designate within such easement area for the purpose of carrying out or facilitating such construction, installation and maintenance. The Developer shall also have the right to grant to Lot owners, their licensees, invitees, successors and assigns, such easements as are necessary to provide access, ingress and egress to the individual owner's Lot or Unit. No purchaser of a Lot or anyone claiming by through or under any such purchaser,

shall have the right to interfere at any time with any such construction, installation or maintenance operations.

As regards any costs of construction, installation or maintenance operations that will inure to the exclusive benefit of any Future Development Area the Developer shall bear those cost.

Section 9. Each Unit owner shall be required to enter into a utility agreement with NORTH BEACH UTILITIES to provide water and sewer service to each owner's particular Unit. NORTH BEACH UTILITIES or its successors has the sold and exclusive right to provide all water facilities and service to the Property described herein. Developer reserves the right to convey to NORTH BEACH UTILITIES all easements required to provide water facilities and service to the Property.

Section 10. Insurance Proof. Each owner must provide proof of insurance (Certificate) to the Association in the full amount of the replacement coverage.

Section 11. Each Lot Owner is provided two permanent parking areas, those being the space inside each garage and the pad directly outside the garage. The Association owns four additional guest parking or temporary parking pads.

If any Lot Owner wishes to utilize any of the temporary spaces on a permanent basis he may do so only with Association approval.

Section 12. No modification of any exterior structure, surface or color may be made on any existing dwelling without unanimous approval of all members casting a vote at any meeting duly called for that purpose.

(a) An exception to the above is the screening in of the rear deck area only; provided that the design of the screening shall be submitted to the Association, through its Board of Directors shall not unreasonable withhold approval.

Section 13. All personal Property of Unit Owners shall be housed inside the Units in such a manner as to prevent their being seen by adjacent Unit Owners. Personal Property is defined as bicycles, tools, rakes, hoses, fishing equipment, etc.

Section 14. The Association shall provide refuse containers of uniform size, shape, color and design to be used by Unit Owners. Containers shall remain in the garage until no sooner than 12 hours prior to garbage pickup day and must be returned to the garages no later than 12 hours after garbage pickup day.

Section 15. Unit Owners may lease their dwelling Units to single families only subject to prior written approval by the Association of the proposed leases.

The Association President shall join in the lease agreement and all leases shall be for a minimum of six (6) months. Unit Owners are responsible for monthly assessments during any rental period.

Section 16. If a Unit Owner desires to sell his dwelling Unit the Association is granted a right of first refusal and must perform within a reasonable period of time and close the sale. Time may be made of the essence by either party in writing to the last known address of both parties.

**ARTICLE VI. APPURTENANCES TO UNITS**

There shall be appurtenant and pass with the title to each Unit the following:

Section 1. Non-exclusive easement to be used and enjoyed in common with the Owners of all Units in this Planned Special Development, their guests and invitees, and with the Developer for so long as Developer owns any unit, for use of Association Land, including, without limitation, easement for:

(a) The furnishing and maintenance of utility services to all parts of the real Property of the Planned Special Development over, across, in and through the Land and Association Land, as described in Article VII below, buildings and other improvements, as the fixtures and equipment therefor now exist and/or may be modified or relocated for use and maintenance of the water and sewer lines; and

(b) Vehicular and pedestrian access and parking over, across, upon, in and through the drives, entries, gates, walks, grounds and other portions, if any, or the land owned directly by the Association (Association Land) as are intended and/or provided for pedestrian and vehicular traffic through the Planned Special Development and through land owned by the Association, and the improvements, fixtures and equipment thereon, and for access to public roadways. Notwithstanding the foregoing, it is the intent of the Developer to provide access, ingress, and egress from a public land to the Owner's Unit whether or not the Association has built any roadways or walkways for that purpose.

(c) An easement of access and right of use over, upon through the club house, pool, tennis court, if any. Owners of dwelling Units in HERON CREEK II, a Planned Special Development, shall share equally in the expenses relative to these areas.

Section 2. The right to membership in the "Association" (elsewhere herein defined) upon the terms and conditions set forth elsewhere herein.

**ARTICLE VII. ASSOCIATION LAND**

Section 1. The Developer, prior to the closing of the sale of the first Unit in the Planned Special Development will convey to the Association title to that certain Property described in Exhibit "B" attached hereto and designated Association Land. The Association Land shall be owned by the Association which shall also have the responsibility for all expenses relative thereto including maintenance, operation and upkeep and real estate taxes. Said Association shall prepare a separate budget on the Association Land on an annual basis and each Unit Owner of HERON CREEK II HOMEOWNER'S ASSOCIATION shall, as members of the Association, have the right to use said facilities pursuant to such rules and regulations as are promulgated from time to time by the Association and each member of the Association shall share equally in the expenses relative thereto and pursuant to such separate budget.

Section 2. The Association Land Assessments payable by each member of the Association shall be equal to a fractional portion of the annual Association budget adopted by the Board of Directors of the Association wherein the numerator

is 1 and the denominator is the total number of members of the Association.

Section 3. Developer hereby reserves to itself, its successors and assigns an easement over the Association Land which is utilized for parking and access to such parking for the purpose of access to HERON CREEK (Phase One) expressly including the right to rearrange and modify parking spaces thereon to accommodate said access to additional parking areas which may be provided, however, no action, change or rearrangement shall, as a result, eliminate any parking spaces.

#### ARTICLE VIII. ASSOCIATION

Section 1. The entity responsible for the operation of this Planned Development shall be HERON CREEK II HOMEOWNER'S ASSOCIATION, INC., a Florida corporation not for profit (The "Association". A copy of the Association's Articles of Incorporation and By-Laws are attached hereto and made a part hereof as Exhibits "C" and "D", respectively. The Association shall administer and manage the Planned Development; provided, that the Association may, delegate its maintenance, management and operational duties and obligations; and provided further, however, that the Developer hereby reserves the rights provided in this Declaration and the By-Laws of the Association to initially manage and operate the Planned Development Property.

#### ARTICLE IX. VOTING RIGHTS OF UNIT OWNERS

Section 1. The owner or owners of each Unit shall become a member or members of the Association automatically upon and simultaneously with the delivery of a deed of conveyance of fee title thereto from Developer or its successors in title. There shall be appurtenant, and pass with title, to each Unit one vote as a member of the Association, which may be exercised by the Owner(s) as set forth in the Articles of Incorporation and By-Laws of the Association. Membership in the Association shall terminate when a Unit Owner's vested interest in the fee title to the Unit terminates. Membership in the Association cannot be separately transferred, assigned or pledged in any manner except as an appurtenance to the respective Unit.

#### ARTICLE X. AMENDMENT OF DECLARATION

Section 1. Developer. The Developer reserves and shall have the sole right, without the joinder or consent of any Owner, the Association, or the holder of any mortgage, lien or other encumbrance affecting the Property, or any other person: (i) to amend this Declaration to comply with any requirements of the governmental agency; or (ii) to amend this Declaration to cure any ambiguity or error, in this Declaration, or any inconsistency between these provisions and the other Legal Documents or the Plat. Any other amendment shall require approval by three-fourths (3/4) vote of the Association membership. Developer shall submit any such proposed amendment to the Association and the Association shall meet and approve or disapprove such proposal within thirty (30) days.

Section 2. Amendment by Unit Owners. An amendment to this Declaration made by Unit Owners shall be evidenced by: (a) a certificate setting forth such amendment executed by the appropriate officers of the Association, with the formalities of a deed (including the recording date identifying this Declaration); and (b) an affidavit (to be attached to the certificate) executed by the appropriate

officers of the Association certifying that the owners of seventy five percent (75%) or more of the Units voted in favor of the amendment. Such amendment shall become effective when it is recorded according to law. No amendment shall be adopted or become effective which adversely affects the lien or priority of any previously recorded mortgage to an Institutional Mortgagee. An amendment made by Unit Owners need not be executed by the Unit Owners. This Declaration shall not be amended without the approval of the Developer and without the joinder of the Developer in the certificate referred to above, if any of the following conditions exist: (i) three (3) or more Units remain unsold; or (ii) such amendment purports to modify, restrict, limit or otherwise affect any right of the Developer hereunder, including without limitation, the rights of the Developer to amend this Declaration as set forth in the preceding paragraph.

**Section 3. Amendment by Association.** Whenever it shall appear that there is an error or omission in the Declaration, and less than three (3) Units remain unsold, then the Board may correct such error or omission by resolution adopted by a majority vote of the Board at any duly called meeting thereof. Such amendment shall become effective when it is recorded according to law.

#### ARTICLE XI. MISCELLANEOUS

**Section 1. Assignment of Developer's Rights.** The Developer shall have the sole and exclusive right at any time and from time to time, to transfer and assign to, and to withdraw from such person, firm, corporation, trust or other entity as it shall select, any or all rights, powers, easements, privileges, authorities and reservations given to or reserved by the Developer in these covenants and restrictions. If at any time hereafter there shall be no person, firm, corporation, trust or other entity entitled to exercise the rights, powers, privileges, authorities and reservations given to or reserved by the Developer under the provisions hereof, the same shall be vested in and be exercised by a committee to be elected or appointed by the Owners of a majority of the Lots.

**Section 2. Consent for Additional Covenants.** No Lot Owner, without the prior written approval of the Developer, may impose any additional covenants or restrictions on any part of the Property.

**Section 3. Duration.** These covenants and restrictions, as amended and added to, from time to time, as provided herein, shall, subject to the provisions hereof and unless released as herein provided, be deemed to be covenants running with the title to said land and shall remain in full force and effect until March 31, 2010, and thereafter the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless within six (6) months prior to March 31, 2010, or within six months preceding the end of any such ten (10) year period, as the case may be, a written agreement executed by the then owners of a majority of the Building Lots shown on the Plat of the Property, amending this Declaration or any part hereof, shall be placed on record in the office of the appropriate agency of St. Johns County, Florida. In the event that such written agreement shall be executed and recorded as provided for above in this Section, these original covenants and restrictions, as therein modified, shall continue in force for successive periods of ten (10) years each, unless and until further changed or modified in the manner provided in this Section.

**Section 4. Enforcement of Covenants.** If any person, firm, corporation, trust or other entity shall violate or attempt to violate any of these covenants or restrictions, it shall be lawful for the Developer, Association, or any person or persons owning any Lot on said Property: (a) to prosecute proceedings for the recovery of damages against those so violation or attempting to violate any such covenant or restriction, or (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate any such covenant or restriction for the purpose of preventing or enjoining all or any such violations or attempted violations. The remedies contained in this Section shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of the Developer or Association or Lot Owner or their respective successors or assigns, to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall, in no event, be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior or subsequent thereto.

**Section 5. FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

**Section 6. Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended and enlarged by implication as to make them full effective.

**Section 7. Captions.** The captions of each paragraph hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraph to which they refer.

**Section 8. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable and the use of the masculine pronoun shall include the neuter and feminine, wherever applicable.

**Section 9. Provisions Severable.** The invalidation of any provisions or provisions of the covenants and restrictions set forth herein by judgment or court order shall not affect or modify any of the other provision of said covenants and restrictions which shall remain in full force and effect.

**Section 10. Additional Parking Restrictions.** No house trailers or mobile homes shall be parked on any portion of the Property, except those used by the Developer in the construction of the Units on the Property. No trucks other than standard sized pickup trucks shall be permitted to park on any portion of the Property for a period of more than four (4) hours, unless the same is present in the actual, active construction, furnishing, or repair of buildings on the Property. Trailers, trucks, and cars shall not be used for living purposes. Trailers, boats, campers, and recreational vehicles, and any other similar equipment may not be parked on the Property. No parking of any vehicle is permitted on the access roads or streets in the Property,

except in areas designated for that purpose by the Developer or the Association.

**Section 11. Utilities.** All utilities, including telephone, television, and electrical systems shall be installed underground.

**Section 12. Signs.** No signs of any kind shall be exhibited in any way on the described Property other than those placed or erected by Developer or by the Association, or those which have been approved by the Developer.

**Section 13. Structures in or on Creek/Marsh.** No structures shall be constructed, dug, or erected in any body of water on or adjacent to the Property, except as approved by the Board of Directors or its agent. Likewise, no internal combustion engine shall be used for any purpose in the creek on the Property, except by specific individual permit issued by the Board of Directors or its agent.

**Section 14. Commercial Use.** No Unit may be used for commercial purposes.

**Section 15. Mail Boxes.** No mail box or paper box or other receptacle of any kind for use in the delivery of mail or newspapers, or magazines or similar material shall be erected or located on any portion of the Property, other than those provided by Developer or the Association.

**Section 16. Window Air-Conditioning.** No window air-conditioning Units shall be installed in any Unit without the prior written consent of the Developer or the Association.

IN WITNESS WHEREOF, the Association and Developer have caused this instrument to be executed by its duly authorized officers and its seal to hereunto affixed all as of the day and year first above written.

Signed, sealed and delivered in the presence of:



TESDORFF AND JAMES DEVELOPMENTS, INC., a Florida corporation

By: 

President

(Corporate Seal)



HERON CREEK II HOMEOWNERS ASSOCIATION, INC., a Florida corporation



By: 

President

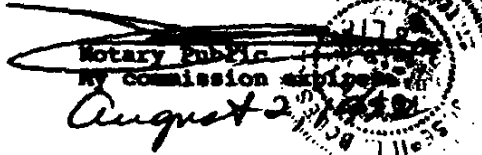
(Corporate Seal)



O.R. 855 PG 0656

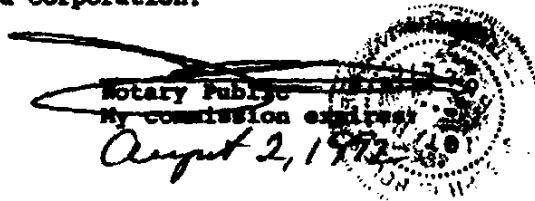
STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing was acknowledged before me this 24 day  
of April, 1990, by JOHN TESDORFF  
as PRESIDENT of TESDORFF AND JAMES  
DEVELOPMENTS, INC., a Florida corporation on behalf of said  
corporation.

  
Notary Public  
My Commission Expires  
August 2, 1990

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing was acknowledged before me this 24 day  
of April, 1990, by JOHN TESDORFF  
of HERON CREEK II HOMEOWNER'S ASSOCIATION, a Florida  
corporation on behalf of said corporation.

  
Notary Public  
My Commission Expires  
August 2, 1990

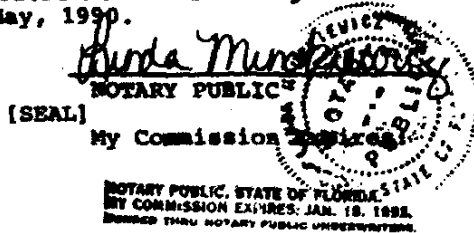
JOINDER AND CONSENT

The undersigned, Barnett Bank of the St. Johns f/k/a  
Barnett Bank of St. Johns County, has  
reviewed the foregoing, DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR HERON CREEK II, and does hereby join in  
and consent to the recordation of the aforesaid covenants,  
conditions and restrictions.

Signed this 7th day of May, 1990.

Barnett Bank of the St. Johns  
By [Signature]  
Authorized Officer  
Vice President

SWORN TO AND SUBSCRIBED before me the undersigned this  
7th day of MAY, 1990.

  
[SEAL] [Signature]  
NOTARY PUBLIC  
My Commission Expires  
NOTARY PUBLIC, STATE OF FLORIDA  
MY COMMISSION EXPIRES JAN. 18, 1991  
BONDED THRU NOTARY PUBLIC UNDERWRITER

**OVERALL HERON CREEK PHASE II (O.R.B. 788, PG. 1438)**

Being in the County of St. Johns and State of Florida, known and described as:

A tract of land in Section 32, Township 6 South, Range 38 East, described as follows:

Commence at an iron pipe on West line of right-of-way of State Road No. 78 at its intersection with North line of Section 32; thence run southerly along West right-of-way of said Road No. 78 being 33 feet from center line thereof, a distance of 864 feet to South line of a thirty foot road; thence run westerly along the South line of road at right angles to State Road 78, 1250 feet; thence continue along South line of road North 85 degrees West, 333 feet to the POINT OF BEGINNING, continue westerly on South line of road 124.49 feet; thence South 2 degrees 01 minutes 24 seconds East, 384.18 feet; thence North 89 degrees 02 minutes 28 seconds East, 281.89 feet; thence North 17 degrees West; 382.99 feet to the POINT OF BEGINNING.

RECEIVED  
52.

## OVERALL HERON CREEK PHASE II (O.R.B. 788, PG. 1438)

Being in the County of St. Johns and State of Florida, known and described as:

A tract of land in Section 32, Township 6 South, Range 38 East, described as follows:

Commence at an iron pipe on West line of right-of-way of State Road No. 78 at its intersection with North line of Section 32; thence run southerly along West right-of-way of said Road No. 78 being 33 feet from center line thereof, a distance of 864 feet to South line of a thirty foot road; thence run westerly along the South line of road at right angles to State Road 78, 1200 feet; thence continue along South line of road North 85 degrees West, 333 feet to the POINT OF BEGINNING, continue westerly on South line of road 124.49 feet; thence South 2 degrees 01 minutes 24 seconds East, 384.18 feet; thence North 89 degrees 02 minutes 20 seconds East, 281.89 feet; thence North 17 degrees West; 302.99 feet to the POINT-OF-BEGINNING.

