

RESOLUTION NO. 95-191

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, STATE OF FLORIDA
APPROVING A FINAL DEVELOPMENT PLAN
FOR MARSH CREEK UNIT ELEVEN
LOCATED WITHIN THE PARCEL OF LAND
ZONED PUD PURSUANT TO ORDINANCE R-PUD-86-060

PROVIDING FOR MODIFICATIONS IN RESPONSE TO THE
BERT J. HARRIS PRIVATE PROPERTY RIGHTS
JUDGEMENT OR ORDER

WHEREAS, the Final Development Plan for Marsh Creek Unit Eleven has been fully considered after public hearing pursuant to Section 8-3-2 of the St. Johns County Zoning Ordinance; and

WHEREAS, it is found that:

- A. The request received favorable review and recommendation by the Planning and Zoning Agency at its meeting on November 2, 19 95; and
- B. The request is both consistent with the Comprehensive Plan and compatible with development patterns in the surrounding area;
- C. The request is consistent with the requirements of Section 8-3-2 of the Zoning Ordinance and with the requirements of PUD Ordinance R-PUD-86-060.

In a Ret: O. Lewis,
Min. & Rec.
Record in P.U.D.

THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA as follows:

Section 1. Pursuant to a request for approval of Marsh Creek Unit Eleven made by Gregory J. Barbour, of Marsh Creek Development Corporation, in accordance with Section 8-3 of St. Johns County Zoning Ordinance, and subsequent review and approval by the St. Johns County Planning and Zoning Agency, the Final Development Plan attached hereto as Exhibit "A" relating to that portion of the PUD, the legal description of which is set forth on Exhibit attached hereto, and which is known as Exhibit "A" are hereby approved in reliance upon, and in accordance with the representation and statements made therein and in the Final Development Plan Narrative attached hereto as Exhibit "B", and in accordance with Exhibits "C" and "D" (applicable sections of the covenants and restrictions) and based on the above referenced findings which are hereby incorporated by reference.

Section 2. Except to the extent that they conflict with specific provisions of the approved development plan or PUD Ordinance, all building code, zoning ordinance, and other land use and development regulations of St. Johns County, including, without limitation, any Concurrency Management Ordinance and the St. Johns County Comprehensive Plan, as may be amended from time to time shall be applicable to this development, except modification to approved development plans by variance or exception shall be prohibited. Particularly, no private land use covenant or restriction that may be incorporated into this Ordinance which is more strict than a particular Federal, State or County Statute, Ordinance, Regulation, Rule or Resolution shall be enforced by the County under this Ordinance except as is specifically provided for and described in the Ordinance or the incorporated PUD narrative.

Unless the Board of County Commissioners demonstrates that compliance with the land development regulations is essential to the public health, safety or welfare, nothing in this section shall be deemed to: (a) supersede any applicable "grandfathering" or "vested rights" provisions contained in Florida law or that may be provided in any such future building code, zoning ordinance or other land use and development regulations; or (b) supersede any concurrency certificate or concurrency exemption determination made by the Concurrency Review Committee or the Board as such may be limited at the time of issuance. Furthermore, nothing in this section shall be deemed to constitute a waiver of the applicant's right to contest application of any such building code, zoning ordinance or other land development regulations as applied to this development under the Florida or United State Constitutions.

Section 3. The developer may not commence land clearing, site preparation or construction of any improvements shown on the Final Development Plan attached as Exhibit "A" until:

- a. Submission to the Engineering Department of satisfactory evidence that all required state and federal permits have been obtained, including, but not limited to United States Army Corps of Engineers Dredge and Fill Permit, St. Johns River Water Management District Wetlands Resource Permit, St. Johns River Water

Management District Management and Storage of Surface Waters Permit and Florida Department of Environmental Protection Water and Sewer Connection Permits;

- b. Issuance of a land clearing permit pursuant to St. Johns County Ordinance No. 90-11;
- c. Review and approval of signed and sealed construction plans by the St. Johns County Engineering Department in compliance with Ordinance 86-4; and
- d. Compliance with all other applicable land use and development regulations of St. Johns County.

