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**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
VILLAS II AT HERITAGE COVE**

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THIS DECLARATION is made this 6th day of June, 2001, by U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida, (the "Declarant") for itself and its successors, grantees and assigns.

PREMISES:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" to this Declaration, and desires to create thereon a residential neighborhood of up to seventy-two (72) single family Villas, grouped in clusters of six (6) villa units per building of attached residences; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in the Neighborhood, and to create a corporate entity to which will be delegated and assigned the powers of administering and enforcing this Declaration of Covenants, Conditions, and Restrictions, maintaining the Neighborhood Common Areas and insuring the Properties, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has created, under the laws of the State of Florida, a corporation not for profit known as The Villas II at Heritage Cove Association, Inc., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, the Declarant declares that the real property described in Exhibit "A" to this Declaration, as it may be amended from time to time, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth. All provisions of this Declaration shall be equitable servitudes which run with the land, and which bind and inure to the benefit of all present and future owners of Lots and Villas. The acquisition of any ownership interest in the Properties, or the lease, occupancy, or use of any portion of a Villa, shall constitute an acceptance and ratification of all provisions of this Declaration as amended from time to time, and indicate agreement to be bound by its terms.

1. DEFINITIONS. Certain words and phrases used in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Declaration of Covenants, Conditions and Restrictions for Heritage Cove, as originally recorded in the Official Records of Lee County, Florida, in Book 3178, at Page 0965, et seq., as the same is amended from time to time, or, if different, the meanings stated below, unless the context clearly requires otherwise.

1.1 "**Architectural Review Committee**" or "**ARC**" means the committee described in Section 6 of the Community Association Declaration.

1.2 "**Association**" means The Villas II at Heritage Cove Association, Inc., a Florida corporation not for profit.

1.3 "**Board**" means the Board of Directors of the Association.

1.4 "**Community Association**" or "**the Community Association**" means Heritage Cove Community Association, Inc., a Florida corporation not for profit.

1.5 "**Community Association Declaration**" means the Declaration Covenants, Conditions and Restrictions for Heritage Cove, as originally recorded in Book 3178, at Pages 0965-1053 et seq., of the Official Records of Lee County, Florida, and as amended from time to time.

1.6 "**County**" A reference in any of the Governing Documents to "the County" or to any County other than Lee County, Florida, is unintentional and shall be construed as intended to mean and refer to Lee County.

1.7 "**Declarant**" or "**Developer**" means U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida. Wherever either term is used in this Declaration, or in the Articles or Bylaws of the Association, it shall always be deemed to include any successor in interest to the Declarant's development rights and obligations.

1.8 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Villas II at Heritage Cove, as amended from time to time.

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

(A) One natural person.

(B) Two or more natural persons who commonly and regularly 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 not more than one person who is not so related to some or all of the others.

1.10 "Governing Documents" means the Community Association Declaration, and the Articles of Incorporation and Bylaws of the Community Association, as well as this Declaration, and the Articles of Incorporation and Bylaws of the Association. If there is conflict in the interpretation of the Governing Documents, the order of priority shall be the same as the order in which they appear in this Section 1.10.

1.11 "Guest" means a person who is physically present in, or occupies a Villa on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.12 "Institutional Mortgagee" means the holder of a mortgage against a Lot or Living Unit, which mortgagee or assignee is a bank, savings and loan association, mortgage 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 Lot or Living Unit which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private agency engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Living Unit.

1.13 "Lease" means the grant by a Villa owner of a right to occupy the owner's Villa for valuable consideration.

1.14 "Living Unit" or "Villa" means any or all the seventy-two (72) Villa residences which will be constructed on the Lots, each designed for use and occupancy as a single-family residence. Wherever either term is used, it shall be interpreted as though it were followed by the words "and the Lot on which it is constructed," unless the context clearly requires another meaning.

1.15 "Lot" means one or more of the seventy-two (72) numbered parcels of land, as graphically shown in Exhibit "B" hereto, into which the Properties have been subdivided, upon each of which a Living Unit has been, or is intended to be, constructed. Wherever "Lot" is used, it shall be interpreted as though it were followed by the words "and the Living Unit constructed thereon," unless the context clearly requires another meaning.

1.16 "Neighborhood Common Areas" means all portions of the Properties exclusive of the Lots.

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

1.18 "**Owner**" or "**Member**" means a person who is the record owner of legal title to a Lot.

1.19 "**Primary Occupant**" means the natural person approved for occupancy, together with that person's family, when legal title to a Villa is held in the name of more than two persons, or by a Director or a corporation or other entity which is not a natural person, as further provided in Section 14.1 below.

1.20 "**Properties**" or "**Neighborhood**" means all real property which is subject to this Declaration, and includes both Neighborhood Common Areas and Lots.

1.21 "**Rules and Regulations**" means the administrative rules and regulations governing use of the Neighborhood Common Areas and procedures for operating the Association and the Properties, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

1.22 "**Service Charge**" means a fee or charge against one or more owners, Lots or Living Units for any service, material or combination thereof which may be provided by the Neighborhood Association for the use and benefit of the owner on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the owners accepting or receiving such material or service shall be a service charge against the Lots or Living Units so benefited. The owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.23 "**Temporary**" or "**Temporarily**" means not more than thirty (30) days in any period of six (6) consecutive months.

1.24 "**Villas II at Heritage Cove**" means, and is the name of, the Properties.

1.25 "**Villas II Documents**" means this Declaration and all recorded exhibits hereto, as the same may be amended from time to time.

1.26 "**Voting Group**" means a group of members of the Community Association who are represented by one (1) or more Directors of the Community 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.