LESS AND EXCEPT:

## UNIT ONE, HERON CREEK PHASE II

A parcel of land lying in Section 32, Township 6 South, Range 38 East, St. Johns County, Florida, described as follows:

Commence at the intersection of the North Line of said Section 32 with the westerly right-of-way line of State Road A-1-A (66 foot wide right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line for a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (30 foot wide right-of-way as now established); thence South 74 degrees 18 minutes 55 seconds West along said southerly right-of-way line for a distance of 1200.69 feet; thence North 85 degrees 00 minutes 00 seconds West continuing along said southerly right-of-way line a distance of 333.00 feet; thence South 17 degrees 00 minutes 00 seconds East for a distance of 186.79 feet; thence South 73 degrees 00 minutes 00 seconds West for a distance of 23.28 feet to the POINT-OF-BEGINNING of the herein described parcel; thence South 12 degrees 11 minutes 03 seconds East for a distance of 27.2 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 2.1 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 12.9 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 5.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 4.1 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 7.8 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 4.8 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 15.8 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 18.2 feet; thence North 57 degrees 11 minutes 03 seconds West for a distance of 2.7 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 68.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 14.4 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.9 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 8.2 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 9.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 1.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 6.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 3.2 feet to the POINT-OF-BEGINNING.

TOGETHER WITH a 18 by 15 foot parcel of land lying in Section 32, Township 6 South, Range 38 East, St. Johns County, Florida, being a part of lands described in Official Records Book 788, pages 1438 and 1439 of the public records of St. Johns County, Florida, being described as follows:

(1)

Commence at the intersection of the North line of said Section 32 with the westerly right-of-way line of State Road A-1-A (a 66 foot wide right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (a 30 foot wide right-of-way as now established); thence South 74 degrees 10 minutes 55 seconds West along said southerly right-of-way line a distance of 1200.69 feet; thence North 85 degrees 00 minutes 00 seconds West, continuing along said southerly right-of-way line a distance of 333.00 feet; thence South 17 degrees 00 minutes 00 seconds East a distance of 106.79 feet; thence South 73 degrees 00 minutes 00 seconds West a distance of 23.28 feet to the POINT-OF-BEGINNING of the herein described parcel of land: thence North 77 degrees 48 minutes 57 seconds East a distance of 10.00 feet; thence South 12 degrees 11 minutes 03 seconds East a distance of 15.00 feet; thence South 77 degrees 48 minutes 57 seconds West a distance of 10.00 feet; thence North 12 degrees 11 minutes 03 seconds West a distance of 15.00 feet to the POINT-OF-BEGINNING.

## UNIT TWO, HERON CREEK PHASE II

A parcel of land lying in Section 32, Township 6 South, Range 30 East, St. Johns County, Florida, described as follows:

Commence at the intersection of the North line of said Section 32 with the westerly right-of-way line of State Road A-1-A (66 foot wide right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line for a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (30 foot wide right-of-way as now established); thence South 74 degrees 10 minutes 55 seconds West along said southerly right-of-way line for a distance of 1200.69 feet; thence North 85 degrees 00 minutes 00 seconds West continuing along said southerly right-of-way line for a distance of 333.00 feet; thence South 17 degrees 00 minutes 00 seconds East for a distance of 87.35 feet; thence South 73 degrees 00 minutes 00 seconds West for a distance of 49.14 feet to the POINT-OF-BEGINNING of the herein described parcel; thence South 12 degrees 11 minutes 03 seconds East for a distance of 48.1 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 9.5 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.8 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 3.9 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 8.8 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 11.8 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 10.1 feet; thence North 57 degrees 11 minutes 03 seconds West for a distance of 2.7 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 60.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 14.4 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.9 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 8.2 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 9.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 1.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 6.0 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 2.9 feet to the POINT-OF-BEGINNING.

## UNIT THREE, HERON CREEK PHASE II

A parcel of land lying in Section 32, Township 6 South, Range 30 East, St. Johns County, Florida, described as follows:

Commence at the intersection of the North line of said Section 32 with the westerly right-of-way line of State Road A-1-A (66 foot wide right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line for a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (30 foot wide right-of-way as now established); thence South 74 degrees 10 minutes 55 seconds West along said

(2)

southerly right-of-way line for a distance of 1288.69 feet; thence North 85 degrees 00 minutes 00 seconds West continuing along said southerly right-of-way line a distance of 333.88 feet; thence South 17 degrees 00 minutes 00 seconds East for a distance of 67.93 feet; thence South 73 degrees 00 minutes 00 seconds West for a distance of 74.78 feet to the POINT-OF-BEGINNING of the herein described parcel; thence South 12 degrees 11 minutes 03 seconds East for a distance of 48.1 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 9.5 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 3.4 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 3.9 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 3.4 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 11.8 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 18.1 feet; thence North 57 degrees 11 minutes 03 seconds West for a distance of 2.7 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 68.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 14.4 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.9 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 8.2 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 9.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 1.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 6.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 2.9 feet to the POINT-OF-BEGINNING.

## UNIT FOUR, HERON CREEK PHASE II

A parcel of land lying in Section 32, Township 6 South, Range 38 East, St. Johns County, Florida, described as follows:

Commence at the intersection of the North Line of said Section 32 with the westerly right-of-way line of State Road A-1-A (66 foot right-of-way as now established); thence South 15 degrees 36 minutes 08 seconds East along said westerly right-of-way line for a distance of 861.87 feet to the southerly right-of-way line of Carcaba Road (30 foot wide right-of-way as now established); thence South 74 degrees 18 minutes 55 seconds West along said southerly right-of-way line for a distance of 1288.69 feet; thence North 85 degrees 00 minutes 00 seconds West continuing along said southerly right-of-way line a distance of 333.88 feet; thence South 17 degrees 00 minutes 00 seconds East for a distance of 48.52 feet; thence South 73 degrees 00 minutes 00 seconds West for a distance of 188.26 feet to the POINT-OF-BEGINNING of the herein described parcel; thence South 12 degrees 11 minutes 03 seconds East for a distance of 48.1 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 6.8 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 21.5 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 12.7 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 1.9 feet; thence South 77 degrees 48 minutes 57 seconds West for a distance of 6.5 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 33.5 feet; thence North 57 degrees 11 minutes 03 seconds West for a distance of 2.7 feet; thence North 12 degrees 11 minutes 03 seconds West for a distance of 68.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 14.4 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 8.9 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 8.2 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 9.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 1.6 feet; thence South 12 degrees 11 minutes 03 seconds East for a distance of 6.8 feet; thence North 77 degrees 48 minutes 57 seconds East for a distance of 2.9 feet to the POINT-OF-BEGINNING.

SUBJECT TO A 20 FOOT EASEMENT TO MICHAEL W. BOLES AND DARIA F. BOLES, HUSBAND AND WIFE, OF EVEN DATE HERewith.

(3)



EXHIBIT "C"

ARTICLE OF INCORPORATION

OF

HERON CREEK II HOMEOWNERS ASSOCIATION, INC.

A CORPORATION NOT-FOR-PROFIT

We, the undersigned, desiring to form a corporation not for profit, do hereby associate ourselves into a corporation for the purposes and with the powers herein specified and do hereby agree to the following Articles of Incorporation:

ARTICLE I. NAME

The name of this corporation shall be:

HERON CREEK II HOMEOWNERS ASSOCIATION, INC.,  
(hereinafter referred to as the "Association").

ARTICLE II. PURPOSE

The purposes and object of the Association shall be to administer the operation and management of HERON CREEK II, a Planned Special Development, (hereinafter "the Development") established upon that certain real property in St. Johns County, Florida, as described on Exhibit "A" attached hereto and incorporated herein by reference, to promote the health, safety and welfare of the residents within the development and any additions thereto which may be brought into the jurisdiction of this Association by annexation under the terms and conditions as set forth in the Declaration of Covenants, Conditions and Restrictions of HERON CREEK II which will be recorded in the public records of St. Johns County, Florida (the "Declaration") by TESDORFF & JAMES DEVELOPMENTS, INC., a Florida corporation, its successors or assigns (the "Developer"). No stock shall be issued by the corporation.

The Association does not contemplate pecuniary gain or profit to the members thereof and shall undertake and perform all acts and duties incident to the operation and management preservation and architectural control of the residence lots and common areas of the Development in accordance with the terms, provisions, and conditions of these Articles of Incorporation, the By-Laws of the Association and the Declaration.

ARTICLE III. POWERS

The Association shall have the following powers:

A. All of the powers and privileges granted to corporations not for profit under the laws of the State of Florida and the Declaration as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth in length.

B. All of the powers reasonably necessary to implement and effectuate the purposes of the Association, including, without limitation, the power, authority and right to:

1. Make and establish reasonable rules and regulations governing the use of the Units, Common Elements, as such terms will be defined in the Declaration.

2. Own, hold, improve, build upon, maintain, operate, lease, sell, manage, transfer, dedicate for public use, and otherwise dispose of and deal with such real and personal property as may be necessary or convenient in connection with the affairs of the Association.

3. To own, manage, administer and operate such property as may be conveyed to it by the Developer, its successors or assigns for the mutual benefit and use of all Members.

4. Fix, levy, collect and enforce payment by any lawful means all charges or assessments against members of the Association to defray the Common Expenses of the Development, as will be provided in the Declaration and the By-Laws, including the right to levy and collect assessments for the purpose of acquiring, owning, holding, operating, leasing, encumbering, selling, conveying, exchanging, managing and otherwise dealing with the Development Property, including Units, which may be necessary or convenient in the operation and management of the Development and in accomplishing the purposes set forth in the Declaration, and to pay all expenses, including office expenses, licenses, taxes, or governmental charges levied or imposed against the Property of the Association, incident to the conduct of business of the Association.

5. Maintain, repair, replace, operate and manage the Development Property, and any property owned by the Association, including the right to reconstruct improvements after casualty and to further improve and add to the Development Property and other property owned by the Association.

6. Contract for the management of the Development and, in connection therewith, to delegate any and/or all of the powers and duties of the Association to the extent and in the manner permitted by the Declaration, the By-Laws.

7. Enforce the provisions of these Articles of Incorporation, the Declaration, the By-Laws, and all rules and regulations governing use of the Development which may hereafter be established.

#### ARTICLE IV. QUALIFICATION OF MEMBERS

The qualifications of members, manner of their admission to and termination of membership shall be as follows:

A. The owners (as defined in the Declaration and the By-Laws) of any Units in the Development shall be members of the Association, and no other persons or entities shall be entitled to membership, except the subscribers hereof.

B. A person shall become a Member by the acquisition of a vested present interest in the fee title to a Unit in the Development. The membership of any person or entity shall be automatically terminated upon his being divested of his title or interest in such Unit.

C. Transfer of membership shall be recognized by the Association upon its being provided with a certified copy of the recorded deed conveying such fee simple title to a Unit to the new Member.

D. If a corporation, trust, partnership, joint venture or other entity is the fee simple title holder to a

Unit or the Unit person as the Member entitled to cast votes and/or to approve or disapprove matters as may be required or provided for in these Articles, the By-Laws or the Declaration.

E. Except as an appurtenance to his Unit, no Member can assign, hypothecate or transfer in any manner, his membership in the Association or his interest in the funds and assets of the Association. The funds and assets of the Association shall belong solely to the Association subject to the limitation that the same be used to accomplish the duties and requirements as outlined in the Declaration or By-Laws.

**ARTICLE V**

The street address and city of the initial registered office of the corporation is 46 Spanish Street, St. Augustine, Florida 32084 and the name of the initial registered agent at such address is JOSEPH L. BOLES, JR.

**ARTICLE VI**

The Board of Directors shall consist of one member per Unit as designated that Units owners.

The number of the members constituting the initial Board of Directors of the corporation is two, and the names and addresses of the persons who are to serve as the initial directors are:

John Tesdorpf	515 Carcaba Road Vilano Beach St. Augustine, FL 32084
John James	117 Carmel Road St. Augustine, FL 32084

**ARTICLE VII**

This corporation is organized under a non-stock basis.

**ARTICLE VIII**

In the event of dissolution, the residual assets of the organization will be turned over to one or more organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law, or to the Federal, State, or Local government for exclusive public purpose.

**ARTICLE IX. -- OFFICERS**

A. The officers of the Association shall be a President, one or more Vice Presidents, Secretary and Treasurer who shall perform the duties of such offices customarily performed by like officers of corporations in the State of Florida subject to the directions of the Board of Directors.

B. Officers of the Association will not be compensated. The Board of Directors, or the President with



the approval of the Board of Directors, may employ a managing agent, agency, and/or other managerial and supervisory personnel or entity to administer or assist in the administration of the operation and management of the Development and the affairs of the Association, and any and all such persons and/or entity or entities may be so employed without regard to whether any such person or entity is a Member, Director or officer of the Association.

C. The persons who are to serve as officers of the Association until their successors are chosen are:

<u>Officer</u>	<u>Name</u>
President	John Tesdorpf
First Vice President	
Secretary/Treasurer	John James

D. The officers shall be elected by the Board of Directors at their annual meeting as provided in the By-Laws. Any vacancies in any office shall be filled by the Board of Directors at any meeting duly held.

E. The officers shall be elected from the membership of the Board of Directors. The same person may hold two offices, provided, however, that the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary be held by the same person. Officers shall be elected annually.

#### ARTICLE X. BY-LAWS

A. The Board of Directors shall adopt by a majority vote the original By-Laws of the Association.

B. The By-Laws may be amended, altered or rescinded upon the proposal of a majority of the Board of Directors and approval by an affirmative vote of a majority of the association Members at a regular or special meeting or the Members, the notice of which shall state that such proposal is to be voted upon at that meeting.

#### ARTICLE XI. AMENDMENT OF ARTICLES

A. These Articles of Incorporation may be amended as follows:

1. Amendments shall be proposed by a majority of the Board of Directors.

2. The President, or acting Chief Executive Officer of the Association in the absence of the President, shall thereupon call a special meeting of the Members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from the date on which the Board of Directors approve the amendment proposal. Each Member shall be given written notice of such meeting stating the time and place of the meeting and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed or presented personally to each Member not less than ten (10) days nor more than thirty (30) days before the date set for such meeting. Such notice shall be deemed properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association. At

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such meeting, the amendment of amendments proposed must be approved by an affirmative vote of at least a majority of the members of the Association in order for such amendment or amendments to become effective. If so approved, a certified copy of the said amendment or amendments shall be filed in the Office of the Secretary of State of the State of Florida and recorded in the public records of St. Johns County, Florida.

#### ARTICLE XII. INDEMNITY

Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases where the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event any claim for reimbursement or indemnification hereunder is based upon a settlement by the Director or officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

#### ARTICLE XIII. INCOME OF CORPORATION; DISSOLUTION

No part of the income of this corporation shall be distributed to the Members except upon dissolution or final liquidation and as permitted by the court having jurisdiction thereof. Dissolution shall be subject to court approval pursuant to Florida Statutes Section 617.05.

#### ARTICLE XIV. INCORPORATORS

John Tesdorpf

515 Carcaba Road  
Vilano Beach  
St. Augustine, FL 32084

John James

117 Carmel Road  
St. Augustine, FL 32084

IN WITNESS WHEREOF, we, the undersigned incorporators, have hereunto set our hands and seals this 24 day of April, 1990.

  
JOHN JAMES

  
JOHN TESDORPF

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing ARTICLES OF INCORPORATION was  
acknowledged before me this 24 day of April,  
1992, by JOHN JAMES, a subscriber.

  
Notary Public, State of Florida at Large

My commission expires: August 2, 1992

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing ARTICLES OF INCORPORATION was  
acknowledged before me this 24 day of April,  
1992, by JOHN TESDORPF, a subscriber.

  
Notary Public, State of Florida at Large

My commission expires: August 2, 1992

CERTIFICATE NAMING AGENT UPON WHOM PROCESS  
MAY BE SERVED

In pursuance of Chapter 48.091, Florida Statutes, the  
following is submitted:

The HERON CREEK II HOMEOWNERS ASSOCIATION, INC., a  
corporation duly organized and existing under the laws of  
the State of Florida, with its principal office, as  
indicated in the Articles of Incorporation at City of St.  
Augustine, County of St. Johns, State of Florida, has named  
JOSEPH L. BOLES, JR., located at 46 Spanish Street, City of  
St. Augustine, County of St. Johns, State of Florida 32084,  
as its agent to accept service of process within this state.

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

  
JOSEPH L. BOLES, JR.

EXHIBIT "D"

BY-LAWS

O.R. 855 PG 0667

OF

HERON CREEK II HOMEOWNERS ASSOCIATION, INC.

