

INSTR # 4924179
OR BK 03282 PG 1940

DECLARATION OF CONDOMINIUM
FOR
TERRACE II AT HERITAGE COVE
A CONDOMINIUM

RECORDED 07/21/00 10:57 AM
CHARLIE GREEN CLERK OF COURT
LEE COUNTY
RECORDING FEE 334.50
DEPUTY CLERK J Miller

MADE this 18th day of May, 2000, by U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida, hereinafter called the "Developer", for itself and its successors, grantees and assigns.

WHEREIN the Developer makes the following declarations:

1. **THE LAND.** The Developer owns certain real property located in Lee County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Land").
2. **SUBMISSION STATEMENT.** The Developer hereby submits the Land described in Exhibit "A" and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date of recording this Declaration, excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by the utility furnishing services to the Condominium. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any interest in the condominium property, or the lease, occupancy, or use of any portion of the condominium property shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and shall signify agreement to be bound by its terms.
3. **NAME.** The name by which this Condominium shall be identified is Terrace II at Heritage Cove, a Condominium, (the "Condominium") and its address is Brant Point Circle, Fort Myers, Florida.
4. **DEFINITIONS.** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires.
 - 4.1 "**Architectural Review Committee**" or "**ARC**" means the Architectural Review Committee as established and empowered in Section 6 of the Community Association Declaration.
 - 4.2 "**Assessment**" means the share of the funds required for the payment of common expenses which from time to time is assessed against each of the units.

TERRACE II AT HERITAGE COVE - DECLARATION

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4.3 "**Association**" means Terrace II at Heritage Cove Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.4 "**Association Property**" means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.5 "**Board of Directors**" or "**the Board**" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration".

4.6 "**Community Association**" or "**the Community Association**" means Heritage Cove Community Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Association Common Areas within Heritage Cove, as described in the Governing Documents.

4.7 "**Community Association Common Areas**" means the real property and all improvements thereon owned or to be owned by the Association for the use and benefit of the members of Heritage Cove.

4.8 "**Community Association Declaration**" means the Declaration of Covenants, Conditions, and Restrictions for Heritage Cove, as originally recorded in O.R. Book 3178, at Pages 0965-1053, Public Records of Lee County, Florida, (the "Association Declaration"), and as it may be amended from time to time.

4.9 "**Condominium Documents**" means this Declaration and all recorded exhibits hereto, as amended from time to time.

4.10 "**County**" All references in the governing documents to "a County" or "the County" or to a specific Florida County are intended to refer to Lee County, Florida, and shall be construed to do so.

4.11 "**Family**" or "**Single Family**" means any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

4.12 "**Fixtures**" means items of tangible personal property which, by being physically annexed or constructively affixed to a unit, have become accessory to it and part and parcel of it, including but not limited to, interior partition walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.13 "**Guest**" means any person (other than the unit owner and his family) who is physically present in, or occupies any unit on a temporary basis at the invitation of the unit owner or other permitted occupant, without the payment of consideration.

4.14 "**Institutional Mortgagee**" means the mortgagee (or its assignee) of a mortgage encumbering a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any other institutional lender providing financing of acquisition, development or construction, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel, which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.15 "**Lease**" means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

4.16 "**Limited Common Elements**" means those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.17 "**Occupant**" when used in connection with a unit, means a person who is physically present in a unit on two or more consecutive days, including staying overnight. "**Occupy**" means the act of staying overnight in a unit.

4.18 "**Primary Institutional Mortgagee**" means that institutional mortgagee which, at the time a determination is made, holds more first mortgages on units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.19 "**Rules and Regulations**" means the rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

4.20 "**Voting Group**" means a group of members of the Association whose Living Units are represented by one (1) or more Directors of the Association, as more particularly described in Section 11.7 of the Community Association Declaration, and in a Supplemental Declaration to be recorded as provided therein.

4.21 "**Voting Interests**" refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are thirty (30) units, so the total number of voting interests is thirty (30) votes.

4.22 "**Voting Representative**" means the representative selected by the Members of this Neighborhood to be responsible for casting all votes the Members in the Neighborhood in all Association matters other than the election of Directors.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

5.1 **Survey and Plot Plans.** Attached to this Declaration as part of Exhibit "B" and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

5.2 **Unit Boundaries.** Each unit shall include that part of the building that lies within the following boundaries:

(A) **Upper and Lower Boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(1) **Upper Boundaries.** The horizontal plane or planes of the unfinished lower surface of the ceiling of the unit.

(2) **Lower Boundaries.** The horizontal plane of the unfinished upper surface of the concrete floor of the unit.

(B) **Perimeter Boundaries.** The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the plasterboard walls bounding the unit as shown in Exhibit "B" hereto, extended to their intersections with each other and with the upper and lower boundaries.

(C) Interior Walls. No part of the non-structural interior partition walls within an unit shall be considered part of the boundary of a unit.

(D) Apertures. Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and the frames thereof. Therefore, windows, doors, screens and all frames, casings and hardware therefor, are excluded from the unit.

(E) Utilities. The unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries, but which serve other units or the common elements. Such utility installations shall be common elements.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of Section 5.2(D) above shall control over Exhibit "B".

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

6.1 **Shares of Ownership.** The Condominium contains thirty (30) units. The owner of each unit also owns a one thirty (1/30th) undivided share in the common elements and the common surplus.

6.2 **Appurtenances to Each Unit.** The owner of each unit has certain rights and owns a certain interest in the condominium property, including without limitation the following:

(A) An undivided ownership share in the Land and other common elements of the Condominium and the common surplus of the Association, as specifically set forth in Section 6.1 above.

(B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D" respectively.

(C) The exclusive right to use the limited common elements reserved for the unit, and the non-exclusive right to use the common elements.

(D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(E) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

Each unit and its appurtenances constitutes a "**condominium parcel.**"

6.3 **Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements and common areas in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements, and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, as set forth in the Bylaws.

7. COMMON ELEMENTS; EASEMENTS.

7.1 **Definition.** The term "common elements" means all of the condominium property not included within the units, and includes without limitation the following:

(A) The Land.

(B) All portions of the buildings and other improvements on the Land not included within the units, including limited common elements.

(C) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.

(D) An easement of support in every portion of the condominium property that contributes to the support of a building or structure.

(E) The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

7.2 **Easements.** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of the easements specified in

this Section may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

(A) **Utility and other Easements.** The Association has the power, without the joinder of any unit owner, to grant easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements, and to grant access easements or relocate any existing access easements in any portion of the common elements, as the Association shall deem necessary or desirable for the proper Operation and maintenance of the Condominium. This power also includes a limited power to convey easements, as provided for in Chapter 73, Florida Statutes. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

(B) **Encroachments.** If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(C) **Ingress and Egress.** A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

(D) **Construction; Maintenance.** The Developer (including its designees and contractors) shall have the right to enter the condominium property and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the unit owners of the condominium property.

(E) **Sales Activity.** For as long as it holds any unit in the Condominium for sale in the ordinary course of business, the Developer and its designees shall have the right to use, without charge, any units owned by it, and the common elements in order to establish modify, maintain and utilize, as it and they deem appropriate, model units and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model units or the common elements to prospective purchasers or tenants, erect on the condominium property signs and other promotional material to advertise units for sale or lease, and take all other action helpful for sales, leases and promotion of the Condominium.

(F) The easements and rights described in (D) and (E) above shall terminate upon the sale of all units in the Condominium to purchasers other than a successor Developer.

7.3 **Restraint Upon Separation and Partition.** The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from" the unit and passes with the title to the unit, whether separately described or not. No owner may maintain an action for partition of the common elements. A unit owner's interest in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his unit.

8. LIMITED COMMON ELEMENTS.

8.1 **Description of Limited Common Elements.** Certain common elements have been or may be designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their use has been assigned are as described in this Declaration and as further identified on the attached survey and plot plan.