Section 4. No lots shall be conveyed within the subdivision depicted on the Final Development Plan attached as Exhibit "A" until a final plat has been approved by the Board of County Commissioner of St. Johns County and recorded in the Public Records of St. Johns County, and the Declaration of Covenants and Restriction for Marsh Creek Unit Eleven is recorded in the Public Records of St. Johns County, Florida.

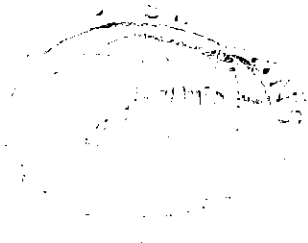
Section 5. All attachments included herein are incorporated herein and made a part of Resolution 95-191

Section 6. This grant of (rezoning, exception, or variance, etc.) is subject to the following condition subsequent and possible modification: In the event a request for relief under the Bert J. Harris, Jr., Private Property Protection Act (Florida 1995) is timely filed against St. Johns County based in whole or in part on the County's enactment of this Ordinance and such request for relief ultimately proceeds to or results in a final (all available appeals having been taken or waived) court order, opinion or judgement that adversely affects the County or that modifies this Ordinance, this Ordinance may be further modified by the St. Johns County Board of County Commissioners to the minimum extent necessary to alleviate or remedy the inordinate burden to real property that the final judgement, order or opinion determines was created by this Ordinance. Such modifications if made, shall comply with or mirror the court order, opinion or judgement to the extent such modifications are set out, described, or implied in or by such court order, opinion, or judgement. The applicant's reliance or use of this Ordinance to the benefit of the applicant shall constitute the applicant's waiver of all claims of the applicant against St. Johns County that may be based in whole or in part on such modifications. However, the foregoing provisions of this section shall be null and void if the Florida Attorney General responds to the St. Johns County Board of County Commissioners Attorney General's Opinion request authorized on October 10, 1995, and opines in substance that the Bert J. Harris, Jr., Private Property Rights Protection Act (1995) solely provides for a cause of action for owners of property or property owners who are the specifically named subject or object of government action upon which the particular Bert J. Harris, Jr., Private Property Rights Protection claim is based. If the Florida Attorney General does not respond or does not opine as so stated, this Section shall remain in full force and effect until otherwise amended by the St. Johns County Board of County Commissioners or by judicial determination.

PASSED AND ADOPTED this 14th day of November 1995.

P. U. D. OFF. REC.
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BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA



By: Barbara Ward
Chair

ATTEST: CARL "BUD" MARKEL, CLERK

By: Rosemary Lewis
Deputy Clerk

P.U.D. OFF. REC.
BOOK I PAGE 266

**EXHIBIT "B" TO THE RESOLUTION
FINAL DEVELOPMENT PLAN FOR
MARSH CREEK UNIT ELEVEN
WITHIN PUD (R-PUD-86-060)**

APPLICANT: MARSH CREEK DEVELOPMENT
CORPORATION
c/o GREGORY J. BARBOUR

SUBMITTED: AUGUST 21, 1995
REVISED: SEPTEMBER 28, 1995

Marsh Creek Development Corporation (Developer) hereby submits for approval by the St. Johns County Planning and Zoning Agency and the St. Johns County Board of County Commissioners, a final development plan (the "Final Development Plan") for a single-family subdivision to be known as Marsh Creek Unit Eleven, (the "Property" or "Subdivision"). The Final Development Plan consists of a 2-page map identified as Exhibit "A" to the Resolution (the "Map"), the legal description located on Exhibit "A", this text identified as Exhibit "B" to the Resolution (the "Text"), copies of the applicable sections of the covenants and restrictions identified as Exhibit "C" and a list of those sections of the covenants specifically incorporated into the Final Development Plan, which list is identified as Exhibit "D" to the Resolution. The Property is located wholly within that parcel of land zoned Planned Unit Development (PUD) pursuant to Ordinance R-PUD-86-060. The area encompassed by this Final Development Plan is located to the North of Marsh Creek Unit Five, and South of Unit Nine. Marsh Creek Unit Eleven will contain 12 single-family lots on approximately 6.35 acres.