A Florida Corporation Not-for-Profit

1. IDENTITY.

1.1 Applicability. These are the By-Laws of HERON CREEK II HOMEOWNERS ASSOCIATION, INC. (the "Association"), a Florida corporation not for profit organized pursuant to the provisions of Chapter 617, Florida Statutes. The purpose and object of the Association shall be to administer the operation and management of HERON CREEK II HOMEOWNERS ASSOCIATION, INC. to be established in accordance with the Declaration of Covenants, Conditions and Restrictions for HERON CREEK II (the "Declaration"), upon certain property in St. Johns County, Florida, as set forth in the said Declaration. The provisions of these By-Laws are applicable to the Association and are subject to the provisions of the Declaration, and the Articles. All members of the Association, as defined in the Articles, and their invitees, including, without limitation, all present or future owners and tenants of lots in the Property and in the Future Development Property, if such property is annexed as set forth in the Declaration as such are defined herein and in the Declaration, and other persons using the lots or any of the facilities thereof in any manner, are subject to these By-Laws, the Articles and the Declaration.

1.2 Office. The office of the Association shall be at 515 Carcaba Road, St. Augustine, Florida 32084, or at such other place as may be established by resolution of the Board of Directors.

1.3 Fiscal Year. The fiscal year of the Association shall be the first day of January through the last day of December.

1.4 Seal. The seal of the Association shall bear the name of "HERON CREEK II HOMEOWNERS ASSOCIATION, INC." the word "Florida", the words "Corporation Not-For-Profit", and the year of incorporation.

2. DEFINITIONS.

2.1 Association. "Association" shall mean and refer to HERON CREEK II HOMEOWNERS ASSOCIATION, INC., a corporation not-for-profit, organized or to be organized pursuant to Chapter 617, Florida Statutes, and its successors and assigns.

2.2 Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interests merely as security for the performance of any obligation. The term "Owner" shall not mean or refer to any mortgagee or grantee or beneficiary under a deed or trust or security deed unless and until such mortgagee, grantee or beneficiary has acquired title pursuant to foreclosure or any proceeding or conveyance in lien of foreclosure.

**2.3 Property.** "Property" shall mean and refer to that certain real property more particularly described on Exhibit "A" attached hereto, containing four (4) Lots.

**2.4 Future Development Property.** "Future Development Property" shall mean and refer to any other property adjacent to and contiguous to the property described in Exhibit "A".

**2.5 Common Area.** "Common Area" shall mean and refer to that portion of the Property which is not a part of a lot and which is intended for the common use and enjoyment of the owners, and which shall be conveyed by the Developer to the Association pursuant to the provisions of this Declaration.

**2.6 Lot.** "Lot" shall mean and refer to any of the plat of land shown upon the plat of the Property, with the exception of the Common Area and dedicated roads.

**2.7 Developed Lot.** "Developed Lot" shall mean and refer to any Lot on which permanent improvements, including a single family dwelling, are located.

**2.8 Undeveloped Lot.** "Undeveloped Lot" shall mean and refer to any lot which does not contain any permanent improvements.

**2.9 Developer.** "Developer" shall mean and refer to TESDORPF & JAMES DEVELOPMENTS, INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped lot for the purpose of development.

**2.10 Board of Directors.** "Board of Directors" shall mean and refer to the Association's Board of Directors.

**2.11 Articles.** "Articles" shall mean and refer to the Articles of Incorporation of the Association.

**2.12 Association Expenses.** "Association Expenses" shall mean and refer to the expenses and charges described in this Declaration incurred or to be incurred by the Association and assessed or to be assessed against the Lots and Owners thereof.

**2.13 Assessment.** The term "Assessment" as used herein shall mean and refer to a share of Association Expenses required for the payment of the Association Expenses which from time to time shall be assessed against the Lots and the Owners and the Authorized Users.

**2.14 Assessment Period.** "Assessment Period" shall be the same period as a calendar year, from January 1 to December 31 of any given year.

**2.15 Member.** "Member" shall mean and refer to all those Owners who are members of the Association as provided in Section 1 of Article II of the Declaration.

### **3. MEMBERSHIP, VOTING, QUORUM, PROXIES.**

**3.1 Membership.** The qualification of members of the Association (the "Members"), and the manner of their admission to membership and termination of such membership, and voting by Members, shall be as set forth in Article IV of the Articles and Article II, Section 1 of the Declaration, the provisions of which are incorporated herein by reference.

3.2 Quorum. A quorum at meetings of Members shall consist of the number of persons which make up a majority of the membership which is entitled to vote upon any matter or matters arising at said meeting.

3.3 Voting. The classes of voting membership and manner of voting shall be as set forth in Section 3 of the Declaration, subject to the additional terms and conditions set forth herein:

(a) There shall be two (2) classes of voting memberships as follows:

Class A - Class A Members shall be all Owners who have taken title to one or more Lots from the Developer, or from a successor in title to the Developer. Class A Members shall be entitled to one vote for each Lot in which they hold an interest required for membership. When more than one person holds such interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine but in no event shall more than one vote be cast with respect to any Lot.

Class B - The Class B Member shall be the Developer, which shall be initially entitled to four (4) votes, with the number of votes decreasing by one with the sale of each Lot. Class B membership shall terminate upon the happening of one of the following events, whichever occurs earlier: (i) when the Developer has conveyed one hundred percent (100%) of the Lots located on the Property ~~and the Future Development Property is developed and annexed as herein provided~~, or (ii) March 31, 1995

(b) If a Lot is owned by one person, his right to vote shall be established by the record title to his Lot.

(c) If any Lot is owned by more than one person or a partnership, corporation, trust, or any other association or entity, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by all of the record owners of the Lot or by the President, general partner or other chief executive officer of the respective entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate designating the person entitled to cast the vote of a Lot may be revoked by any owner of the Lot. If such a certificate is not on file, the vote of such owners shall not be considered in determining the requirement for a quorum nor for any other purpose.

(d) The Developer shall be entitled to cast the number of votes as set forth in subparagraph (a) hereof under Class B Membership.

3.4 Vote Required. Except as otherwise required under the provisions of the Articles, these By-Laws or the Declaration, or where the same otherwise may be required by law, at any meeting of the general membership of the Association, duly called and at which a quorum is present, the acts approved by the affirmative vote of a majority of the votes present at such meeting regardless of whether the Member is voting as a Class A or Class B Member, shall be binding upon the Members.

**3.5 Proxies.** At any meeting of the Members, every Member having the right to vote shall be entitled to vote in person or by proxy. Any proxy given shall be effective only for the specific meeting for which originally given. All such proxies shall be filed with the Secretary prior to or during the roll call or such meeting. In no event shall any proxy be 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 any time at the pleasure of the owner executing it.

#### **4. MEMBER'S MEETINGS**

**4.1 Annual Meeting.** The annual meeting of the Members shall be held at the office of the Association or such other place in St. Johns County, Florida, and at such time as may be specified in the notice of the meeting, on the first Tuesday in March of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the Members; provided, however, that if that day is a legal holiday, the meeting shall be held on the next succeeding Saturday, or such day as the Directors shall determine and include in the notice of meeting.

**4.2 Special Meeting.** Special meetings of the entire membership of the Association shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from Members entitled to cast a majority of the votes of the entire membership.

#### **4.3 Notice of Meetings.**

(a) **Generally.** Written notice of all meetings of Members shall be given by the Secretary or, in the absence of the Secretary, another officer of the Association, to each Member or class of Members, if any, unless waived in writing. Each notice shall state the time and place of and purpose for which the meeting is called and shall be posted at a conspicuous place in the Common Area of the Development Property at least fourteen (14) days prior to said meeting.

(b) **Annual.** Notice of the Annual Meeting shall be given by or at the direction of the President, Secretary or officer or persons calling the meeting to each Member not less than fourteen (14) days nor more than sixty (60) days prior to the date set for the meeting, and shall be mailed by first class mail or delivered personally to each Member. If delivered personally, receipt of notice shall be signed by the Member, indicating the date received and shall constitute that Member's waiver of his right to receive given when deposited in the United States Mail addressed to the Member at his Post Office address as it appears on the records of the Association.

(c) **Special.** Notice of Special Meetings shall be given to each Member not less than fourteen (14) days nor more than sixty (60) days prior to the date set for the meeting and shall be mailed by first class mail or delivered personally to the Member.

(d) **Waiver.** Any Member may, in writing signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether before, at or after the holding of the meeting, shall constitute notice to such Member.

(e) **Adjourned Meetings.** If any meeting of Members cannot be held because a quorum is not present, or

because a greater percentage of the membership required to constitute a quorum for a particular purpose is not present, wherever the latter percentage of attendance may be required as set forth in the Articles, the By-Laws or the Declaration, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum or the required percentage of attendance, if greater than a quorum, is present. If the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and any business may be transacted at the adjournment meeting that might have been transacted on the original date of the meeting, it is not necessary to give notice of the adjourned meeting. If, however, the time and place for the adjourned meeting are fixed after the adjournment, it is necessary to give notice of the adjourned meeting in accordance with Section 4.3 herein.

**4.4 Presiding Officer and Minutes.** At meetings of Members, the Chairman of the Board, or in his absence, the President, shall preside, or in absence of both, the Members present shall select a chairman of the meeting. Minutes shall be kept in a business like manner and available for inspection by Directors, Unit owners and their authorized representatives during normal business hours at the principal office of the Association. The Association shall retain these minutes for a period of not less than seven (7) years.

**4.5 Order of Business.** The order of business at annual meetings of Members, and, as far as practical, at other meetings of Members, shall be:

- (a) Calling of the roll and certifying of proxies
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading or waiver of reading or minutes or previous meeting of Members
- (d) Reports of officers
- (e) Reports of committees
- (f) Appointment by Chairman of inspectors of election
- (g) Election of Directors
- (h) Unfinished business
- (i) New business
- (j) Adjournment

## **5. BOARD OF DIRECTORS**

**5.1 First Board and Developer Control.** The affairs of the Association shall be managed by a Board of Directors. The first Directors shall consist of two (2) persons as designated in the Articles of Incorporation. TESDORFF & JAMES DEVELOPMENTS, INC., a Florida corporation, "Developer," reserves the right to appoint Directors to the Board as specified in the Articles, and as described herein.

**5.2 Election of Directors.** Directors shall be elected in the following manner:



(a) The Board of Directors shall be elected by the Members from among the membership of the Association at the annual membership meeting, by affirmative vote of a plurality of the votes cast at such meeting, however, the Developer shall have the right to elect all of the Directors of the Board subject to the following:

1. When Lot owners other than the Developer own twenty-five percent (25%) or more of the Lots in the Development that will be operated ultimately by the Association, the Lot owners other than the Developer shall be entitled to elect one-third (1/3) of the members of the Board of Directors.

2. Lot owners other than the Developer shall be entitled to elect a majority of the Members of the Board of Directors upon the first to occur of the following:

(a) The Developer has conveyed a majority of the lots which will ultimately comprise the development; or

(b) March 31, 1995.

3. The Developer is entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least (25%) percent of all of the Lots in the Development to be operated ultimately by the Association.

(a) Vacancies on the Board may be filled, through the unexpired term thereof, by the remaining Directors except that, should any vacancy on the Board be created in a directorship previously filled by any person appointed by Developer, such vacancy shall be filled by Developer appointing by written instrument delivered to any officer of the Association, the successor Director, who shall fill the vacated directorship for the unexpired term thereof.

(b) In the election of Directors, there shall be appurtenant to each Lot one (1) vote for each Director to be elected, and the Developer shall be entitled to cast the number of votes allocated to it under Article 2, Section 2.3(a) hereof, provided, however, that no Member or owner of any Lot (other than the Developer) may cast more than one vote for any person nominated as a Director, and the Developer may cast no more than its total number of allocated votes for any person nominated as a Director, it being the intent hereof that voting for Directors shall be non-cumulative.

(c) At the first annual meeting, the members will elect three (3) directors, which one directorship to be designated as a two year term director and the other two to be for one year terms. At the next succeeding annual meeting, one of such one year term directorships shall be, from that point one, designated as a two year term directorship. The intent hereof is to stagger the terms of the directorships so that there shall be only two directors elected each year with one member of the old board continuing on the new board. Therefore, there shall be two directorships of two year terms being up for election in different years, and the third directorship shall always remain a one-year term directorship.

(d) In the event that Developer selects any person or persons to serve on the initial Board, Developer shall have the absolute right at any time, in its sole discretion, to replace any such person or persons with another person or other persons to serve on the Board.

Replacement of any person or persons designated by Developer to serve on any board shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name or names of the person or persons designated as successor or successors to the persons so removed from the Board. The removal of any director and designation of his successor shall be effective immediately upon delivery of such written instrument by Developer to any officer of the Association.

(e) Approval of Class A Members. Except as otherwise expressly provided herein or the Declaration, prior to Class A membership acquiring the power to elect a majority of the Board of Directors pursuant to paragraph 5.2(a)(2), the approval of a majority of the Class A membership shall be required for enactment by the Board of Directors of any resolution materially affecting the Class A membership in the operation, maintenance or ownership of their Lots or the Common Area.

5.3 Organizational Board Meeting. The organizational meeting of a newly elected or designated Board shall be held within fifteen (15) days of their election or designation, at such time and place as shall be fixed at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary; provided, that a quorum shall be present.

5.4 Regular Board Meeting. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, at least seven (7) days prior to the day named for such meeting, unless notice is waived. Meetings of the Board of Directors shall be open to all Members and notices of meetings shall be posted conspicuously in the common area at least forty-eight (48) hours in advance for the attention of Lot owners, except in an emergency. Notice of any meeting where assessments against Lot owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

5.5 Special Meetings. Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of one-third of the Directors. Except in an emergency, not less than two (2) days notice of a special meeting shall be given to each Director, personally or by mail, telephone, or telegram, which notice shall state the time, place and purpose of the meeting. Notice of any meeting where assessments against Lot owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

5.6 Board Minutes. Minutes of all meetings of the Board shall be kept in a businesslike manner and available for inspection by Members and Directors during normal business hours at the principal office of the Association. The Association shall retain these minutes for a period of not less than seven (7) years.

5.7 Waiver of Notice. Any Director may waive notice of a meeting before, at or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

5.8 Quorum. To conduct business at any duly called meeting of the Directors at least a majority must be present and vote.

**5.9 Action Without a Meeting.** To the extent now or from time to time hereafter permitted by the laws of Florida, the Board may take any action which they might take at a meeting of the Board without a meeting; provided, that a record of all such actions so taken, signed by each Director, shall be filed and retained in the minute book of the Association.

**5.10 Removal.** Directors may be removed from office with or without cause by the vote or written agreement of persons entitled to cast a majority of the votes of the membership, provided, however, that only the Developer can remove a member of the Board who was appointed by the Developer.

**5.11 Presiding Officer.** The presiding officer of meetings of the Board shall be the Chairman of the Board, if such officer has been elected, or, if not, the President of the Association. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

**5.12 Compensation.** No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties, if such expense is provided for in the budget. If such expense is not provided for in the budget, all reimbursements shall be approved by the majority of the membership.

**5.13 Powers and Duties.** All of the powers and duties of the Association shall be exercised by the Board, including those existing under the laws of Florida, the Articles, these By-Laws and the Declaration. Such powers and duties shall be exercised in accordance with the Articles, these By-Laws and the Declaration, and shall include, without limitation, the right, power and authority to:

(a) Make, levy and collect assessments, including without limitation assessments for reserves and for betterments to Association property, against Members and Members' Lots to defray the costs of the Development and the property owned by the Association and use of the proceeds of assessments in the exercise of the powers and duties of the Association.

(b) Maintain, repair, replace, operate and manage the Common Areas in the Property wherever the same is required to be done and accomplished by the Association for the benefit of members;

(c) Repair and reconstruct improvements after casualty;

(d) Make and amend regulations governing the use of Common Areas in the Property, real and personal, provided that such regulations or amendments thereto shall not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Articles and Declaration;

(e) Contract for the management and maintenance of property and to authorize a management agent to assist the Association in carrying out its powers and duties, including but not limited to the performance of such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of common elements

and property owned by the Association with funds as shall be made available by the Association for such purposes. Any such contract shall be terminable for cause upon the giving of thirty (30) days prior written notice, and shall be for a term of from one (1) to three (3) years. Any such contract shall be renewable by consent is negotiated by the Developer, the term of such contract shall not exceed one (1) year. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, including but not limited to the making of assessments, promulgation of rules and execution of contracts on behalf of the Association;

(f) Enforce by legal means the provisions of the Articles, these By-Laws, the Declaration and all regulations governing use of the Property;

(g) Pay all taxes and assessments which are liens against any part of the Property other than Lots and the appurtenances thereto, and assess the same against the Members and their respective Lots subject to such liens;

(h) Carry insurance for the protection of Members and the Association against casualty and liability, including Directors' liability insurance;

(i) Pay all costs of power, water, sewer and other utility services rendered to the Property or to the Association and not billed to the owners of the separate Lots;

(j) Employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association.

## 6. OFFICERS.

6.1 Generally. The Board shall elect a President, Secretary, Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall deem advisable from time to time. The President and Vice President shall be elected from the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, that the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary be held by the same person.

6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of a corporation not for profit, including but not limited to the power to appoint committees from among the Members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association. He shall have such additional powers as the Board may designate.