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

2. CONTINUING DEVELOPMENT. This Neighborhood is being developed by the Declarant into Lots intended for "zero lot line" cluster housing. Other areas of Heritage Cove will contain other types of residential development, and may be under construction for an extended time. Incident to the development process, the quiet enjoyment of the Properties may be unavoidably interfered with to some extent by construction and sales operations. From time to time, Declarant and others may present to the public certain renderings, plans, and models showing possible future development of Heritage Cove. Declarant does not warrant in any way the accuracy of these renderings, plans or models. They are primarily thematic and do not represent a guaranteed final development plan of Heritage Cove.

3. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS. The operation, of the Neighborhood, and the management and ownership of the Neighborhood Common Areas shall be by The Villas II at Heritage Cove Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

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

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

3.3 Delegation of Management. The Association may contract for the management and maintenance of the Properties and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, and maintenance of the Neighborhood Common Areas, with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Governing Documents and Sections 720.301 through 720.312, inclusive, Florida Statutes (2000), as amended.

3.4 Board of Directors. Except as expressly otherwise provided by law or by the Villas II Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members. An owner does not have the authority to act for the Association by virtue of being an owner.

3.5 Association As Owner of Lots. The Association has the power to purchase Lots and Living Units, and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns two (2) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests.

3.6 Members. Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

3.7 Membership Roster. The Association shall maintain a current roster of names and mailing addresses of owners and primary occupants. A copy of the up-to-date roster shall be available to any owner upon request.

3.8 Limitation on Liability. Notwithstanding the duty of the Association to maintain and repair the Neighborhood Common Areas, and certain parts of the Villas, the Association is not liable to owners for property damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the association, or caused by the elements or owners or other persons.

3.9 Powers and Duties. The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

3.10 Community Association Voting. All votes of the members pertaining to the Community Association, except in the election of Directors, shall be cast by the Voting Representative of this Neighborhood Association, as further provided in Sections 3.12 and 3.13 of the Bylaws. Votes of the Declarant Member shall be cast by its designated representative. Voting in the election of Directors shall be by ballots the members personally cast, as further provided in the Bylaws.

3.11 Member Approval of Certain Litigation. Notwithstanding any other provisions of the Governing Documents, the Association must obtain the prior approval of at least two-thirds (2/3rds) of its voting interests before paying or obligating itself to pay 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.

3.12 Official Records. The official records of the Association shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt by the Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the development. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

4. ASSESSMENTS. The Association has the authority to levy assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Neighborhood Common Areas and association property, the expenses of insurance for the Association and/or Directors and officers; the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as common expense by this Declaration or the Bylaws. If the Association enters into a contract for bulk service cable television, the cost of a duly franchised cable television service obtained pursuant to a bulk contract shall be a common expense.

4.1 Covenants to Pay Assessments. Declarant, for each Lot within the Neighborhood, hereby covenants, and each subsequent owner of a Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (A) the Lot's share of annual assessments based on the annual budget of common expenses adopted by the Association;

(B) the Lot's share of special assessments for Association expenditures not provided for in the annual budget; and

(C) any special charge against one or more Lots specifically authorized in this Declaration or the Bylaws.

Assessments and charges shall be established and collected as provided herein and in the Bylaws. The obligation to pay the assessments provided for herein commences as to each Lot on the day of the first conveyance of the Lot to an owner other than the Developer, except that no Lot shall be subject to assessment until a certificate of occupancy or like authorization has been issued by the county as to the Villa located on the Lot. The annual assessments, special assessments and special charges, together with interest, late payment fees, costs, and reasonable attorney's fees, shall be the personal obligation of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title to a Lot, voluntary or otherwise, the new owner shall be jointly and severally liable with the previous owner for all unpaid assessments and charges coming due prior to the time of such conveyance, without prejudice to the right of the new owner to recover from the previous owner any such amounts paid by the new owner. Except as provided in Section 4.3 below as to the Developer, and in Section 4.6 below as to certain persons acquiring title through foreclosure, or deed in lieu of foreclosure, of a first mortgage, no owner may be excused from the payment of assessments and charges unless all owners are similarly excused.

4.2 Share of Assessments. Each Lot and its owner(s) are liable for a share of all annual and special assessments levied by the Association, which share shall be a fraction of the whole, the numerator of which is the number "one" (1) and the denominator of which is the actual number of Lots in the Neighborhood. Until the development of the Neighborhood is completed, and all Villas have been sold to purchasers other than a developer, the denominator shall be conclusively presumed to be the number "seventy-two (72)."

4.3 Developer's Guarantee of Assessments and Share for Lots Owned By It. The Developer guarantees that from the recording of this Declaration in the public records of the County, until December 31, 2000, or such earlier date as owners other than the Developer first elect at least a majority of the Directors of the Association as provided in Section 15 of this Declaration (the "turnover date"), assessments against the Lots for all Association purposes will not exceed \$330.00 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 the Lots will not exceed \$379.50 per quarter. If the turnover date has not occurred by December 31, 2001, then the Developer further guarantees that from January 1, 2002, until the turnover date, assessments against the Lots will not exceed \$436.42 per quarter. During this guarantee period, the Developer shall be excused from the payment of assessments for Lots owned by it, and instead shall be obligated to pay all Association expenses actually incurred which exceed assessments receivable from all other

owners at the guaranteed level, less other Association revenues from all other sources. Such difference (if any), shall not include the cost of funding reserves for operating expenses, depreciation, capital expenditures or deferred maintenance. After this guarantee period, the Developer shall have the same responsibility to pay assessments on Lots with completed Villas for which a certificate of occupancy has been issued as any other owner.

4.4 Establishment of Liens to Secure Payment. Any and all assessments and charges levied by the Association, together with interest at the highest rate allowed by law, and other costs and collection (including, but not limited to attorney's fees) are hereby declared to be a continuing lien upon the Lot and Living Unit against which each such assessment or charge is made. The lien relates back to the date of recording this Declaration, and is superior to any Homestead rights any owner may acquire. No owner may exempt himself from personal liability, or release the Lot owned by him from the liens and charges hereof by waiving the use and enjoyment of the Common Areas, or by abandoning the Villa. The lien is perfected by recording a Claim of Lien in the Public Records of the county, setting forth the amount and due date of each unpaid assessment or charge. To be valid the Claim of Lien must be signed by an officer or authorized agent of the Association, and must contain the legal description of the Lot. A recorded Claim of Lien secures payment of all assessments or charges due at the time of recording, as well as all assessments or charges coming due subsequently, including all interest, late payment fees, attorney's fees and costs incident to the collection process, until the Claim is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by the Claim of Lien, the party making payment is entitled to a satisfaction.

