

Return To:  
Highlands Enhancement, Inc.  
PO Box 237  
Highland City, FL 33837

DECLARATION  
OF  
RESTRICTIVE COVENANTS AND CONDITIONS  
FOR  
HIGHLANDS CREEK PHASE TWO SUBDIVISION

INSTR # 2015069187  
BK 9504 Pgs 720-733 PG(s)14  
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STACY M. BUTTERFIELD,  
CLERK OF COURT POLK COUNTY  
RECORDING FEES \$120.50  
RECORDED BY ambezieq

THIS DECLARATION, is made this 17th day of April, 2015, by HIGHLANDS ENHANCEMENT, INC. (hereinafter "Developer" or "Declarant"), owner (hereinafter "Owner") of all the right, title and interest, both legal and equitable, in and to certain lands more particularly described on the attached Exhibit "A" (hereinafter, "Property").

WITNESSETH:

WHEREAS, the Owner of said real property desires to impose Restrictive Covenants and Conditions on said real property for the benefit of subsequent grantees which Restrictive Covenants and Conditions shall be deemed to be covenants and conditions running with the land.

NOW, THEREFORE, the following Restrictive Covenants and Conditions are hereby imposed upon each lot as described hereinabove; the breach of which prior to December 31, 2040 A.D. shall not give rise to a possibility of reverter or right of entry for condition broken on the part of the Owner but shall entitle any record owner of any one lot hereinabove described to proceed with legal action to prevent the furtherance of any breach of said Restrictive Covenants and Conditions and for damages resulting from said breach. Failure to enforce in whole or in part any of said Restrictive Covenants or Conditions for any length of time shall not stop any party so entitled from enforcing same; however, the present Owner shall not be liable or responsible in any way for its failure to enforce any part of the Restrictive Covenants or Conditions so enumerated. Further, invalidation of any one or any part of any one of these Restrictive Covenants and Conditions by Judgment or Order of Court will in no way affect any of the other Restrictive Covenants or Conditions herein set out, and such other Restrictive Covenants or Conditions shall remain in full force and effect.

1. Each lot shall be used expressly and exclusively for one single-family private residence except for lots 2 and 64 which may be additionally used by the Declarant and Owner for itself, its successors and assigns, for ingress and egress purposes to and from the lands described on exhibit "B" attached hereto.

2. No business activity shall be conducted or carried on in connection with the usage of any lot. Further, no signs of any character may be exhibited or displayed upon any lot or the improvements hereon except one (1) sign of not more than five square feet advertising the

property for sale or rent; or signs used by a builder, sub-contractor or financial institution during the period of improvement construction; or a sign of a reasonable display area tastefully identifying the owner of the residence.

3. No residence may exceed two stories in height. A single story residence shall contain not less than 2,000 square feet of living area; a two-story or split-level residence shall contain not less than 1,200 square feet of living area on the ground floor, and an aggregate of not less than 2,200 square feet. Garaging beneath a two-story or split-level residence shall not be construed as either ground floor or an additional story. The term "ground floor" means the footing area on the ground, whether or not the same is on the lowest level. All square footage shall be measured by outside dimensions, exclusive of garages, porte cocheres, patios, screened or unscreened porches, covered walkways, breezeways and approaches. No construction nor any alteration to the exterior of any existing structure of any type shall take place without prior written approval from the HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc., as hereinafter set forth.

4. Each residence shall contain a minimum of an enclosed standard double car garage not less than eighteen (18) linear feet in width with garage doors for ingress and egress purposes. Each garage shall be architecturally integrated as a part or as an extension of the residence and attached thereto to conform architecturally therewith. The driveway from each garage to Platted Roadways within the Subdivision shall be paved with either concrete or pavers (brick or stone,) shall be adequate width for vehicular use, and shall be in keeping and be maintained by the residence's owner so as not to degrade the value of the residence or adjacent properties in the Subdivision.