6.3 Vice-President. Should more than one person be designated Vice President, those persons serving as Vice President shall be titled First Vice President and Second Vice President. The First Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and person such other duties as shall be prescribed by the Board. The Second Vice President shall serve as President in the absence or disability of the President and the First Vice President and shall exercise such other

powers and perform shall other duties as prescribed by the Board.

**6.4 Secretary.** The Secretary shall keep the minutes of all proceedings of the Board and the Members. He shall attend to the affairs of the Association. He shall have such additional powers as the Board may designate.

**6.5 Treasurer.** The Treasurer shall have custody of all of the property of the Association including funds, securities and evidences of indebtedness. He shall keep the assessment roll and accounts of the Members; he shall keep the assessment roll and accounts of the Members; he shall keep the books of the Association in accordance with good accounting practices, and he shall perform all other duties incident to the office of Treasurer.

**6.6 Compensation.** No compensation shall be paid to any officer of the Association. Nothing herein shall be construed so as to prohibit or prevent the Board of Directors from employing any director or officer as an employee of the Association at such compensation as the Board shall determine, nor shall anything herein be construed so as to preclude the Board from contracting with a director or officer or with any corporation in which a director or officer of the Association may be stockholder, officer, director or employee, for the management of HERON CREEK II, for such compensation as shall be mutually agreed between the Board and such officer, director or corporation, for the purpose of making available to the owners of Lots such services as are contemplated by the provisions of Article as is of these By-Laws. It is expressly contemplated that the first Board of Directors may enter into such contracts with persons who are initial officers or directors of the Association, or with corporations having officers, directors or employees who are also members of the first Board of Directors of the Association.

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

**7.1 Books and Accounts.** Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance supplied at least annually to members. Such records shall include, but not be limited to:

(a) A record of all receipts and expenditures.

(b) An account for each Lot which shall designate the name and address of the Lot owner, the amount of each assessment, dates and amounts in which the assessments come due, the amounts paid upon the account and the balance due.

**7.2 Inspection of Books.** Financial reports and the membership records shall be maintained in the office of the Association and shall be available to members for inspection during normal business hours. The Association shall issue an annual financial report to Lot owners.

**7.3 Annual Budget.** The Board shall adopt, for, and in advance of, each fiscal year, a budget showing the estimated cost of performing all of the functions of the Association for the year. Each budget shall show the total estimated expenses of the Association for that year and shall contain an itemized breakdown of the common expenses, which shall include without limitation, the cost of operating and maintaining the Common Elements, taxes on Association property, wages and salaries of Association employees,

management, legal and accounting fees, office supplies, public utility services not metered or charged separately to lots, premiums for insurance carried by the Association and any reserve accounts and/or funds which may be established from time to time by the Board. Each budget shall also show the proportionate share of the total estimated expenses to be assessed against and collected from the owner(s) of each lot, and due date(s) and amounts of installments thereof. Copies of the proposed budget and proposed assessments shall be transmitted to each Member at least thirty (30) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of the time and place of said meeting, which shall be open to Members. If any budget is subsequently amended, a copy shall be furnished to each affected Member. Delivery of a copy of any budget or amended budget to a Member shall not affect the liability of any Member for any such assessment, nor shall delivery of a copy of any budget or amended budget to a Member shall not affect the liability of any Member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of the budget and assessments levied pursuant thereto. Nothing herein contained shall be construed as a limitation upon the additional assessment in the event that any budget originally adopted shall appear to be sufficient to pay costs and expenses of operation and management, or in the event of emergencies.

**7.4 Amount of Budget.** If an budget is adopted by the Board which requires assessment of the lot owners in any budget year of an amount in excess of ten percent (10%) over the maximum assessment or the previous year's assessment established in accordance with Section 5 of the Declaration, a special meeting of the Members shall be held upon not less than ten (10) days written notice to each Member, but within thirty (30) days of the adoption of such budget, at which special meeting Members shall be entitled to approve or disapprove such budget and may consider only and enact only a revision of the budget. Approval of the budget and any such revision of the budget shall require a vote of a majority of the members. The Board may, in any event, first propose a budget to the Members at any such meeting of Members or by writing, and if such budget or proposed budget be approved by a majority of the Members either at such meeting or by writing, such budget shall not thereafter be reexamined by the Members in the manner hereinabove set forth.

In determining whether assessments are in excess of ten percent (10%) over the maximum assessment or previous year's assessment established in accordance with the Declaration in the prior budget year, there shall be excluded from the computation reasonable reserves established by the Board in respect of repair and replacement of Association property, or in respect of anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis; and there shall be excluded from such computation assessments for betterments to Association property. Provided, however, that so long as Developer is in control of the Board of Directors the Board shall not impose an assessment for a budget year greater than ten percent (10%) of the maximum assessment as set forth in the Declaration of the prior budget year's assessment without approval of two-thirds (2/3) of the votes of all Members.

**7.5 Notice of Adopted Budgets.** Upon adoption of budgets, the Board shall cause written copies thereof to be delivered to all Members. Assessments shall be made against Members pursuant to procedures established by the Board, and in accordance with terms of the Declaration and Articles.

Provided, however, that the lien or lien rights of the Association shall not be impaired by failure to comply with procedures established pursuant to these By-Laws.

**7.6 Assessments.** Unless otherwise determined by the Board of Directors, assessments shall be payable monthly on the first day of each calendar month, but in no event shall amounts be payable less often than quarterly. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment, and installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. Unpaid assessments for the remaining portion of the fiscal year for which an amended assessment is made shall be payable in equal installments through the end of the fiscal year; provided, nothing herein shall serve to prohibit or prevent the Board of Directors from imposing a lump sum assessment in case of any immediate need or emergency.

**7.7 Special Assessments.** Special assessments, if required and approved by a three-fourths (3/4) majority of the votes of the membership at a duly convened meeting, shall be levied and paid in the same manner as heretofore provided for regular assessments. Special assessments can be of three kinds: (i) those chargeable to all Members in the same proportions as regular assessments to meet shortages or emergencies, to construct, reconstruct, repair or replace all or any part of the Common Area (including fixtures and personal property related thereto), (ii) those assessed against one Member along to cover repairs or maintenance for which such Member is responsible and which he has failed to make, which failure impairs the value of or endangers the Common Area or which are for expenses incident to the abatement of a nuisance within his Lot, and (iii) and for such other purposes as shall have been approved by a three-fourths (3/4) majority of the membership.

**7.8 The Depository.** The depository of the Association shall be such bank or banks or savings and loan association or associations as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks or withdrawals signed by such persons as are authorized by the directors, provided that any management agreement may include in its provisions authority for the Manager to sign checks on behalf of the Association for payment of the obligations of the Association.

**7.9 Audit.** An audit of the accounts of the Association may be made from time to time as directed by the Board of Directors.

**7.10 Fidelity Bonds.** The Board may if it so chooses by majority vote direct that all officers, directors, employees, agents and contractors of the Association and their employees and agents, who are responsible for or who handle Association funds shall be bonded in an amount equal to at least one hundred fifty percent (150%) of the Association's estimated annual budget, including reserves. The premiums of the of said bonds shall be paid by the Association.

**8. PARLIAMENTARY RULES.** Robert's Rules of Order (latest edition) shall govern the conduct of the Association

meetings when not in conflict with the Declaration of Condominium, Articles of Incorporation, or these By-Laws.

**9. AMENDMENTS TO BY-LAWS.** Amendments to these By-Laws shall be proposed and adopted in the following manner:

**9.1 Proposal.** Amendments to these By-Laws may be proposed by the Board, acting upon a vote of a majority of the Directors, or by person entitled to cast a majority of the Lots whether meeting as Members or by instrument in writing signed by them.

**9.2 Notice.** Upon any amendment or amendments to these By-Laws being proposed by the Board or Members, such proposed amendment of amendments shall be transmitted to the President of the Association, or acting chief executive officer in the absence of the President, who shall thereupon call a special meeting of the Members for a date not sooner than fourteen (14) days nor later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each Member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the Members is required as herein set forth; provided, that proposed amendments to the By-Laws may be considered and voted upon at annual meetings of the Members.

**9.3 Content of Amendment.** No By-Law shall be revised or amended by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended; new words shall be inserted in the text underlined and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw. . . for present text." Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

**9.4 Voting.** In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of two-thirds of the votes entitled to be cast at a regular or special meeting. Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the public records of St. Johns County, Florida, within fifteen (15) days from the date on which any amendment or amendments have been affirmatively approved by the Members.

**9.5 Written Vote.** At any meeting held to consider such amendment or amendments to these By-Laws, the written vote of any Member shall be recognized if such Member is not present at such meeting in person or by proxy, provided such written vote is delivered to the Secretary at or prior to such meeting.

**9.6 Developer's Reservation.** Notwithstanding for foregoing provisions of this Article 8, no amendment to these By-Laws which shall abridge, amend or alter the right of Developer to designate members of the Board of Directors, of the Association, as provided in Article 5 hereof, or any other right of the Developer provided herein or in the



Articles of Declaration, may be adopted or become effective without the prior written consent of Developer.

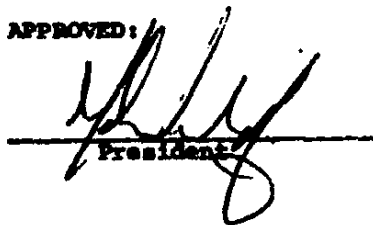
9.7 FHA/VA Approval. As long as there is Class B membership in the Association, the Federal Housing Administration or Veterans Administration shall have the right to veto amendments to these By-Laws.

9.8 Proviso. Provided, however, that no amendment shall discriminate against any Lot owner or class or group of Lot owners unless the Lot owners so affected shall consent. No amendment shall be made that is in conflict with the Declaration or the Articles of Incorporation. In the event of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control, and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control. Anything herein to the contrary notwithstanding, until the first regular election of Directors by the membership, and so long as the Developer shall have the right to fill vacancies on the Board of Directors, and amendment shall require only the unanimous consent of the Board of Directors, and no meeting of the Members nor any approval thereof need be had.

The foregoing were adopted as the By-Laws of HERON CREEK II HOMEOWNERS ASSOCIATION, INC., a corporation not-for-profit under the laws of the State of Florida, at the first meeting of the Board of Directors on the 25 day of April, 1982.

  
Secretary

APPROVED:

  
President

FILED AND RECORDED IN  
PUBLIC RECORDS OF  
ST. JAMES COUNTY, FLA.

90PMY-8 PM 1:20

Chad "Budd" Munk  
CLERK OF ST. JAMES COUNTY

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERON CREEK**

THIS AMENDMENT made this 9th day of ~~December~~ <sup>JANUARY 1992</sup>, 1992, by TESDORFF AND JAMES DEVELOPMENTS, INC., a Florida corporation, 'Developer', and HERON CREEK HOMEOWNERS ASSOCIATION, a Florida corporation, 'Association', both having their principal place business at: 515 Carcaba Road, St. Augustine, Florida 32084.

WITNESSETH:

WHEREAS, Developer and Association did on the 30th day of January, 1987 execute a Declaration of Covenants, Conditions and Restrictions for Heron Creek, which Declaration was recorded among the public records of St. Johns County in Official Records Book 733, page 997;

AND, WHEREAS, Developer and Association desire to amend said Declaration in accordance with Article X, Section 1 thereof, in particular to correct certain legal description errors as set forth in said original Declaration;

NOW THEREFORE, Developer and Association hereby amend said Declaration as follows:

EXHIBIT 'C' OF SAID DECLARATION (Common Areas) IS HEREBY AMENDED TO  
READ AS PER ATTACHED EXHIBIT 'C' HERETO.

All of the other provisions of said Declaration shall remain unchanged.

IN WITNESS WHEREOF, the Developer and Association have caused this instrument to be executed by its duly authorized officers all as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

Candace Lagani  
Witness

Candace Lagani  
Witness

Candace Lagani  
Witness

Candace Lagani  
Witness

TESDORFF AND JAMES  
DEVELOPMENTS, INC.

By: John Tesdorpf, President

HERON CREEK HOMEOWNERS  
ASSOCIATION

By: [Signature]

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

*January* The foregoing was acknowledged before me this 9 day of ~~December~~ <sup>JANUARY</sup>, 1992, by John Tesdorpf as President of Tesdorpf and James Developments, Inc. and [Signature] as President of Heron Creek Homeowners Association, both Florida corporations on behalf of said corporations.

Candace Lagani  
NOTARY PUBLIC, STATE OF FLORIDA  
My Commission Expires 4-17-92

## EXHIBIT 'C'

A tract of land in Section 32, Township 6 South, Range 39 East, St. Johns County, Florida, described as follows:

Begin at an iron pipe on West line of right-of-way of State Road No. A-1-A at its intersection with the North line of said Section 32; thence Southerly along said West right-of-way line, being 33 feet from the center line thereof, 864 feet to the South line of a thirty foot road; thence Westerly at right angles to said West right-of-way line, 1200 feet; thence continue along South line of road North 85 degrees West, 173 feet to the POINT OF BEGINNING; thence continue Westerly on the South line of road 160 feet; thence South 17 degrees East, 284.29 feet; thence North 89 degrees 02 minutes 20 seconds East, 154.36 feet; thence North 17 degrees West 267 feet to the POINT OF BEGINNING.

## LESS AND EXCEPT:

Units 1, 2, 3 and 4 being more particularly described in Corrective Warranty Deeds being recorded contemporaneously herewith in Official Records Book 281, page 490 (Tesdorpf/Unit 1); Official Records Book 881, page 481 (Balara/Unit 2); Official Records Book \_\_\_\_\_, page \_\_\_\_\_ (Scott and Clinton/Unit 3); and in Official Records Book \_\_\_\_\_, page \_\_\_\_\_ (Upchurch/Unit 4), all of the public records of St. Johns County, Florida.

FILED AND RECORDED IN  
PUBLIC RECORDS OF  
ST. JOHNS COUNTY, FLA.

91 JAN -9 PM 4: 11.

Carl "Bud" Mink  
CLERK OF COUNTY COURT

87 2519

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HERON CREEK

THIS DECLARATION, made the 30th day of January, 1987, by TESDORFF & JAMES DEVELOPMENTS, INC., a Florida corporation, (hereinafter called "Developer") and HERON CREEK HOMEOWNERS ASSOCIATION, a Florida corporation, (hereinafter "Association"), both having their principal places of business at 515 Carcaba Road, St. Augustine, Florida 32084.

## W I T N E S S E T H:

WHEREAS, Developer is the Owner of certain real Property described in Exhibit "A" attached hereto, and Developer desires to create thereon a development community known as HERON CREEK and

WHEREAS, Developer is the owner of certain real Property described in Exhibit "B", and as to such Property Developer desires to reserve the right to develop all or a portion of such Property in a manner consistent with this Declaration and to subject all or a portion of such Property to the terms of this Declaration and require that the owners of lots in such future development Property be members of the Association created herein; and

WHEREAS, Developer is contemporaneously herewith conveying to the Association certain real Property as described in Exhibit "C", hereinafter referred to as "Association Land"; and

WHEREAS, Developer and Association desire to provide for the preservation of the values and amenities in this community and for the care and maintenance of the common areas and to this end, desire to subject the real Property described in Exhibit "A" attached hereto, together with such additions thereto as may hereafter be made, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of said Property and each and every owner of any and all parts thereof.

NOW, THEREFORE, Developer declares that the real Property described in Exhibit "A", and such other properties as are or may be subsequently encompassed by this Declaration as hereinafter set forth, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which are for the purpose of protecting the value and desirability of the Property and which shall run with the title to the Property, shall be binding upon all parties having any right, title or interest in the Property or any part thereof and their respective heirs, successors and assigns and which shall inure to the benefit of each Owner of a lot within the Property.

## ARTICLE I. DEFINITIONS

Section 1. Annexation. "Annexation" shall mean and refer to the addition of "Future Development Property", at the option of Developer, to the development community created herein and the subjection of such Property to the terms and conditions set forth in this Declaration. Annexation shall be accomplished by recording by Developer of an amendment to this Declaration in the public records of St. Johns County, Florida, describing the Property to be annexed along with a Plat of such Property.

Section 2. Articles. "Articles" shall mean and refer to the Articles of Incorporation of the Association.

Section 3. Assessment. The term "Assessment" as used herein shall mean and refer to a share of Association Expenses required for the payment of the Association Expenses which from time to time shall be assessed against the Lots and the Owners and the Authorized Users.

Section 4. Assessment Period. "Assessment Period" shall be the same period as a calendar year, from January 1 to December 31 of any given year.

Section 5. Association. "Association" shall mean and refer to HERON CREEK HOMEOWNER'S ASSOCIATION, INC., a corporation not-for-profit, organized or to be organized pursuant to Chapter 617, Florida Statutes, and its successors and assigns.

Section 6. Association Expenses. "Association Expenses" shall mean and refer to the expenses and charges described in this Declaration incurred or to be incurred by the Association and assessed or to be assessed against the Lots and the Owners thereof.

Section 7. Board of Directors. "Board of Directors" shall mean and refer to the Association's Board of Directors.

