



Secretary of State

STATE OF FLORIDA
THE CAPITOL
TALLAHASSEE 32304
(904) 488-6472

GEORGE FIRESTONE
SECRETARY OF STATE

June 4, 1980

James C. Johnston, Esq.
P. O. Drawer DD
Fort Myers, Fl 33902

Ref. #: 109

Dear Mr. Johnston:

Articles of Incorporation for BILLY CREEK LOT OWNERS' ASSOCIATION, INC., a corporation not for profit, were filed on June 2, 1980, and assigned charter number 752742. Your check for \$38.00 has been deposited.

Enclosed is a certified copy of the articles.

If you desire further information please telephone (904)487-1322, Word Processing Section.

Sincerely,


D. W. McKinnon, Director
Division of Corporations

DWM/jh

State of Florida



Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of BILLY CREEK LOT OWNERS' ASSOCIATION, INC., a corporation not for profit organized under the Laws of the State of Florida, filed on June 2, 1980, as shown by the records of this office.

The charter number for this corporation is 752742.



CER 101 Rev. 5-79

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
4th day of June, 1980.

George Firestone
Secretary of State

ARTICLES OF INCORPORATION
OF
BILLY CREEK LOT OWNERS' ASSOCIATION, INC.

The undersigned, being desirous of organizing a corporation not for profit pursuant to Part I of Chapter 617 of the Florida Statutes, do hereby make, subscribe and acknowledge the following to be the Articles of Incorporation of Billy Creek Lot Owners' Association, Inc.

ARTICLE I. NAME

The name of this corporation shall be BILLY CREEK LOT OWNERS' ASSOCIATION, INC.

ARTICLE II. TERM OF EXISTENCE

The term for which this corporation shall exist shall commence upon the filing of these Articles of Incorporation with the Department of State of the State of Florida and shall continue thereafter in perpetuity.

ARTICLE III. PURPOSES

The purpose for which this corporation is organized is to promote the health, safety and welfare of the owners of Lots ("LOT OWNERS") which may be included within BILLY CREEK COMMERCE CENTER ("CENTER"), which shall consist of one or more contiguous similar subdivisions of lands developed by GATOR UTILITIES SERVICES, INC., and CAPTAIN'S COVE DEVELOPMENT COMPANY, INC. ("DEVELOPER"), as more particularly provided in this Article.

A. COMPOSITION OF CENTER

The Center shall initially consist of one subdivision, BILLY CREEK COMMERCE CENTER, UNIT ONE, to be recorded in the Public Records of Lee County, Florida ("UNIT ONE"). The Center may be expanded by the addition of one or more similar subdivisions of lands ("ADDITIONS") which may be developed by the Developer, or either of them, as more particularly provided in this section.

(1) Each Addition shall be contiguous to either Unit One or a prior Addition to the Center. As used herein, the term "contiguous" shall be used to describe two properties which have a common boundary line or which are separated by one or a combination of streets, roads, highways, sidewalks, paths, alleyways or other thoroughfares, together with medians and other dividers.

(2) Each Addition shall have a name which includes the name "BILLY CREEK COMMERCE CENTER", and additional words which distinguish the Addition to the Center from Unit One and the other Additions to the Center, such as "Unit Two" or "First Addition."

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(3) The Declaration of Covenants and Restrictions ("DECLARATION") with respect to the Addition shall be in substance substantially the same as the Declaration with respect to Unit One, to be recorded in the Public Records of Lee County, unless approved by the Directors. As used in these Articles, the terms "Plat" and "Declaration" shall include not only the original of a Plat or Declaration, but also any and all amendments thereto.

(4) Such subdivision shall become an Addition to the Center upon the recordation of the Plat and the Declaration if the Declaration indicates a clear intention that such subdivision is to become an Addition to the Center.

B. SPECIFIC AUTHORITY.

In the furtherance of its purposes, the Corporation shall have the following rights and powers:

(1) To own and maintain, repair and replace the general and/or Common Areas, parks, sidewalks and/or access paths, streets, drainage easements and other Common Areas, lakes, structures, landscaping and other improvements in and and/or benefitting the Center for which the obligation to maintain and repair has been delegated and accepted.

(2) To control the specifications, architecture, design, appearance, elevation and location of landscaping around all buildings and improvements of any type including walls, fences, sewers, drains, disposal systems, or other structures constructed, placed or permitted to remain in the Center, as well as the alteration, improvement, addition and/or change thereto.

(3) To provide or provide for private security, fire protection, street lighting and such other services the responsibility for which has been or may be accepted by the Corporation and the capital improvements and equipment related thereto, in the Center.