5. All construction on each lot shall be new construction. No used buildings or structures shall be moved onto any lot; nor shall there be any storage of building supplies on any lot unless used in immediate construction. The exterior of any building or structure shall be properly finished by painting, stucco, wood-treatment, or other similar treatment and in keeping with other residences in the Subdivision. No unfinished exposed concrete block walls shall be permitted. If a concrete patio is to be covered, it can only be covered by a roof that matches the original architecture of the home. No aluminum roofs shall be allowed. Any prefabricated or modular or geodesic-dome type residence must be specifically approved by written permission of HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc. as hereinafter set

forth.

Out-buildings (one per lot only) other than garages shall be allowed, but only in the rear-yard of a lot containing six (6) foot tall white privacy PVC fencing; however, no detached out-building or accessory buildings shall be allowed unless they are architecturally compatible (including paint color and other finishing materials) with the residential unit and approved in writing by HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc. as hereinafter set forth. No tents, garages, out-building or attachments shall be erected on any lot prior to construction of the main residence; and none shall be used as a residence, either temporary or permanent.

6. Each residence shall be built on a lot so as to face, for front yard purposes, the lot line having the shortest frontage along a Platted Roadway within the Subdivision. For front yard purposes, no part or portion of any residence (or garage attached thereto) on any lot shall be erected closer than fifteen (15) feet from the right-of-way of a Platted Roadway within the Subdivision; nor closer than five (5) feet from any side-yard property line; nor closer than fifteen (15) feet from any rear-yard property line. All garage entrances for vehicles shall be setback a minimum of twenty (20) feet from the right-of-way line to ensure a minimum of two (2) off street non-enclosed parking spaces for vehicles. No security chain-link fencing may be placed on any lot in the Subdivision. All fence material must be either white privacy PVC or black picket aluminum material not to exceed six (6) feet in height and with a flat top-rail (decorative tops and spikes are not permitted.) There shall not be placed within the minimum front-yard building setback area fencing of any kind; all fencing shall be placed such that it is not forward of the rear corners of the home and shall extend perpendicular toward the side lot line. Further, no hedging along or near the boundary line of any lot shall be erected, constructed, placed or grown in excess of four (4) feet in height above normal ground level within the minimum front-yard setback area. The Declarant and Owner for itself, its successors and assigns, reserves the right to erect a wall or fence around the perimeter of the subdivision consisting of material of its choice; such wall or fence to be owned and maintained by the Property Owners' Association.

7. Each owner shall provide and maintain landscaping, lawn and shrubbery upon his lot in keeping with the architecture of his residence. Prior to occupancy, all front, side and rear yards shall be equipped with an underground sprinkler system, and shall be completely sodded with St. Augustine or better quality grass, customarily used for lawn purposes. Declarant shall

have no responsibility for maintenance or landscaping on lots, common areas, streets, or drainage retention areas. Receptacles for mail and paper deliveries placed adjacent to or upon the right-of-way of the Platted Roadways within the Subdivision by lot owners in the subdivision shall meet the requirements of the United States Postal Service, if any, and shall be tastefully constructed and maintained by the lot owner in keeping with the intention of these Restrictions so as not to degrade the value of the residence or adjacent properties in the Subdivision. There shall be no permanent receptacles for garbage and trash, and except during the days of scheduled pick-up, receptacles for garbage and trash shall be located as not to be visible by vehicular traffic traveling along the Platted Roadways within the Subdivision.

All telephone, electrical and cable services to any residence must be underground from the point of distribution to the residence. Outside television aerials and antennas must be located in the rear yard. Outside satellite dishes (not exceeding 18-inches in diameter) must be located at least ten (10) feet behind the front corners of the home and approval shall be obtained from HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc. for the erection of any satellite dish, which approval may be withheld if it is determined that the location thereof would degrade the value of the residence or adjacent properties.