(A) **Covered Parking Spaces.** Certain one car covered parking spaces are shown in Exhibit "B." The exclusive right to the use of each covered parking space is assigned as a limited common element to the unit bearing the same number.

(B) **Stairs.** The exclusive use of any stairways, stairwells and railings which are attached to and which exclusively serve particular units is a limited common element for the units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the Association and shall be a common expense.

(C) **Air Conditioning and Heating Equipment.** All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, are limited common elements.

(D) Lanai, Patio or Balcony. The airspace comprising any lanai, patio or balcony attached to and serving exclusively a unit is a limited common element.

(E) Others. Any part of the common elements that is connected to and exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by, or at the expense of, the unit owner, shall be deemed a limited common element, whether specifically described above or not. This paragraph includes assigned storage lockers, windows, screens and doors, including all hardware, locks and frames therefor.

8.2 Exclusive Use. The exclusive right to use a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The use right passes with the unit, whether separately described or not, and cannot be separated from it.

9. ASSOCIATION. The operation of the Condominium is by Terrace II at Heritage Cove Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

9.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "C".

9.2 Bylaws. The Bylaws of the Association shall be the Bylaws attached as Exhibit "D", as they are amended from time to time.

9.3 Delegation of Management. The Board of Directors may contract for the management and maintenance of the condominium property and authorize a manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance and repair of the common elements with funds made available by the Association for such purposes. The Association and its Directors and officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

9.4 Membership. The members of the Association are the owners of record legal title to the units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or the condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6 **Powers and Duties.** The powers and duties of the Association include those set forth in the Condominium Act and in the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association may impose reasonable fees for use of common elements or association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities contiguous to the lands of the Condominium, for the use and enjoyment of the unit owners.

9.7 **Official Records.** The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 **Purchase of Units.** The Association has the power to purchase units in the Condominium and to acquire and hold, lease, mortgage, and convey them, such power to be exercised by the Board of Directors.

9.9 **Acquisition of Property.** The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in 9.8 above, the power to acquire interests in real property may be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 **Disposition of Property.** Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the Board of Directors, without need for authorization by the unit owners.

9.11 **Roster.** The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request.

9.12 **Approval of Certain Litigation.** Notwithstanding any other provisions of the governing documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests of the Association prior to the paying or contracting to pay any legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which members are obligated to pay;
- (C) the enforcement of the governing documents;

- (D) the enforcement of the rules and regulations of the Association;
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- (F) filing a compulsory counterclaim.

10. ASSESSMENTS AND LIENS. The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts other than common expenses which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws and as follows:

10.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement and protection of the common elements and association, property, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted to fund reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors enters into a contract for pest control or cable television services in bulk for all units, the cost of such services shall be a common expense.

10.2 Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses of the Association equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

10.3 Ownership. Assessments collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided-herein or by law.

10.4 Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all monies owed by the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

10.5 **No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit for which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided below as to certain mortgagees.

10.6 **Application of Payments; Failure to Pay; Interest.** Assessments and installments thereon paid on or before ten (10) days after the due date shall not bear interest, but all sums not paid by the tenth (10th) day shall bear interest at the highest rate allowed by law, until paid. Assessments and installments thereon shall become due, and the unit owner shall become liable for the assessments or installments, on the date established in the Bylaws or otherwise set by the Association for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees and attorney's fees and costs, and finally to unpaid assessments as required by law. No payment by check is deemed received until the check has cleared.

10.7 **Acceleration.** If any special assessment or quarterly installment of regular assessments as to a unit becomes more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment and all special assessments for that fiscal year as if the balance had originally been due on the date the Claim of Lien was recorded. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate is exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8 **Liens.** The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9 **Priority of Lien.** Except as otherwise provided by law, the Association's lien for unpaid assessments shall be subordinate and inferior to the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded. Any lease of a unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

10.10 **Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

10.11 **Certificate As To Assessments.** Within fifteen (15) days after request by a unit owner, unit purchaser or mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

10.12 **Statutory Assessment Guarantee; Liability of Developer for Common Expenses.** The Developer guarantees that from the recording of this Declaration, until December 31, 2000, or such earlier date as unit owners other than the Developer first elect a majority of the Directors of the Condominium Association (the "turnover date"), assessments against unit owners for common expenses will not exceed \$450.84 per quarter. If the turnover date has not occurred by December 31, 2000, then the Developer further guarantees that from January 1, 2001, until the first to occur of the turnover date or December 31, 2001, assessments against unit owners for common expenses will not exceed \$518.47 per quarter. If the turnover date has not occurred by December 31, 2001, the Developer further guarantees that from January 1, 2002, until the turnover date, assessments against unit owners for common expenses will not exceed \$596.24 per quarter. During this guarantee period, the Developer and units owned by the Developer shall be exempt from the payment of assessments for common expenses. The Developer shall, however, be obligated to fund any deficit caused by the failure of assessments at the guaranteed level receivable from other unit owners to meet the common expenses incurred by the Association.

11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS. Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement shall be as follows:

11.1 **Association Maintenance.** The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Water lines, up to the individual unit cut-off valve.
- (C) Cable television lines up to the wall outlet.
- (D) Main air conditioning condensation drain lines, up to the point where the individual unit drain line cuts off.
- (E) Sewer lines, up to the point where they enter the individual unit.
- (F) The exterior surfaces of the main entrance door to each unit.
- (G) All exterior building walls, including painting, waterproofing, and caulking.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be, performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense unless the need for the work was caused by the unit owner. Regardless of the foregoing, the Association shall not be responsible for incidental damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

11.2 **Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and of certain limited common elements. The owner's responsibilities include, without limitation:

- (A) All screens, windows, window glass, and related hardware and frames.
- (B) The entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit and serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.

- (F) Appliances, water heaters, smoke alarms and vent fans.
- (G) All air conditioning and heating equipment, thermostats, ducts and related installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit.
- (L) Other facilities or fixtures which are located or contained entirely or partially within the unit and serve only the unit.
- (M) All interior, partition walls which do not form part of the boundary of the unit.

11.3 **Other Unit Owner Responsibilities:**

(A) **Porches or Lanais.** Where a limited common element consists of a porch or lanai area, the unit owner who has the exclusive right to use the area shall be responsible for day-to-day cleaning and care of the walls, floor and ceiling bounding said area, if any; and all fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs. No porch or lanai may be covered or enclosed in any way without the prior written approval of the Board of Directors. The maintenance, repair and replacement and insurance of such approved covering or enclosure is the responsibility of the unit owner. Maintenance, repair and replacement of all screening is the responsibility of the unit owner.

(B) **Covered Parking.** Maintenance of all interior spaces within the covered parking spaces shall be the unit owner's responsibility. Maintenance of exterior, roof, and structural components of the covered parking spaces shall be by the Association and shall be a common expense.

(C) **Interior Decorating.** The unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

(D) **Flooring.** All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms or laundry rooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g., marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any work being done. If the installation is made without prior approval the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner.

(E) **Window Coverings.** The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.

(F) **Modifications and Alterations.** If a unit owner makes any modifications, installations or additions to his unit or to the common elements with or without association approval, the unit owner, and his successors in title, shall thereby become financially responsible for:

- (1) insurance, maintenance, repair and replacement of the modifications, installations or additions; and
- (2) all damages to other property or persons caused by such modifications, installations or additions; and
- (3) the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the condominium property; and
- (4) damage to the modifications, installations or additions caused by work being done by the Association.

(G) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

11.4 Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the voting interests in writing, the Association may enter into such contractual undertakings. The costs of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

11.5 Alteration of Units or Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the ARC, as well as the approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium.

11.6 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or real property owned by the Association costing more than \$10,000 in the aggregate in any calendar year without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required. All alterations are subject to the prior approval of the ARC.

11.7 **Enforcement of Maintenance.** If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any common elements or of any portion of the unit to be maintained by the Association pursuant to this Declaration. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses or collection, if any.

