

Instrument: 2006080400221
 Book and Page: GI 8038 412
 Data Processing F \$2.00
 Misc Recording Fe \$445.00
 Total Fees: \$447.00
 User: KSPRUIELL
 Date: 04-AUG-2006
 Time: 03:44:04 P
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 Hamilton County Tennessee

OK 69179

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

HORSE CREEK FARMS (PHASE II)

(Part 2)

P. 33 - P. 62

THIS INSTRUMENT PREPARED BY
 AND AFTER RECORDING RETURN TO:

Chambliss, Bahner & Stopfel, P.C.
 1000 Tallan Building
 Two Union Square
 Chattanooga, Tennessee 37402
 Attention: Michael J. Stewart

the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

8.10 Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to \$250.00 per Unit. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Horse Creek Farms (Phase II) and to accommodate changes in the Master Plan which inevitably occur as a community the size of Horse Creek Farms (Phase II) grows and matures.

Article 9 Expansion of the Community

9.1 Expansion by Declarant.

From time to time, Declarant may subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the additional property to be subjected. Prior to the expiration of the Class "B" Control Period, Declarant may unilaterally modify Exhibit "B" as Declarant, in its sole and absolute discretion may determine appropriate. A Supplemental Declaration Recorded pursuant to this Section 9.1 shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand Horse Creek Farms (Phase II) pursuant to this Section 9.1 shall expire when all property described in Exhibit "B" has been subjected to this Declaration or 40 years after this Declaration is Recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

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9.2 Expansion by the Association.

The Association may also subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of the Unit Owners representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Association's President and Secretary, the owner of the property, and Declarant, if Declarant's consent is necessary shall sign the Supplemental Declaration.

9.3 Additional Covenants and Easements.

Declarant may subject any portion of Horse Creek Farms (Phase II) to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If someone other than Declarant owns the property, then the consent of the owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property. To the extent there is a conflict of any restrictive covenant, rule/regulation or other term under this Declaration with any restrictive covenant, rule/regulation or other term of a Supplemental Declaration, the more restrictive covenant, rule/regulation or term shall control.

9.4 Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article 10 Additional Rights Reserved to Declarant

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10.1 Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Section 9.1, for the purpose of removing any portion of Horse Creek Farms (Phase II) which has not yet been improved with structures from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2 Marketing and Sales Activities.

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Property, including any Common Area, such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

10.3 Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Every Person that acquires any interest in Horse Creek Farms (Phase II) acknowledges that Horse Creek Farms (Phase II) is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest; or (b) changes in the Master Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

10.4 Right to Approve Additional Covenants.

No Person shall Record any declaration of covenants, conditions and restrictions, declaration of condominium, or similar instrument affecting any portion of Horse Creek Farms (Phase II) without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

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10.5 Right to Approve Changes in Horse Creek Farms (Phase II) Standards.

No amendment to or modification of any Rules and Regulations or Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

10.6 Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.7 Exclusive Rights To Use Name of Development.

No Person shall use the name "Horse Creek Farms (Phase II)" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Horse Creek Farms (Phase II)" in printed or promotional matter where such term is used solely to specify that particular property is located within Horse Creek Farms (Phase II) and the Association shall be entitled to use the words "Horse Creek Farms (Phase II)" in its name.

10.8 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Horse Creek Farms (Phase II), including Units, and a perpetual nonexclusive easement of access throughout Horse Creek Farms (Phase II) to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

10.9 Termination of Rights.

The rights contained in this Article shall not terminate until the earlier of: (a) 30 years from the date this Declaration is Recorded; or (b) Recording by Declarant of a written statement that all sales activity has ceased.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.

Article 11 Easements

11.1 Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend an Owner's right to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent; and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the Bylaws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
 - (v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public; and
 - (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

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(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article 12.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2 Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3 Easements for Utilities, Etc.

(a) Installation and Maintenance. So long as Declarant owns any property described in Exhibit "A" or "B", Declarant reserves for itself and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Horse Creek Farms (Phase II) (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Horse Creek Farms (Phase II), cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any property described in Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section 11.3 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4 Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant and its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

11.5 Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over Horse Creek Farms (Phase II) as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. The Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6 Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of

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Horse Creek Farms (Phase II) abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section 11.6.

Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 25 feet of bodies of water and wetlands within Horse Creek Farms (Phase II), in order to (a) temporarily flood and back water upon and maintain water over such portions of Horse Creek Farms (Phase II); (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

11.7 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Horse Creek Farms (Phase II), including Units, and a perpetual, nonexclusive easement of access throughout Horse Creek Farms (Phase II) to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the Owner's consent.

The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

Article 12 **Limited Common Areas**

12.1 Purpose.

Certain portions of the Common Area may be designated as a Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

12.2 Designation.

Any Limited Common Area shall be designated as such in any Supplemental Declaration or in a deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units and/or Neighborhoods, so

long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of the Unit Owners representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require Declarant's written consent.

12.3 Use by Others.

Upon approval of a majority of Owners of Units within the Neighborhood to which any Limited Common Area is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

Article 13 Party Walls and Other Shared Structures

13.1 General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section 13.1, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article 14.

13.2 Maintenance; Damage and Destruction.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it, if other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section 13.2 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Horse Creek Farms (Phase II) as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

Article 14 Dispute Resolution and Limitation on Litigation

14.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, any Neighborhood Association and their officers, or directors, pursuant to the applicable Supplemental Declaration, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article 14 (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Horse Creek Farms (Phase II) without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article 4, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions relating to creation and maintenance of community standards;

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(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

14.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing by either Claimant or Respondent, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 14.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Hamilton County, Tennessee area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

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If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

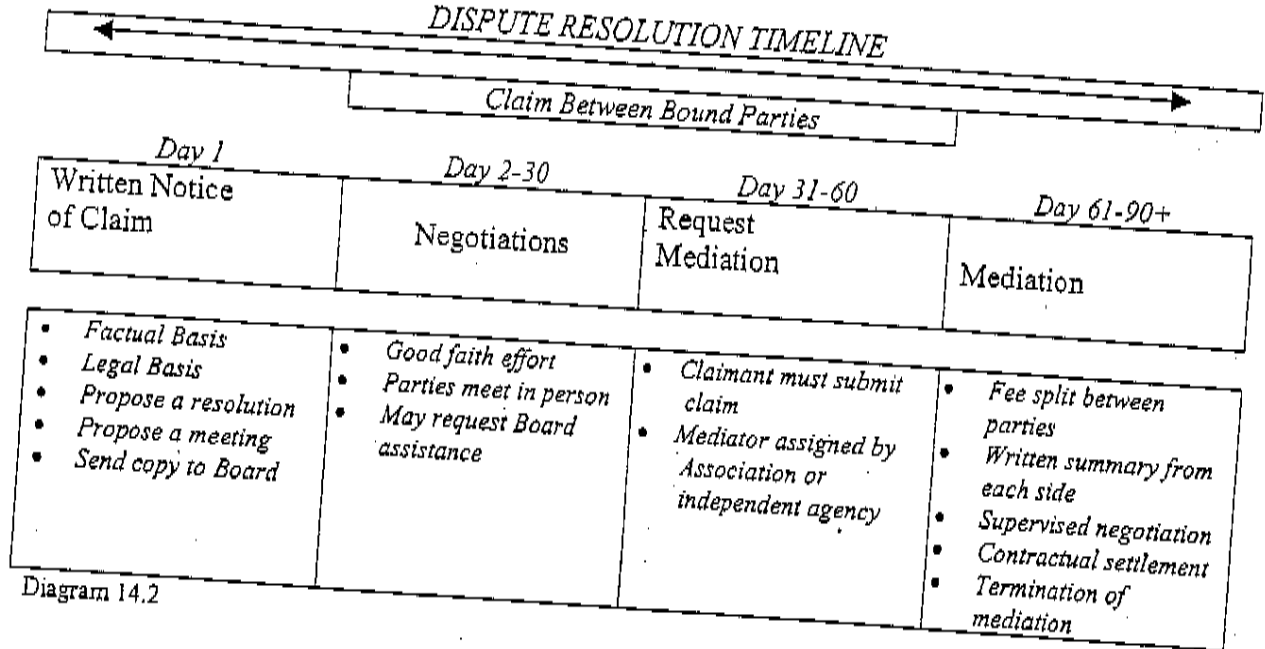


Diagram 14.2

14.3 Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by Owners entitled to cast 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