(4) To provide, purchase, acquire, replace, improve, maintain and/or repair such real property, buildings, structures, street lights and other structures, landscaping, paving and equipment, both real and personal, related to the health, safety and social welfare of the members of the Corporation as the Board of Directors in its discretion determines necessary, appropriate, and/or convenient.

(5) To operate without profit for the sole and exclusive benefit of its members.

(6) To perform all of the functions contemplated of the Corporation, and undertaken by the Board of Directors of the

Corporation in the Declarations of the Subdivisions included in the Center.

(7) To hold funds solely and exclusively for the benefit of the members for purposes set forth in these Articles of Incorporation.

(8) To promulgate and enforce rules, regulations, By-laws, covenants, restrictions and agreements to effectuate the purposes for which the Corporation is organized.

(9) To delegate power or powers where such is deemed in the interest of the Corporation.

(10) To purchase, lease hold, sell, mortgage or otherwise acquire or dispose of interests in, real or personal property, except to the extent restricted hereby; to enter into, make, perform or carry out contracts of every kind with any person, firm, corporation, association or other entity; to do any and all acts necessary or expedient for carrying on any and all of the activities and pursuing any and all of the objects and purposes set forth in the Articles of Incorporation and not forbidden by the laws of the State of Florida.

(11) To fix assessments to be levied against the Lots included in the Center to defray expenses and the cost of effectuating the objects and purposes of the Corporation, and to create reasonable reserves for such expenditures, and to authorize its Board of Directors, companies and other organizations for the collection of such assessments.

(12) To charge recipients for services rendered by the Corporation and the user for use of Corporation Property when such is deemed appropriate by the Board of Directors of the Corporation.

(13) To pay taxes and other charges, if any, on or against property owned or accepted by the Association.

(14) To merge with any other association which may perform similar functions, located within the same general vicinity of the real property included in the Center.

(15) In general, to have all powers conferred upon a Corporation by the laws of the State of Florida, except as prohibited herein.

ARTICLE IV. MEMBERSHIP

The Developer, as such, shall be a member of the Corporation until the right of the Developer to elect the Board of Directors shall be lost or relinquished, as more particularly set forth in Article VII(B) of these

Articles. Every Person or entity who is, from time to time, a record fee owner of any lot within any subdivision included in the Center shall be a member of the Corporation; provided, however, that any such person or entity who holds such interest only as a security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, the ownership of any such lot.

ARTICLE V. SUBSCRIBERS AND INITIAL OFFICERS AND DIRECTORS

The name and address of the subscribers to these Articles of Incorporation, who shall serve as the directors of the Corporation until the first election thereof, and who are to serve as the officers of the Corporation until the first election or appointment are as follows:

<u>Name and Address</u>	<u>Office</u>
Charles C. Bundschu, III Rt. 1, Box 501-U Fort Myers, Florida 33905	President
Gayle Bundschu Rt. 1, Box 501-U Fort Myers, Florida 33905	Vice-President
Charles C. Bundschu, Jr. 3454 Hancock Bridge Pkwy. Apartment B-12 Fort Myers, Fl 33903	Secretary & Treasurer

ARTICLE VI. OFFICERS

The Corporation shall have a President, a Vice-President, a Secretary and a Treasurer, and such other officers as the Board of Directors may, from time to time, by resolution create. Two or more offices may be held by the same person, except as may be prohibited by law. Officers shall be elected by the Directors for a term of one (1) year, in accordance with the By-Laws, but may be removed with or without cause by the Directors at any time.

ARTICLE VII. DIRECTORS

The affairs of the Corporation shall be managed by a Board of Directors consisting of three (3) members, initially. The number of members constituting the Board of Directors may, from time to time, be increased or decreased, as may be provided in the By-Laws, but shall never be less than three (3).

A. TERMS OF OFFICE.

Directors shall generally serve a term of one (1) year each

and shall be elected at the annual meeting of the membership. However, the members of the Board of Directors shall serve until their successors are elected and qualify. In the case of a vacancy upon the Board of Directors, whether occasioned by the resignation or removal of a member or the creation of a new directorship, the vacancy shall be filled by the person elected by the remaining Board of Directors and the newly appointed member shall serve until the next election of Directors.

B. DEVELOPER'S RIGHT TO ELECT BOARD.

The Developer shall have the right to elect the members of the Board of Directors until the sale of the last lot included in Unit One owned by the Developer or until such right is relinquished by the Developer. For these purposes, the Center shall be deemed to include additions to the Center made by the Developer prior to the loss or relinquishment of such right.