11.8 **Negligence: Damage Caused by Condition in Unit.** The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from an owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

11.9 **Association Access to Units.** The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventative maintenance of safety equipment, as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Association. If the Association is not given a key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by forced entry, and all damage resulting from delay in gaining entrance to his unit caused by the non-availability of a key.

11.10 **Pest Control.** The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control services provided by the Association is a common expense, the election of an owner not to use the service shall not reduce the owner's assessments.

11.11 **Porch or Lanai Enclosures.** The Board of Directors may adopt a basic approved plan for screening and/or glassing-in of porches or lanais, subject to ARC approval. A unit owner may screen or enclose the porch or lanai serving his unit in accordance with the approved basic plans without specific consent from the Board of Directors, provided that such screening or enclosure conforms in all respects to the approved basic plans and specifications therefor.

11.12 **Hurricane Shutters.** Subject to approval by the ARC, the Board of Directors shall adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the Condominium. No hurricane shutter except of the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium.

12. **USE RESTRICTIONS.** The use of the units and the common elements shall be in accordance with the following provisions, and with Section 5 of the Community Association Declaration, as long as the Condominium exists:

12.1 **Units.** Each unit shall at any time be occupied by only one family, its servants and guests, as a residence and for no other purpose. No business, commercial activity or profession may be conducted from any unit, nor may the name of the condominium or the address of any be publicly advertised as the location of any business. The use of a unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use. This Section 12.1 is, however, intended to prohibit commercial or business activity by a unit owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers and clients.

12.2 **Age.** There are restrictions on the age of occupants of units (See Section 24 of the Declaration). All occupants under eighteen (18) years of age must be closely supervised at all times by an adult to insure that they do not become a source of annoyance to other residents.

12.3 **Pets.** The owner of each unit may keep no more than two (2) small pets, of a normal domesticated household type (such as a cat or dog) in the unit. Dogs and cats must be leashed or carried at all times while outside of the unit. The ability to keep pets is a privilege, not a right, and the Board of Directors may order and enforce the removal of any pet which becomes a reasonable source of annoyance to other residents. The owner is responsible for cleaning up after his pet. No pets of any kind are permitted in leased units. No reptiles, rodents, poultry, amphibians, swine or livestock may be kept in the Condominium, but tropical fish or caged birds in reasonable numbers are permitted.

12.4 **Nuisances.** No owner shall use his unit, or permit it to be used, in any manner that is unreasonably disturbing, detrimental or a nuisance to the occupants of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws, the governing documents and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.5 **Signs.** No person other than the Developer may post or display any signs, banners, and the like, anywhere on the condominium property, including "For Sale," "For Rent," "Open House" and other similar signs. If any sign is erected in violation of this provision, the Declarant, the Association, or the Neighborhood Association shall have the right to enter the property on which the sign is located and remove it. The foregoing shall not apply to signs, banners, flags, billboards or advertisements used or erected by Declarant, entry and directional signs installed by Declarant, and signs required by law.

12.6 **Motor Vehicles; Parking.** No motor vehicle shall be parked anywhere on the condominium property except on a paved parking surface or under a covered space. No commercial trucks, or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Boats, boat trailers, trailers, semitrailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept on the condominium property. For the purpose of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less. Because the number of parking spaces is limited, the right of the occupants or owners of any unit to keep more than one motor vehicle in the Condominium may be limited or regulated by the Association. For purposes of this paragraph "kept" shall mean present for either a period of twelve (12) consecutive hours or overnight, whichever is less. No house trailer, mobile home, motor home and the like may be kept on the Condominium more than two (2) times in any month. Any vehicle parked in violation of this Section is subject to being towed away at the owner's expense without further warning.

13. **LEASING OF UNITS.** All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section. The ability of a unit owner to lease his unit is a privilege, not a right. The privilege may be revoked by the Board of Directors if it is abused by the unit owner, or the owner fails or refuses to follow the required procedures.

13.1 **Procedures.**

(A) **Notice.** An owner intending to lease his unit must give to the Board of Directors (or its designee) written notice of such intention at least five (5) days prior to the starting date of the proposed lease, together with the name and address of the proposed lessee, and other information about the lessee or the lease that the

Board may reasonably require.

(B) **Failure to Give Notice.** Any lease entered into without notice in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee by summary proceedings without securing consent to such eviction from the unit owner.

13.2 **Term of Lease and Frequency of Leasing.** The minimum lease term is thirty (30) consecutive days. No lease may begin sooner than thirty (30) days after the beginning of the last lease. No subleasing or assignment of lease rights by the lessee is allowed.

13.3 **Occupancy During Lease Term.** No one but the lessee and his family within the first degree of relationship by blood, adoption or marriage may occupy the unit. The total number of overnight occupants of a leased unit is limited to six (6) persons. No pets are permitted.

13.4 **Use of Common Elements and Common Areas.** To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

13.5 **Regulation by Association.** All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. The Association may require lessees to post a security deposit as provided by law to protect against damage to the common elements. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

14. **OWNERSHIP OF UNITS.** The transfer of ownership of units shall be subject to the following restrictions:

14.1 **Notice to Association.** An owner intending to sell his unit shall give the Association written notice of such intent at least seven (7) days prior to the closing of the sale, including the name of the purchaser and such other information about the purchaser as the Association may reasonably require. A new owner acquiring title shall provide to the Association a copy of the recorded deed, or other instrument evidencing title, within thirty (30) days after the transfer occurred.

14.2 **Life Estate.** A unit may be subjected to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be the regular member of the Association from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. The life tenant shall be liable for all assessments and charges against the unit. Any consent, approval or vote required may be given by the life tenant, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

15. **INSURANCE.** In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 **By the Unit Owner.** Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

15.2 **Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self insure.

15.3 **Required Coverage.** The Association shall maintain adequate insurance covering the buildings and other improvements on the condominium property that the Association is required to insure, as well as all association property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors in the exercise of its good business judgment, such insurance to afford at least the following protection:

(A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "all risk" property contract.

(B) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

(C) **Automobile.** Automobile liability for bodily injury and property damage for owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(D) **Statutory Fidelity Bond.**

15.4 **Optional Coverage.** The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners. Some of the more common options include:

(A) Flood insurance.

(B) Broad Form Comprehensive General Liability Endorsement.

(C) Directors and Officers Liability.

(D) Medical Payments.

(E) Leakage, seepage and wind-driven rain.

(F) Endorsement for loss by operation of local ordinance.

15.5 **Description of Coverage.** A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection and copying by unit owners or their authorized representatives upon request.

15.6 **Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the unit owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 **Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

(A) **Common Elements.** Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

(B) **Units.** Proceeds received on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all units.

(C) **Mortgagee.** If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a unit, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(D) **Deductibles.** The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

15.8 **Distribution of Proceeds.** Insurance proceeds from Association policies shall be distributed to or for the benefit of the unit owners in the following manner:

(A) **Costs of Protecting and Preserving the Property.** If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(B) **Cost of Repair or Reconstruction.** If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the Costs as provided in Sections 15.7 (A) and (B) above. Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

(C) **Failure to Repair or Reconstruct.** If it is determined in the manner elsewhere provided here in that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

15.9 **Association as Agent.** The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

16. **REPAIR OR RECONSTRUCTION AFTER CASUALTY.** If any part of the condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

16.1 **Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and no other person, including the Association, is liable for the cost thereof in the absence of legal fault.

16.2 **Damage to Common Elements - Less than "Very Substantial".** Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

16.3 **"Very Substantial" Damage.** As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least three-fourths (3/4ths) of the total units cannot reasonably be rendered habitable within sixty (60) days. Should such "very substantial" damage occur:

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 4.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves.

(B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.

(C) A meeting of the members shall be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment that exceeds fifteen percent (15 %) of the total annual budget for the condominium in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3rds) of the total voting interests of the

Condominium vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel and construction experts, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the Condominium in the year in which the casualty occurred, the Condominium shall be terminated, and the property removed from the provisions of the Condominium Act, unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.