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This Section 14.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article 15 Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in Horse Creek Farms (Phase II). The provisions of this Article 15 apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

15.1 Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of the following:

- (a) Any condemnation loss or any casualty loss which affects a material portion of Horse Creek Farms (Phase II) or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days; and
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

15.2 Other Provisions for First Lien Holders.

To the extent not inconsistent with Tennessee law:

- (a) Any restoration or repair of Horse Creek Farms (Phase II) after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.
- (b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

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15.3 Amendments to Documents.

The following provisions do not apply to amendments to the constituent documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 15.2(a) and (b), or to the addition of land in accordance with Article 9.

(a) The consent of Unit Owners representing at least 67% of the Class "A" votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Unit Owners representing at least 67% of the Class "A" votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Charter, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of Horse Creek Farms (Phase II);
- (vii) expansion or contraction of Horse Creek Farms (Phase II) or the addition, annexation, or withdrawal of Properties to or from the Association;
- (viii) boundaries of any Unit;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

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15.4 No Priority.

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.5 Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

15.6 Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

15.7 Construction of Article 15.

Nothing contained in this Article shall be construed to reduce the Declarant's rights as set forth in this Declaration or to otherwise reduce the percentage vote that must be obtained under this Declaration, the Bylaws, or Tennessee law for any of the acts set out in this Article 15.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as Horse Creek Farms (Phase II) are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Horse Creek Farms (Phase II) and its Governing Documents must be able to adapt to these changes while protecting the things that make Horse Creek Farms (Phase II) unique.

Article 16 Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Unit Owner, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article 17 Changes in Common Area

17.1 Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Unit Owners representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Unit Owners representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply; or

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

17.2 Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section 17.2 shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

17.3 Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Hamilton County, Tennessee, the City of Chattanooga, or to any other local, state, or federal governmental or quasi-governmental entity.

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(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

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Article 18 Amendment of Declaration

Book and Page: GI 8038 465

18.1 By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, so long as Declarant owns property described in Exhibit "A" or "B" for development as part of Horse Creek Farms (Phase II), it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

18.2 By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Unit Owners representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1. In addition, the approval requirements set forth in Article 15 shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

18.3 Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

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Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

HORSE CREEK, LLC, a Tennessee limited liability company

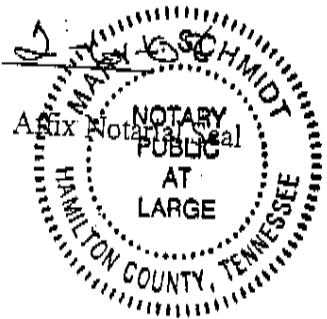
By: [Signature]
Its: Chief Manager

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

Before me, a Notary Public, of the state and county aforesaid, personally appeared Neal C. Bennett, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Chief Manager of Horse Creek, LLC, the within named bargainor, a Tennessee limited liability company, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the company by himself as such officer.

WITNESS my hand and seal at office in Chattanooga, Tennessee, this 2nd day of August, 2006.

[Signature]
Notary Public
My commission expires July 15, 2008



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JOINDER

The undersigned hereby joining in this Declaration this 2nd day of August, 2006.

HORSE CREEK FARMS (PHASE II)
OWNERS' ASSOCIATION, INC., a
Tennessee nonprofit corporation

By: [Signature]
Its: President

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

Before me, a Notary Public, of the state and county aforesaid, personally appeared Neal C. Bennett, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be President of Horse Creek Farms (Phase II) Owners' Association, Inc., the within named bargainor, a Tennessee non-profit corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the company by himself as such officer.

