

RESOLUTION NO. 97-2

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, STATE OF FLORIDA
APPROVING A FINAL DEVELOPMENT PLAN
FOR MOSES CREEK ESTATES,
LOCATED WITHIN THE PARCEL OF LAND
ZONED PUD PURSUANT TO ORDINANCE 96-19

WHEREAS, the Final Development Plan for MOSES CREEK
ESTATES 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
December 19, 1996; 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 96-19; and

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 MOSES
CREEK ESTATES made by MOSES CREEK ESTATES DEVELOPERS, INC., 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 B attached hereto, and
which is known as MOSES CREEK ESTATES 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 and incorporated herein as Exhibits C and D, and based on the above referenced findings which are hereby incorporated herein 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 Ordinances 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. Furthermore, 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 this Ordinance and the incorporated PUD Ordinance.

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 Commissioners of St. Johns County and recorded in the Public Records of St. Johns County, and the Declaration of Covenants and Restrictions for MOSES CREEK ESTATES 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 No. 97-2.

PASSED AND ADOPTED this 14 day of January, 1996.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: [Signature]
Chair



ATTEST: CHERYL STRICKLAND, CLERK

By: [Signature]
Deputy Clerk

EXHIBIT "B"

P. U. D. OFF. REC.
BOOK K PAGE 134

PARCEL "A"

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SECTION 45, TOWNSHIP 8 SOUTH, RANGE 30 EAST, ST JOHNS COUNTY, FLORIDA, WITH THE EAST RIGHT OF WAY OF THE FLORIDA EAST COAST RAILROAD; THEN RUN NORTH 09 DEGREES 06 MINUTES 51 SECONDS WEST ALONG SAID EAST RIGHT OF WAY, 1575.00 FEET TO THE CENTERLINE OF MOSES CREEK; THENCE MEANDERING SAID CENTERLINE RUN SOUTH 71 DEGREES 35 MINUTES 02 SECONDS EAST, 54.01 FEET; THENCE NORTH 86 DEGREES 39 MINUTES 24 SECONDS EAST, 240.57 FEET; THENCE NORTH 83 DEGREES 35 MINUTES 58 SECONDS EAST, 153.15 FEET; THENCE NORTH 88 DEGREES 14 MINUTES 22 SECONDS EAST, 91.32 FEET; THENCE NORTH 60 DEGREES 58 MINUTES 26 SECONDS EAST, 94.52 FEET; THENCE NORTH 30 DEGREES 08 MINUTES 49 SECONDS EAST, 202.50 FEET; THENCE DEPARTING SAID CREEK, RUN SOUTH 50 DEGREES 14 MINUTES 24 SECONDS EAST, 8.00 FEET TO A CONCRETE MONUMENT; THENCE CONTINUE TO RUN SOUTH 50 DEGREES 14 MINUTES 24 SECONDS EAST, 1069.99 FEET; THENCE RUN NORTH 39 DEGREES 28 MINUTES 23 SECONDS EAST, 583.61 FEET; THENCE RUN SOUTH 08 DEGREES 17 MINUTES 27 SECONDS EAST, 1386.50 FEET; THENCE RUN NORTH 89 DEGREES 08 MINUTES 48 SECONDS EAST 400.32 FEET TO THE WEST RIGHT OF WAY OF U.S. HIGHWAY NO. 1; THENCE RUN SOUTH 08 DEGREES 17 MINUTES 27 SECONDS EAST, ALONG SAID WEST RIGHT OF WAY, 150.53 FEET TO THE SOUTH LINE OF THE AFORESAID SECTION 45; THENCE RUN SOUTH 89 DEGREES 01 MINUTES 45 SECONDS WEST, ALONG SAID SECTION LINE, 2291.44 FEET TO THE POINT OF BEGINNING.

PARCEL "B"

LAND, SITUATE, LYING AND BEING IN ST. JOHNS COUNTY, FLORIDA, TO-WIT:

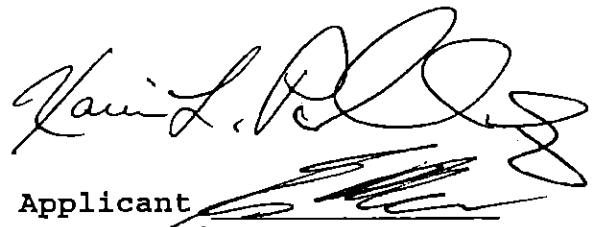
BEING A PART OF THE ANDRES PAPY GRANT, SECTION 45, TOWNSHIP 8 SOUTH, RANGE 30 EAST, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A CONCRETE MONUMENT MARKING THE ORIGINAL SOUTHEAST CORNER OF SAID SECTION 45 AS A POINT OF REFERENCE AND RUNNING THENCE SOUTH 89 DEGREES 01 MINUTE 45 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SECTION 45 TO THE INTERSECTION WITH THE WESTERLY RIGHT OF WAY OF U.S. HIGHWAY NO. 1; THENCE RUN NORTH 08 DEGREES 17 MINUTES 27 SECONDS WEST, ALONG SAID WESTERLY RIGHT OF WAY, 150 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE TO NORTH 08 DEGREES 17 MINUTES 27 SECONDS WEST ALONG SAID RIGHT OF WAY, 80 FEET; THENCE RUN SOUTH 89 DEGREES 08 MINUTES 48 SECONDS WEST, 400 FEET; THENCE RUN SOUTH 08 DEGREES 17 MINUTES 27 SECONDS EAST, 80 FEET; THENCE NORTH 89 DEGREES 08 MINUTES 48 SECONDS EAST, 400 FEET TO THE POINT OF BEGINNING. BEING THE SAME PROPERTY AS DESCRIBED IN OFFICIAL RECORD BOOK 748, PAGE 1171, PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA. BEARING REFERENCE IS FLORIDA STATE GRID COORDINATES, EAST ZONE.

EXHIBIT C

P.U.D. OFF. REC.
BOOK K PAGE 135

FINAL DEVELOPMENT PLAN FOR
MOSES CREEK ESTATES
WITHIN MOSES CREEK ESTATES PUD



Applicant

Submitted _____

Developer hereby submits, for approval by the St. Johns County Planning and Zoning Board and the St. Johns County Board of County Commissioners, a final development plan (the "Final Development Plan") for single family subdivision to be known as **MOSES CREEK ESTATES**, (the "Property" or "Subdivision"). The Final Development Plan consists of a 1-page map identified as Exhibit A to the Resolution (the "Map"), the legal description identified as Exhibit B, this text identified as Exhibit C to the Resolution (the "Text"), copies of the applicable sections of the covenants and restrictions identified as Exhibit D, which sections of the covenants are specifically incorporated into the Final Development Plan. In accordance with the PUD and the approved master plan, the property will be developed in two phases. The Property is located wholly within that parcel of land zoned Planned Unit Development (PUD) pursuant to Ordinance 96-19. Phase I will contain 49 single family lots on approximately 28.13 acres located in the easternmost area of the PUD and Phase II will contain 60 single family lots on approximately 38 acres located in the westernmost area of the PUD. Phase I will commence not later than the end of 1997 and Phase II will commence on or before the end of 2004.

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 Management and Storage of Surface Water Permit, Florida Department of Environmental Protection Water and Sewer Connection Permits and FDOT Access Connection and Utility 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 to 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 **MOSES CREEK ESTATES** 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 included in Exhibit D are incorporated by reference in the Final Development Plan, shall be made a part of the Final Development Plan and shall not be substantially amended without approval of the Board of County Commissioners of St. Johns County. 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 buildings and structures in the Subdivision shall not exceed 35 percent of the total ground area committed to residential use. There will be not more than two residential units per gross acre.

8-4-2 Open Space

The area of jurisdictional wetlands to be preserved are designated as Tracts A, B-C and D on the Map. These areas will not be disturbed as provided in the covenants. The exact boundaries of these areas will be established by survey and shall be depicted on the signed and sealed construction plans and final plat. The areas designated as Tracts E and F on the Map shall be used for storm water detention ponds. The areas designated as Tracts G, H, I and J on the Map will be used, respectively, for recreation, landscaping, a utility site and an entry sign. The common areas within the Subdivision will be owned and maintained by a homeowner's association whose membership will include all lot owners within the Subdivision. Tract "I" will be owned and maintained by St. Johns County.

The type of facilities permitted within the recreation tract shall be as deemed acceptable by the homeowners association. The type of facilities shall include but not be limited to items such as swing sets, slides, sand box, monkey bars, manual merry-go-round, etc. Only pedestrian access will be permitted to the recreation tract. Vehicular access will not be permitted to the recreation tract. Recreation facilities shall be placed a minimum of 10' from adjacent lot boundaries.

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 49 residences in Phase I and 60 residences in Phase II. A

residence may be located wholly within a single platted lot or upon a portion of a platted lot or combination of platted lots.