Section 8. Common Area. "Common Area" shall mean and refer to such Property, intended for the common use and enjoyment of the owners, as may be conveyed by Developer to the Association pursuant to the provisions of this Declaration. Such Common Area Property shall be included within the Property described in Exhibit "C" attached hereto.

Section 9. Developed Lot. "Developed Lot" shall mean and refer to any Lot on which permanent improvements, including a single family dwelling, are located.

Section 10. Developer. "Developer" shall mean and refer to TESDORFF & JAMES DEVELOPMENTS, INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot for the purpose of development.

Section 11. Future Development Property. "Future Development Property" shall mean and refer to that certain real Property more particularly described in Exhibit "A" attached hereto and any other Property adjacent to the Property described in Exhibit "A" or Exhibit "B".

Section 12. Lot. "Lot" shall mean and refer to any of the improved or unimproved Lots of Units (as depicted on the survey) located on the Property and the Future Development Property, if such Property is developed and annexed as herein set forth, with the exception of the Common Area and dedicated roads.

Section 13. Member. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Section 1 of Article II hereof.

Section 14. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property and the Future Development Property if such Property is developed and annexed as herein set forth, including contract sellers, but excluding those having such interests merely as security for the performance of any obligation. The term "Owner" shall not mean or refer to any mortgagee or grantee or beneficiary under a deed of trust or security deed unless and until such mortgagee, grantee or beneficiary has acquired title pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

Section 15. Property. "Property" shall mean and refer to that certain real Property more particularly described on Exhibit "A" attached hereto, containing Four (4) Lots and additional lands as shown on the Plat of Property, which Plat is being recorded simultaneously herewith.

Section 16. Undeveloped Lot. "Undeveloped Lot" shall mean and refer to any Lot which does not contain any permanent improvements.

## ARTICLE II. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot in the Property and the Future Development Property if such Property is developed and annexed as herein set forth shall be a Member of the Association. Such membership shall be coincident with the ownership of the Lot, and shall not be separately transferable. Membership shall cease upon the transfer or termination of ownership. Persons or entities who or which own a Lot merely as security for the performance of an obligation shall not be Members of the Association; rather, the beneficial owner in such cases shall be the Member.

Section 2. Associate Membership. Every person who is entitled to possession and occupancy of any Lot as a tenant or lessee of a Lot may be an Associate Member of the Association, and shall be privileged to use the Common Areas and facilities subject to this Declaration, as amended from time to time, and subject to the rules and regulations of the Association. Associate Member shall not be entitled to a vote in the Association.

Section 3. Voting Rights. The Association shall have two classes of voting membership:

Class A - Class A Members shall be all Owners who have taken title to one or more Lots from the Developer, or from a successor in title to the Developer, which shall include Lots on Future Development Property, if such Property is annexed as herein provided. Class A Members shall be entitled to one vote for each Lot in which they hold an interest required for membership. When more than one person holds such interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine but in no event shall more than one vote be cast with respect to any Lot.

Class B - The Class B Member shall be Developer, which shall be initially entitled to four (4) votes, with the number of votes decreasing by one with the sale of each lot. The number of votes of the Class B Member shall be increased at the time of annexation of Future Development Property by a number equal to the number of Lots included on the plat of such Future Development Property, and shall decrease likewise by one vote each time a Lot is sold. Class B membership shall terminate upon the happening of one of the following events, whichever occurs earlier: (i) when Developer has conveyed one hundred percent (100%) of the Lots located on the Property and the Future Development Property is developed and annexed as herein provided, or (ii) February 1, 1992.

Section 4. Membership and Voting Procedure. The Articles and Bylaws of the Association shall more specifically define and describe the procedural requirements for Association Membership meetings and voting procedures, but shall not substantially alter or amend any of the rights or obligations of the Developer as set forth herein.

ARTICLE III. PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easement of Enjoyment. Subject to the provisions of Section 3 of this Article III, every Member shall have right and easement of enjoyment in and to the Common Areas. Such easement shall be appurtenant to and shall pass with the title to each Lot, whether or not the same shall be referred to in any deed conveying title to any Lot.

Section 2. Title to Common Areas. Developer shall convey to the Association the fee simple title by Special Warranty Deed to the Common Area prior to the conveyance of the first Lot in the development.

Section 3. Extent of Member's Easements. The right and easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer, and of the Association in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and in aid thereof, to mortgage said properties. In the event of a default upon such mortgage, the lender's rights thereunder shall be limited to the rights of the Members as described herein; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Property against foreclosure; and

(c) The right of the Association to suspend the enjoyment of the Common Area by, and voting rights of, any Member for any period during which any assessment remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, that no such dedication, transfer or determination as to the purposes or as to the conditions thereof shall be effective until agreed to by a vote of the majority of the Members of each class present at an Association meeting called in accordance with the Articles of Incorporation and By-Laws of the Association for the purpose of discussing such dedication or transfer and unless an instrument has been recorded, signed and sworn to by the Secretary of the Association stating that such a vote was duly held and that the majority of the members present at the meeting favored such dedication, transfer, purpose, or condition; and

ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Property and Future Development Property if such Property is developed and annexed as here set forth, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time

when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, however, the delinquent assessment shall remain a lien against the Property until paid.

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and the Future Development Property, if such Property is developed and annexed as herein set forth, and for the improvement and maintenance of the Common Area also herein referred to as Association Land.

Section 3. There shall be two classes of assessments:

Class "A" - "Developed Lots": The initial annual assessment for Developed Lots and Authorized Users shall be SEVEN HUNDRED EIGHTY AND NO/100 (\$780.00) payable by monthly assessments of SIXTY FIVE AND NO/100 (\$65.00).

Class "B" - "Undeveloped Lots": The initial annual assessment for Undeveloped Lots shall be SIXTY FIVE AND NO/100 DOLLARS (\$65.00) payable by monthly assessments of FIVE AND NO/100 DOLLARS (\$5.00).

Section 4. Maximum Annual Assessment. Until June 1, 1987 the annual assessment shall be SEVEN HUNDRED EIGHTY AND NO/100 DOLLARS (\$780.00) per Developed Lot and SIXTY FIVE AND NO/100 DOLLARS (\$65.00) per Undeveloped Lot.

(a) From and after June 1, 1987, the maximum annual assessment may be increased each year, by the Board of Directors of the Association, not more than fifteen percent (15%) above the maximum assessment for the previous year without a unanimous vote of the membership.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal Property related thereto, provided that any such assessment shall have the assent of not less than three fourths (3/4) of the membership at a duly convened meeting.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 2 and 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 2 or 3 shall be sent to all members not less than fourteen (14) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast a majority of all the votes of each class of membership shall constitute a quorum.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Developed Lots and Undeveloped Lots shall be uniformly assessed at a lower rate than the Developed Lots. Assessments on Developed Lots will be collected on a monthly basis payable one month in advance, with the first monthly assessment being prorated from the date of closing to the end of the month in which the closing takes place. Assessments on Undeveloped Lots shall also be collected on a monthly basis.



Section 8. Date of Commencement of Assessments: Due Dates. The assessments provided for herein shall commence as to all Lots on the first day following the conveyance of the Common Area. Said monthly assessments shall be based on one-twelfth (1/12th) of the annual assessment levied on each Lot based on a budget approved by the Board of Directors in accordance with this Declaration, the Articles of Incorporation and By-Laws of the HERON CREEK HOMEOWNERS ASSOCIATION. The Board of Directors shall fix the amount of the annual assessment requirements against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property of the Owner. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V. COVENANTS AND RESTRICTIONS

Section 1. No structures of any kind shall be erected, altered, placed or permitted to remain on any of the Lots other than: (i) one single family dwelling, not to exceed two stories in height; and (ii) one patio and/or deck; and (iii) one garage attached to the living Unit on the ground floor level.

Section 2. No building, fence, wall or other structure shall be erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made.

Section 3. No structure or other improvement or change in the topography of the land shall be erected or made which interferes in any respect with the drainage or utility easements shown on the subdivision Plat.

Section 4. Not trade, or business or noxious activity based upon the sole determination of the Developer, shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No mobile homes, tents or shacks shall be placed on any Lot except mobile homes used temporarily as sales offices and construction offices with the Developer's approval.

Section 5. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that no more than one (1) dog, or one (1) cat, or one (1) other household pets may be kept by an owner-occupant, provided they are not kept, bred or maintained for any commercial purposes. While outside the dwelling Unit they shall be leashed at all times.

Section 6. No clothes or laundry shall be hung or clothes lines erected.

Section 7. No fence, wall, hedge, shrub or trees shall be planted without the approval of the Association.

Section 8. A perpetual, alienable and releasable easement is hereby reserved to the Developer over all the Association Land as herein defined. The Developer shall have the right to grant subordinate easements to utility companies, governmental bodies and such other persons as Declarant may from time to time designate within such easement area for the purpose of carrying out or facilitating such construction, installation and maintenance. The Developer shall also have the right to grant to Lot owners, their licensees, invitees, successors and assigns, such easements as are necessary to provide access, ingress and egress to the individual owner's Lot or Unit. No purchaser of a Lot or anyone claiming by through or under any such purchaser, shall have the right to interfere at any time with any such construction, installation or maintenance operations.

As regards any costs of construction, installation or maintenance operations that will inure to the exclusive benefit of any Future Development Area the Developer shall bear those cost.

Section 9. Each Unit owner shall be required to enter into a utility agreement with NORTH BEACH UTILITIES to provide water and sewer service to each owner's particular Unit. NORTH BEACH UTILITIES or its successors has the sole and exclusive right to provide all water facilities and service to the property described herein. Developer reserves the right to convey to NORTH BEACH UTILITIES all easements required to provide water facilities and service to the Property.

Section 10. Insurance Proof. Each owner must provide proof of insurance (Certificate) to the Association in the full amount of the replacement coverage.

Section 11. Each Lot Owner is provided two permanent parking areas, those being the space inside each garage and the pad directly outside the garage. The Association owns four additional guest parking or temporary parking pads.

If any Lot Owner wishes to utilize any of the temporary spaces on a permanent basis he may do so only with Association approval.

Section 12. No modification of any exterior structure, surface or color may be made on any existing dwelling without unanimous approval of all members casting a vote at any meeting duly called for that purpose.

(a) An exception to the above is the screening in of the rear deck area only; provided that the design of the screening shall be submitted to the Association, through its Board of Directors shall not unreasonably withhold approval.

Section 13. All personal Property of Unit Owners shall be housed inside the Units in such a manner as to prevent their being seen by adjacent Unit Owners. Personal Property is defined as bicycles, tools, rakes, hoes, fishing equipment, etc.

Section 14. The Association shall provide refuse containers of uniform size, shape, color and design to be used by Unit Owners. Containers shall remain in the garage until no sooner than 12 hours prior to garbage pickup day and must be returned to the garages no later than 12 hours after garbage pickup day.

Section 15. Unit Owners may lease their dwelling Units to single families only subject to prior written approval by the Association of the proposed leasees.

The Association President shall join in the lease agreement and all leases shall be for a minimum of six (6) months. Unit Owners are responsible for monthly assessments during any rental period.

Section 16. If a Unit Owner desires to sell his dwelling Unit the Association is granted a right of first refusal and must perform within a reasonable period of time and close the sale. Time may be made of the essence by either party in writing to the last know address of both parties.

#### ARTICLE VI. APPURTENANCES TO UNITS

There shall be appurtenant and pass with the title to each Unit the following:

Section 1. Non-exclusive easement to be used and enjoyed in common with the Owners of all Units in this Planned Special Development and with the owners of Units in the Future Development Area as defined herein, their guests and invitees, and with the Developer for so long as Developer owns the Future Development Area, for use of Association Land, including, without limitation, easement for:

(a) The furnishing and maintenance of utility services to all parts of the real property of the Planned Special Development and Future Development Area over, across, in and through the Land and Association Land as described in Article VII below, buildings and other improvements, as the fixtures and equipment therefor now exist and/or may be modified or relocated for use and maintenance of the water and sewer lines; and

(b) Vehicular and pedestrian access and parking over, across, upon, in and through the drives, entries, gates, walks, grounds and other portions, if any, of the land owned directly by the Association (Association Land) as are intended and/or provided for pedestrian and vehicular traffic through the Planned Special Development and through land owned by the Association, and the improvements, fixtures and equipment thereon, and for access to public roadways. Notwithstanding the foregoing, it is the intent of the Developer to provide access, ingress, and egress from a public land to the Owner's Unit whether or not the Association has built any roadways or walkways for that purpose.

(c) An easement of access and right of use over, upon through the club house, pool, tennis court, if any. Owners of dwelling Units in HERON CREEK, a Planned Special Development, and any additional dwelling Units which might be constructed in the Future Development Area hereof, shall share equally in the expenses relative to these areas.

Section 2. The right to membership in the "Association" (elsewhere herein defined) upon the terms and conditions set forth elsewhere herein.

ARTICLE VII. ASSOCIATION LAND

Section 1. The Developer, prior to the closing of the sale of the first Unit in the Planned Special Development will convey to the Association title to that certain Property described in Exhibit "C" attached hereto and designated Association Land. The Association Land shall be owned by the Association which shall also have the responsibility for all expenses relative thereto including maintenance, operation and upkeep and real estate taxes. Said Association shall prepare a separate budget on the Association Land on an annual basis and each Unit Owner of HERON CREEK HOMEOWNER'S ASSOCIATION, as well as Unit Owners in the Future Development Area shall, as members of the Association, have the right to use said facilities pursuant to such rules and regulations as are promulgated from time to time by the Association and each member of the Association shall share equally in the expenses relative thereto and pursuant to such separate budget.

Section 2. The Developer currently intends, but is not obligated, to construct additional Planned Special Development Units in the Future Development Area and intends, but is not obligated, to convey to the Association certain lands contiguous to this development and to the Association Land. Each Unit Owner, together with Unit Owners in the Future Development Area, shall have the right to use these additional lands in accordance with rules and regulations promulgated by the Association which will be responsible for the management and maintenance of these Association Lands.

Section 3. The Association Land Assessments payable by each member of the Association shall be equal to a fractional portion of the annual Association budget adopted by the Board of Directors of the Association wherein the numerator is 1 and the denominator is the total number of members of the Association.

Section 4. Developer hereby reserves to itself, its successors and assigns, for the benefit of the Future Development Area, its owners and its occupants an easement over the Association Land which is utilized for parking and access to such parking for the purpose of access to the Future Development Area and expressly including the right to rearrange and modify parking spaces thereon to accommodate said access to additional parking areas which may be provided on the Future Development Area; provided, however, no action, change or rearrangement shall, as a result, eliminate any parking spaces.

ARTICLE VIII. ASSOCIATION

Section 1. The entity responsible for the operation of this Planned Development shall be HERON CREEK HOMEOWNER'S ASSOCIATION, INC., a Florida corporation not for profit (the "Association"). A copy of the Association's Articles of Incorporation and By-Laws are attached hereto and made a part hereof as Exhibits "D" and "E", respectively. The Association shall administer and manage the Planned Development; provided, that the Association may, delegate its maintenance, management and operational duties and obligations; and provided further, however, that the Developer hereby reserves the rights provided in this Declaration and the By-Laws of the Association to initially manage and operate the Planned Development Property.

Section 2. Nothing contained herein shall be deemed to require the Developer to add the Future Development Area or any portion thereof to the Planned Special Development, nor to require that the Association be the entity responsible for the operation and administration of any of the

additional Units built by the Developer in the Future Development Area. The Developer reserves the right in its sole discretion to determine the type of development or improvements of the Future Development Area, if any, including the right to control the mix and location and type of structures and to create a separate operating and administrative entity for any such development. Notwithstanding anything contained herein to the contrary, neither this Declaration nor any term or provision hereof shall constitute a defect, encumbrance, lien or cloud on the title of any portion of the Property included within the Future Development Area and is intended only to reserve certain rights to the Developer, as the owners of the Future Development Area, its successors or assigns.

#### ARTICLE IX. VOTING RIGHTS OF UNIT OWNERS

Section 1. The owner or owners of each Unit shall receive a member or members of the Association automatically upon and simultaneously with the delivery of a deed of conveyance of fee title thereto from Developer or its successors in title. There shall be appurtenant, and pass with title, to each Unit one vote as a member of the Association, which may be exercised by the owner(s) as set forth in the Articles of Incorporation and Bylaws of the Association. Membership in the Association shall terminate when a Unit Owner's vested interest in the fee title to the Unit terminates. Membership in the Association cannot be separately transferred, assigned or pledged in any manner except as an appurtenance to the respective Unit.

#### ARTICLE X. AMENDMENT OF DECLARATION

Section 1. Developer. The Developer reserves and shall have the sole right, without the joinder or consent of any Owner, the Association, or the holder of any mortgage, lien or other encumbrance affecting the Property, or any other person: (i) to amend this Declaration to comply with any requirements of the governmental agency; or (ii) to amend this Declaration to cure any ambiguity or error, in this Declaration, or any inconsistency between these provisions and the other legal documents or the Plat. Any other amendment shall require approval by three-fourths (3/4) vote of the Association membership. Developer shall submit any such proposed amendment to the Association and the Association shall meet and approve or disapprove such proposal within thirty (30) days.