WITNESS my hand and seal at office in Chattanooga, Tennessee, this 2nd day of August, 2006.

[Signature]
Notary Public
My commission expires 2-6-08

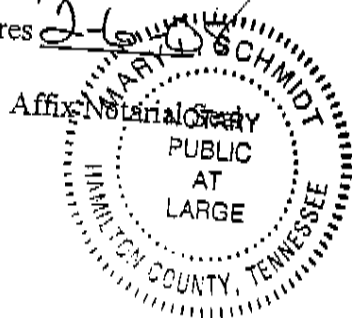


EXHIBIT "A" ^{Book and Page: GI 8038 468}

Land Initially Submitted

Land being located in the City of Chattanooga, Hamilton County Tennessee, being Horse Creek Farms Subdivision Phase Two, also being part of the land described in Deed Book 7160, Page 229, as corrected in Book 7535, Page 78 Register's Office of Hamilton County and being more particularly described as follows:

Point of beginning being the east corner of Lot 27, Horse Creek Farms Phase one as recorded in Plat Book 65, Page 11 (R.O.H.C.), thence along Lots 26, Horse Creek Farms Phase One, North 06 degrees 29 minutes 11 seconds East 242.97 feet to a point; thence with and along Lots 25, 24, 23, 22, 21, crossing Hidden Creek Drive, and along the north line of lot 19, Horse Creek Farms Phase One 1,175.39 feet to the center line of Mountain Creek; thence northward with and along the Centerline of Mountain Creek, 1,534 feet more or less, having a chord bearing and distance of North 38 degrees 50 minutes 27 seconds East 1,142.79 feet; thence leaving Mountain Creek with and along the centerline of a drainage a distance of 499.14 more or less, said drainage having a chord bearing and distance of South 84 degrees 24 minutes 29 seconds East 344.46 feet to a point; thence South 63 degrees 33 minutes 47 seconds East 109.00 feet to a point; thence North 26 degrees 26 minutes 13 seconds East 58.00 feet to a point; thence North 26 degrees 26 minutes 13 seconds East 80.00 feet to a point; thence South 63 degrees 35 minutes 26 seconds East 164.50 feet to a point; thence North 26 degrees 24 minutes 34 seconds East 240.00 feet to a point; thence South 63 degrees 33 minutes 47 seconds East 167.62 feet to a point; thence South 63 degrees 33 minutes 47 seconds East 123.00 feet to a point; thence North 26 degrees 26 minutes 13 seconds East 133.60 feet to a point; thence South 86 degrees 14 minutes 22 seconds East 61.80 feet to a point; thence a curve to the right, said curve having a radius of 200.00 feet, a tangent of 24.51 feet, a length of 48.78 feet, and a chord bearing and distance of South 79 degrees 15 minutes 06 seconds East 48.66 feet; thence a second curve to the right, said curve having a radius of 200.00 feet, a tangent of 72.56 feet, a length of 139.22 feet and a chord bearing of South 52 degrees 19 minutes 22 seconds East 136.42 feet; thence South 32 degrees 22 minutes 53 seconds East 178.32 feet to a point; thence South 43 degrees 27 minutes 32 seconds East 195.33 feet to a point; thence South 41 degrees 27 minutes 32 seconds West 475.50 feet to a point; thence South 17 degrees 08 minutes 55 seconds West 449.75 feet to a point; thence North 84 degrees 46 minutes 16 seconds West 280.03 feet to a point; thence South 33 degrees 11 minutes 26 seconds West 307.28 feet to a point; thence North 78 degrees 43 minutes 32 seconds West 241.00 feet to the point of beginning. Being and containing 45.46 acres, more or less.

ALSO BEING DESCRIBED AS:

Lots 78-90, 154-239, and 252-262 on the plat of record in Plat Book P3 83, Page 47 in the Hamilton County Register of Deed's Office.

Declarant's source of title is a deed at record in Book 7160, Page 229, as corrected in Book 7535, Page 78 in the Hamilton County Register of Deed's Office.