Prior to commencement of land clearing, site preparation, or construction of any improvements depicted on the Map, the developer shall submit to the Engineering Department satisfactory evidence that all required state and federal permits have been obtained, including, but not limited to: (a) United States Army Corps of Engineers Dredge and Fill Permit, St. Johns River Water Management District and Management Storage of Surface Water Permit and Florida Department of Environmental Protection Water and Sewer Connection Permits; (b) Obtain a land clearing permit pursuant to St. Johns County Ordinance No. 90-11; (c) Obtain approval of signed and sealed construction plans by the St. Johns County Engineering Department in compliance with Ordinance 86-4; and (d) Comply with all other applicable land use and development regulations of St. Johns County. Once the foregoing conditions to construction have been met the developer may proceed with construction of horizontal improvements prior to approval and recording of a final plat.

No lot within the Subdivision shall be conveyed until a final plat has been approved by the Board of County Commissioners of St. Johns County, Florida, and recorded in the Public Records of St. Johns County, and the Declaration of Covenants and Restrictions for Marsh Creek Unit Eleven have been recorded in the Public Records of St. Johns County.

Nothing contained in the covenants shall be interpreted to limit or restrict in any way the regulatory powers of St. Johns County (including its powers to review and approve plats and replats under Section 177.071 of the Florida Statutes). Those sections of the covenants which are specifically referenced herein and listed on Exhibit "C" are incorporated by reference in the Final Development Plan, shall be made a part of the Final Development Plan and shall not be amended without approval of the Board of County Commissioners of St. Johns County. A list of the sections of the covenants made a part of the Final Development Plan is provided with this submission and is identified as Exhibit "D" to the Resolution. The developer reserves the right to alter, amend, or allow to be amended all other sections of the covenants.

8-4-1 Density of Development

The total ground area occupied by residential building and structures in the Subdivision shall not exceed 35 percent of the total ground area committed to residential use. There will be 1.89 residential units per acre.

8-4-2 Open Space

An area of jurisdictional wetland to be preserved is designated on the Map as Tract "A". This area will not be disturbed. The exact boundary of this area will be established by survey and shall be depicted on the signed and sealed construction plans and final plat. Tract "B" is an area of wetland mitigation that will be owned and maintained by the existing Marsh Creek Owners Association. The roadways with Unit Eleven will also be owned and maintained by the Owners Association whose membership is a requirement of all lot owners with within the Subdivision.

8-4-3 Waiver of Yard, Dwelling Unit, Frontage Criteria, and Use Restriction

All development which is to occur within the Subdivision will comply with the spirit and intent of the Zoning Ordinance. There will be no more than 12 residences (total) in this Subdivision. A residence may be located wholly within a single platted lot or upon a portion of a platted lot or a combination of platted lots. Nevertheless, in accordance with the covenants, every parcel upon which a residence is constructed will have a total area equal to or greater than 95% of the total area of the smallest Lot (in area) in the Subdivision. Minimum lot size shall be 6,000 SF. Furthermore, the covenants will establish a minimum 25 foot front setback line, combined 10 foot side separation between exterior structural walls and a minimum of 6 feet between roof overhangs, allowing zero lot line capability, and 20 feet rear setback, subject to the Developer's right to release Lots from minor violations as set forth in covenants. All setbacks shall be measured from the exterior wall of the dwelling to the applicable parcel boundary. The minimum lot width at the building setback line shall be 60 feet. Typical sections of the covenants that will address minimum building parcel size and minimum front and side setbacks are attached as Section 4 (b), respectively of Exhibit "C". The actual recorded covenants for the Subdivisions shall contain these provisions but may identify them by different section number and may include greater setbacks. Setbacks for accessory uses, such as pools, spas and outside buildings will be reviewed and approved by the Architectural Review Board. Pursuant to County requirements, all pools will be either fenced or screened, subject to Architectural Review Board approval.

The maximum height of the structures within the Subdivision shall be 35 feet.