4.5 Priority of Lien; Non-liability of Certain Acquirers of Title. Except as may be otherwise expressly provided herein or by law, the Association's lien for unpaid assessments shall be subordinate and inferior all mortgages or other liens regardless of when recorded. A lease of a Villa shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed. Exception: regardless of the priority of the lien, anyone who acquires title to a Lot and Living Unit by foreclosure, or deed in lieu of foreclosure, of an institutional first mortgage (the "acquirer"), and anyone claiming by, through or under the acquirer, shall not be liable to pay any assessments or charges that came due before the acquirer's acquisition of title, other than those assessments which came due during the one hundred eighty (180) days immediately preceding the date of acquisition of title by the acquirer. Any unpaid assessments or charges which cannot be collected by reason of this exception shall be treated as common expenses, divided equally among, payable by, and assessed against, all Lots including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

4.6 Collection of Assessments. If the owner of any Villa fails to pay any charge or assessment, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

(A) To charge interest on the unpaid amount, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose a late payment fee of up to five percent (5 %) of the delinquent amount. This fee shall not be considered a "fine" as provided for in Section 12.3 below, and the procedural requirements for levying fines shall not apply to the imposition of late payment fees.

(B) To accelerate the due date for any and all remaining unpaid installments of the annual assessment against the owner's Villa for the fiscal year.

(C) To file an action in equity to foreclose its lien. Unless otherwise required by law, the lien may be foreclosed by an action in the name of the Association in the same manner as provided in Section 718.116 of the Florida Condominium Act, as it may be amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.

(D) To bring an action at law for a money judgment against the owner, without waiving any lien foreclosure rights. The Association may refuse to accept any tendered payment that bears a restrictive endorsement, and such will be the equivalent of no payment. Payment by check is not deemed received until the check has cleared.

4.7 Estoppel Information. The Association shall, within fifteen (15) days after receiving a written request for same, certify to any owner, prospective purchaser of a Villa, or mortgagee in writing (sometimes referred to as an "estoppel letter") signed by an officer of the Association, setting forth whether all assessments and other sums due the Association have been paid. Such certificate may be relied upon by all interested persons except the Villa owner.

4.8 Termination of the Association. If the Association no longer exists for any reason, and if no other Neighborhood Association has assumed its duties and functions, the Community Association shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

5. ARCHITECTURAL AND AESTHETIC CONTROL. The Developer is seeking to create a Neighborhood of architecturally harmonious homes. Among the techniques employed to accomplish this result is the use of certain carefully chosen colors for exterior paint and roof materials. In order to protect the integrity of the development plan and preserve the values of the Villas, after the initial construction of the Villas by the Developer, no owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style of roofing materials used on the Residence or appurtenant structure, without prior written approval of Architectural Review Committee of the Community Association (the "ARC"). Except for the initial construction of Villas and related improvements by the Developer, no building, structure or other improvement shall be erected or

altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Neighborhood Common Area be performed without the prior written approval of the Board of Directors, as well as the ARC. In obtaining the written approval, owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal to approve proposed changes may be based on purely aesthetic reasons. The membership, term of office, composition, compensation (if any), qualifications and procedures of the ARC shall be as provided in the Community Association Declaration and Bylaws of the Community Association.

6. APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.

6.1 Appurtenances to Each Lot. The owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

(A) Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.

(B) The non-exclusive right to use the Neighborhood Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.

(C) Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth in Section 4.2 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.

(D) Membership and voting rights in the Community Association, and the non-exclusive right to use Community Association Common Areas, subject to the restrictions and limitations provided in the Governing Documents.

(E) Other appurtenances as may be provided in the Governing Documents. The appurtenances to a Lot and Living Unit automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot and Living Unit. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Villas.

6.2 Use and Possession. An owner is entitled to exclusive use and possession of his Lot and Living Unit. He is entitled to non-exclusive use of the Neighborhood Common Areas in accordance with the purposes for which they are intended, but no use of any Lot, Villa or Common Area may unreasonably interfere with the rights of other owners or residents. No Lot or

Villa may be sub-divided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the walkways and private roads laid out on the Community Association Common Areas for use in common with all other owners, their tenants, guests and invitees. The portions of the Neighborhood Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners and each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

(A) The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of the Neighborhood Common Areas and improvements thereon.

(B) The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Neighborhood Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of the owners to use the Common Areas for the purposes intended.

(C) The right of an owner to the non-exclusive use and enjoyment of the Neighborhood Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.

6.3 Title to Neighborhood Common Areas. On or before the date when owners other than the Developer first elect a majority of the Board of Directors, the Developer shall convey the Neighborhood Common Areas to the Association by Special Warranty Deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record. From the date this Declaration is recorded, the Association shall be responsible for the maintenance and operation of the Neighborhood Common Areas, and any improvements and personal property thereon. The Developer shall have the right from time to time to enter upon the Neighborhood Common Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Neighborhood Common Areas that the Developer elects to build.

THE ASSOCIATION AND THE MEMBERS ARE OBLIGATED TO ACCEPT TITLE TO THE NEIGHBORHOOD COMMON AREAS AND FACILITIES, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE ASSOCIATION BY THE DEVELOPER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEVELOPER DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, IN LAW OR

IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN, THE NEIGHBORHOOD COMMON AREAS AND FACILITIES.