8. All motor vehicles located on any lot shall carry a current year's license tag registration. No house-trailers or mobile homes shall be parked on any lot at any time. Further, there shall be no parking of any trucks of any nature, other than pick-up trucks or vans upon a lot. No vehicles may be stored upon any lot other than boats and boat-trailers, which must be stored either in the garage or on the rear of each lot under a shelter approved by HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc. There shall be no parking of any kind upon the rights-of-way of the Platted Roadways within the Subdivision for a period greater than four (4) hours. Additionally, there shall be no parking of commercial vehicles of any nature upon the rights-of-way of the Platted Roadways (other than for loading and unloading) within the Subdivision. All motor vehicles, cycles and other engine-run apparatus located or operated within the Subdivision by a lot owner, their guests and invitees, will carry legal sound control devices as prescribed by the manufacturer or approved by HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc.

9. No livestock, poultry or other farm animals of any kind shall be raised, bred, or kept on any lot. Dogs, cats and other household pets may be kept on a lot provided that they are

not raised, kept, bred or maintained for any commercial purpose and that proper restraint and control by use of a leash or a secure enclosure are used in the keeping of them. No agricultural activities on a lot (other than hay production) shall be permitted which results in the sale of an agricultural product grown on the premises whether sold in or out of the subdivision.

10. No lot without a house constructed thereon shall be used for parking purposes nor shall any lot be used, without express written permission of the present Owner or HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc. for ingress, egress, utility or drainage purposes to adjacent property, except for lots 2 and 64 which may be additionally used by the Declarant and Owner for itself, its successors and assigns, for ingress and egress purposes to and from the lands described on Exhibit "B" attached hereto. No major alteration of ground elevation shall be permitted on any lot without the express written permission of HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc. The integrity of the drainage design of the Subdivision must be maintained and no lot owner shall impair or divert drainage structures or easements within the Subdivision but shall maintain same if located on the lot. No lot owner shall construct outdoor clothes lines or expose fuel tanks on a lot. Each lot owner shall be responsible for lot and yard maintenance and shall, whether or not improvements shall have been constructed thereupon, maintain the upkeep thereof keeping the same free of debris and trash, unsightly weeds and litter.

11. No building or improvement which has been partially or totally destroyed by fire or other casualty shall be allowed to remain in such state for more than six (6) months from the time of such destruction. If not reconstructed or repaired within six (6) months, the owner shall raze and remove the building or improvement from the lot promptly thereafter. The building of every residence, structure or other improvement upon a lot shall be diligently and continuously pursued until completed by a lot owner and may not be abandoned without completion.

12. Nothing contained herein (including an Amendment to this Declaration) shall prevent the present Owner (including Grantees from the Declarant), its successors or assignees and contractors or subcontractors from doing or performing all or any part of the subdivision not conveyed or transferred what may be determined to be necessary or advisable to complete the Subdivision development, including without limitation:

a) Erecting, constructing, maintaining and staffing sales offices or model units as may be necessary for the completing of the development and establishing it as a residential

community and disposing of it by lots or residential units through sale, lease or otherwise;

b) Maintaining such signs thereon and other advertising media as may be necessary in connection with the sale, lease or other transfer of the development in either lots or residential units to third parties; and

c) Building additional homes using plans and specifications similar to those theretofore used in the Subdivision.

13. No noxious activity, trade or business of any sort shall be carried on upon any lot; nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall any use be made of any lot that will in any way injure the value of any adjoining lot or the Subdivision as a whole.

14. Each lot owner is a member of HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc., a Florida corporation not for profit and will maintain membership in the Association as long as the lot is owned. Each lot owner further agrees to maintain said membership in the Association in good standing and to abide by the Articles of Association, By-Laws, and Rules and Regulations of the Association as may be amended from time to time.

15. The Association shall have two (2) classes of voting membership:

CLASS A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS B. The Class B members shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to a Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership. (Until the conversion, the Declarant remains obligated to fund any operating expense that exceeds the assessments received from Class A members and any other income of the association.)

16. The Property Owners' Association shall be empowered:

(a) To enforce these Restrictive Covenants and Conditions either for its own account or in conjunction with other lot owners.