Set backs will be as follows:

Front yard:	25 feet
Rear yard:	10 feet
Side yard (from eave):	8 feet
Corner lots:	25 feet from one side and 15 feet form the other side

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Pool enclosures, pools (including decking) and external air conditioning units will be not closer than two (2') feet to the property line.

Lots will not be less that 14,500 square feet with not less than 90' width at the building setback line. Lot coverage will not exceed 35%.

There may be an entry sign to the Subdivision (which may be lighted) that will lie within Tract J as shown on the Map. The entry sign will not exceed 10' in height and will be no larger than 32 square feet. The sign will be set back from the intersection to avoid obstructing visibility. One temporary "Coming Soon" sign may be placed near the entrance to the subdivision and will be placed in compliance with County requirements. The sign will not exceed 64 square feet and will be removed within fifteen days after construction operations have ceased. Construction signs will be setback at least ten feet from all property lines.

Temporary construction trailers may be used within the Subdivision during the construction period (which shall be up to 24 months from the date of approval of this Final Development Plan).

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

Buffer areas and deed restricted areas as delineated on the map shall be owned and maintained by each individual lot owner. These areas shall not be filled or excavated and the existing vegetation shall remain in accordance with the St. Johns River Water Management District's permit specifications.

8-4-4 Project Size

The PUD consists of approximately 66 acres as does this Final Development Plan. Phase I consists of approximately 28 acres and Phase II consists of approximately 38 acres.

8-4-5 Support Legal Documents for Open Space

The covenants and the Articles of Incorporation of the Homeowners' Association shall assure adequate management and maintenance of all common areas encompassed by this Final Development Plan and shall be substantially in the form(s) as attached hereto as composite Exhibit D. Notwithstanding the foregoing:

- a. The covenants shall provide for conveyance of title to 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. (See §1 of the Covenants and Restrictions)
- b. The covenants shall appropriately limit use of the Common Property to the uses established by the Master Plan. (See Article II, Section 1(f) of the Covenants and Restrictions)
- c. The covenants shall assign responsibility for the management and maintenance of the Common Property to the appropriate homeowners' association. (See §§ 2 & 3 of the Covenants and Restrictions and Articles II and III of the Articles of Incorporation of the Homeowners' Association)
- d. The covenants shall place responsibility for enforcement of the covenants contained therein upon the appropriate homeowners' association and its board of directors. (See § 4 of the Covenants and Restrictions and Articles II and III of the Articles of Incorporation of the Homeowners' Association)
- e. The covenants shall permit the subjection of each lot to assessment for its proportionate share of maintenance costs. (See § 3 of the Covenants and Restrictions)

The final form of all documents referred to above shall be approved by the office of the County Attorney prior to issuance of a final approval of the improvements to be constructed in accordance with this Final Development Plan.

8-4-6 Access

As graphically depicted on the Map, each lot is provided vehicular access within the Property via the public roads dedicated to St. Johns County.

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 Homeowners Association.

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8-4-8 Community Facilities

- a. All roads will be dedicated to St. Johns County, Florida. All water and sewer utility lines, equipment and systems and Tract I will be conveyed to St. Johns County, Florida.
- 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. 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 with revisions.

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 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 with revisions and shall be depicted on the Final Plat. All drainage easements not on common property will be owned by individual lot owners, but 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

Entrance and exit design and configuration will be as required by FDOT. A non-access buffer will be provided on the plat to prevent vehicular access to roads in the Property from off-site except from the connection on U.S. 1.

9-1-4 Interior Drives

There will be no interior drives on the Property except as shown on the Map.

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. Street lighting will be installed by the developer and maintained by the homeowners association.

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.

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9-4-1 Off-Street Loading Requirements

This section does not apply to residential developments.

APPLICANT

By: _____

misc.md\moses\fdp
*

COMPOSITE
EXHIBIT D

Section 1

P. U. D. OFF. REC.
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Section ##. **Conveyance of Common Property.** The Declarant may convey the Common Property (other than the Common Roads) 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.

Section 2

Section ##. **"Surface Water or Stormwater Management System"** means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C.

Section ##. **Surface Water or Stormwater Management System.**

(a) The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District. This Article shall be deemed for the additional benefit of the County of St. Johns, State of Florida, which may enforce the Association's legal responsibility for the maintenance and operation of the surface and stormwater management system by appropriate action including injunctive relief.