6.4 Partition; Separation of Interests. There shall be no judicial partition of the Neighborhood Common Areas, except as expressly provided elsewhere herein, nor shall the Developer, or any owner or any other person acquiring any interest in the Neighborhood, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Living Unit owned in cotenancy. The ownership of any Lot and the ownership of the Villa constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Living Unit hold membership in the Association.

6.5 Easements. Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Properties. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Properties for the location of utilities, for the location of, and access for the operation, maintenance, repair and replacement of plumbing, electrical, mechanical and HVAC equipment (including but not limited to air conditioning compressors, conduits, lines, and other apparatus) which may be situated on certain lots but serves neighboring lots, for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

(A) Utility and other Easements. The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the Properties, and to relocate any existing easements in any portion of the Properties, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Properties. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

(B) Encroachments. If for any reason other than the intentional act of the owner or the Association, any Villa encroaches upon any of the Neighborhood Common Areas, upon any other Lot, or any Neighborhood Common Area encroaches upon any Lot, 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 owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Neighborhood Common Areas 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 Neighborhood Common Areas 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) Drainage. A perpetual, non-exclusive easement shall exist in favor of Declarant, the Association, the Community Association, and their employees or other designees for the use of drainage areas established throughout the Neighborhood, and an easement for ingress, egress, and access to enter any portion of the Neighborhood in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Neighborhood Common Areas by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

(E) Construction; Maintenance. The Developer and its agents, employees and contractors shall have the right to enter the Properties 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 owners of their property.

(F) Sales Activity. The Developer and its agents, employees and contractors shall have an easement to use, without charge, any Villas owned or leased by the Developer, and the Neighborhood Common Areas (including, but not limited to, all recreational facilities), in order to establish modify, maintain and utilize, as it and they deem appropriate, model Villas and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show

model Villas or the Neighborhood Common Areas to prospective purchasers or tenants, erect signs On the Properties, and take all other action helpful for sales, leases and promotion of the Properties.

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

6.6 Assignment of Easements. The easements and easement rights reserved hereunder to the Developer may be assigned by the Developer in whole or in part to the Association, the Community Association, any town, county or state government or agency thereof, or duly licensed or franchised public or private utility, or any other designee of the Developer.

7. MAINTENANCE; IMPROVEMENTS.

7.1 Maintenance of Neighborhood Common Areas. Except as otherwise provided herein, the Association shall maintain, repair and replace any and all improvements constructed on the Neighborhood Common Areas, including without limitation all landscaping, the components of the irrigation systems, including but not limited to the tap into the main line, timers, switching devices and heads, drainage structures, utility lines, walkways, light fixtures, and other structures. Additionally, where the Neighborhood Common Areas are contiguous to the right-of-way of a road, the Association shall maintain all landscaping (if any) between the Neighborhood Common Areas and the pavement within such right-of-way. The Association shall obtain the written approval of the ARC before making any material alterations or substantial additions to the Neighborhood Common Areas.

7.2 Maintenance of Lots and Villas.

(A) Lots. The mowing of lawns and all outside maintenance, repair and replacement of landscaping and sprinkler systems is the Association's responsibility, and is a common expense. No person may add to or change the plantings, trees or landscaping without the prior approval of the Association.

(B) Villas. The Association shall clean and provide ordinary maintenance, repair and replacement of the roofs, structural components and the exterior walls and other surfaces of the Villas and appurtenant structures such as privacy walls and garages, the need for which is caused by normal wear and tear and weathering keeping the appearance of the same in a condition comparable to the condition of such improvements at the time of their initial construction, except for normal weathering, wear and tear. The cost shall be a common expense. Painting the outside of exterior doors, door and window frames and exterior caulking, are Association responsibilities. Maintenance, repair and replacement of mailboxes and street lighting is the Association's responsibility. Otherwise the maintenance,

repair and replacement of the Villas is the responsibility of the owners thereof. The owner of each Villa shall maintain, repair and replace, at his own expense, all portions of his Villa except those portions specifically required to be maintained, repaired and replaced by the Association. Specifically it is the owner's responsibility to repair, reconstruct or replace all damage resulting from windstorm, fire, flood, hail, hurricanes, sinkholes, and other natural disasters, acts of God, and casualties that are or could be covered by property insurance carried by the owner under Section 8.1 below. The owner is responsible for any deductibles. By way of illustration, and not limitation, the owner's responsibilities include:

- (1) Windows, glass and screens, doors, door and window frames, hardware and locks.
- (2) All wiring, plumbing, and electrical or mechanical equipment or fixtures which serve only the Villa, regardless of location.
- (3) Pools, pool cages and related structures and improvements.

Each owner shall maintain his Villa and all fixtures and appliances located therein in good condition and repair at all times. Garages and storage areas shall be maintained in an orderly condition, and the storage of combustibles or explosives other than ordinary household materials is prohibited. Each owner is prohibited from painting or otherwise decorating or changing the appearance of his Villa except as permitted in the Declaration.

7.3 Completion of Neighborhood. The Developer shall undertake the work of developing all Lots and Villas within the Neighborhood. The completion of that work, or the sale, lease, or other disposition of Villas, is essential to the establishment and welfare of the Neighborhood as an ongoing residential community. In order that such work may be completed and the Neighborhood established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever in their judgment is reasonably necessary or advisable for the completion of the work and the establishment of the Neighborhood as a residential community. As used in this paragraph, the words, "its transferees" specifically do not include purchasers of Lots improved with completed Villas.

7.4 Enforcement of Maintenance. If the owner of a Villa fails to maintain it as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot, with or without consent of the owner. The Association may repair, replace, or

maintain any item which constitutes an immediate hazard to other property or residents, or which has a material adverse effect on the appearance of the Neighborhood. Any expenses so incurred by the Association shall be assessed against the owner, together with reasonable attorney's fees and other expenses of enforcement.