(D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination by at least two-thirds (2/3rds) of the Directors shall be conclusive, and shall be binding upon all persons.

16.4 **Application of Insurance Proceeds.** It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is an excess of insurance proceeds left in the funds held by the Association after the payment of all costs of repair, and reconstruction, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.7(C) above.

16.5 **Equitable Relief.** In the event of damage to the common elements which renders any unit uninhabitable, if repairs and reconstruction are not begun and completed within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include termination of the Condominium and partition of the former condominium property. For purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

16.6 **Plans and Specifications.** Any repairs or reconstruction must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the owners of at least three-fourths (3/4ths) of the units, by the ARC, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

17. CONDEMNATION.

17.1 **Deposit of Awards with Association.** The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken. Awards for the taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

17.2 **Determination Whether to Continue Condominium.** Whether the Condominium will be continued after a taking by condemnation or eminent domain will be determined in the same manner provided for determining whether damaged property will be repaired or reconstructed or after a casualty.

17.3 **Disbursement of Funds.** If the Condominium is terminated, the proceeds of all awards and other payments will be deemed association property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated, but the size of the Condominium will be reduced, the owners of units to be diminished or eliminated, if any, will first be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 **Association as Agent.** The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with a condemning authority for the purpose of realizing just compensation.

17.5 **Units Reduced but Habitable.** If the size of a unit must be reduced, and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) **Restoration of Unit.** The unit shall be made habitable. If the cost of doing so exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

(B) **Distribution of Surplus.** The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

17.6 **Unit Made Not Habitable.** If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) **Payment of Award.** The award shall be paid to the owner of the unit and to each mortgagee of the unit as their interests may appear, the remittance being made payable jointly to the owner and mortgagee(s).

(B) **Addition to Common Elements.** If possible and practical, any remaining portion of the unit shall become part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.

(C) **Adjustment of Shares in Common Elements.** The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to equitably distribute the ownership of the common elements among the changed number of units.

(D) **Assessments.** If the award to the Association for damage to the common elements resulting from a taking is not sufficient to pay the cost of converting the remaining portions of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

17.7 **Taking of Common Elements.** Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall become part of the common surplus.

17.8 **Amendment of Declaration.** Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation or eminent domain shall be accomplished by amending this Declaration and Exhibits "A" and "B" in conformity to the changes mandated by Sections 17.5 and 17.6 above. Such amendments need be approved only by the owners of a majority of the units. Approval of, or joinder by, lien holders is not required for any such amendment.

18. TERMINATION. The Condominium may be terminated in the following manner:

18.1 **Agreement.** The Condominium may be caused to be terminated at any time by written agreement of the owners of at least three-fourth; (3/4ths) of the units, and the Primary Institutional Mortgagee.

18.2 **Very Substantial Damage.** If the Condominium suffers "very substantial damage" to the extent defined in Section 16.3 above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

18.3 **Certificate of Termination.** The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Director, and shall be executed by the Director indicating willingness and ability to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Public Records of Lee County, Florida. The recording of that Certificate of Termination automatically divests the Association and all unit owners of legal title, and vests legal title in the Termination Director named in the Certificate of Termination, to all real and personal property which was formerly the condominium property or association property, without need for further conveyance. Beneficial title to the former condominium and association property is owned by the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements. Upon termination, each lien encumbering a condominium parcel shall be automatically transferred to the equitable share in the condominium property attributable to the unit encumbered by the lien, with the same priority.

18.4 **Wind-up of Association Affairs.** The termination of the Condominium does not, by itself, terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, for the purpose of winding up the affairs of the Association in accordance with this Section 18.4 Director's Powers and Duties. The Termination

Director shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Termination Director shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Section. The Termination Director shall be entitled to reasonable fees for acting in such capacity, and such fees, and all costs and expenses incurred by the Termination Director in the performance of its duties, shall be paid by the Association or paid from the proceeds of the sale of the former condominium and Association property, or other Association assets, and shall constitute a lien on the property superior to any other lien. The Director shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Director unless such liabilities are the result of gross negligence or malfeasance. The Termination Director may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions. In the event of the resignation or incapacity of the Director, a successor Director may be appointed by the Circuit Court of the county in which the Condominium is located on the petition of the Association.

18.5 Partition; Sale. Following termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Director, and the Director shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former condominium and association property within 1 year after the recording of the Certificate of Termination, the Director may proceed to sell the property without agreement by the former unit owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Director to the beneficial owners thereof, as their interests shall appear.

18.6 New Condominium. The termination of the Condominium does not bar creation of another Condominium including all or any portion of the same property.

18.7 Provisions Survive Termination. The provisions of this Section 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Director, as well as post-termination

costs of maintaining the former condominium property and winding up the affairs of the Association, are common expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

19. OBLIGATIONS OF OWNERS.

19.1 **Duty to Comply Right to Sue.** Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Declaration, the documents creating the Association, the Bylaws and the Rules and Regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 **Waiver of Rights.** The failure of the Association or of a member to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a prospective purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act.

19.3 **Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a tenant, unit owner or the Association to comply with the requirements of the Condominium Act or the condominium documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys fees as may be awarded by the court.

19.4 **No Election of Remedies.** All rights, remedies and privileges granted to the Association or unit owners under any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be

deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the condominium documents, or at law or in equity.

20. RIGHTS OF MORTGAGEES.

20.1 **Approvals.** Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the percentage interests of the unit in the ownership of the common elements, except as provided in Section 17.6(C) above.

20.2 **Notice of Casualty or Condemnation.** In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

20.3 **Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or by a deed given in lieu of foreclosure, the liability of the mortgagee for the share of common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the mortgagee's acquisition of title shall be governed by the Condominium Act, as it may be amended from time to time. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners, including the acquirer and his successors and assigns. No owner or acquirer of title to a condominium parcel by foreclosure (or by a deed in lieu of foreclosure) may during his period of ownership, whether or not the parcel is occupied, be excused from the payment of any assessments coming due during the period of such ownership:

20.4 **Redemption.** If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. A mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

20.5 **Right to Inspect Books.** The Association shall make available to institutional mortgagees upon request current copies of the recorded condominium documents and the books, records and financial statements of the Association. "Available" means ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies provided at the request of the mortgagee shall be at the expense of the mortgagee.

20.6 **Financial Statement.** Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement or financial report of the Association as delivered, to the owners for the immediately preceding fiscal year.

20.7 **Lender's Notices.** Upon written request to the Association, any institutional mortgagee shall be entitled to timely written notice of:

(A) Any delinquency of sixty (60) days or longer in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.

(B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(C) Any proposed action that requires the consent of a specified number or percentage of mortgage holders.

21. DEVELOPER'S RIGHTS AND DUTIES. Notwithstanding any other provision of this Declaration, so long as the Developer or any successor in interest to the Developer holds any units in the Condominium for sale in the ordinary course of business, the following shall apply:

21.1 **Developer's Use.** Until the Developer has completed all of the contemplated improvements and has sold all of the units in the Condominium, neither the unit owners nor the Association, nor their use of the condominium property shall unreasonably interfere with the completion of the contemplated improvements or the sale of units. The Developer may make any use of the unsold units and the common elements as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of a sales office, display of signs, leasing units, and showing the units for sale to prospective purchasers. The Developer also reserves the right to sell and lease back one or more units for use as "hospitality suites", providing short term guest accommodations for prospective purchasers or other business guests of the Developer.

21.2 **Assignment.** All or any of the rights, privileges, powers and immunities granted or reserved to the Developer in the condominium documents may be assigned by the Developer to any person or entity without the consent of any other unit owner or any holder of a mortgage secured by any unit. In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer.

21.3 **Amendments by Developer.** The Developer has the right under the Condominium Act to amend this Declaration and any of its exhibits for certain specific purposes. Said amendments may be made and executed solely by the Developer and recorded in the Public Records of Lee County, Florida, and without any requirement of securing the consent of any unit owner, the Association, or the owner and holder of any lien encumbering a condominium parcel.