(b) Notwithstanding the responsibilities of the Association set forth in subparagraph (a) above, all Lots abutting a surface

water storage area shall be maintained by their owners so that the grass, planting or other lateral support shall prevent erosion of the embankment adjacent to the surface water storage area. The height, grade and contour of the embankment shall not be changed without the prior written consent of the Association. If the owner of any Lot abutting a surface water storage area fails to maintain the embankment as part of his or her landscape maintenance obligations in accordance with this paragraph, the Association shall have the right, but not the obligation, to enter upon such lot to perform such maintenance which may reasonably be required, all at the expense of the owner of such Lot. No docks, bulkheads, or other structures shall be constructed on such embankments.

(c) The Association shall have the exclusive right to manage, maintain and control the surface water storage areas and to prescribe rules and regulations pertaining to its recreational use. Only the Developer or Association shall have the right to pump or otherwise remove any water from said areas, for the purpose of irrigation or such other use. The Developer and Association after assignment of such right to same, shall have the sole and absolute right to control the water quality and level of such areas and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in such areas.

Section 3

Section #. **Damage to Common Property.** In the event that any portion of the Common Property is damaged or destroyed by casualty, it shall be repaired or restored by the Association to substantially its condition prior to the damage or destruction.

Repair or reconstruction of the Common Property shall be substantially in accordance with the plans and specifications pursuant to which the same was originally specified. All insurance proceeds shall be applied to the restoration and repair. If the insurance proceeds and any reserve maintained by the Association for such purpose are insufficient, the deficit shall be assessed against all Owners as a Special Assessment. If there is a surplus of insurance proceeds, it shall become the property of the Association.

Section 4

Section #. **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. 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.

The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.

Section 5

ARTICLE ##

COVENANT FOR MAINTENANCE ASSESSMENTS

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, 5 and 13 of this Article, and Section 15 of Article VI, or Section 3 of Article VIII, such assessments to be established and collected as hereinafter provided. The annual 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 attorneys 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.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the owners and residents of the Property, for the improvement and maintenance of the Common Property, including without limitation the Common Roads, and surface water or stormwater management system, for the operation and administration of the Association, for the establishment of a maintenance, repair and reserve account for the installing and maintaining of street lighting and signage, for payment of taxes and insurance in all Common Property and for such other purposes as are set forth or permitted in this Declaration, the Articles or Bylaws.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment per Lot shall be _____ (\$ _____) Dollars per year.

(a) From and after January 1 of the year immediately following the recording of this Declaration, the maximum Annual

Assessment for a Lot may be increased each year not more than 10% above the maximum Assessment for the previous year without approval of the majority vote of each class of membership.

(b) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

(c) The Association in determining the Common Expenses shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property.

Section 4. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) majority vote of the Association unless the Special Assessment is required due to the inadequacy of the insurance proceeds to cover the cost of a repair to Common Property (See Article VIII, Section 1) wherein no approval shall be required.

Section 5. Uniform Rate of Assessment. Subject to the provisions of Section 12, below both Annual Assessments and Special Assessments, for the purposes set forth in Section 4, above, must be fixed at a uniform rate for all Lots. In the event that an Owner or his family, guest or invitees specifically damage the Common Property as elsewhere provided the owner's of such Lot may be subjected to a nonuniform Special Assessment for payment of such costs. There shall be no Assessment against the Common Property.

Section 6. Date of Commencement of Annual Assessments:
Due Dates. The Annual Assessments shall commence upon substantial completion of the installation of the Common Roads and utilities serving a specified Lot subject to this Declaration. A Lot shall be deemed substantially complete and subject to Assessments when the Common Roads necessary to provide access to a particular Lot have been constructed, utilities for use of Owner are in place and the Owner is able to obtain a building permit therefor. In the event that any Additional Property is annexed to this Declaration, Assessments for the land annexed shall commence at such time as the roads and utilities serving that portion of the Additional Property are installed. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every owner subject thereto. The Annual Assessment may be payable monthly, quarterly or annually and the due date shall be the first day of such payment period unless

specifically changed by the Board of Directors.

P. U. D. OFF. REC.
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Section 7. **Association Certificate.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments for a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. **Effect of Nonpayment of Assessment. Remedies of the Association.** Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate of interest permitted by the law. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Property or abandonment of his Lot.

Section 9. **Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage held by a Mortgagee. Sale or transfer or any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof. Any such delinquent Assessments which were extinguished pursuant to the foregoing may be reallocated and assessed against all of the Lots as part of the annual budget.