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EXHIBIT "A-1"

Neighborhood Designation

A. Single-Family Detached Residences

Being Lots 78-90, 154-191, 239, and 252-262 on the plat of record in Plat Book P3 83, Page 47 in the Hamilton County Register of Deed's Office.

B. The Townes at Horse Creek Farms

Being Lots 192-238 on the plat of record in Plat Book P3 83, Page 47 in the Hamilton County Register of Deed's Office.

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EXHIBIT "B"**Land Subject to Annexation**

Land being located in the City of Chattanooga, Hamilton County Tennessee, being Horse Creek Farms Subdivision Phase Two, also being part of the land described in Deed Book 7160, Page 229, as corrected in Book 7535, Page 78, Register's Office of Hamilton County and being more particularly described as follows:

Remote Point of beginning being the east corner of Lot 27, Horse Creek Farms Phase one as recorded in Plat Book 65, Page 11 (R.O.H.C.), thence along Lots 26, Horse Creek Farms Phase One, North 06 degrees 29 minutes 11 seconds East 242.97 feet to a point; thence with and along Lots 25, 24, 23, 22, 21, crossing Hidden Creek Drive, and along the north line of lot 19, Horse Creek Farms Phase One 1,175.39 feet to the center line of Mountain Creek; thence northward with and along the Centerline of Mountain Creek, 1,534 feet more or less, having a chord bearing and distance of North 38 degrees 50 minutes 27 seconds East 1,142.79 feet to the True Point of Beginning; thence continuing with and along Mountain Creek 1,165.8 feet more or less, having a chord bearing and distance at North 12 degrees 50 minutes 53 seconds East 820.65 feet; thence continuing with and along Mountain Creek 94.6 feet, more or less, having a chord bearing and distance of South 80 degrees 39 minutes 57 seconds East 91.15 feet; thence North 59 degrees 02 minutes 05 seconds West 34.10 feet to a 5/8" rebar (new); thence South 86 degrees 13 minutes 30 seconds East 1447.32 feet to a 5/8" rebar (new); thence South 44 degrees 30 minutes 54 seconds East 1,132.80 feet to a 5/8" rebar (new); thence South 38 degrees 00 minutes 59 seconds West 52.12 feet to a 5/8" rebar (new); thence South 52 degrees 10 minutes 59 seconds West 727.19 feet to a 5/8" rebar (new); thence South 05 degrees 59 minutes 29 seconds West 155.05 feet to a 5/8" rebar (new); thence South 60 degrees 57 minutes 08 seconds East 90.70 feet to a 5/8" rebar (new); thence South 35 degrees 34 minutes 16 seconds West 351.26 feet; thence North 84 degrees 44 minutes 20 seconds West 964.20 feet to a 5/8" rebar (new); thence North 17 degrees 08 minutes 55 seconds East 449.75 feet to a 5/8" rebar (new); thence North 41 degrees 27 minutes 32 seconds East 475.50 feet to a point; thence North 43 degrees 27 minutes 32 seconds West 195.33 feet to a point; thence North 32 degrees 22 minutes 53 seconds West 178.32 feet to a point; thence a curve to the left, said curve having a radius of 200.00 feet, a tangent of 72.56 feet, a length of 139.22 feet and a chord bearing and distance of North 52 degrees 19 minutes 22 seconds West 136.42 feet; thence a second curve to the left having a radius of 200.00 feet, a tangent of 24.51 feet, a length of 48.78 feet and a chord bearing and distance of North 79 degrees 15 minutes 06 seconds West 48.66 feet; thence North 86 degrees 14 minutes 22 seconds West 61.80 feet to a point; thence South 26 degrees 26 minutes 13 seconds West 110 feet to a point; thence North 63 degrees 33 minutes 47 seconds West 123.00 feet to a point; thence North 63 degrees 33 minutes 47 seconds West 50.00 feet to a point; thence North 63 degrees 33 minutes 47 seconds West 167.62 feet to a point; thence South 26 degrees 24 minutes 34 seconds West 240.00 feet to a point; thence North 63 degrees 35 minutes 26 seconds West 164.50 feet to a point; thence South 26 degrees 26 minutes 13 seconds West 80.00 feet to a point; thence South 26 degrees 26 minutes 13 seconds West 58.00 feet to a point; thence North 63 degrees 33 minutes 47 seconds West 109.00 feet tot a point; thence with and along the centerline of a drainage to the centerline of Mountain Creek a distance of 499.14 feet, more or less, having a chord bearing and distance of North 84 degrees 24 minutes 29 seconds West

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344.46 feet to the TRUE POINT OF BEGINNING. Being and containing 53.71 acres more or less.