21.4 **Sales of Units.** The Developer shall have the right to sell or transfer any unit owned by it to any person, on such terms and conditions as it deems in its own best interest.

21.5 **Transfer of Association Control.** By electing a majority of the Directors, the unit owners other than the Developer assume control. At that time the Developer must deliver to the Association all property of the Association held or controlled by the Developer, and all items, and documents that the Developer is required to turn over to the Association under Florida law. The Developer may turn over control of the Association to unit owners other than the Developer before the statutory deadlines by causing all of its appointed Directors to resign, whereupon it becomes the affirmative obligation of unit owners other than the Developer to elect Directors and assume control. Provided at least sixty (60) days notice of the Developer's decision to cause its appointees to resign is given to unit owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with the resignations, if unit owners other than the Developer refuse or fail to assume control.

21.6 **Developer's Rights.** As long as the Developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer.

(A) Any amendment of the condominium documents which would adversely affect the Developer's rights.

(B) Any assessment of the Developer as a unit owner for capital improvements.

(C) Any action by the Association that would be detrimental to the sales of units by the Developer. However, an increase in assessments for common expenses shall not be deemed to be detrimental to the sales of units.

22. AMENDMENT OF DECLARATION. Except as otherwise provided above as to amendments made by the Developer, all amendments to this Declaration shall be proposed and adopted as follows:

22.1 **Proposal.** Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by the owners of at least one-fourth (1/4th) of the units.

22.2 **Procedure.** Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

22.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests present in person or by proxy and voting at any annual or special meeting called for the purpose. Prior to the assumption of control of the Association by unit owners other than the Developer, this Declaration may be amended by vote of a majority of the Directors, and no vote of the unit owners is required.

22.4 **Certificate; Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida.

22.5 **Proviso.** An amendment to this Declaration may change the configuration or size of any unit in a material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, if the record owner of the unit, his institutional mortgagee, if any, and the owners of at least a majority of the units, consent to the amendment. This proviso does not apply to changes ordered by a governmental agency as a result of condemnation or a taking by eminent domain under Section 17 above, nor to mergers under Section 22.7 below.

22.6 **Amendment of Provisions Relating to Developer.** As long as the Developer owns any units in the Condominium for sale in the ordinary course of business, no amendment shall be effective to change any provision relating specifically to the Developer without the Developer's written consent.

22.7 **Merger.** Heritage Cove will contain several condominiums or other forms of residential development, each with its own association. This multi-development, multi-association structure is administratively convenient and desirable from the Developer's perspective. However, it is possible that the owners, after they have assumed control of the various associations, will determine that it is in their best interest collectively to merge any or all of the condominiums and other developments and the common areas into a single condominium, operated by one association, in the manner contemplated by Section 718.110(7), Florida Statutes (1997), as amended from time to time. Notwithstanding any provision in this Declaration to the contrary, this Declaration and the recorded exhibits thereto may be amended in any way necessary to accomplish that purpose by the written consent of at least seventy-five percent (75%) of the voting interests and the approval of all record owners of liens on the condominium property, and no other approval, consent or joinder of any other person shall be necessary. Proviso: the amendments or new documents accomplishing such a merger must provide that:

(A) The security and priority of all existing mortgages and liens, and the rights of existing mortgagees and other lien holder, shall not be impaired by the merger;

(B) The then-existing restrictions on the use, occupancy and transfer of units shall not be materially changed as part of the merger; and

(C) The share of common expenses and ownership of the common elements for each unit in the new condominium shall be a fraction, the numerator of which is the number "one" (1), and the denominator of which is the total number of Living Units in all condominiums or other developments being merged.

23. MISCELLANEOUS.

23.1 **Severability.** The invalidity or non-enforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not effect the remaining portions thereof.

23.2 **Applicable Statutes.** The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date of recording this Declaration in the Public Records of Lee County, Florida.

23.3 **Conflicts.** If there is an irreconcilable conflict between any provision of this Declaration and the Governing Documents or the Condominium Act, the Governing Documents or the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, this Declaration shall control.

23.4 **Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

23.5 **Exhibits.** There is hereby incorporated within this Declaration any materials contained in any of the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

23.6 **Headings and Capitalization.** The headings used in the condominium documents, and the capitalization of certain words, are for reference and convenience purposes only, and do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.

24. 55 or Over Age Community.

24.1 **Statement of Intent.** It is hereby declared by the developer, U.S. Home Corporation, that the developer desires and intends to provide housing for older persons, as defined in the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995 (hereinafter referred to as the "Acts") and the Federal Rules and Regulations (hereinafter referred to as the "Federal Regulations") as promulgated by the Department of Housing and Urban Development (hereinafter sometimes referred to as "HUD"). It is more specifically the desire and intention of this community to meet the exemption for housing for older persons as is provided for in 24 CFR Part 100, Section 100.304 (hereinafter referred to as the "55 or Over Housing Exemption"). Section 100.304 implements Section 807(b)(2)(c) of the Acts which exempts housing communities intended and operated for occupancy by at least one (1) person 55 years of age or over per unit that satisfy certain criteria. In this endeavor, the following occupancy restrictions and procedures shall govern. Further, the Association shall do whatever is required by the Acts and Federal Regulations to publish its intention to comply with, and adhere to, policies and procedures which demonstrate an intent to provide housing for persons 55 year of age or over. The Acts and Federal Regulations, as amended from time to time, are hereby incorporated by reference into this document. Reference to the Acts and to the Federal Regulations in this document shall mean the Acts and the Federal Regulations as they are amended from time to time.

24.2 **Fair Housing Definitions:**

(A) "Acts" shall mean and refer to the (Federal) Fair Housing Amendments Act of 1988 (Pub.L. 100-430, approved September 13, 1988; 102 STAT.1619 and the Housing for Older Persons Act of 1995.)

(B) "FEDERAL REGULATIONS" shall mean and refer to the Federal rules and regulations promulgated by the Department of Housing and Urban Development, which became effective on March 12, 1989 and May 3, 1999.

(C) "55 OR OVER HOUSING EXEMPTION" shall mean and refer to the exemption for housing for older persons (55 or over housing) as is originally provided for in Section 807(b)(2)(C) of the Acts.

24.3 **Minimum Age Restrictions.** Permanent occupancy of a unit shall be restricted as follows provided that the restrictions contained in the remaining provisions of this Section are met:

(A) No persons under the age of eighteen (18) years shall be permitted to permanently reside in the units.

(B) However, a person under the age of eighteen (18) years may be permitted to visit and temporarily reside in a unit for a period of time not to exceed thirty (30) days in the aggregate in any calendar year, nor more than fifteen (15) consecutive days. The visitation time periods shall not be cumulative from year to year. Only overnight visitation shall be considered in the computation. So by way of example, if an under-aged person visits overnight, two (2) days of visitation shall be computed. If an under-aged person visits during the day only and does not stay overnight, no days of visitation shall be computed.

24.4 Age Restriction. At least eighty percent (80%) of the occupied Lots or Units shall be occupied by at least one permanent occupant who is 55 years of age or older, and all permanent occupants must be at least eighteen (18) years of age or older. A "permanent occupant" shall be defined in these restrictions as a person who occupies a residential structure on a Lot or Parcel for more than eight (8) weeks in any calendar year. A surviving or divorced spouse who is a permanent occupant under the age of 55 years and who was the spouse of a permanent occupant 55 years of age or older will be allowed to remain as a permanent occupant. Other than the Declarant, no Owner may rent or sell a residential structure unless at least one person who will occupy the residential structure is a permanent occupant 55 years of age or older. The Board shall have the right to require prior age verification from all prospective occupants. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to sell Lots or Units which shall be permanently occupied by at least one person who is 50 years of age or older; provided that such sales do not conflict with any federal, state or local law. The Declarant or the Board shall have the right to promulgate, from time to time, reasonable rules and regulations governing the visitation and temporary residence of, or use of the Common Area and facilities by, persons under eighteen (18) years of age.