Section 2. Amendment by Unit Owners. An amendment to this Declaration made by Unit Owners shall be evidenced by: (a) a certificate setting forth such amendment executed by the appropriate officers of the Association, with the formalities of a deed (including L&C recording date identifying this Declaration); and (b) an affidavit (to be attached to the certificate) executed by the appropriate officers of the Association certifying that the owners of seventy five percent (75%) or more of the Units voted in favor of the amendment. Such amendment shall become effective when it is recorded according to law. No amendment shall be adopted or become effective which adversely affects the lien or priority of any previously recorded mortgage to an Institutional Mortgagee. An amendment made by Unit Owners need not be executed by the Unit Owners. This Declaration shall not be amended without the approval of the Developer and without the joinder of the Developer in the certificate referred to above, if any of the following conditions exist: (i) three (3) or more Units remain unsold; or (ii) such amendment purports to modify,

restrict, limit or otherwise affect any right of the Developer hereunder, including without limitation, the rights of the Developer to amend this Declaration as set forth in the preceding paragraph.

Section 3. Amendment by Association. Whenever it shall appear that there is an error or omission in the Declaration, and less than three (3) Units remain unsold, then the Board may correct such error or omission by resolution adopted by a majority vote of the Board at any duly called meeting thereof. Such amendment shall become effective when it is recorded according to law.

#### ARTICLE XI. MISCELLANEOUS

Section 1. Assignment of Developer's Rights. The Developer shall have the sole and exclusive right at any time and from time to time, to transfer and assign to, and to withdraw from such person, firm, corporation, trust or other entity as it shall select, any or all rights, powers, easements, privileges, authorities and reservations given to or reserved by the Developer in these covenants and restrictions. At any time hereafter there shall be no person, firm, corporation, trust or other entity entitled to exercise the rights, powers, privileges, authorities and reservations given to or reserved by the Developer under the provisions hereof, the same shall be vested in and be exercised by a committee to be elected or appointed by the Owners of a majority of the Lots.

Section 2. Consent for additional Covenants. No Lot Owner, without the prior written approval of the Developer, may impose any additional covenants or restrictions on any part of the Property.

Section 3. Duration. These covenants and restrictions, as amended and added to, from time to time, as provided herein, shall, subject to the provisions hereof and unless released as herein provided, be deemed to be covenants running with the title to said land and shall remain in full force and effect until January 1, 2006, and thereafter the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless within six (6) months prior to January 1, 2006, or within six months preceding the end of any such ten (10) year period, as the case may be, a written agreement executed by the then owners of a majority of the Building Lots shown in the Plat of the Property, amending this Declaration or any part hereof, shall be placed on record in the office of the appropriate agency of St. Johns County, Florida. In the event that such written agreement shall be executed and recorded as provided for above in this Section, these original covenants and restrictions, as thereto modified, shall continue in force for successive periods of ten (10) years each, unless and until further changed or modified in the manner provided in this Section.

Section 4. Enforcement of Covenants. If any person, firm, corporation, trust or other entity shall violate or attempt to violate any of these covenants or restrictions, it shall be lawful for the Developer, Association, or any person or persons owning any Lot on said Property: (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate any such covenant or restriction, or (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate any such covenant or restriction for the purpose of preventing or enjoining all or any such violations or attempted violations. The remedies contained in this Section shall be construed as cumulative of all

other remedies now or hereafter provided by law. The failure of the Developer or Association or Lot Owner or their respective successors or assigns, to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall, in no event, be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior or subsequent thereto.

**Section 5. FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

**Section 6. Annexation.** Additional land located within the boundaries of the Property described in Exhibit "E" may be annexed by the Developer without the consent of members within fifteen (15) years of the date of this instrument provided that either the FHA or VA determines that the annexation is in accord with the general plan heretofore approved by them.

**Section 7. Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended and enlarged by implication as to make them full effective.

**Section 8. Captions.** The captions of each paragraph hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraph to which they refer.

**Section 9. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable and the use of the masculine pronoun shall include the neuter and feminine, wherever applicable.

**Section 10. Provisions Severable.** The invalidation of any provisions or provisions of the covenants and restrictions set forth herein by judgment or court order shall not affect or modify any of the other provision of said covenants and restrictions which shall remain in full force and effect.

**Section 11. Additional Parking Restrictions.** No house trailers or mobile homes shall be parked on any portion of the Property, except those used by the Developer in the construction of the Units on the Property. No trucks other than standard sized pickup trucks shall be permitted to park on any portion of the Property for a period of more than four (4) hours, unless the same is present in the actual, active construction, furnishing, or repair of buildings on the Property. Trailers, trucks, and cars shall not be used for living purposes. Trailers, boats, campers, and recreational vehicles, and any other similar equipment may not be parked on the Property. No parking of any vehicle is permitted on the access roads or streets in the Property, except in areas designated for that purpose by the Developer or the Association.

**Section 12. Utilities.** All utilities, including telephone, television, and electrical systems shall be installed underground.

Section 13. Signs. No signs of any kind shall be exhibited in any way on the described Property other than those placed or erected by Developer or by the Association, or those which have been approved by the Developer.

Section 14. Structures in or on Creek/Marsh. No structure shall be constructed, dug, or erected in any body of water on or adjacent to the Property, except as approved by the Board of Directors or its agent. Likewise, no internal combustion engine shall be used for any purpose in the creek of the Property, except by specific individual permit issued by the Board of Directors or its agent.

Section 15. Commercial Use. No Unit may be used for commercial purposes.

Section 16. Mail Boxes. No mail box or paper box or other receptacle of any kind for use in the delivery of mail or newspapers, or magazines or similar material shall be erected or located on any portion of the Property, other than those provided by Developer or the Association.

Section 17. Window Air-Conditioning. No window air-conditioning Units shall be installed in any Unit without the prior written consent of the Developer or the Association.

IN WITNESS WHEREOF, the Association and Developer have caused this instrument to be executed by its duly authorized officers and its seal to hereto affixed all as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Deanna H. Higginbottom

TESDORFF AND JAMES  
DEVELOPMENTS, INC.,  
a Florida  
corporation

By: [Signature]  
President  
(Corporate Seal)

HERON CREEK HOMEOWNERS  
ASSOCIATION, INC., a  
Florida corporation

Deanna H. Higginbottom

By: [Signature]  
President  
(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing was acknowledged before me this 10th day of January, 1987, by John Tesdorff as President of TESDORFF AND JAMES DEVELOPMENTS, INC., a Florida corporation on behalf of said corporation.

[Signature]  
Notary Public  
My commission expires:



STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing was acknowledged before me this 30th day  
of January, 1987, by John James, President  
of HERON CREEK HOMEOWNERS ASSOCIATION, a Florida  
corporation on behalf of said corporation.

Notary Public  
My commission expires:

JOINDER AND CONSENT

The undersigned, BARNETT BANK OF ST. JOHNS COUNTY has  
reviewed the foregoing, DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR HERON CREEK, and does hereby  
join in and consent to the recordation of the aforesaid  
covenants, conditions and restrictions.

Signed this 30th day of January, 1987.

BARNETT BANK OF ST. JOHNS COUNTY

By

Authorized Officer

SWORN TO AND SUBSCRIBED before me the undersigned this  
30th day of January, 1987.

Notary Public  
My commission expires: 10, 1993

## EXHIBIT "A"

A tract of land in Section 32, Township 6 South, Range 30 East, described as follows:

Begin at an iron pipe on West line of right-of-way of State Road No. 78 at it's intersection with North line of said Section 32; thence run Southerly along West right-of-way line of said road 78 being 33 feet from center line thereof, a distance of 864 feet to South line of a thirty foot road; thence run Westerly along the South line of road and at right angles to State Road 78, 1260 feet; thence continue along South line of road North 85° West, 173 feet to the Point of Beginning; continue Westerly on the South line of road 160 feet; thence South 17° East, 284.29 feet; thence North 89° 02' 20" East, 154.36 feet; thence North 17° West, 267 feet to the Point of Beginning.

## EXHIBIT "E"

A tract of land in Section 32, Township 6 South, Range 30 East, described as follows:

Commence at an iron pipe on West line of right-of-way of State Road No. 78 at its intersection with North line of said Section 32; thence run Southerly along West right-of-way line of said Road 78 being 53 feet from center line thereof, a distance of 364 feet to South line of a thirty foot road; thence run Westerly along the South line of Road at right angles to State Road 78, 1200 feet; thence continue along South line of road North 85 degrees West, 333 feet to the Point of Beginning, continue Westerly on the South line on road, 124.49 feet; thence South 1 degree 01 minute 24 seconds East, 304.18 feet; thence North 89 degrees 02 minutes 20 seconds East, 201.89 feet; thence North 17 degrees West, 302.99 feet to the Point of Beginning. Said tract contains 11.11 acres. Being a portion of the land described in O.R. 501, page 177, Public Records of St. Johns County, Florida.

Subject to an Easement for ingress, egress and utilities reserved by the grantors, MICHAEL W. BOLES and MARIA F. BOLES, his wife, their heirs and assigns, said easement providing access to the grantor's contiguous land and being more particularly described as a 20 foot wide strip of land lying across, in and through the above described property.

Subject to any restrictions of record, if any, and any governmental or environmental restrictions, if any.

## EXHIBIT "C"

A tract of land in Section 32, Township 6 South, Range 30 East, described as follows:

Begin at an iron pipe on West line of right-of-way of State Road No. 78 at it's intersection with North line of said Section 32; thence run Southerly along West right-of-way line of said road 78 being 33 feet from center line the S.E. a distance of 964 feet to South line of a thirty foot road; thence run Westerly along the South line of road and at right angles to State Road 78, 1200 feet; thence continue along South line of road North 85° West, 173 feet to the Point of Beginning; continue Westerly on the South line of road 160 feet; thence South 17° East, 284.29 feet; thence North 89° 02' 20" East, 151.36 feet; thence North 17° West, 267 feet to the Point of Beginning.

LESS and EXCEPT:

A tract lying in Section 32, Township 6 South, Range 30 East, St. Johns County, Florida and being more particularly described as follows:

For a Point of Commencement use the Point of Beginning of the above described Parent Tract; thence South 17° East, 107.69 feet; thence South 73° West, 15.27 feet to the Point of Beginning; thence South 8° 27' 55" East, 47.5 feet; thence South 81° 32' 05" West, 24.7 feet; thence South 8° 27' 55" East, 2.8 feet; thence South 81° 32' 05" West, 6.8 feet; thence North 8° 27' 55" West, 71.8 feet; thence North 81° 32' 05" East, 13.7 feet; thence South 8° 27' 55" East, 10.7 feet; thence North 81° 32' 05" East, 5.9 feet; thence South 8° 27' 55" East, 10.8 feet; thence North 81° 32' 05" East, 11.4 feet to the Point of Beginning. Also including:

A tract lying in Section 32, Township 6 South Range 30 East, St. Johns County, Florida and being more particularly described as follows:

For a Point of Commencement use the Point of Beginning of the above described Parent Tract; thence South 17° East, 50.14 feet; thence South 73° West, 43.18 feet to the Point of Beginning; thence South 8° 27' 55" East, 47.5 feet; thence South 81° 32' 05" West, 11 feet; thence South 8° 27' 55" East, 6.8 feet; thence South 81° 32' 05" West, 3.1 feet; thence North 8° 27' 55" West, 6.8 feet; thence South 81° 32' 05" West, 16.9 feet; thence North 8° 27' 55" West, 69 feet; thence North 81° 32' 05" East, 13.7 feet; thence South 8° 27' 55" East, 10.7 feet; thence North 81° 32' 05" East, 5.9 feet; thence South 8° 27' 55" East, 10.8 feet; thence North 81° 32' 05" East, 11.4 feet to the Point of Beginning. Also including:

A tract lying in Section 32, Township 6 South Range 30 East, St. Johns County, Florida and being more particularly described as follows:

For a Point of Commencement use the Point of Beginning of the above described Parent Tract; thence South 17° East, 53.19 feet; thence South 73° West, 70.48 feet to the Point of Beginning; thence South 8° 27' 55" East, 47.5 feet; thence South 81° 32' 05" West, 11 feet; thence South 8° 27' 55" East 6.8 feet; thence South 81° 32' 05" West, 3.1 feet; thence North 8° 27' 55" West, 6.8 feet; thence South 81° 32' 05" West, 16.9 feet; thence North 8° 27' 55" West, 69 feet; thence North 81° 32' 05" East, 13.7 feet; thence South 8° 27' 55" East, 10.7 feet; thence North 81° 32' 05" East, 5.9 feet; thence South 8° 27' 55" East, 10.8 feet; thence North 81° 32' 05" East, 11.4 feet to the Point of Beginning. Also including:

A tract lying in Section 32, Township 6 South, Range 30 East, St. Johns County, Florida and being more particularly described as follows:

For a Point of Commencement use the Point of Beginning of the above described Parent Tract; thence South 17° East, 26.24 feet; thence South 73° West, 97.78 feet to the Point of Beginning; thence South 8° 27' 55" East 47.5 feet; thence South 81° 32' 05" West, 24.7 feet; thence South 8° 27' 55" East, 2.8 feet; thence South 81° 32' 05" West, 6.3 feet; thence North 8° 27' 55" West, 71.8 feet; thence North 81° 32' 05" East, 13.7 feet; thence South 8° 27' 55" East, 10.7 feet; thence North 81° 32' 05" East, 5.9 feet; thence South 8° 27' 55" East, 10.8 feet; thence North 81° 32' 05" East, 11.4 feet to the Point of Beginning.

## EXHIBIT "D"

## ARTICLE OF INCORPORATION

OF

HERON CREEK HOMEOWNERS ASSOCIATION, INC.

A CORPORATION NOT-FOR-PROFIT

We, the undersigned, desiring to form a corporation not for profit, do hereby associate ourselves into a corporation for the purposes and with the powers herein specified and do hereby agree to the following Articles of Incorporation:

ARTICLE I. NAME

The name of this corporation shall be:

HERON CREEK HOMEOWNERS ASSOCIATION, INC., (hereinafter referred to as the "Association").

ARTICLE II. PURPOSES

The purposes and object of the Association shall be to administer the operation and management of "HERON CREEK," a Planned Special Development, (hereinafter "the Development") established upon that certain real property in St. Johns County, Florida, as described on Exhibit "A" attached hereto and incorporated herein by reference, to promote the health, safety and welfare of the residents within the development and any additions thereto which may be brought into the jurisdiction of this Association by annexation under the terms and conditions set forth in the Declaration of Covenants, Conditions and Restrictions of HERON CREEK which will be recorded in the public records of St. Johns County, Florida (the "Declaration") by TERSORPE & JAMES DEVELOPMENTS, INC., a Florida corporation, its successors or assigns (the "Developer"). No stock shall be issued by the corporation.

The Association does not contemplate pecuniary gain or profit to the members thereof and shall undertake and perform all acts and duties incident to the operation and management, preservation and architectural control of the residence lots and common areas of the Development in accordance with the terms, provisions, and conditions of these Articles of Incorporation, the By-Laws of the Association and the Declaration.

ARTICLE III. POWERS

The Association shall have the following powers:

A. All of the powers and privileges granted to corporations not for profit under the laws of the State of Florida and the Declaration as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth in length.

B. All of the powers reasonably necessary to implement and effectuate the purposes of the Association, including, without limitation, the power, authority and right to:

1. Make and establish reasonable rules and regulations governing the use of the Units, Common Elements, as such terms will be defined in the Declaration.

2. Own, hold, improve, build upon, maintain, operate, lease, sell, manage, transfer, dedicate for public use, and otherwise dispose of and deal with such real and personal property as may be necessary or convenient in connection with the affairs of the Association.

3. To own, manage, administer and operate such property as may be conveyed to it by the Developer, its successors or assigns for the mutual benefit and use of all Members.

4. Fix, levy, collect and enforce payment by any lawful means all charges or assessments against members of the Association to defray the Common Expenses of the Development, as will be provided in the Declaration and the By-Laws, including the right to levy and collect assessments for the purpose of acquiring, owning, holding, operating, leasing, encumbering, selling, conveying, exchanging, managing and otherwise dealing with the Development Property, including Units, which may be necessary or convenient in the operation and management of the Development and in accomplishing the purposes set forth in the Declaration, and to pay all expenses, including office expenses, licenses, taxes, or governmental charges levied or imposed against the Property of the Association, incident to the conduct of business of the Association.

5. Maintain, repair, replace, operate and manage the Development Property, and any property owned by the Association, including the right to reconstruct, improvements after casualty and to further improve and add to the Development Property and other property owned by the Association.

6. Contract for the management of the Development and, in connection therewith, to delegate any and/or all of the powers and duties of the Association to the extent and in the manner permitted by the Declaration, and the By-Laws.

7. Enforce the provisions of these Articles of Incorporation, the Declaration, the By-Laws, and all rules and regulations governing use of the Development which may hereafter be established.