As specified in Section 4 of Exhibit "C", titled "Architectural Planning Criteria", the Marsh Creek Architectural Review Board must review and approve all buildings and improvements within the community. No building permits or certificates of occupancy shall be issued by St. Johns County without approval from the Marsh Creek Architectural Review Board.

8-4-4 Project Size

The PUD consists of 745 acres. This Final Development Plan consists of 6.35 acres total.

8-4-5 Support Legal Documents for Open Space

The covenants and By-laws shall assure adequate management and maintenance of all common areas encompassed by this Final Development Plan.

- a. The covenants shall provide for conveyance of title of the Common Property to, and ownership by, the appropriate homeowners' association as described above, which shall be a duly constituted and legally responsible community association, by inclusion of Article II, Section 4 of Exhibit "C".
- b. The covenants shall appropriately limit use of the Common Property by inclusion of Article VI, Section 13 of Exhibit "C".
- c. The By-Laws shall assign responsibility for the management and maintenance of the Common Property to the appropriate homeowners' association by inclusion of Article XIII, paragraph C, of Exhibit "C".
- d. The By-Laws shall place responsibility for enforcement of the covenants contained therein upon the appropriate homeowners' association and its board of directors by inclusion of Article XII, Section 1 of Exhibit "C".
- e. The covenants shall permit the subjection of each lot to assessment for its proportionate share of maintenance costs by inclusion of to Article IV, Section 1 of Exhibit "C".

8-4-6 Access

As graphically depicted on the Map, each lot is provided vehicular access within the Property via the private roads to be owned and maintained by the Homeowners Association.

8-4-7 Privacy

Each dwelling will be provided visual and acoustical privacy by virtue of lot sizes and architectural control of the Subdivision by the existing Architectural Review Board.

8-4-8 Community Facilities

- a. None of the utility facilities serving the Property are proposed for dedication to St. Johns County; therefore, the provisions of subparagraph "a" are inapplicable.
- b. All requirements for off-street parking and loading set forth in Article 9 of the St. Johns County Zoning Ordinance are addressed specifically in Sections 9-1-1 through 9-4-1 of this text.
- c. The Map illustrates the anticipated traffic flow pattern. Sufficient space has been allowed to permit access for fire fighting equipment, furniture moving vans, fuel trucks, refuse collection, deliveries and debris removal. Locations of the fire hydrants serving the Property shall be depicted on the signed and sealed construction plans. The fire hydrants to be installed pursuant to this Final Development Plan shall meet county standards and must be approved by the county fire coordinator prior to issuance of certificates of occupancy for any structure to be served by such hydrants.
- d. All utilities serving the Property including telephone, power, cable television, and sewer and water lines will be installed underground. The signed and sealed construction plans shall show the location and design of the storm sewer facilities serving the Property and the grading and topography of the site. The storm sewer facilities shall comply with all applicable requirements of law including, but not limited to the requirements of Ordinance 86-4 and shall facilitate the proper drainage of storm waters and prevent erosion and the formation of dust.
- e. Specifications for all streets and roadways depicted on the Map shall conform to the rules and regulations adopted by the St. Johns County Board of County Commissioners in Ordinance Number 86-4, as amended.

9-1-1 Drainage

A preliminary drainage plan for the Property so as to prevent damage to abutting parcels and public streets and alleys is graphically depicted on the Map. Detailed drainage plans demonstrating compliance with all requirements of Ordinance 86-4 and the St. Johns County Comprehensive Plan shall be included within the signed and sealed construction plans. The signed and sealed construction plans will show the required treatment berm between the lots 1 and 12 and the wetland area. The construction plans must be reviewed and approved by the St. Johns County Engineering Department prior to commencement of land clearing, site preparation or construction. All necessary easements for drainage shall comply with the requirements of Ordinance 86-4, and shall be depicted on the Final Plat.

The wetland located north of lot 1, designated as Tract "A" will be owned and maintained by the Homeowners Association.

9-1-2 Separation from Walkway and Street

No combined off-street parking or loading facilities will be constructed on the Property.

9-1-3 Entrances and Exits

The location and design of the entrances and/or exits to all streets will be in accordance with County specifications.