24.5 Guest Visitation Limitation. Use of units by the following guests of the designated occupant when the designated occupant is not present in the unit shall be restricted as follows: No guest shall use or occupy a unit in excess of thirty (30) days in a calendar year, of which the maximum number of continuous days shall be fifteen (15). Each day as well as part of a day shall be counted in this computation. This Section shall be in addition to restrictions pertaining to guests which may be contained elsewhere in the constituent documents and Rules and Regulations of the Association, as amended from time to time. The designated occupant shall be considered to be not present in the unit when the designated occupant does not stay overnight in the unit along with the guest.

(A) A "guest" shall mean and refer to any person who is visiting a unit without requirement to contribute money, perform any services or provide any other consideration to the Owner in connection with such visit/occupancy. A permanent occupant of a unit shall not be considered as a guest. Furthermore, an Owner of a unit shall never be considered a guest of the unit he or she owns, unless the Owner is visiting a lessee in the unit.

(B) Registration of Guests. All guests who visit when the designated occupant is not present in the unit must register with the Association prior to or upon arrival at Terrace II at Heritage Cove. The Board of Administration shall be empowered to adopt a form for use in connection with the registration of such guests, for which the guests must sign. The form shall include an acknowledgment of the following: (i) relationship to the designated occupant; (ii) the intended length of stay; (iii) that the guest has received a copy of the constituent documents and Rules and Regulations of the Association, or summation thereof, and agrees to abide by them; (iv) and such other reasonable information determined by the Board of Administration from time to time. Such guest shall not be entitled to visit unless he or she registers with the Association as required in this Section.

(C) Unauthorized Guest Visit. Any guest visit not authorized pursuant to the terms of this Section shall be deemed improper, entitling the Association to bar access of the guest to the unit and recreational facilities and/or shall entitle the Association to obtain an injunction removing the guest and his or her personal belongings from the unit.

(D) Other Restrictions. The restrictions on guests in this Section shall be in addition to other restrictions which may be contained elsewhere in the constituent documents and Rules and Regulations of the Association.

24.6 **Exceptions to Section 24.6.**

(A) Surviving Spouse or Cohabitant. Section 24.6 shall not be applicable in the case of the death of the designated occupant whose surviving spouse or cohabitant is under 55 years of age provided that the surviving spouse or cohabitant resided with the designated occupant at the time of the designated occupant's death. Under such circumstances, the surviving spouse or cohabitant shall be allowed to continue to occupy the unit irrespective of age so as to prevent disruption of the lives of surviving spouses and cohabitants under age 55, when the over 55 designated occupant dies. Notwithstanding however, no persons under the age of eighteen (18) years shall be permitted to permanently reside in the units.

(B) Recipient of Legacy. The Federal Regulations recognize that the 20% requirement is not intended to exclude all incoming households, therefore Section 24.4 shall not be applicable in the event that an Owner of a unit dies and the unit is inherited by an individual who is under 55 years of age, the recipient of legacy and his or her household shall be allowed to occupy the unit. Notwithstanding however, no persons under the age of eighteen (18) years shall be permitted to permanently reside in the units.

24.7 **Contract/Covenant.** Every Owner and lessee shall be deemed to have a contract with the Association to ensure that the occupancy requirement in Section 24.4 is met at all times. Even though this occupancy requirement is a contract between the Association and the Owner or lessee, as applicable, this amendment shall be deemed to be a covenant running with the land. Furthermore, the Owner shall be responsible to ensure that his/her lessee(s) comply with this occupancy requirement.

24.8 **Proof of Age.**

(A) All persons occupying units shall deliver to the Association, a completed Association form demonstrating proof of age and any other documentation required by the Association.

(B) Any person(s) not providing such documentation, when and as requested by the Board of Administration, shall be validly presumed by the Association and by a Court of law to be under the age of 55 years, even though the persons may actually be 55 years of age or over.

24.9 **Remedies for Non-Compliance.** The Association concurrently shall have any one or more of the following remedies for non-compliance in addition to those provided elsewhere in the constituent documents.

(A) Lease of a Unit.

(i) In the event of a lease of a unit, and the occupancy and other requirements of this amendment are not met, the Association shall be entitled to file for and obtain an injunction against the Owner of the unit and lessee(s) and/or other occupants on the unit, removing the unauthorized lessee(s) and/or other unauthorized occupants.

(ii) The Association shall also be entitled to evict the unauthorized lessee(s) and other unauthorized occupants on the unit, as agent for the Owner(s). This right of eviction by the Association shall apply only:

(a) After the expiration of seven (7) working days from the date on which the Association mails notice to the Owner(s) by certified mail, return receipt requested, or provides notice by hand delivery; and

(b) Provided that the Owner(s) fail(s) to commence eviction proceedings on his/her/their own and fails to so notify the Association, within the seven (7) day period.

- (iii) The lease shall specify, and if it fails to so specify the lease shall be deemed to specify, that the lessee(s) and all other occupants shall abide by the constituent documents for Terrace II at Heritage Cove and the Rules and Regulations of the Association; and shall specify that the Association has the remedies provided for in this Section 24.9(A). Costs and attorney's fees incurred by the Association in connection with the exercise of its remedies under this Section 24.9(A) provided that the Association prevails, shall be the responsibility of the Owner(s) of the unit, and shall to the extent awarded by a Court under Chapter 83, Florida Statutes, shall also be the responsibility of the lessee(s).

(B) **Other Occupancies (other than Leases).** In the event of an existing Ownership; in the event of use by guests; or in the event of a sale, gift, or other transfer of title; and the occupancy requirements of this amendment are not met, the Association may disapprove the transfer and shall be entitled to file for and obtain an injunction against the Owner(s) of the unit and all occupants in the unit, removing the unauthorized occupants (including the Owner(s)). In that event, if the Association prevails, the Owner(s) shall be responsible for costs and attorney's fees incurred by the Association in connection with its enforcement of this Section 24.9(B).

24.10 **Registration Required.** All Owners, lessees and occupants must register with the Association at the time of becoming a member of the Association or, in the case of a non-Owner, at the time of the commencement of the lease agreement, by delivery of the items referred to below. Furthermore, no persons shall attain grandfather status under Section 24.6(A) above unless the person registers with the Association by delivery of the items referred to below. These items are as follows:

- (A) A fully completed and signed Association form to be provided by the Association; and
- (B) Documentation demonstrating proof of age as provided for in Section 24.8 above; and
- (C) In the event of a lease, a fully executed copy of the lease must also be delivered (if not already on file with the Association). It shall be the responsibility of the particular Owner, not the Association, to provide the lessee(s) and/or other occupants of the unit with the registration form for the lessee(s) occupant(s) to complete and return to the Association within five (5) days from the date of receipt.

24.11 **Additional Occupants.** Even though a person under the age of 55 years is given grandfather status under Section 24.6(A) above or is provided with an exception under Section 24.6(B) above, this shall not entitle additional persons to occupy the unit, unless:

- (A) That additional person is 55 years of age or older; or
- (B) That additional person is also accorded grandfather status under Section 24.6(A) above; or
- (C) That additional person is legally married to the surviving spouse or cohabitant mentioned in Section 24.6(B) above.

24.12 **Non-Occupancy Status.** Each Owner or lessee, as applicable, shall notify the Association of any periods of time during which the unit becomes unoccupied. As used in this Section, "unoccupied" is defined to mean any intended absence of all permanent residents of the unit, for a period in excess of six (6) months. It is understood that this is a necessary requirement because the Federal Regulations require record keeping of occupied and unoccupied units.

24.13 **Additional Provisions.** Special provisions concerning the Acts and Federal Regulations.

(A) Notwithstanding any other provision in this Declaration, to the contrary, the following shall apply: Upon the affirmative vote of two-thirds (2/3) of the Owner's voting interests of the Association which vote may be evidenced by written agreement or consent, present and voting at a duly called meeting, any one or more of the following amendments to this Declaration may be approved and become effective.