#### ARTICLE IV. QUALIFICATION OF MEMBERS

The qualifications of members, manner of their admission to and termination of membership shall be as follows:

A. The owners (as defined in the Declaration and the By-Laws) of any Units in the Development shall be members of the Association, and no other persons or entities shall be entitled to membership, except the subscribers hereof.

B. A person shall become a Member by the acquisition of a vested present interest in fee title to a Unit in the Development. The membership of any person or entity shall be automatically terminated upon his being divested of his title or interest in such Unit.

C. Transfer of membership shall be recognized by the Association upon its being provided with a certified copy of the recorded deed conveying such fee simple title to a Unit to the new Member.

D. If a corporation, trust, partnership, joint venture or other entity is the fee simple title holder to a

Unit or the Unit person as the Member entitled to cast votes and/or to approve or disapprove matters as may be required or provided for in these Articles, the By-Laws or the Declaration.

E. Except as an appurtenance to his Unit, no Member can assign, hypothecate or transfer in any manner, his membership in the Association or his interest in the funds and assets of the Association. The funds and assets of the Association shall belong solely to the Association subject to the limitation that the same be used to accomplish the duties and requirements as outlined in the Declaration or By-Laws.

#### ARTICLE V

The street address and city of the initial registered office of the corporation is 46 Spanish Street, St. Augustine, Florida 32084 and the name of the initial registered agent at such address is JOSEPH L. BOLES, P.F.

#### ARTICLE VI

The Board of Directors shall consist of one member per Unit as designated by the Unit owners.

The number of the members constituting the initial board of directors of the corporation is three, and the names and addresses of the persons who are to serve as the initial directors are:

John Tesdorpf	515 Carcaba Road Vilano Beach St. Augustine, FL 32084
John James	117 Carmel Road St. Augustine, FL 32084
Frank Upchurch, Jr.	P.O. Box 170 St. Augustine, FL 32084

#### ARTICLE VII

This corporation is organized under a non-stock basis.

#### ARTICLE VIII

In the event of dissolution, the residual assets of the organization will be turned over to one or more organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future law, or to the Federal, State, or Local government for exclusive public purpose.

#### ARTICLE IX. -- OFFICERS

A. The officers of the Association shall be a President, one or more Vice Presidents, Secretary and Treasurer who shall perform the duties of such offices customarily performed by like officers of corporations in the State of Florida subject to the directions of the Board of Directors.

B. Officers of the Association will not be compensated. The Board of Directors, or the President with



the approval of the Board of Directors, may employ a managing agent, agency, and/or other managerial and supervisory personnel or entity to administer or assist in the administration of the operation and management of the development and the affairs of the Association, and any and all such persons and/or entity or entities may be so employed without regard to whether any such person or entity is a Member, Director or officer of the Association.

C. The persons who are to serve as officers of the Association until their successors are chosen are:

<u>Officer</u>	<u>Name</u>
President	Frank Upchurch, Jr.
First Vice President	John James
Secretary/Treasurer	John Tesdorpf

D. The officers shall be elected by the Board of Directors at their annual meeting as provided in the By-Laws. Any vacancies in any office shall be filled by the Board of Directors at any meeting duly held.

E. The officers shall be elected from the membership of the Board of Directors. The same person may hold two offices, provided, however, that the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary be held by the same person. Officers shall be elected annually.

#### ARTICLE X. BY-LAWS

A. The Board of Directors shall adopt by a majority vote the original By-Laws of the Association.

B. The by-laws may be amended, altered or rescinded upon the proposal of a majority of the Board of Directors and approval by an affirmative vote of a majority of the association Members at a regular or special meeting of the Members, the notice of which shall state that such proposal is to be voted upon at that meeting.

#### ARTICLE XI. AMENDMENT OF ARTICLES

A. These Articles of Incorporation may be amended as follows:

1. Amendment shall be proposed by a majority of the Board of Directors.

2. The President, or acting Chief Executive Officer of the Association in the absence of the President, shall thereupon call a special meeting of the Members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from the date on which the Board of Directors approve the amendment proposal. Each Member shall be given written notice of such meeting stating the time and place of the meeting and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed or presented personally to each Member not less than ten (10) days nor more than thirty (30) days before the date set for such meeting. Such notice shall be deemed properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association. All

such meeting, the amendment of amendments proposed must be approved by an affirmative vote of at least a majority of the members of the Association in order for such amendment or amendments to become effective. If so approved, a certified copy of the said amendment or amendments shall be filed in the Office of the Secretary of State of the State of Florida and recorded in the public records of St. Johns County, Florida.

#### ARTICLE XII. INDEMNITY

Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases where the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event any claim for reimbursement or indemnification hereunder is based upon a settlement by the Director or officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights in which such Director or officer may be entitled.

#### ARTICLE XIII. INCOME OF CORPORATION; DISSOLUTION

No part of the income of this corporation shall be distributed to the Members except upon dissolution or final liquidation and as permitted by the court having jurisdiction thereof. Dissolution shall be subject to court approval pursuant to Florida Statutes Section 617.05.

#### ARTICLE XIV. INCORPORATORS

John Tesdorpf 515 Carcaba Road  
Vilano Beach  
St. Augustine, FL 32084

John James 117 Carmel Road  
St. Augustine, FL 32084

IN WITNESS WHEREOF, we, the undersigned incorporators, have hereunto set our hands and seals this 5 day of February, 1957.

JOHN JAMES

JOHN TESDORPF

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing ARTICLES OF INCORPORATION was acknowledged before me this 5 day of January, 1987, by JOHN JAMES, a subscriber.

[Signature]  
Notary Public, State of Florida at Large

My commission expires: NOTARY PUBLIC, STATE OF FLORIDA  
My Commission Expires Aug. 4, 1988

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing ARTICLES OF INCORPORATION was acknowledged before me this 5 day of January, 1987, by JOHN TESDORFF, a subscriber.

[Signature]  
Notary Public, State of Florida at Large

My commission expires: NOTARY PUBLIC, STATE OF FLORIDA  
My Commission Expires Aug. 4, 1988

CERTIFICATE NAMED AGENT UPON WHOM PROCESS  
MAY BE SERVED

In pursuance of Chapter 48.091, Florida Statutes, the following is submitted:

THE HERON CREEK HOMEOWNERS ASSOCIATION, .INC., a corporation duly organized and existing under the laws of the State of Florida, with its principal office, as indicated in the Articles of Incorporation at City of St. Augustine, County of St. Johns, State of Florida, has named JOSEPH L. BOLES, JR., located at 46 Spanish Street, City of St. Augustine, County of St. Johns, State of Florida 32084, as its agent to accept service of process within this state.

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

[Signature]  
JOSEPH L. BOLES, JR.

## EXHIBIT "E"

## BY-LAWS

## OF

HERON CREEK HOMEOWNERS ASSOCIATION, INC.

A Florida Corporation Not-for-Profit

**1. IDENTITY.**

**1.1 Applicability.** These are the By-laws of HERON CREEK HOMEOWNERS ASSOCIATION, INC. (the "Association"), a Florida corporation not for profit organized pursuant to the provisions of Chapter 617, Florida Statutes. The purpose and object of the Association shall be to administer the operation and management of HERON CREEK HOMEOWNERS ASSOCIATION, INC. to be established in accordance with the Declaration of Covenants, Conditions and Restrictions for HERON CREEK (the "Declaration"), upon certain property in St. Johns County, Florida, as set forth in the said Declaration. The provisions of these By-laws are applicable to the Association and are subject to the provisions of the Declaration, and the Articles. All members of the Association, as defined in the Articles, and their invitees, including, without limitation, all present or future owners and tenants of lots in the Property and in the Future Development Property, if such property is annexed as set forth in the Declaration as such are defined herein and in the Declaration, and other persons using the lots or any of the facilities thereof in any manner, are subject to these By-Laws, the Articles and the Declaration.

**1.2 Office.** The office of the Association shall be at 515 Carcaba Road, St. Augustine, Florida 32081, or at such other place as may be established by resolution of the Board of Directors.

**1.3 Fiscal Year.** The fiscal year of the Association shall be the first day of January through the last day of December.

**1.4 Seal.** The seal of the Association shall bear the name of "HERON CREEK HOMEOWNERS ASSOCIATION, INC." the word "Florida", the words "Corporation Not-For-Profit", and the year of incorporation.

**2. DEFINITIONS.**

**2.1 Association.** "Association" shall mean and refer to HERON CREEK HOMEOWNERS ASSOCIATION, INC., a corporation not-for-profit, organized or to be organized pursuant to Chapter 617, Florida Statutes, and its successors and assigns.

**2.2 Owner.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property and the Future Development Property if such property is developed and annexed as herein set forth, including contract sellers, but excluding those having such interests merely as security for the performance of any obligation. The term "Owner" shall not mean or refer to any mortgagee or grantee or beneficiary under a deed or trust or security deed unless and until such mortgagee, grantee or beneficiary has acquired title pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

2.3 Property. "Property" shall mean and refer to that certain real property more particularly described on Exhibit "A" attached hereto, containing four (4) Lots.

2.4 Future Development Property. "Future Development Property" shall mean and refer to any other property adjacent and contiguous to the property described in Exhibit "A".

2.5 Annexation. "Annexation" shall mean and refer to the addition of "Future Development Property", at the option of Developer, to the development community created herein and the subjection of such property to the terms and conditions set forth in this Declaration. Annexation shall be accomplished by recording by Developer of an amendment to this Declaration in the public records of St. Johns County, Florida, describing the property to be annexed along with the plat of such property.

2.6 Common Area. "Common Area" shall mean and refer to that portion of the Property which is not a part of a lot and which is intended for the common use and enjoyment of the owners, and which shall be conveyed by the Developer to the Association pursuant to the provisions of this Declaration.

2.7 Lot. "Lot" shall mean and refer to any of the plat of land shown upon the plat of the Property and the Future Development Property if such property is developed and annexed as herein set forth, with the exception of the Common Area and dedicated roads.

2.8 Developed Lot. "Developed Lot" shall mean and refer to any lot on which permanent improvements, including a single family dwelling, are located.

2.9 Undeveloped Lot. "Undeveloped Lot" shall mean and refer to any lot which does not contain any permanent improvements.

2.10 Developer. "Developer" shall mean and refer to TRSDORFF & JAMES DEVELOPMENTS, INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped lot for the purpose of development.

2.11 Board of Directors. "Board of Directors" shall mean and refer to the Association's Board of Directors.

2.12 Articles. "Articles" shall mean and refer to the Articles of Incorporation of the Association.

2.13 Association Expenses. "Association Expenses" shall mean and refer to the expenses and charges described in this Declaration incurred or to be incurred by the Association and assessed or to be assessed against the Lots and Owners thereof.

2.14 Assessment. The term "Assessment" as used herein shall mean and refer to a share of Association Expenses required for the payment of the Association Expenses which from time to time shall be assessed against the Lots and the Owners and the Authorized Users.

2.15 Assessment Period. "Assessment Period" shall be the same period as a calendar year, from January 1 to December 31 of any given year.

2.16 Member. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Section 1 of Article II of the Declaration.

### 3. MEMBERSHIP, VOTING, QUORUM, PROXIES.

3.1 Membership. The qualification of members of the Association (the "Members"), and the manner of their admission to membership and termination of such membership, and voting by Members, shall be as set forth in Article IV of the Articles and Article II, Section 1 of the Declaration, the provisions of which are incorporated herein by reference.

3.2 Quorum. A quorum at Meetings of Members shall consist of the number of persons which make up a majority of the membership which is entitled to vote upon any matter or matters arising at said meeting.

3.3 Voting. The classes of voting membership and manner of voting shall be as set forth in Section 3 of the Declaration, subject to the additional terms and conditions set forth herein.

(a) There shall be two (2) classes of voting memberships as follows:

Class A - Class A Members shall be all Owners who have taken title to one or more Lots from the Developer, or from a successor in title to the Developer, which shall include Lots on Future Development Property, if such property is annexed as herein provided. Class A Members shall be entitled to one vote for each Lot in which they hold an interest required for membership. When more than one person holds such interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine but in no event shall more than one vote be cast with respect to any Lot.

Class B - The Class B Member shall be the Developer, which shall be initially entitled to four (4) votes, with the number of votes decreasing by one with the sale of each Lot. The number of votes of the Class B Member shall be increased at the time of annexation of Future Development Property by a number equal to the number of Lots included on the plat of such Future Development Property, and shall decrease likewise by one vote each time a Lot is sold. Class B membership shall terminate upon the happening of one of the following events, whichever occurs earlier: (i) when the Developer has conveyed one hundred percent (100%) of the Lots located on the Property and the Future Development Property is developed and annexed as herein provided, or (ii) February 1, 1992.

(b) If a Lot is owned by one person, his right to vote shall be established by the record title to his Lot.

(c) If any Lot is owned by more than one person or a partnership, corporation, trust, or any other association or entity, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by all of the record owners of the Lot or by the President,

general partner or other chief executive officer of the respective entity and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate designating the person entitled to cast the vote of a Lot may be revoked by any owner of the Lot. If such a certificate is not on file, the vote of such owners shall not be considered in determining the requirement for a quorum nor for any other purpose.

(d) The Developer shall be entitled to cast the number of votes as set forth in subparagraph (a) hereof under Class B Membership.

3.4 Vote Required. Except as otherwise required under the provisions of the Articles, these By-Laws or the Declaration, or where the same otherwise may be required by law, at any meeting of the general membership of the Association, duly called and at which a quorum is present, the acts approved by the affirmative vote or a majority of the votes present at such meeting regardless of whether the Member is voting as a Class A or Class B Member, shall be binding upon the Members.

3.5 Proxies. At any meeting of the Members, every Member having the right to vote shall be entitled to vote in person or by proxy. Any proxy given shall be effective only for the specific meeting for which originally given. All such proxies shall be filed with the Secretary prior to or during the roll call or such meeting. In no event shall any proxy be 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 any time at the pleasure of the owner executing it.

#### 4. MEMBER'S MEETINGS

4.1 Annual Meeting. The annual meeting of the Members shall be held at the office of the Association or such other place in St. Johns County, Florida, and at such time as may be specified in the notice of the meeting, on the first Tuesday in March of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the Members; provided, however, that if that day is a legal holiday, the meeting shall be held on the next succeeding Saturday, or such day as the Directors shall determine and include in the notice of meeting.

4.2 Special Meeting. Special meetings of the entire membership of the Association shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from Members entitled to cast a majority of the votes of the entire membership.

#### 4.3 Notice of Meetings.

(a) Generally. Written notice of all meetings of Members shall be given by the Secretary or, in the absence of the Secretary, another officer of the Association, to each Member or class of Members, if any, unless waived in writing. Each notice shall state the time and place of and purpose for which the meeting is called and shall be posted at a conspicuous place in the Common Area of the Development Property at least fourteen (14) days prior to said meeting.

(b) Annual. Notice of the Annual Meeting shall be given by or at the direction of the President, Secretary or officer or persons calling the meeting to each Member not

less than fourteen (14) days nor more than sixty (60) days prior to the date set for the meeting, and shall be mailed by first class mail or delivered personally to each Member. If delivered personally, receipt of notice shall be signed by the Member, indicating the date received and shall constitute that Member's waiver of his right to receive given when deposited in the United States Mail addressed to the Member at his Post Office address as it appears on the records of the Association.

(c) Special. Notice of Special Meetings shall be given to each Member not less than fourteen (14) days nor more than sixty (60) days prior to the date set for the meeting and shall be mailed by first class mail or delivered personally to the Member.

(d) Waiver. Any Member may, in writing signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether before, at or after the holding of the meeting, shall constitute notice to such Member.

(e) Adjourned Meetings. If any meeting of Members cannot be held because a quorum is not present, or because a greater percentage of the membership required to constitute a quorum for a particular purpose is not present, wherever the latter percentage of attendance may be required as set forth in the Articles, the By Laws or the Declaration, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum or the required percentage of attendance, if greater than a quorum, is present. If the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and any business may be transacted at the adjournment meeting that might have been transacted on the original date of the meeting, it is not necessary to give notice of the adjourned meeting. If, however, the time and place for the adjourned meeting are fixed after the adjournment, it is necessary to give notice of the adjourned meeting in accordance with Section 4.3 herein.

4.4 Presiding Officer and Minutes. At meetings of Members, the Chairman of the Board, or in his absence, the President, shall preside, or in absence of both, the Members present shall select a chairman of the meeting. Minutes shall be kept in a business like manner and available for inspection by Directors, Unit owners and their authorized representatives during normal business hours at the principal office of the Association. The Association shall retain these minutes for a period of not less than seven (7) years.

4.5 Order of Business. The order of business at annual meetings of Members, and, as far as practical, at other meetings of Members, shall be:

- (a) Calling of the roll and certifying of proxies
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading or waiver of reading of minutes or previous meeting of Members
- (d) Reports of officers
- (e) Reports of committees
- (f) Appointment by Chairman of inspectors of election



- (g) Election of Directors
- (h) Unfinished business
- (i) New business
- (j) Adjournment

## 5. BOARD OF DIRECTORS

5.1 First Board and Developer Control. The affairs of the Association shall be managed by a Board of Directors. The first Directors shall consist of three (3) persons as designated in the Articles of Incorporation. TESBORPF & JAMES DEVELOPMENTS, INC., a Florida corporation, "Developer," reserves the right to appoint Directors to the Board as specified in the Articles, and as described herein.