C. ELECTION BY MEMBERS.

Following the loss or relinquishment of the initial right of the Developer to elect the Board of Directors, as set forth in Section (B) above, the members of the Board of Directors shall be elected by the membership (including the Developer, as a Lot Owner and as a member of the Corporation, by reason of being a Lot Owner). Every director elected by the membership (but, not by the Developer) shall be a member of the Corporation. All such elections shall be by plurality of votes, and the member of the Board of Directors receiving the largest number of votes shall be the Chairman of the Board of Directors.

D. VOTING OF MEMBERS.

Each Lot Owner including the Developer, as a Lot Owner, shall be entitled to one (1) vote for each lot included in the Center (including lots within Additions to the Center, after made an addition to the center) in which he holds an interest. The foregoing shall be true even though the owner may combine several lots into one building site, so that the owner of two and one-half lots, included in one building site, shall be entitled to two and one-half votes. The owner of a fractional portion of a lot shall be entitled to a proportionate portion of a vote. When one or more persons hold any undecided interest in any such lot, all such persons shall be members and the vote for such lot shall be exercised as they determine among themselves, but, in no event shall more than one vote be cast with respect to any one lot. The vote for any lot cannot be divided for any issue and must be voted as a whole. If more than one person holds such interest in any such lot, those persons present at any meeting (even though less than all of the persons holding such interest in the lot, including those represented by proxy) shall be entitled to cast the vote as they among themselves determine. Except as otherwise provided in

these Articles, the Declaration with respect to the subdivision included in the Center or by law, the affirmative vote of a majority of the lots represented at any meeting duly called and at which a quorum is present shall be binding upon the membership.

ARTICLE VIII. ASSESSMENTS

The Corporation will obtain funds with which to operate by the assessment of the Lot Owners in accordance with the Declaration of the subdivisions included in the Center, as supplemented by the provisions of these Articles and of the By-Laws of the Corporation relating thereto. All assessment shall be in equal amounts per one-tenth (1/10th) acre or fractional part thereof included within the Lots within the Center.

ARTICLE IX. BY-LAWS & AMENDMENT OF ARTICLES

The By-Laws shall be adopted and may be amended by the Directors, consistent with these Articles and the Declaration. These Articles may be altered, amended or repealed by resolution of the Board of Directors, consistent with the Declaration, except as otherwise provided herein.

ARTICLE X. REGISTERED AGENT & OFFICE

The name and address of the Corporation's initial registered agent is as follows:

Charles C. Bundschu, III
5448 U.S. 41 South
Fort Myers, Florida 33907

The aforesaid address of the initial registered agent is also the address of the initial registered office of the Corporation.

ARTICLE XI. RIGHTS OF DEVELOPER

The rights of the Developer set forth herein, including without limitation, the right to make additions to the Center and the right to elect the members of the Board of Directors, shall be deemed to be personal property and shall be freely alienable as such. No amendment may be made to these Articles which in any way limits or restricts the rights of the Developer hereunder or as set forth in the By-Laws or Declaration without the written approval of the Developer, including, without limitation the right to make additions to the Center.

ARTICLE XII. INDEMNIFICATION OF OFFICERS AND DIRECTORS

A. The Corporation hereby indemnifies any Director or officer made a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding:

- (1) Whether civil, criminal, administrative, or investigative,

other than one by or in the right of the Corporation to procure a judgment in its favor, brought to impose a liability or penalty on such person for an act alleged to have been committed by such person in his capacity of Director or officer of the Corporation, or in his capacity as Director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorney's fees, actually and necessarily incurred as a result of such action, suit or proceeding or any appeal therein, if such person acted in good faith in the reasonable belief that such action was in the best interests of the Corporation, and in criminal actions or proceedings, without reasonable ground for belief that such action was unlawful. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not in itself create a presumption that any such Director or officer did not act in good faith in the reasonable belief that such action was in the best interests of the Corporation or that he had reasonable grounds for belief that such action was unlawful.

(2) By or in the right of the Corporation to procure a judgment in its favor by reason of his being or having been a Director or officer of the Corporation, or by reason of his being or having been a Director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he serves at the request of the Corporation, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein if such person acted in good faith in the reasonable belief that such action was in the best interest of the Corporation. Such person shall not be entitled to indemnification in relation to matters to which such person has been adjudged to have been guilty of negligence or misconduct in the performance of his duty to the Corporation unless, and only to the extent that, the court, administrative agency, or investigative body before which such action, suit or proceeding is held shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such tribunal shall deem proper.

B. The Board of Directors shall determine whether amounts for which a Director or officer seeks indemnification were properly incurred and whether such Director or officer acted in good faith and in a manner he reasonably believed to be in the best interest of the Corporation, and whether, with respect to any criminal action or proceeding, he had no reasonable ground for belief that such action was unlawful. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding.