7.5 Negligence; Damage Caused by Condition in Villa. The owner of each Villa shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees, only to the extent that such expense is not met by proceeds of insurance. Each owner has a duty to maintain his Villa, and the personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Villas, the Neighborhood Common Areas or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other Villas, the Neighborhood Common Areas, Association property or property within other Villas, the owner of the offending Villa 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 Villas involved is not occupied at the time the damage is discovered, the Association may enter the Villa 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.

7.6 Alterations and Additions. Funds necessary for material alterations or substantial additions to the Neighborhood Common Areas by the Neighborhood Association may be levied as special assessments by the Association only upon prior approval by a majority of the whole Board of Directors and approval by two-thirds (2/3rds) of the voting interests present and voting at a meeting called for the purpose. Prior to the commencement of any such project relating to the Neighborhood Common Areas or to the buildings, the Association shall obtain the written approval of the ARC. However, if changes that are necessary to enable the Association to perform its legal duty to protect, insure, maintain, repair or replace the Properties also happen to constitute material alterations or substantial additions, no prior approval by the owners is necessary.

7.7 Pest Control. The Association may elect to supply pest control services for the inside of each Villa, 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 other Villas, in which case the owner must either permit the Association's pest control company to enter his Villa, or employ a licensed pest control company of his own selection to enter his Villa on a regular basis to perform pest control services and furnish written evidence thereof to the Association. The cost of pest control provided by the Association is a common expense, so the election of an owner not to use the service will not reduce the owner's assessments.

7.8 Hurricane Shutters. Notwithstanding anything to the contrary above, the Board of Directors shall adopt, with the approval of the ARC, a model, style and color of hurricane shutter as a standard for use in the Properties. No hurricane or storm shutters except the standard model, color and style adopted by the Board of Directors and approved by the ARC shall be used.

8. 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:

8.1 By the Villa Unit Owner. Each villa unit owner is responsible for insuring the interior of his own villa 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 villa unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the villa unit or the common elements by the owner or his predecessors in title. Each villa 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.

8.2 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 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 villa unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self insure.

8.3 Required Coverage. The Association shall maintain adequate insurance covering all other improvements on the property other than those improvements which are defined under Section 8.1 as being the responsibility of the villa unit owner, 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 villa unit owners as a group to a villa 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**.

8.4 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 villa 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.

8.5 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 villa unit owners or their authorized representatives upon request.

8.6 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 villa 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.

8.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the villa 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 villa unit owners and their respective mortgagees in the following shares:

(A) **All Improvements other than Villa Units.** Proceeds on account of damage to common elements shall be held in as many undivided shares as there are villa units, the shares of each villa unit owner being the same as his share in the common elements.

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

(C) **Mortgagee.** If a mortgagee endorsement has been issued as to a villa unit, the shares of the mortgagee and the villa 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 villa unit, unless insurance proceeds on account of damage to that villa 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.

8.8 Distribution of Proceeds. Insurance proceeds from Association policies shall be distributed to or for the benefit of the villa 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 8.7 (A) and (B) above. Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to villa 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 villa unit owners and their mortgagees being payable jointly to them.

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

9. PARTY WALLS.

9.1 Definition. Any wall which is built as part of the original construction of any Villa subject to this Declaration and placed on the dividing line between adjoining Villas and Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 9, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

9.2 Cost of Repairs. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who share the wall.

9.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who uses the wall may restore it, and if any other owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. This paragraph shall be deemed to be in addition to, and not in lieu of or to the exclusion of, the repair obligations of the Association under Section 9.2 above.

9.4 Weatherproofing. Notwithstanding any other provision of this Section 9, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

9.5 Contribution. The right of any owner to contribution from any other owner(s) under this Declaration shall be appurtenant to the land and shall pass to such owner's successors in title.

9.6 Binding Arbitration. Any dispute concerning a party wall shall be submitted to arbitration under Chapter 682, Florida Statutes. Each party shall choose one arbitrator, and the arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

10. ASSOCIATION INSURANCE. Insurance shall be carried and kept in force at all times in accordance with the following provisions:

10.1 Association Insurance: Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the owners without naming them, and their mortgagees.

10.2 Required Coverage. The Association shall maintain adequate liability insurance and casualty insurance covering all buildings and other insurable improvements (if any) that are part of the Neighborhood Common Areas, with coverage equal to the maximum insurable replacement value thereof, as determined annually by the Board of Directors; such insurance to afford 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 referred to 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 shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the owners as a group to any single owner.

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

(D) Fidelity Bonding. Adequate fidelity bond coverage for all individuals having control of or access to Association funds.

10.3 Optional Coverage. The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and owners. Some common examples are:

(A) Flood insurance.

(B) Broad Form Comprehensive General Liability Endorsement.

(C) Directors and Officers Liability.

(D) Medical Payments.

10.4 Description of Coverage. A detailed summary of the coverages included in the Association's policies shall be available for each owner upon request. All Association insurance policies shall be available for inspection by owners upon request.

10.5 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 subrogate as to any claim against owners, the Association, or their respective servants, agents or guests, except for any claim based primarily upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

10.6 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

10.7 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

10.8 Association as Agent. The Association is hereby irrevocably appointed agent for each owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Villas.

11. GENERAL COVENANTS AND USE RESTRICTIONS.

11.1 Residential Use. Each Villa shall be occupied by only one family and its temporary guests at any time, as a residence and for no other purpose. No time-sharing, business or commercial activity shall be conducted in or from any Villa. No person may publicly advertise the address of a Villa as the address of any business. The use of a Villa as a public lodging establishment shall be deemed a business or commercial use. This Section 11.1 shall not be construed to prohibit any Villa occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Villa, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Villa. Such uses are expressly declared customarily incident to residential use. This Section 11.1 is, however, intended to prohibit commercial or business activity by an owner which would noticeably change the residential ambiance of the Neighborhood, or make it obvious that a business is being conducted, Such as by regular or frequent traffic in and out of the Neighborhood by persons making deliveries or pick-ups, or by employees and business associates, or by customers and clients.