(b) To modify these Restrictive Covenants and Conditions on a reasonable basis to prevent undue hardship in the placement of any structures upon any lot in regard to lot

line setback requirements and the placement of garages with a side-yard entrance.

(c) To place easements of record, if necessary, for ingress and egress and utility and drainage along the perimeter of any lot line in the Subdivision.

(d) To maintain and improve all common facilities, including but not limited to the storm water retention ponds, adjacent facilities and use easements pertaining thereto and to promote Rules and Regulations for the use of same.

(e) To maintain and improve common area landscaping.

(f) To maintain and improve traffic control devices and signs, and subdivision and roadway name designation signs within the Subdivision.

(g) To maintain and improve private lighting for night decorative effect or security purposes.

(h) To maintain by appointment or retainer, a Building Committee which need not consist of lot owners to review plans and specifications required by lot owners to be submitted hereunder which Committee for and on behalf of the Association shall give permission in writing or rejection in writing, as the case may be, to said lot owners as provided herein. No member of the Building Committee shall in any way be subject to liability in granting or failing to grant approval or permission of any plans, specifications or request brought before said Committee by any person whomsoever.

(i) To maintain security within the Subdivision. It shall have the right, but not the duty, to enunciate a Neighborhood Crime Watch Security Program or other similar program for the Subdivision as a whole.

(j) To obtain insurance for loss purposes, whether by casualty or liability, covering HIGHLANDS CREEK PHASE TWO Property Owners' Association, Inc., Directors, Officers, Committee members and employees of the Association. Further, it may bond, if desired, Directors, Officers and employees of the Association.

(k) The surface water management system facilities shall be owned by the association or said surface water management system facilities shall be denominated as common property and it shall be the responsibility of the association to operate and maintain the surface water management system facilities as permitted by the Southwest Florida Water Management District ("District"). Operation and maintenance and re-inspection reporting shall be performed in accordance with the terms and conditions of the Environmental Resource Permit.

- i. The surface water management system facilities shall include, but are not limited to: all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland and mitigation areas.
- ii. Each property owner within the subdivision at the time of construction of a building, residence, or structure shall comply with the construction plans for the surface water management system approved and on file with the Southwest Florida Water Management District (SWFWMD).
- iii. No construction activities may be conducted relative to any portion of the surface water management system facilities. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the surface water management system facilities. If the project includes a wetland mitigation area, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the District in the Environmental Resource Permit may be conducted without specific written approval from the District.
- iv. No owner of property within the subdivision may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, wetland mitigation area(s), buffer area(s), upland conservation area(s) and drainage easement(s) described in the approved permit and recorded plat of the subdivision, unless prior approval is received from the Southwest Florida Water Management District Bartow Regulation Department.
- v. The District has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the association to compel it to correct any outstanding problems with the surface water management



system facilities.

(l) It shall have the right, but not the duty, to maintain improved or unimproved lots within the Subdivision wherein lot owners have failed to maintain same in keeping said lot free and clear of debris and trash and unsightly weeds and litter and to assess the costs thereof against said lot owner. It shall have an easement or License of Entry over any lot within the Subdivision for the purpose of this maintenance.

(m) To determine, prepare, deliver notice of and collect assessments from the Association members for the purpose of the foregoing and to enforce liens for such assessments uncollected, with interest, by legal action, if necessary.

(n) To do every other act as may be reasonably necessary in carrying out that which has been empowered to it under these Restrictive Covenants and Conditions, its Articles of Association, By-Laws, Rules and Regulations.

(o) If the association ceases to exist, all of the lot owners, parcel owners or unit owners shall be jointly and severally responsible for operation and maintenance of the surface water management system facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternative entity assumes responsibility.

17. Each lot owner shall be liable and obliged to pay to the Property Owners' Association an annual property improvement and management fee covering the cost of maintenance, improvement and operation of the various common areas under control of the Property Owners' Association hereinabove referenced which are for the private use and benefit of the property and lot owners, their guests and invitees. Each lot that has membership in the Association shall bear equal portions of each annual assessment regardless of a lot's location, dimension or size.