9-1-4 Interior Drives

As shown on the Map, there will be no interior drives on the Property.

9-1-5 Marking of Parking Spaces

As shown on the Map, there will be no street parking spaces other than private driveways and garages.

9-1-6 Lighting

Lighting within the Property will meet or exceed minimum lumens of 100 watt high pressure sodium fixture lights affixed 16 feet above the roadway and 300 feet on center.

9-1-7 Screening

Section 9-1-7 does not apply because there will be no parking spaces for ten or more vehicles in any one location on the property.

9-2 Location

The required off-street parking facilities will be located upon the same parcel of land they are intended to serve.

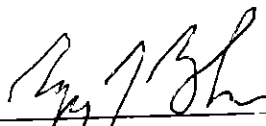
9-3-1 Off-Street Parking: Number Required

The Property will be used for single-family residential lots. Therefore, in accordance with Subsection a of 9-3-1, at least one off-street parking space will be provided per dwelling. Also, each unit will have a garage.

9-4-1 Off-Street Loading Requirements

This section does not apply to residential developments.

APPLICANT: MARSH CREEK DEVELOPMENT CORPORATION

By: 
Gregory J. Barbour

P. U. D. OFF. REC.
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EXHIBIT "D" TO THE RESOLUTION

P. U. D. OFF. REC.
BOOK I PAGE 223

Sections of the Declaration of Covenants and Restrictions made part of the Final Development Plan.

Article II, Section 4	Conveyance of Common Property
Article IV, Section 1	Creation of the Lien and Personal
	Obligation of Assessments
Article V, Section 4 (b)	Set Back Restrictions
Article VI, Section 13	Lawful Use
Article XII, Section 1	Enforcement
Article XIII, Paragraph C	Duties of the Board of Directors

EXHIBIT "C" TO THE RESOLUTION

ARTICLE II

P. U. D. OFF. REC.
BOOK I PAGE 274

Section 4. Conveyance of Common Property

Declarant will convey all Common Property to the Association at such time as all the planned improvements, if any, are complete and in the event the Common Property is unimproved at such time as the Declarant determines, but in all events prior to the termination of the Class B membership. Such conveyance shall be subject to easements and restrictions of record and free and clear of all liens and financial encumbrances other than taxes for the year of conveyance. The Declarant may reserve certain rights to itself for use of the Common Property and/or Common Roads which are not adverse to the Owners.

ARTICLE IV

Section 1. Creation of the Lien and Personal Obligation of Assessments

The Declarant, for each Lot owned within the Properties, 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 as set forth in Section 4 of this Article, in Section 13 of this Article and Section 15 of this Article and special assessments (sometimes jointly referred to herein as: "Assessments") together with interest, costs and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot 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 Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall be the joint obligation of the grantor and grantee under a deed, without affecting the grantee's right to recover the grantor's share from the grantor.

ARTICLE V

Section 4 (b) Set Back Restrictions

No part of any structure shall be constructed within the twenty-five (25) feet of the front property line, twenty (20) feet from rear property line and a combined ten (10) foot side separation between exterior structural walls and a minimum of six (6) feet between roof overhangs, allowing zero lot line capability. A dwelling may be located upon a single platted lot or on a combination of platted lots and in such event the set back lines shall apply to the outermost lot lines. The ARB shall have the right to impose additional set back requirements for all lot lines to preserve line of sight of neighboring properties. The ARB may modify the set back restrictions for an individual lot where in its opinion and sole discretion, such modification is necessary for the preservation of trees or the maintenance of overall aesthetics in the area. A residence may be located wholly within a single Lot or a combination of Lots and in such event the set back restrictions shall apply to the most exterior boundary lines.