11.2 Occupancy of Villa when Owner is not in Residence. An owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily occupy his Villa in his absence. Except as otherwise provided in Section 15.1 below, this provision is not intended to allow any owner to use his Villa as short-term transient accommodations for several individuals

or families. The owner must register all guests with the Association in advance, giving such information about the guests and the period of their stay as the Board may reasonably require. The owner is responsible for the conduct of his guests. When the owner is not in residence, no more than six (6) overnight occupants are allowed at any time.

11.3 Leasing. Villas may be leased, with the minimum allowable lease period being thirty (30) consecutive days. No lease may begin sooner than thirty (30) days after the first day of occupancy under the last previous lease. All leases are subject to the following restrictions and conditions:

(A) The lease must be written, and a fully executed copy must be provided to the Association not less than fifteen (15) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require.

(B) No lease may be for a period of less than thirty (30) consecutive days.

(C) No more than six (6) overnight occupants are allowed in a leased Villa.

(D) No subleasing or assignment of lease rights is allowed.

(E) No one but the lessee and the lessee's spouse if any, and their unmarried children who live with their parents, may occupy the unit during a lease.

All of the provisions of the Villas II Documents and the Rules and Regulations of the Association pertaining to use and occupancy of the Villas shall be applicable to and enforceable against any person occupying a Villa as a lessee or guest, to the same extent as against an owner, and a covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Villas II Documents, designating the Association as the owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not.

THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING VILLAS OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT A VILLA MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OR HER OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGE OF OWNERSHIP.

11.4 Nuisance. No member shall use or permit a Villa to be used in any manner which would be unreasonably disturbing, detrimental or a nuisance to the occupant of another Villa or which would not be consistent with the maintenance of the highest standards for the first class residential development, nor permit the premises to be used in a disorderly or unlawful way. The use of each Villa and the Neighborhood Common Areas shall be consistent with existing laws and the Governing Documents, and residents shall at all times conduct themselves in a peaceful and orderly manner. No unlawful, disorderly or offensive activity shall be carried on upon any Lot or in any Villa, nor shall any owner permit or condone any activity that is, or may reasonably become, a source of annoyance or nuisance to other residents.

11.5 Temporary Structures. Temporary structures, including trucks, trailers, motor homes, recreational vehicles, tents or shacks shall not be used on any Lot at any time as a residence, either temporary or permanent.

11.6 Signs. In order to maintain an attractive community, no sign, banner, advertisement or poster (including "open house", "for sale" or "for rent" signs) shall be exhibited, displayed, inscribed, painted, or affixed, in, on or upon any part of the Properties. This provision includes signs inside of Villa windows or the windows of motor vehicles. This Section 11.6 shall not apply to signs used by Developer or its agents to market Villas owned by Developer.

11.7 Appearance; Refuse Disposal. Each owner shall keep his Lot and Villa free of trash and debris and shall reasonably maintain his Villa. Personal property of residents shall not be left on the lawns or landscaped areas outside the Villas. Trash, garbage or other waste must be kept in appropriate containers suitably screened from view from the street and adjacent Lots. Porches, and lanais shall be used only for the purposes intended, and shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

11.8 Maintenance. The Developer shall care for unimproved Lots within the Properties at its expense, remove and destroy tall grass, undergrowth, weeds and rubbish therefrom, and do any other things and perform any labor necessary to keep the Lot in reasonable order. The Association shall have the right to repair any structure or improvement on any Lot which, in the opinion of the Board, constitutes a safety hazard or nuisance, or is unsightly, or is in a state of disrepair, provided that the Lot owner is given no less than five (5) days notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of the Lot, which charge shall be a lien on the Lot which may be foreclosed and shall include the Association's attorney fees and other costs in connection with the lien and foreclosure.

11.9 Awnings and Windows. Awnings, storm shutters, solar film, and other window coverings shall be subject to the prior approval and control of the ARC.

11.10 Fences. No fence, wall, hedge or other physical and visual barrier shall be erected in the Neighborhood Common Areas, except as originally installed by Developer, or as approved by the ARC.

11.11 Driveways and Parking Areas. Driveways and parking areas must be paved with concrete, paver blocks, or another hard surface approved by the Developer. Maintenance and repair of all driveways, parking and other paved parking facilities shall be the responsibility of the Association. Driveways must be kept clean and free from excessive oil, rust or other unsightly stains.

11.12 Water Supply; Wells; Water Rights. Each Living Unit shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All irrigation systems must be connected to the non-potable water line and all outside spigots must be connected to the potable water line. Each owner shall be required to connect the water lines on his Lot to the lines of the utility provider(s) providing service to Heritage Cove. No owner may install or operate a private well for any reason, including operation of a water source heat pump.

11.13 Landscaping. All landscaping, including without limitation, trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Association. No landscaping shall be added, augmented, replaced, cut down, destroyed or removed without the prior written approval of the artificial grass, plants or other artificial vegetation shall be placed or maintained upon any Lot outside of the Villa and the Villa's privacy walls, unless approved by the ARC.

11.14 Pets. The owner of each Villa may keep not more than two (2) small pets, of a normal domesticated household type (such as a cat or dog) in the Villa. Reasonable numbers of birds in cages and fish in aquaria are also permitted, subject to reasonable regulation by the Association. Animals must be hand carried or leashed at all times while outside of the Villa. The owner is responsible for cleaning up after his pet. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyances to other residents of the Properties. No reptiles, amphibians, poultry, swine or livestock may be kept on the Properties. The Board of Directors may restrict the locations where pets may be walked.