18. Each Class A lot owner as a member of the Association at all Association membership meetings, if in good standing, shall be entitled to one (1) vote for each lot owned. Each Class B lot owner as a member of the Association at all Association membership meetings, shall be entitled to three (3) votes for each lot owned.

19. There shall be a \$250.00 initial membership fee prorated to December 31, 2015 per lot, payable upon lot acquisition from the Developer. Commencing January 1, 2016, there shall be made an annual assessment by the Association for each lot membership in the Association. The annual assessments shall be payable in advance on or before December 31 of

each preceding year with the initial annual assessment payable on or before December 31, 2015, for the year 2016. There shall be no proration, except as between lot owners, of any assessments, and any unpaid assessments due at any time shall be and become the obligation of a new lot owner upon purchase of said lot. The amount of an annual assessment will depend upon the financial requirements for maintenance, improvements and operation of the common areas desired by the Association members. Special assessments for these purposes may from time to time be made by the Association.

20. There shall be no special assessment (except for the fee payable at closing) until January 1, 2016, as hereinabove set forth.

21. Commencing in 2020 (or earlier should the Board of Directors so decide), during the month of November in each year (or earlier should the Board of Directors so decide), the Board of Directors of the Association shall call a meeting of the membership of the Association for the purpose of electing members of the Board of Directors; fixing the amount of the Association's maintenance, improvement and operation assessment; and conducting old and new Association business for the ensuing year. Said call shall be in writing, state the meeting's purpose, shall designate the date (which shall be no less than thirty (30) days nor more than sixty (60) days from the date the call is mailed), time and place of said meeting and shall be mailed to all lot owners at the last addresses for said owners shown on the books and records of the Association or to the lot owners' addresses as shown on the Polk County Tax rolls. The annual election of the Board of Directors, each year's annual assessments and business of the Association, shall be determined at said meeting by the affirmative vote of a majority of those Association members present at said meeting.

22. The Association shall be empowered through its Officers and Board of Directors to place a charging lien against the lot owner's property for non-payment of such assessments, charges and costs that have been properly made hereunder and in accordance with the Charter, By-Laws, and Rules and Regulations of the Association. Removal of said lien shall require the payment of said lien amount, interest, recording costs and attorney fees. A lien shall be subordinate to a mortgage lien of any financial institution having a mortgage on said lot whether before or after said lien shall be placed thereupon. In addition, any financial institution holding a mortgage on any lot and taking title thereto after default through foreclosure or otherwise, shall have no obligation toward the payment of accrued and uncollected assessments, charges and

costs on the part of the Association that have accrued to the date that it has taken title to said lot.

23. A member not in good standing with the Association shall include a member that has failed to pay any assessments, charges and costs, of the Association during the time period allowed for the payment of same. A member not in good standing with the Association may be denied the right to vote at the Association affairs or to hold office within the Association as well as the use of any recreational facilities within the common areas of the Association or the use thereof by immediate family members, guests and invitees.

24. Prior to the time when Class B membership is converted to Class A membership, the Declarant shall have the absolute right to modify any or all of these Restrictive Covenants and Conditions by amendment, deletion or addition thereto. After the time when Class B membership is converted to Class A membership, the Association through its membership shall have the absolute right to modify any or all of the Restrictions contained herein by amendment, deletion or addition thereto upon the direction of seventy-five percent (75%) or more of the membership in the Association, except that any amendment which would affect the surface water management system, including the water management portion of the common area, must have the prior approval of the Southwest Florida Water Management District or its successor agency and except that any amendment must have the prior written approval of the Declarant if the Declarant or its successors or assigns owns any Lot or Lots in the subdivision.