Section 10. **Exempt Property.** All properties dedicated to, and accepted by, a local public authority or utility company and serving a public use and all properties owned by the Association shall be exempt from the Assessment created herein.

Section 11. **Reserves.** The Board of Directors shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property. This reserve fund shall constitute a portion of the annual budget. In addition, the Board of Directors may establish reserve funds from the Annual Assessments to be held in reserve in an interest bearing account for:

- (a) Major rehabilitation or major repairs;
- (b) For emergency and other repairs required as a result of storm, fire, mutual disaster or other casualty loss and
- (c) Initial cost, if any, new service to be performed by the

Association.

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Section 12. Declarant Payment. The Declarant is obligated to pay the Annual Assessment up to the amount of funds required to operate the Association created by short fall in revenue from Class A voting membership for each Lot it owns which is substantially complete as provided in Section 6 hereof. All Assessments paid by the Declarant during the time the Declarant is a Class B Member shall be placed in the Association's account and shall not be commingled with Declarant's general funds.

Section 13. Assessments for Failure to Maintain. In the event that an owner fails to maintain his Lot or the improvements thereupon as required herein, the Association shall give written notice specifying such failure to the owner and if the Owner fails to correct such unperformed maintenance within ten (10) days from the Association's written notice, the Association may perform such maintenance and the cost of such shall constitute a Special Assessment for which a claim of lien may be filed and enforced.

Section 14. Failure to Revise Budget. The failure or delay of the Board to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of the owner's obligation to pay any Assessment as herein provided, whenever the same shall be determined. In the absence of an annual budget, each owner shall continue to pay the Assessment as established for the previous year.

COMPOSITE EXHIBIT D

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ARTICLES OF INCORPORATION
OF

MOSES CREEK ESTATES HOMEOWNERS ASSOCIATION, INC.

A CORPORATION NOT-FOR-PROFIT

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

ARTICLE I
NAME

The name of this corporation shall be:

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

ARTICLE II
PURPOSE

The purposes and object of the Association shall be to administer the operation and management of Moses Creek Estates, a residential development, (hereinafter "the Development") to be established upon that certain real property in St. Johns County, Florida, as described in that certain Declaration of Covenants, Conditions, Restrictions and Easements of Moses Creek Estates dated _____, recorded in Official Records _____, page _____, et seq., of the public records of St. Johns County, Florida (the "Declaration"), and to operate, maintain and manage the stormwater management system in a manner consistent with the St. Johns River Water Management District (the "District"), Permit No. _____ requirements and applicable District rules and to assist in the enforcement of the restrictions and covenants contained in the Declaration. Moses Creek Estates Developers, Inc., a Florida corporation, is the developer (the "Developer") of the Development.

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

ARTICLE III
POWERS

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The Association shall have the following powers:

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

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

1. Make and establish reasonable rules and regulations governing the use of the Lots, Common Area and Maintenance Area, as such terms are defined in the Declaration.
2. Own, hold, improve, build upon, maintain, operate, lease, sell, manage, transfer, dedicate for public use, and otherwise dispose of and deal with such real and personal property as may be necessary or convenient in connection with the affairs of the Association.
3. To own, manage, administer and operate such property as may be conveyed to it by the Developer, its successors or assigns for the mutual benefit and use of all Members.
4. Tax, levy, collect and enforce payment by all lawful means all charges or assessments against members of the Association and their Lots to defray the Common Expenses of the Development, as will be provided in the Declaration and the ByLaws, including the right to levy and collect assessments for the purpose of acquiring, owning, holding, operating, leasing, encumbering, selling, conveying, exchanging, managing and otherwise dealing with the Common Area, the Maintenance Area and other property owned by the Association, which may be necessary or convenient in the operation and management of the Development and in accomplishing the purposes set forth in the Declaration, and to pay all expenses, including office expenses, licenses, taxes, or governmental charges levied or imposed against the property of the Association, incident to the conduct of business of the Association, and to pay the cost of maintenance and operation of the stormwater management system

(including work performed in the retention areas, drainage structures and drainage easements).

5. Maintain, repair, replace, operate and manage the Common Area, Maintenance Area, including without limitation, the stormwater management system serving the Development (including, but not limited to, retention areas, drainage structures and drainage easements) and any property owned by the Association, including the right to reconstruct improvements after casualty and to further improve and add to the Common Area, the Maintenance Area and other property owned by the Association.
6. Contract for the management of the Development, the Common Area, the Maintenance Area and other property owned by the Association and, in connection therewith, to delegate any and/or all of the powers and duties of the Association to the extent and in the manner permitted by the Declaration, the By-Laws.
7. Enforce the provisions of these Articles of Incorporation, the Declaration, the ByLaws, and all rules and regulations governing use of the Development which may hereafter be established.