ARTICLE XIII

P. U. D. OFF. REG.
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Section 13. Lawful Use

No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement

The Association, the Declarant for so long as it is a Class B member, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Provided, however, the foregoing shall not be construed to limit the Declarant's rights under Article V to retain Architectural Control of Marsh Creek as provided therein. Failure by the Association, the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XIII

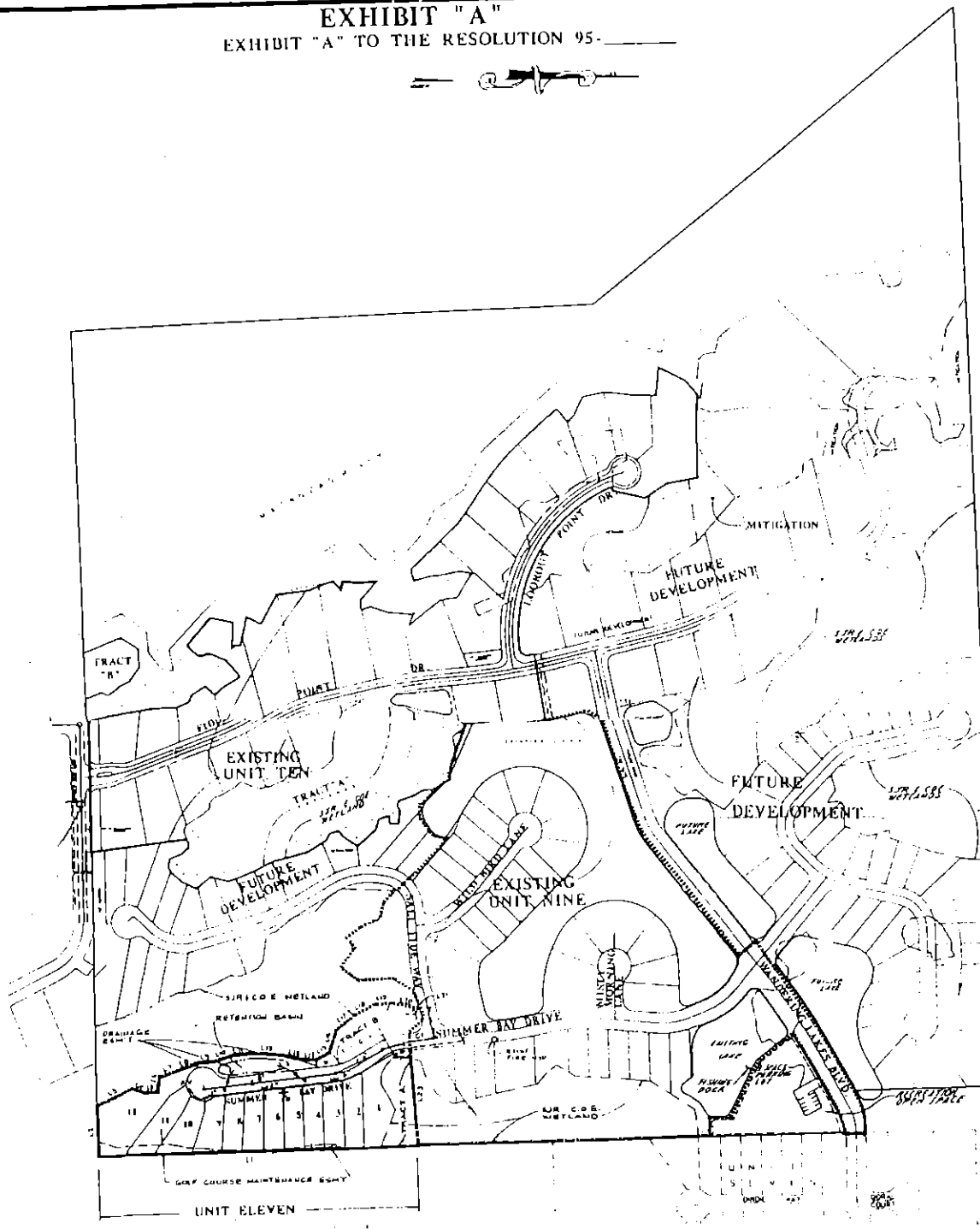
C. Duties

The Board shall be deemed to have the following duties:

1. Make, levy and collect Assessments, including without limitation, Assessments for reserves and for betterments to Common Property against members and their Lots to defray the costs of the operation and maintenance of the Common Property and use the proceeds of Assessments in the exercise of the powers and duties of the Association. In such regard the Board shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period, send written notice of each Assessment to every Member subject thereto at least thirty (30) days in advance of each annual Assessment period and issue a cause to be issued, upon request, a certificate setting forth whether or not any Assessments have been paid;
2. Foreclose the lien against any Lot for which Assessments are not paid as required or bring an action at law against the Member personally liable.
3. Maintain, repair, replace, operate and manage the Common Property wherever the same is deemed to be prudent for the benefit of Members; provided however, in the event of destruction or damage to the improvements to the Common Property,

- ~~including landscaping, which are not covered by warranty or insurance, the Board~~
may elect in its sole discretion not to reconstruct or replant such improvements as
it may deem necessary and convenient;
4. Repair and reconstruct the Common Property or any improvement thereupon, if any, after casualty;
 5. Pay all taxes and assessments which are liens against any part of the Common Property and appurtenances thereto, and assess the same against the Members and their respective Lots;
 6. Procure and maintain adequate liability and hazard insurance on the Common Property for the protection of Members and the Association against casualty and liability, including Directors' liability insurance and fidelity bonds (provided however, such Director liability insurance shall not be required during the time that the Directors are appointed by the Class B Member;
 7. Pay all costs of power, waste, sewer and other utility services rendered to the Association and Common Property and not billed to the Owners of the separate lots;
 8. Supervise all officers, agents and employees of the Association.
 9. Cause to be kept a complete record of all the Association's acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when so requested; and
 10. Cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate.

EXHIBIT "A"
EXHIBIT "A" TO THE RESOLUTION 95-



Lot #	Area	Notes
11	10000	10000
12	10000	10000
13	10000	10000
14	10000	10000
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100	10000	10000

CREDS TABLE

NO.	NAME	DATE	REVISION	BY	CHKD.	APP'D.
01

V. DUNN
AUGUST 1995
BRO. O.C. NO.

Hill, Boring & Associates, Inc.
CIVIL ENGINEER / LAND SURVEYOR
5850 BLUDD ROAD, SUITE 200
JACKSONVILLE, FLORIDA 32216
904.741.1177

MARSH CREEK COUNTRY CLUB UNIT ELEVEN
57 AUGUSTINE BEACH, FLORIDA
DEVELOPER - MARSH CREEK DEVELOPMENT CORPORATION
FINAL DEVELOPMENT PLAN

STATE OF FLORIDA
COUNTY OF ST. JOHNS

P. U. D. OFF. REC.
BOOK I PAGE 279

I, CARL "BUD" MARKEL, CLERK OF THE CIRCUIT COURT, Ex-officio, Clerk of the Board
of County Commissioners of St. Johns County, Florida,

DO HEREBY CERTIFY that the foregoing is a true and correct copy of the following:

RESOLUTION NO. 95-191

Adopted by the Board of County Commissioners of St. Johns
County, Florida, at a regular meeting of said Board
November 14, 1995

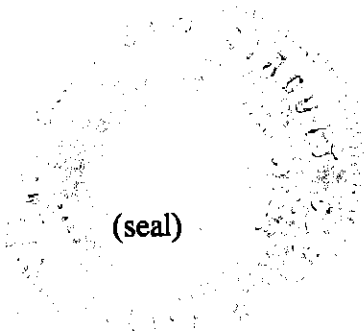
FILED AND RECORDED IN
PUBLIC RECORDS OF
ST. JOHNS COUNTY, FLA.
95 NOV 20 PM 2:32
Carl "Bud" Markel
CLERK OF CIRCUIT COURT

as the same appears of record in the office of the Clerk of the Circuit Court of St. Johns County,
Florida, of the public records of St. Johns County, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 20th day
of November, 1995.

CARL "BUD" MARKEL,
CLERK OF THE CIRCUIT COURT
Ex-officio Clerk of the Board of County
Commissioners of St. Johns County, Florida

By: Rosemary Lewis
Rosemary Lewis, Deputy Clerk



(seal)