11.15 Parking and Storage of Vehicles. Except for service vehicles temporarily present on business, owners and occupants of Villas II may not parked, stored or kept on the Properties any commercial truck or other commercial vehicle, or any boat, trailer, semi-trailer, recreation vehicle, motorcycle, house trailer, mobile home, motor home, bus, tractor, or any other such vehicle, unless it is enclosed within a garage. No person may park, store or keep any motor vehicle on grassed or landscaped areas, or any places outside of paved driveways, garages, or other designated parking areas. Vehicles which are in wrecked, junked, partially dismantled, inoperative or abandoned condition, whether attended or not, and those not bearing current license plates, are not permitted on the Properties. Because guest parking may be limited in some areas, each owner is specifically cautioned that he and the other occupants of his Villa may be limited or restricted as to the number of motor vehicles they may keep on the Properties. The repair of motor vehicles, except emergency repairs, is not permitted on the Properties. 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 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.

11.16 Antennas, Radio Equipment and Flagpoles. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, unless expressly approved in writing by the ARC, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Community Association shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Community Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved by the ARC. An approved flagpole shall not be used to mount an antenna. It is the intent of this Section to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting equipment. This Section 11.16 shall not apply to the Developer or its agents to market Villas owned by Developer.

11.17 LOTS MAY CONTAIN OR ABUT CONSERVATION AREAS, WHICH ARE PROTECTED UNDER RECORDED CONSERVATION EASEMENTS. THESE AREAS MAY NOT BE ALTERED FROM THEIR PRESENT CONDITIONS EXCEPT IN ACCORDANCE WITH THE RESTORATION PROGRAM INCLUDED IN THE CONSERVATION EASEMENT, OR TO REMOVE EXOTIC OR NUISANCE VEGETATION, INCLUDING WITHOUT LIMITATION MELALEUCA, BRAZILIAN PEPPER, AUSTRALIAN PINE, JAPANESE CLIMBING FERN, CATTAILS, PRIMROSE WILLOW, AND GRAPE VINE. PROPERTY OWNERS ARE RESPONSIBLE FOR PERPETUAL MAINTENANCE OF SIGNAGE REQUIRED BY THE PERMIT ISSUED BY SOUTH FLORIDA WATER MANAGEMENT DISTRICT, WHICH MAINTENANCE WILL BE MAINTAINED TO THE GREATEST DEGREE LAWFUL BY THE COMMUNITY ASSOCIATION.

No person shall undertake or perform any activity in Conservation Areas described in the approved permits and Plats of Heritage Cove, or remove native vegetation that becomes established within the Conservation Areas and without prior written approval of the ARC, the County, and the South Florida Water Management District. Prohibited activities within Conservation Areas include the removal of native vegetation, excavation, placement or dumping of soil, trash or land clearing debris, and construction or maintenance of any building, Unit or other structure. "Removal of native vegetation" includes dredging, application of herbicides, and cutting.

11.18 Open Space. Any land subjected to this Declaration and designated as open space, landscape buffer, preserve area, Conservation Area or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Neighborhood Association, the Neighborhood Association shall preserve and maintain such land. No development may occur on such land except structures or improvements which promote the use and enjoyment thereof for open space purposes.

11.19 Lakes; Water Retention Ponds. No Lot, Tract, Parcel or Neighborhood Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the ARC and the District. No person other than the Declarant or the Community Association may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

12. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS. Every owner, and all guests, tenants and occupants of Villas, shall at all times comply with Chapter 720, Florida Statutes, the Governing Documents, and the rules of the Association. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with, this Chapter 720, the governing documents of the Neighborhood, and the rules of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any member against:

(A) The Association;

(B) A member;

(C) Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and

(D) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section does not deprive any person of any; other available right or remedy.

12.1 Enforcement Action. Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.2 Self-help Remedies. Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Declarant, its successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the owner of the land, any construction or other violation that may be or exist thereon. The Developer, its successors and assigns and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

12.3 Suspension of Common Area Use Rights; Fines. The Association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities, and may levy reasonable fines, not to exceed the amount allowed by law, against any member or any tenant, guest, or invitee.

(A) A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(B) The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

(C) Suspension of common area use rights shall not impair the right of an owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

(D) Collection of Fines. A fine shall be treated as a special charge due to the Association ten (10) days after written notice from the Association to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law, and may be the subject of a late payment fee

(E) Application. All monies received from fines shall become part of the common surplus.

(F) Nonexclusive Remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover at law from such owner.

13. THE COMMUNITY ASSOCIATION. By taking title to a Lot, an owner also becomes a member of Heritage Cove (The "Community Association") and is subject to the terms and conditions of the Declaration of Covenants, Conditions, and Restrictions for Heritage Cove, as originally recorded in Book 3178, at Pages 0968-1053 et seq., of the Official Records of Lee County, Florida, (the "Community Association Declaration"), as it may be amended from time to time.

13.1 Club Assessments. Pursuant to the Community Association Declaration, the Community Association has the right to assess its members for all expenses incurred in the performance of its duties. These assessments are collected directly by the Community Association from each member.

13.2 Voting in Community Association Affairs; Voting Representative. In accordance with the provisions of the Governing Documents, all owners are automatically and irrevocably members of the Community Association. Notwithstanding such membership, only representative members, known as the "Voting Representatives," shall be entitled to vote on behalf of all

members of this Association, at meetings of the members of the Community Association, as further provided in the Master Declaration. "Voting Representative" means the Declarant (as to the votes allocated the Declarant Member) and the authorized designee of the Association (as to the votes allocated to Members).

13.3 Notices to Community Association. Copies of all amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, and any easements or conveyances affecting the Common Areas, shall be forwarded to the Community Association no later than fifteen (15) days after recording in the public records of the county. The Association shall also provide a current list of the names and mailing address of all owners within fifteen (15) days after receiving a written request for same from the Community Association.

13.4 Termination of the Association. If the Association is terminated or shall cease to exist for any reason, and no other Neighborhood Association has assumed its duties and functions, the Community Association shall maintain all Neighborhood Common Areas and otherwise perform all functions of the Association, and shall be authorized to assess all owners for the cost of such services.