C. The foregoing rights of indemnification shall not be deemed to

limit in any way the powers of the Corporation to indemnify under applicable law.

ARTICLE XIII. TRANSACTION IN WHICH DIRECTORS
OR OFFICERS ARE INTERESTED

No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its Directors or officers are Directors or officers, have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because the Director or officer is present at or participated in the meeting of the Board or committee thereof which authorized the contract or transaction, or solely because his or their votes are counted for such purpose. No Director or officer of the Corporation shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction.

ARTICLE XIV. DISSOLUTION OF THE ASSOCIATION

Upon dissolution of the Corporation, all of its assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

1. Property, whether real, personal or mixed, which constitutes or is directly or indirectly related to, a surface water management system, if any, shall be dedicated to an appropriate governmental agency or, if not accepted, to a similar non-profit corporation, as may be required by the South Florida Water Management District. This provision may not be amended without the consent of the South Florida Water Management District.
2. Except as provided in paragraph numbered one (1) above, real property contributed to the Corporation without the receipt of other than nominal consideration by Developer (or its predecessor in interest) shall be returned to Developer unless it refuses to accept the conveyance (in whole or in part). This provision may not be amended without the consent of the Developer.
3. Remaining assets shall be distributed among the members, subject to the limitations set forth below. as tenants in common, each members' share of the assets to be determined in accordance with its voting rights.

The Corporation may be dissolved upon a resolution to that effect being recommended by three-fourths (3/4th) of the members of the Board of Directors, and, if such decree be necessary at the time dissolution, after receipt of an appropriate decree as set forth in Florida Statutes Section 617.05 or statute of similar import, and approved by two-thirds (2/3) of the voting rights of the Corporation's members.

GAYLE BUNDSCHU, to me well known to be the person described in and who executed the foregoing instrument and she acknowledged before me that she executed the same freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal at Fort Myers, County of Lee, and state of Florida this 20 day of May, 1980.

Patricia L Kane
Notary Public

My Commission Expires:

~~NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT. 21 1981
BONDED THRU GENERAL INS. UNDERWRITERS~~

STATE OF FLORIDA)
)
COUNTY OF LEE)

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, CHARLES C. BUNDSCHU, JR., to me well known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal at Fort Myers, County of Lee and State of Florida, this 20 dy of May, 1980.

Patricia L Kane
Notary Public

My Commission Expires:

~~NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT. 21 1981
BONDED THRU GENERAL INS. UNDERWRITERS~~

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Amendment, filed on July 3, 2000, for BILLY CREEK LOT OWNERS' ASSOCIATION, INC., a corporation organized under the laws of the State of Florida, as shown by the records of this office.

The document number of this corporation is 752742.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
First day of August, 2000



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Katherine Harris

Katherine Harris
Secretary of State

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SECRETARY OF STATE
DIVISION OF CORPORATIONS

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ARTICLES OF AMENDMENT TO
ARTICLES OF INCORPORATION OF
BILLY CREEK LOT OWNERS' ASSOCIATION, INC.

The following provisions in the Articles of Incorporation of Billy Creek Lot Owners' Association, Inc., a Florida corporation, not for profit, filed with the Secretary of State, State of Florida on June 2, 1980, are hereby amended as follows:

- 1. Article VII C. is amended in it's entirety so that it reads as follows:

"The members of the Board of Directors shall be elected by the membership. Every Director elected by the membership, all such elections shall be by plurality of votes, and the member of the Board of Directors receiving the largest number of votes shall be the Chairman of the Board of Directors."

- 2. Article VII E., a new section is added as follows:

E. Qualification of Directors

"A Director may be any natural person owning a direct interest in a lot or, in the case of multiple owners of a lot and in the case of an entity owner of a lot, a Director may be any natural person designated in writing by the owner as having the authority to act for the owner in matters relating to the lot or to this association. Any such designation by multiple owners or entity owners shall be in writing delivered to the Association and shall be effective until the Association receives actual notice in writing of a substitution of the designated person to act for the multiple owners or for the entity. An owner owning more than one lot may designate a different natural person for each property having a separate STRAP parcel identification number issued by the Lee County Tax Appraiser."

In all other respects, the Articles of Incorporation shall remain as they were prior to this Amendment being adopted.

The foregoing amendments were adopted by the Directors of the corporation on the 12th day of June, 2000. Both the Directors are authorized to make this Amendment without the vote of any member.

IN WITNESS WHEREOF, the undersigned President and Secretary of this corporation have executed these Articles of Amendment this 12th day of June, 2000.

By: [Signature]
Chris Bundschu, President

Attest: [Signature]
Gayle Bundschu, Secretary