25. Additional lands within the area described on Exhibit "B" attached hereto (which may be now owned or hereafter acquired by the developer) may be annexed by the Declarant without the consent of members within seven (7) years from the date hereof. Annexations contemplated by Declarant shall become effective upon the recording of a Supplementary Declaration in the public records of Polk County, Florida. Should the Declarant, in its sole discretion, determine not to annex additional lands, the general plan of development shall not bind the Declarant to make any additions contemplated or to adhere to this plan in the subsequent development of any lands described on Exhibit "B". Additional property which is outside of the area described in Exhibit "B" may be annexed to the property with the consent of two-thirds (2/3) of each class of members of the Association, any such annexation shall become effective upon the recording of a Supplementary Declaration in the public records of Polk County, Florida.

26. The Declarant and Owner for itself, its successors and assigns, hereby reserves the right to use (whether they are public or private) Highlands Creek Boulevard, Highlands

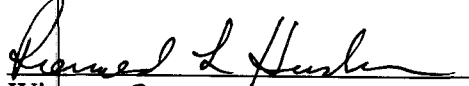
Creek Avenue, Highlands Creek Road and Highlands Creek Way (as shown on Plat Book 157, Page(s) 24 through 28, public records of Polk County, Florida,) and lots 2 and 64 as shown on said plat for the purpose of ingress and egress to and from the lands described on Exhibit "B" hereto attached and by reference made a part hereof. Further, any privacy access gates over the aforementioned roadways will remain open at all times during Developer's/Declarant's chosen hours of operation for whatever purposes it deems necessary including but not limited to maintenance, construction and/or marketing of the community or individual lots therein.

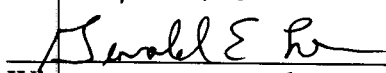
The Declarant and Owner for itself, its successors and assigns, further reserves the right to install United States Postal Service approved mail boxes for this subdivision and to use all easements shown on the plat for the purposes shown.

27. The covenants and conditions contained herein shall be in force and effect until December 31, 2040, A.D. and for five (5) year periods thereafter unless seventy-five percent (75%) or more of the membership shall, in writing, vote to rescind them at the expiration of the original period or any five (5) year term.

IN WITNESS WHEREFORE, HIGHLANDS ENHANCEMENT, INC., has executed this Declaration of Restrictive Covenants and Conditions this 17th day of April, 2015.

Signed, Sealed & Delivered  
in the Presence of:

  
Witness RONALD S. HENDERSON

  
Witness GERALD E. LOU

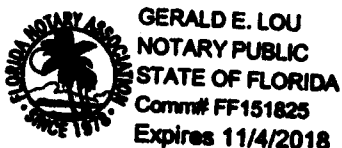
HIGHLANDS ENHANCEMENT, INC.,  
a Florida corporation

BY:   
C. Dane Rogers, President

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS was acknowledged before me by C. Dane Rogers, as President of HIGHLANDS ENHANCEMENT, INC., a Florida corporation, on behalf of the corporation, who is personally known to me, this 17<sup>th</sup> day of April, 2015.

(seal)



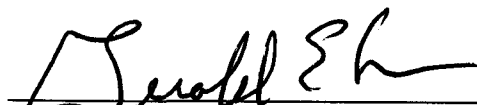
  
Notary Public

EXHIBIT "A"

Lots 1 through 119, HIGHLANDS CREEK PHASE TWO SUBDIVISION, according to the map or plat thereof recorded in Plat Book 157, Page(s) 24 through 28, Public Records of Polk County, Florida.

EXHIBIT "B"

The following land may be annexed pursuant to paragraph 25 of the Declaration, and accessed pursuant to paragraphs 1, 10 and 26 of the Declaration:

DESCRIPTION:

Tract 11, HIGHLANDS CREEK PHASE TWO SUBDIVISION, according to the map or plat thereof recorded in Plat Book 157, Page(s) 24 through 28, Public Records of Polk County, Florida.

The following land may be accessed pursuant to paragraphs 1, 10 and 26 of the Declaration:

DESCRIPTION:

Lot 52 of Section 21, Township 29 South, Range 24 East, Polk County, Florida, as shown on W.F. Hallam & Company Club Colony Tract, as recorded in Plat Book 1-C, Page 102-A, Public Records of Polk County, Florida.