EXHIBIT "C"

Book and Page: GI 8038 472

Initial Rules and Regulations

The following restrictions shall apply to all of Horse Creek Farms (Phase II) until such time as they are amended, modified, repealed, or limited pursuant to Article 3 of the Declaration.

1. General. Horse Creek Farms (Phase II) shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant or a designated Builder to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Association, or business offices for Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.
2. Restricted Activities. The following activities are prohibited within Horse Creek Farms (Phase II) unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:
 - (a) Parking any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;
 - (b) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in or on a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;
 - (c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;
 - (d) Any activity which violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;
 - (e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

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- (f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;
- (g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;
- (h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound, device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;
- (i) Use and discharge of firecrackers and other fireworks;
- (j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within Horse Creek Farms (Phase II), except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff;
- (k) Accumulation of rubbish, trash, or garbage except between regular garbage pickups, and then only in approved containers;
- (l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;
- (m) Swimming, fishing, boating, use of motorized watercraft such as jet-skis, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within Horse Creek Farms (Phase II) and Declarant, its successors and assigns, shall be permitted and shall have the exclusive right to draw water from lakes, ponds, and streams within Horse Creek Farms (Phase II) for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to Horse Creek Farms (Phase II);
- (n) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;
- (o) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.
- (p) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from

outside the Unit; (ii) the business activity conforms to all zoning requirements for Horse Creek Farms (Phase II); (iii) the business activity does not involve door-to-door solicitation of residents of Horse Creek Farms (Phase II); (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in Horse Creek Farms (Phase II) which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of Horse Creek Farms (Phase II) and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Horse Creek Farms (Phase II), as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of Horse Creek Farms (Phase II) or its use of any Units which it owns within Horse Creek Farms (Phase II), including the operation of a timeshare or similar program;

(q) Capturing, trapping, or killing of wildlife within Horse Creek Farms (Phase II), except in circumstances posing an imminent threat to the safety of persons using Horse Creek Farms (Phase II);

(r) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Horse Creek Farms (Phase II) or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(s) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article 4 of the Declaration;

(t) Operation of motorized vehicles on pathways or trails maintained by the Association; and

(u) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except without prior approval pursuant to Article 4 of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; pools; pool houses; storage buildings; and hedges, walls, dog runs, animal pens, or fences of any kind; satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Architectural Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Horse Creek Farms (Phase II), should any master system or systems be utilized by the Association and require such exterior apparatus.

3. Prohibited Conditions. The following shall be prohibited at Horse Creek Farms (Phase II):

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Horse Creek Farms (Phase II);

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within Horse Creek Farms (Phase II), except that Declarant and the Association shall have the right to draw water from such sources.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term, which requirements may vary from Neighborhood to Neighborhood. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, Bylaws, and the Rules and Regulations.

5. Property Maintenance: The builder or owner shall maintain the property consistent with the character of a quality residential neighborhood. Each Owner shall keep foundation, exterior walls, windows, doors and glazing, roofs, structural, mechanical and

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electrical systems, landscaping and grounds, fences and retaining walls in a high state of maintenance, repair and appearance. Storage of trash containers shall be in a service court or garage not visible from the street except at time of pick up.

6. Landscape Maintenance: Except as otherwise provided in a Supplemental Declaration, Owners, including the Builder prior to sale, are responsible for proper care, maintenance and pruning of their lawns and landscaping.

EXHIBIT "D" Book and Page: GI 8038 477

Bylaws

[see attached]