ARTICLE IV
QUALIFICATION OF MEMBERS

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

A. The owners (as defined in the Declaration and the ByLaws) of all Lots in the Development shall be members of the Association, and no other persons or entities shall be entitled to membership, except the subscribers hereof.

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

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

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

by more than one person, the Lot owner shall designate one person as the Member entitled to cast votes and/or to approve or disapprove matters as may be required or provided for in these Articles, the ByLaws or the Declaration.

E. Except as an appurtenance to his Lot, no Member can assign, hypothecate or transfer in any manner, his membership in the Association or his interest in the funds and assets of the Association. The funds and assets of the Association shall belong solely to the Association subject to the limitation that the same be expended, held or used for the benefit of the membership and for the purposes authorized herein, in the Declaration, and the ByLaws hereof.

ARTICLE V
VOTING

A. There shall be two classes of voting membership which classes are more fully defined in the Declaration and ByLaws.

B. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Lot (as such term is defined in the Declaration) in the Development.

C. Until the recordation of Declaration in the public records of Duval County, Florida, the membership of the Association shall be comprised of the subscribers to these Articles, each of whom shall be entitled to cast a vote on all matters upon which the membership would be entitled to vote.

ARTICLE VI
TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE VII
OFFICE

The principal office of the Association shall be _____, St. Johns County, Florida, or such other place as the Board of Directors may designate.

ARTICLE VIII
BOARD OF DIRECTORS

A. The business affairs of this Association shall be managed by the Board of Directors. The number of members of the first Board of Directors shall be three.

B. Subject to the Declaration, the Board of Directors shall be elected by the Members of the Association from among the membership at the annual membership meeting as provided in the ByLaws.

C. The names and residence addresses of the persons who are to serve as the initial Board of Directors until their successors are chosen, are as follows:

<u>Director</u>	<u>Address</u>
1.	
2.	
3.	

**ARTICLE IX
OFFICERS**

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

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

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

<u>Officer</u>	<u>Name</u>
----------------	-------------

D. The officers shall be elected by the Board of Directors at their annual meeting as provided in the ByLaws. Any vacancies in

any office shall be filled by the Board of Directors at any meeting duly held.

E. The President shall be elected from the membership of the Board of Directors, but no other officer need be a Director. The same person may hold two offices, provided, however, that the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person. Officers shall be elected annually.

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ARTICLE X
BYLAWS

A. The Board of Directors shall adopt by a majority vote the original ByLaws of the Association.

B. The ByLaws may be amended in accordance with the procedures set forth in the ByLaws.

ARTICLE XI
AMENDMENT OF ARTICLES

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

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

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

ARTICLE XII
INDEMNITY

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

ARTICLE XIII
NONPROFIT STATUS

No part of the income of this corporation shall be distributed to the Members except upon dissolution or final liquidation and as permitted by the court having jurisdiction thereof.

ARTICLE XIV
RULES OF THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the stormwater management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027 F.A.C. and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

ARTICLE XV
SUBSCRIBERS

The names and addresses of the subscribers to these Articles are:

- 1.
- 2.

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IN WITNESS WHEREOF, we, the undersigned subscribing incorporators, have hereunto set our hands and seals this ____ day of _____ 1996, for the purpose of forming this corporation not-for-profit under the laws of the State of Florida.

(Name)

(Name)

STATE OF FLORIDA

COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 1996, by _____, the subscriber, who has produced _____ as identification.

Notary Public, State of Florida
Name: _____

My Commission Expires: _____
My Commission Number is: _____

CERTIFICATE NAMING AGENT
UPON WHOM PROCESS MAY BE SERVED

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Pursuant to Chapter 48.091, Florida Statutes, the following is submitted:

That MOSES CREEK ESTATES HOMEOWNERS ASSOCIATION, INC., a corporation duly organized and existing under the laws of the State of Florida, with its principal office, as indicated in the articles of incorporation at City of St. Augustine, County of St. Johns, State of Florida, has named _____, located at _____, City of _____, County of _____, State of _____, as its agent to accept service of process within this state.

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

(NAME)

moses\articles

FILED AND RECORDED IN
PUBLIC RECORDS OF
ST. JOHNS COUNTY FL
97 FEB 25 AM 11:14
CHERYL STRICKLAND
CLERK OF COURTS