- (i) Any amendment which is necessary to enable Terrace II at Heritage Cove to attain or retain the "55 or Over Housing Exemption" of the Acts.
- (ii) Any amendment which is necessary to refine those amendments approved by the Association relating to the Acts and/or Federal Regulations.
- (iii) Any amendment which is necessary to delete any or all amendments approved by the Association relating to the Acts and/or Federal Regulations.
- (iv) Any amendment which is made which otherwise relates to the Acts and/or Federal Regulations.
- (v) Any amendment which may be required due to regulations adopted from time to time by the Federal National Mortgage Association (FNMA).

IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written.

Signed in the presence of:

U.S. HOME CORPORATION,
a Delaware corporation

Sharon J. Upton
Witness
Print name: SHARON J. UPTON

By: *Joseph Grimes*
Joseph Grimes, Division President
10481 Six Mile Cypress Pkwy.
Ft. Myers, FL 33912

(CORPORATE SEAL)

Sharon B. Olney
Witness
Print name: Sharon B. Olney

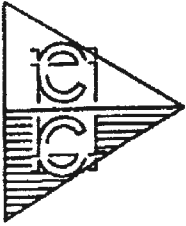
STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was executed before me this 18th day of May 18 2000
by Joseph Grimes, Division President, of U.S. Home Corporation, a Delaware corporation, on
behalf of the corporation. He is personally known to me, or did produce
personally known as identification.

Evelyn D. Dushek
Notary Public Signature



Evelyn D. Dushek
Commission # CC 892114
Expires Jan. 22, 2004
Bonded Thru
Atlantic Bonding Co., Inc.



INK ENGINEERING, INC.

ENGINEERS • SURVEYORS • PLANNERS

3660 CENTRAL AVE, SUITE 8 • FORT MYERS, FLORIDA 33901 • TEL (941) 931-0455 • FAX (941) 931-0456

EXHIBIT "A"

JULY 14, 2000
FILE NO. 9720C2.LGL

LEGAL DESCRIPTION:

TERRACE II AT HERITAGE COVE, A CONDOMINIUM

PART OF TRACT "E" OF HERITAGE COVE, PHASE I, A SUBDIVISION AS RECORDED IN PLAT BOOK 64, PAGES 90-100 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT "A"

BEGIN AT THE SOUTHWEST CORNER OF TERRACE I AT HERITAGE COVE, A CONDOMINIUM AS RECORDED IN CONDOMINIUM BOOK 27, PAGE 62; THENCE ALONG THE SOUTHERLY LINE OF SAID TERRACE I AT HERITAGE COVE, A CONDOMINIUM, FOR THE FOLLOWING 2 CALLS: (1) N.49°12'37"E., FOR 68.63 FEET; (2) THENCE N.58°40'03"E., FOR 113.51 FEET TO A POINT ON A CURVE TO THE LEFT, HAVING: A RADIUS OF 297.00 FEET, A CENTRAL ANGLE OF 21°11'13", A CHORD BEARING OF S.41°55'34"E.; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 109.82 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.52°31'10"E., FOR 124.90 FEET; THENCE S.25°34'00"W., FOR 110.00 FEET; THENCE S.12°59'34"E., FOR 32.55 FEET; THENCE S.72°02'09"W., FOR 28.56 FEET; THENCE N.46°49'01"W., FOR 166.54 FEET; THENCE N.60°33'52"W., FOR 130.86 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING: A RADIUS OF 70.00 FEET, A CENTRAL ANGLE OF 19°21'59", A CHORD BEARING OF N.50°52'53"W.; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 23.66 FEET TO THE POINT OF BEGINNING.

TRACT CONTAINS 1.832 ACRES, MORE OR LESS.


TOGETHER WITH:

TRACT "B", (COVERED PARKING, A L.C.E.)

COMMENCE AT THE SOUTHWEST CORNER OF SAID TERRACE I AT HERITAGE COVE, A CONDOMINIUM ALSO BEING A POINT ON A CURVE TO THE LEFT, HAVING: A RADIUS OF 70.00 FEET, A CENTRAL ANGLE OF 19°21'59", A CHORD BEARING OF S.50°52'53"E.; THENCE ALONG THE ARC OF SAID CURVE, AN ARC LENGTH OF 23.66 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE S.60°33'52"E., FOR 130.86 FEET; THENCE S.20°59'21"W., FOR 28.08 FEET TO THE POINT OF BEGINNING; THENCE S.46°49'01"E., FOR 100.00 FEET; THENCE S.43°10'59"W., FOR 20.00 FEET; THENCE N.46°49'01"W., FOR 100.00 FEET; THENCE N.43°10'59"E., FOR 20.00 FEET TO THE POINT OF BEGINNING.

TRACT CONTAINS 0.046 ACRES, MORE OR LESS.

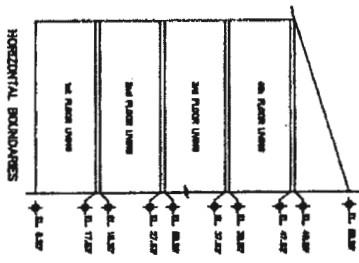
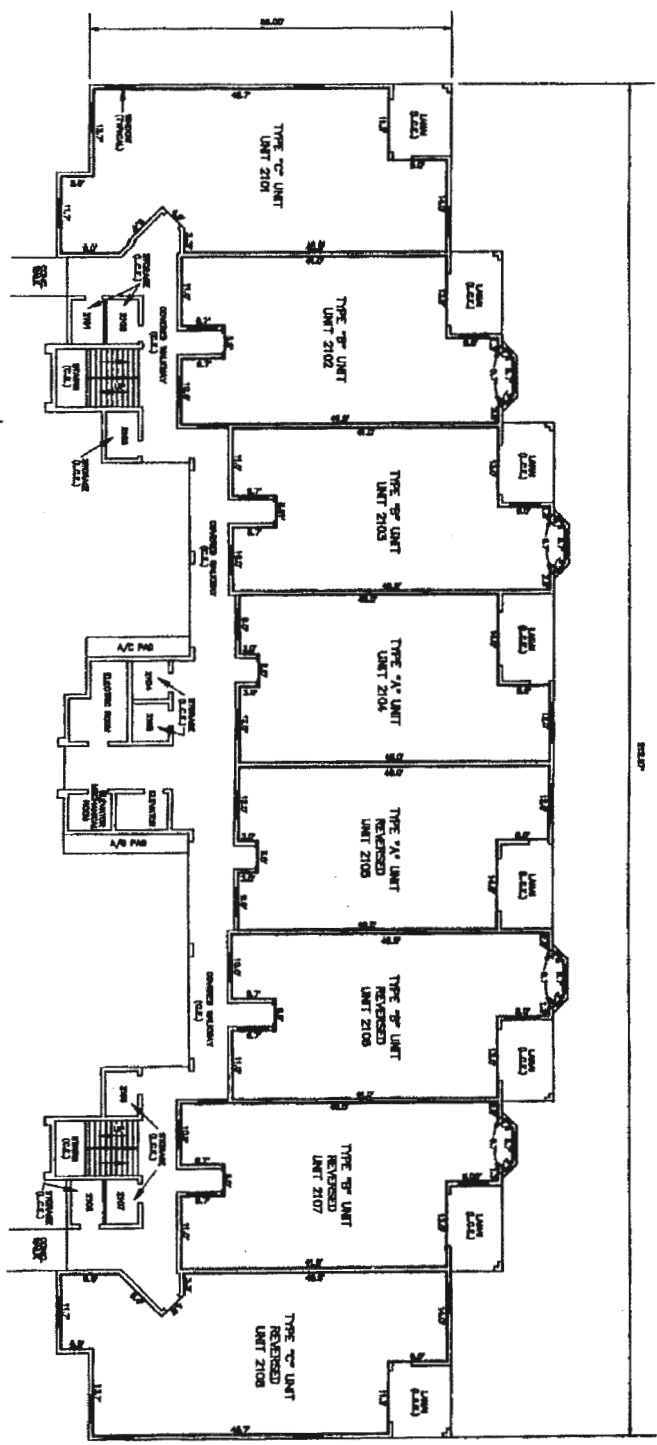
INK ENGINEERING INC. (LB 856)