5.2 Election of Directors. Directors shall be elected in the following manner:

(a) The Board of Directors shall be elected by the Members from among the membership of the Association at the annual membership meeting, by affirmative vote of a plurality of the votes cast at such meeting, however, the Developer shall have the right to elect all of the Directors of the Board subject to the following:

1. When Lot owners other than the Developer own twenty-five percent (25%) or more of the Lots in the Development that will be operated ultimately by the Association, the Lot owners other than the Developer shall be entitled to elect one-third (1/3) of the members of the Board of Directors.

2. Lot owners other than the Developer shall be entitled to elect a majority of the Members of the Board of Directors upon the first to occur of the following:

- (a) The Developer has conveyed a majority of the lots which will ultimately comprise the development; or
- (b) February 1, 1992.

3. The Developer is entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least (25%) percent of all of the Lots in the Development to be operated ultimately by the Association.

(a) Vacancies on the Board may be filled, through the unexpired term thereof, by the remaining Directors except that, should any vacancy on the Board be created in a directorship previously filled by any person appointed by Developer, such vacancy shall be filled by Developer appointing by written instrument delivered to any officer of the Association, the successor Director, who shall fill the vacated directorship for the unexpired term thereof.

(b) In the election of Directors, there shall be appurtenant to each Lot one (1) vote for each Director to be elected, and the Developer shall be entitled to cast the number of votes allocated to it under Article 2, Section 2.3(a) hereof, provided, however, that no Member or owner of any Lot (other than the Developer) may cast more than one vote for any person nominated as a Director, and the Developer may cast no more than its total number of allocated votes for any person nominated as a Director, it being the intent hereof that voting for Directors shall be non-cumulative.

(c) At the first annual meeting, the members will elect three (3) directors, which one directorship to be designated as a two year term director and the other two to be for one year terms. At the next succeeding annual meeting, one of such one year term directorships shall be, from that point on, designated as a two year term directorship. The intent hereof is to stagger the terms of the directorships so that there shall be only two directors elected each year with one member of the old board continuing on the new board. Therefore, there shall be two directorships of two year terms being up for election in different years, and the third directorship shall always remain a one-year term directorship.

(d) In the event that Developer selects any person or persons to serve on the initial Board, Developer shall have the absolute right at any time, in its sole discretion, to replace any such person or persons with another person or other persons to serve on the Board. Replacement of any person or persons designated by Developer to serve on any board shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name or names of the person or persons designated as successor or successors to the persons so removed from the Board. The removal of any director and designation of his successor shall be effective immediately upon delivery of such written instrument by Developer to any officer of the Association.

(e) Approval of Class A Members. Except as otherwise expressly provided herein or the Declaration, prior to Class A membership acquiring the power to elect a majority of the Board of Directors pursuant to paragraph 5.2(a)(2), the approval of a majority of the Class A membership shall be required for enactment by the Board of Directors of any resolution materially affecting the Class A membership in the operation, maintenance or ownership of their lots or the Common Area.

5.3 Organizational Board Meeting. The organizational meeting of a newly elected or designated Board shall be held within fifteen (15) days of their election or designation, at such time and place as shall be fixed at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary; provided, that a quorum shall be present.

5.4 Regular Board Meeting. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, at least seven (7) days prior to the day named for such meeting, unless notice is waived. Meetings of the Board of Directors shall be open to all Members and notices of meetings shall be posted conspicuously in the common area at least forty-eight (48) hours in advance for the attention of Lot Owners, except in an emergency. Notice of any meeting where assessments against Lot owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

5.5 Special Meetings. Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of one-third of the Directors. Except in an emergency, not less than two (2) days notice of a special meeting shall be given to each Director, personally or by mail, telephone, or telegram, which notice shall state the time, place and purpose of the meeting. Notice of any meeting where assessments against Lot owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

5.6 Board Minutes. Minutes of all meetings of the Board shall be kept in a businesslike manner and available for inspection by Members and Directors during normal business hours at the principal office of the Association. The Association shall retain these minutes for a period of not less than seven (7) years.

5.7 Waiver of Notice. Any Director may waive notice of a meeting before, at or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

5.8 Quorum. To conduct business at any duly called meeting of the Directors at least a majority must be present and vote.

5.9 Action Without a Meeting. To the extent now or from time to time hereafter permitted by the laws of Florida, the Board may take any action which they might take at a meeting of the Board without a meeting; provided, that a record of all such actions so taken, signed by each Director, shall be filed and retained in the minute book of the Association.

5.10 Removal. Directors may be removed from office with or without cause by the vote or written agreement of persons entitled to cast a majority of the votes of the membership, provided, however, that only the Developer can remove a member of the Board who was appointed by the Developer.

5.11 Presiding Officer. The presiding officer of meetings of the Board shall be the Chairman of the Board, if such officer has been elected, or, if not, the President of the Association. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

5.12 Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties, if such expense is provided for in the budget. If such expense is not provided for in the budget, all reimbursements shall be approved by the majority of the membership.

5.13 Powers and Duties. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the laws of Florida, the Articles, these By-Laws and the Declaration. Such powers and duties shall be exercised in accordance with the Articles, these By-Laws and the Declaration, and shall include, without limitation, the right, power and authority to:

(a) Make, levy and collect assessments, including without limitation assessments for reserves and for betterments to Association property, against Members and Members' Lots to defray the costs of the Development and the property owned by the Association and use of the proceeds of assessments in the exercise of the powers and duties of the Association.

(b) Maintain, repair, replace, operate and manage the Common Areas in the Property wherever the same is required to be done and accomplished by the Association for the benefit of members;

(c) Repair and reconstruct improvements after casualty;

(d) Make and amend regulations governing the use of Common Areas in the Property, real and personal, provided that such regulations or amendments thereto shall not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Articles and Declaration;

(e) Contract for the management and maintenance of property and to authorize a management agent to assist the Association in carrying out its powers and duties, including but not limited to the performance of such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of common elements and property owned by the Association with funds as shall be made available by the Association for such purposes. Any such contract shall be terminable for cause upon the giving of thirty (30) days prior written notice, and shall be for a term of from one (1) to three (3) years. Any such contract shall be renewable by consent is negotiated by the Developer, the term of such contract shall not exceed one (1) year. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, including but not limited to the making of assessments, promulgation of rules and execution of contracts on behalf of the Association;

(f) Enforce by legal means the provisions of the Articles, these By-Laws, the Declaration and all regulations governing use of the Property;

(g) Pay all taxes and assessments which are liens against any part of the Property other than Lots and the appurtenances thereto, and assess the same against the Members and their respective Lots subject to such liens;

(h) Carry insurance for the protection of Members and the Association against casualty and liability, including Directors' liability insurance;

(i) Pay all costs of power, water, sewer and other utility services rendered to the Property or to the Association and not billed to the owners of the separate Lots;

(j) Employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association.

## 6. OFFICERS.

6.1 Generally. The Board shall elect a President, Secretary, Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall deem advisable from time to time. The President and Vice President shall be elected from the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, that the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary be held by the same person.

6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of a corporation not for profit, including but not limited to the power to appoint committees from among the Members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association. He shall have such additional powers as the Board may designate.

6.3 Vice-President. Should more than one person be designated Vice President, those persons serving as Vice President shall be titled First Vice President and Second Vice President. The First Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and person such other duties as shall be prescribed by the Board. The Second Vice President shall serve as President in the absence or disability of the President and the First Vice President and shall exercise such other powers and perform shall other duties as prescribed by the Board.

6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Board and the Members. He shall attend to the affairs of the Association. He shall have such additional powers as the Board may designate.

6.5 Treasurer. The Treasurer shall have custody of all of the property of the Association including funds, securities and evidences of indebtedness. He shall keep the assessment roll and accounts of the Members; he shall keep the assessment roll and accounts of the Members; he shall keep the books of the Association in accordance with good accounting practices, and he shall perform all other duties incident to the office of Treasurer.

6.6 Compensation. No compensation shall be paid to any officer of the Association. Nothing herein shall be construed so as to prohibit or prevent the Board of Directors from employing any director or officer as an employee of the Association at such compensation as the Board shall determine, nor shall anything herein be construed so as to preclude the Board from contracting with a director or officer or with any corporation in which a director or officer of the Association may be stockholder, officer, director or employee, for the management of HERON CREEK, for such compensation as shall be mutually agreed between the Board and such officer, director or corporation, for the purpose of making available to the owners of Lots such services as are contemplated by the provisions of Article as is of these By-Laws. It is expressly contemplated that the first Board of Directors may enter into such contracts with persons who are initial officers or directors of the Association, or with corporations having officers, directors or employees who are also members of the first Board of Directors of the Association.

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

7.1 Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance supplied at least annually to members. Such records shall include, but not be limited to:

(a) A record of all receipts and expenditures.

(b) An account for each Lot which shall designate the name and address of the lot owner, the amount of each assessment, dates and amounts in which the assessments come due, the amounts paid upon the account and the balance due.

7.2 Inspection of Books. Financial reports and the membership records shall be maintained in the office of the Association and shall be available to members for inspection during normal business hours. The Association shall issue an annual financial report to lot owners.

**7.3 Annual Budget.** The Board shall adopt, for, and in advance of, each fiscal year, a budget showing the estimated cost of performing all of the functions of the Association for the year. Each budget shall show the total estimated expenses of the Association for that year and shall contain an itemized breakdown of the common expenses, which shall include without limitation, the cost of operating and maintaining the Common Elements, taxes on Association property, wages and salaries of Association employees, management, legal and accounting fees, office supplies, public utility services not metered or charged separately to lots, premiums for insurance carried by the Association and any reserve accounts and/or funds which may be established from time to time by the Board. Each budget shall also show the proportionate share of the total estimated expenses to be assessed against and collected from the owner(s) of each lot, and due date(s) and amounts of installments thereof. Copies of the proposed budget and proposed assessments shall be transmitted to each Member at least thirty (30) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of the time and place of said meeting, which shall be open to Members. If any budget is subsequently amended, a copy shall be furnished to each affected Member. Delivery of a copy of any budget or amended budget to a Member shall not affect the liability of any Member for any such assessment, nor shall delivery of a copy of any budget or amended budget to a Member shall not affect the liability of any Member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of the budget and assessments levied pursuant thereto. Nothing herein contained shall be construed as a limitation upon the additional assessment in the event that any budget originally adopted shall appear to be sufficient to pay costs and expenses of operation and management, or in the event of emergencies.

**7.4 Amount of Budget.** If an budget is adopted by the Board which requires assessment of the Lot owners in any budget year of an amount in excess of ten percent (10%) over the maximum assessment or the previous year's assessment established in accordance with Section 5 of the Declaration, a special meeting of the Members shall be held upon not less than ten (10) days written notice to each Member, but within thirty (30) days of the adoption of such budget, at which special meeting Members shall be entitled to approve or disapprove such budget and may consider only and enact only a revision of the budget. Approval of the budget and any such revision of the budget shall require a vote of a majority of the members. The Board may, in any event, first propose a budget to the Members at any such meeting of Members or by writing, and if such budget or proposed budget be approved by a majority of the Members either at such meeting or by writing, such budget shall not thereafter be reexamined by the Members in the manner hereinabove set forth.

In determining whether assessments are in excess of ten percent (10%) over the maximum assessment or previous year's assessment established in accordance with the Declaration in the prior budget year, there shall be excluded from the computation reasonable reserves made by the Board in respect of repair and replacement of Association property, or in respect of anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis; and there shall be excluded from such computation assessments for betterments to Association property. Provided, however, that so long as Developer is in control of the Board of Directors the Board shall not impose an assessment for a budget year greater than ten percent (10%) of the maximum assessment as set forth in the Declaration of the prior budget year's assessment without approval of two-thirds (2/3) of the votes of all Members.

7.5 Notice of Adopted Budgets. Upon adoption of budgets, the Board shall cause written copies thereof to be delivered to all Members. Assessments shall be made against Members pursuant to procedures established by the Board, and in accordance with terms of the Declaration and Articles. Provided, however, that the lien or lien rights of the Association shall not be impaired by failure to comply with procedures established pursuant to these By-Laws.

7.6 Assessments. Unless otherwise determined by the Board of Directors, assessments shall be payable monthly on the first day of each calendar month, but in no event shall amounts be payable less often than quarterly. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment, and installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. Unpaid assessments for the remaining portion of the fiscal year for which an amended assessment is made shall be payable in equal installments through the end of the fiscal year; provided, nothing herein shall serve to prohibit or prevent the Board of Directors from imposing a lump sum assessment in case of any immediate need or emergency.

7.7 Special Assessments. Special assessments, if required and approved by a three-fourths (3/4) majority of the votes of the membership at a duly convened meeting, shall be levied and paid in the same manner as heretofore provided for regular assessments. Special assessments can be of three kinds: (i) those chargeable to all Members in the same proportions as regular assessments to meet shortages or emergencies, to construct, reconstruct, repair or replace all or any part of the Common Area (including fixtures and personal property related thereto), (ii) those assessed against one Member alone to cover repairs or maintenance for which such Member is responsible and which he has failed to make, which failure impairs the value of or endangers the Common Area or which are for expenses incident to the abatement of a nuisance within his lot, and (iii) and for such other purposes as shall have been approved by a three-fourths (3/4) majority of the membership.

7.8 The Depository. The depository of the Association shall be such bank or banks or savings and loan association or associations as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks or withdrawals signed by such persons as are authorized by the directors, provided that any management agreement may include in its provisions authority for the Manager to sign checks on behalf of the Association for payment of the obligations of the Association.

7.9 Audit. An audit of the accounts of the Association may be made from time to time as directed by the Board of Directors.

7.10 Fidelity Bonds. The Board may if it so chooses by majority vote direct that all officers, directors, employees, agents and contractors of the Association and their employees and agents, who are responsible for or who handle Association funds shall be bonded in an amount equal to at least one hundred fifty percent (150%) of the Association's estimated annual budget, including reserves. The premiums of the of said bonds shall be paid by the Association.

8. PARLIAMENTARY RULES. Robert's Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration of Condominium, Articles of Incorporation, or these By-Laws.

9. AMENDMENTS TO BY-LAWS. Amendments to these By-Laws shall be proposed and adopted in the following manner:

9.1 Proposal. Amendments to these By-Laws may be proposed by the Board, acting upon a vote of a majority of the Directors, or by person entitled to cast a majority of the Lots whether meeting as Members or by instrument in writing signed by them.

9.2 Notice. Upon any amendment or amendments to these By-Laws being proposed by the Board or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or acting chief executive officer in the absence of the President, who shall thereupon call a special meeting of the Members for a date not sooner than fourteen (14) days not later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each Member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the Members is required as herein set forth; provided, that proposed amendments to the By-Laws may be considered and voted upon at annual meetings of the Members.

9.3 Content of Amendment. No By-Law shall be revised or amended by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended; new words shall be inserted in the text underlined and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw... for present text." Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

9.4 Voting. In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of two-thirds of the votes entitled to be cast at a regular or special meeting. Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the public records of St. Johns County, Florida, within fifteen (15) days from the date on which any amendment or amendments have been affirmatively approved by the Members.

9.5 Written Vote. At any meeting held to consider such amendment or amendments to these By-Laws, the written vote of any Member shall be recognized if such Member is not present at such meeting in person or by proxy, provided such written vote is delivered to the Secretary at or prior to such meeting.

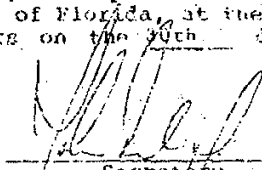
9.6 Developer's Reservation. Notwithstanding for foregoing provisions of this Article 8, no amendment to these By-Laws which shall abridge, amend or alter the right of Developer to designate members of the Board of Directors, of the Association, as provided in Article 5 hereof, or any other right of the Developer provided herein or in the Articles of Declaration, may be adopted or become effective without the prior written consent of Developer.



9.7 FHA/VA Approval. As long as there is Class B membership in the Association, the Federal Housing Administration or Veterans Administration shall have the right to veto amendments to these By-Laws.

9.8 Proviso. Provided, however, that no amendment shall discriminate against any Lot owner or class or group of Lot owners unless the Lot owners so affected shall consent. No amendment shall be made that is in conflict with the Declaration or the Articles of Incorporation. In the event of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control, and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control. Anything herein to the contrary notwithstanding, until the first regular election of Directors by the membership, and so long as the Developer shall have the right to fill vacancies on the Board of Directors, any amendment shall require only the unanimous consent of the Board of Directors, and no meeting of the Members nor any approval thereof need be had.

The foregoing were adopted as the By-Laws of HERON CREEK HOMESOWNERS ASSOCIATION, INC., a corporation not-for-profit under the laws of the State of Florida, at the first meeting of the Board of Directors on the 20th day of January, 1987.

  
Secretary  
John Tesdorpf

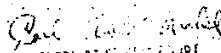
APPROVED:

  
President

John James

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CLERK OF THE COURT