GORDON D. MEIERS
PROFESSIONAL SURVEYOR MAPPER
FLORIDA CERTIFICATE NO. 2858

THIS INSTRUMENT WAS PREPARED BY
JNE ENGINEERING, INC.
 REGISTERED PROFESSIONAL ENGINEERS
 1000 NE 10th Ave., Suite 200, Portland, OR 97232
 TEL: (503) 255-1111 FAX: (503) 255-1112

EXHIBIT "B"
 TO THE DECLARATION OF CONDOMINIUM OF
TERRACE II AT HERITAGE COVE
A CONDOMINIUM

CONDOMINIUM BOOK 28 PAGE 65
 SHEET 2 OF 4
 MAY, 2000



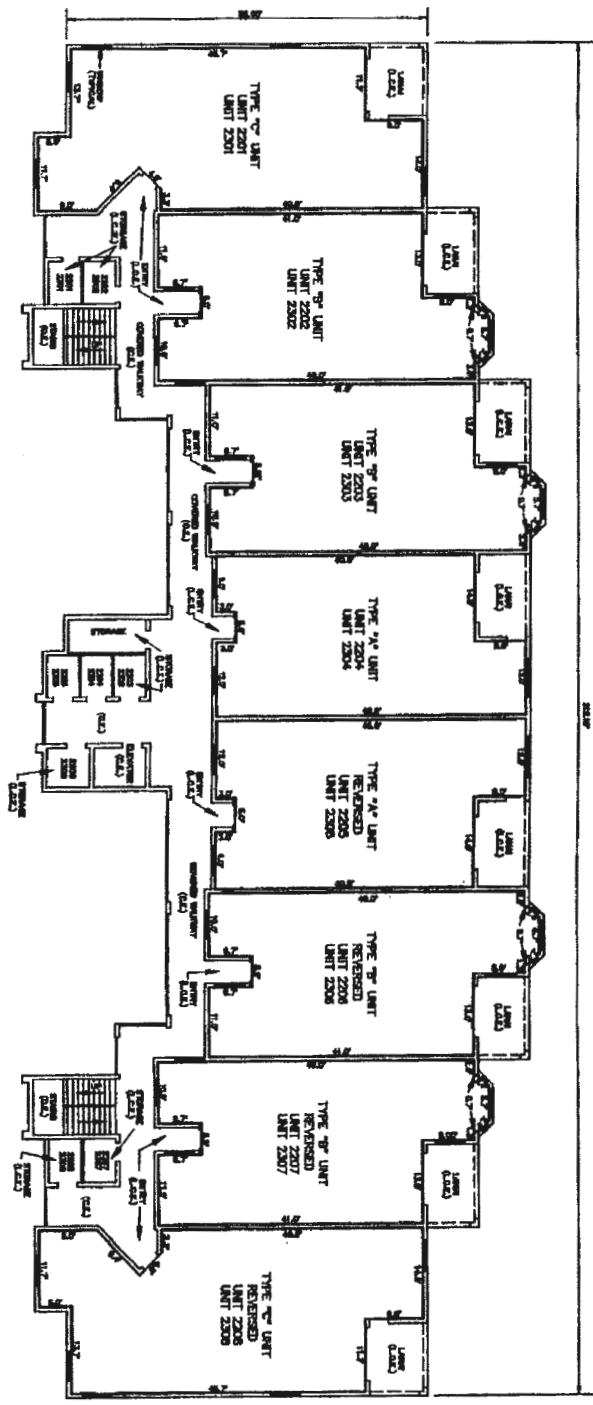
DATE	7/8/00	BY	JNE
DESCRIPTION	FINAL	PROJECT	CP
SCALE			
PROJECT NO.			
CLIENT			

1ST FLOOR PLAN
 UNIT 2401
 COMMON AREA
 UNIT 2401

THIS INSTRUMENT WAS PREPARED BY
DKS ENGINEERING, INC.
 ENGINEERS - ARCHITECTS - SURVEYORS
 1010 NE 10th St., Suite 200, Portland, OR 97232
 TEL: 503-255-1111 FAX: 503-255-1112

EXHIBIT "D"
 TO THE DECLARATION OF CONDOMINIUM OF
TERRACE II AT HERITAGE COVE
 A CONDOMINIUM

CONDOMINIUM BOOK 218-2182 110
 JULY 2000
 SHEET 3 OF 4



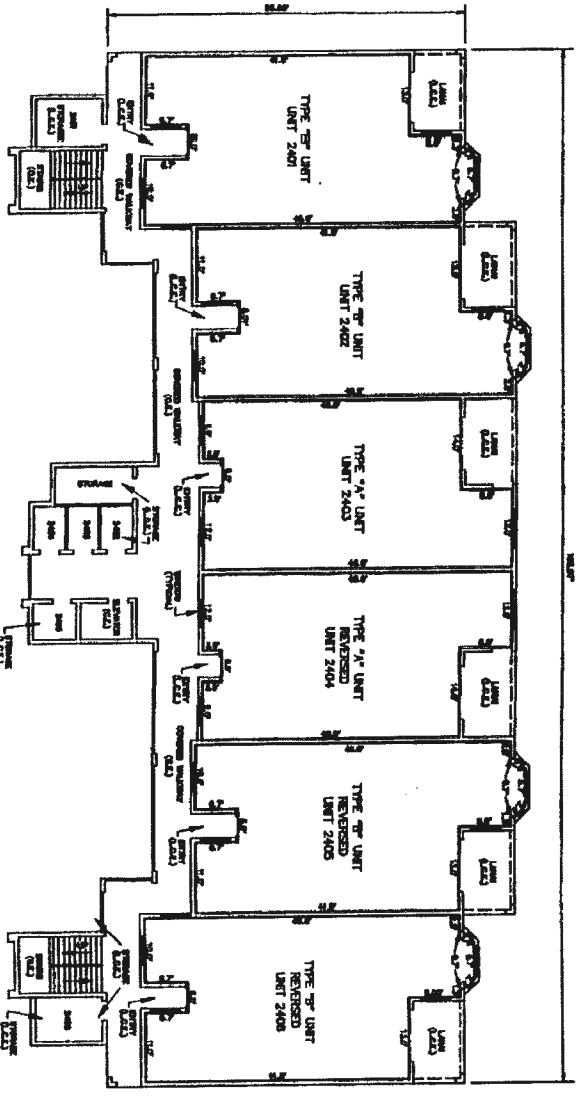
2nd AND 3rd FLOOR PLAN



DATE	BY	REVISION
7-2-00	DKS	1
7-2-00	DKS	2
7-2-00	DKS	3
7-2-00	DKS	4
7-2-00	DKS	5
7-2-00	DKS	6
7-2-00	DKS	7
7-2-00	DKS	8
7-2-00	DKS	9
7-2-00	DKS	10

THIS INSTRUMENT WAS PREPARED BY
HKS ENGINEERING, INC.
 ARCHITECTS - ENGINEERS - PLANNERS
 3000 NE 10th Avenue, Suite 200
 Portland, Oregon 97232
 TEL: 503/253-6600 FAX: 503/253-6601

EXHIBIT "B"
 TO THE DECLARATION OF CONDOMINIUM OF
TERRACE II AT HERITAGE COVE
 A CONDOMINIUM




4th FLOOR PLAN



NO.	DATE	BY	CHKD.
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State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of TERRACE II AT HERITAGE COVE ASSOCIATION, INC., a Florida corporation, filed on January 21, 2000, as shown by the records of this office.

The document number of this corporation is N00000000549.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-eighth day of January, 2000



CR2EO22 (1-99)

Katherine Harris
Katherine Harris
Secretary of State