14. TRANSFERS OF OWNERSHIP OF VILLAS. In order to foster a community of congenial, financially responsible residents with the objectives of inhibiting transiency, protecting the value of the Villas and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Villa by an owner other than the Developer shall be subject to the following restrictions, which each owner covenants to observe:

14.1 Forms of Ownership.

(A) One owner. A Villa may be owned by one natural person who has been approved as provided herein.

(B) Co-ownership. Co-ownership of Villas is permitted, but if the proposed co-owners are other than husband and wife, the Board shall condition its approval upon designation of one of the approved co-owners as "primary occupant", and the use of the Villa by other persons shall be as though the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 14.

(C) Ownership by Corporations or Trusts. A Villa may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers or title. However, the intent of this provision is to allow flexibility in estate, financial or tax planning, and not to

create circumstances in which the Villa may be used as short term transient accommodations for several individuals or families. The approval of a Director, or corporation or other entity as an owner shall be conditioned upon designation of one natural person to be the "primary occupant", and the use of the Villa by other persons shall be as though the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 14. No more than one such change will be approved in any twelve-month period.

(D) Life Estate. A Villa may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant shall be the only member from such Villa, and occupancy of the Villa shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant and holders of the remainder interest shall be jointly and severally liable for all assessments and charges against the Lot. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. Except in the case where such a transfer has been made, if the consent or approval of the owner is required for any purpose, that consent or approval of the holders of the remainder interest shall not be required.

14.2 Transfers.

(A) Sale or Gift. No owner may effectively convey title to a Villa or any interest therein by sale or gift without the prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any owner acquires his title by devise or inheritance, his right to occupy or use the Villa shall be subject to the approval of the Association. The approval of the Association shall not be denied to any devisee or heir who was the decedent's lawful spouse or related to the owner by blood or adoption within the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, his right to occupy the Villa shall be subject to the approval of the Association under the procedure outlined in Section 14.3 below.

14.3 Procedures.

(A) Notice to Association.

(1) Sale or gift. An owner intending to make a sale or gift of his Villa or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the date of the proposed transfer, together with the name, and address of the proposed purchaser or donee and such other information as the Board may reasonably require.

(2) Devise, Inheritance, or Other Transfers. The transferee must notify the Association of his ownership and submit to the Association a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy right unless approved by the Board, but may sell or lease the Villa following the procedures provided in this Declaration.

(3) Failure to give Notice. If no notice is given, the Association at its election may approve or disapprove the transfer without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.

(B) Board Action: Approval. Within twenty (20) days of receipt of the required notice and all information requested, but not later than sixty (60) days after receipt of the notice, whichever occurs first, the Board must approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee or the closing agent if the Board neither approves or disapproves within twenty (20) days, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval.

(C) Disapproval.

(1) The Board may disapprove a transfer of ownership only if a majority of the whole Board so votes, after receiving a written opinion of counsel that such disapproval is for a good cause. Only the following shall be deemed to constitute good cause:

(a) The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Properties;

(b) The person seeking approval has a history of disruptive behavior or an attitude of disregard for the rights and property of others, as evidenced by his conduct in other social organizations or associations, or by his conduct as a tenant, owner or occupant of a Living Unit in Heritage Cove; or

(c) The person seeking approval failed to provide the information and appearance required to process the application in a timely manner or concluded the transaction without obtaining approval.

14.4 Exception. The provisions of Sections 14.2 and 14.3 do not require Association approval of transfers of ownership by the Developer or of the acquisition of title by any acquirer who acquires title through an institutional mortgage, whether by foreclosure or deed in lieu of foreclosure; however, Association approval is required for a purchaser from such mortgagee.

14.5 Unapproved Transfers. Any sale or transfer which is not approved pursuant to the terms of this Declaration shall be void or voidable unless subsequently approved by the Board.

15. DEVELOPER'S RIGHTS AND DUTIES. As long as the Developer holds any Lots in the Neighborhood for sale in the ordinary course of business, the following shall apply, notwithstanding any other provisions to the contrary:

15.1 Developer's Use. Until the Developer has completed all of the contemplated improvements and has sold all of the Lots in the Neighborhood neither the owners nor the Association, nor their use of the Lots and Neighborhood Common Areas shall unreasonably interfere with the completion of the contemplated improvements or the sales of Villas. The Developer may make any use of the unsold Lots and the Common Areas as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of sales office, display of signs, leasing Villas, and showing the Properties to prospective purchasers. The Developer also reserves the right to lease back one or more Villas for use as "hospitality suites", providing short term guest accommodations for prospective purchasers or other business guests of the Developer.

15.2 Assignment of Development Rights. All or any portion of the rights, privileges, powers and duties of the Developer set forth in the Governing Documents may be assigned by the Developer to any successor developer, without the consent of any other owner or any holder of a mortgage secured by any Lot. In the event of such assignment, the assignee shall assume such rights, powers and duties, and the assignee shall be relieved of further liability or obligation to the extent of the assignment. 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 in and to such interest.

15.3 Amendment of Documents. In addition to any other right of amendment or modification provided for in the Villa Documents, the Declarant, or any entity which succeeds to its position as the Developer of the Property described in Exhibit "A" may, in its sole discretion, by an instrument filed of record in the county, unilaterally modify, enlarge, amend, waive or add to the provisions of this Declaration or any of its recorded exhibits. The rights set forth in this paragraph shall expire when construction of the Neighborhood is completed and the Declarant no longer holds any Lots and Villas in the Properties for sale in the ordinary course of business. Any amendment made pursuant to this paragraph may be made without notice to the members or to any other person. However, no amendment shall change the shares of liability for assessments or ownership of the common surplus of the Association, or the voting rights appurtenant to any Villa, unless the owner of the Villa and his institutional mortgagee (if any) consent in writing to the amendment.

15.4 Sales or Leases of Villas. The Developer has the right to sell, lease or transfer ownership of any Villa owned by it on such terms and conditions as it deems in its own best interest.

16. TURNOVER OF CONTROL.

16.1 Time of Turnover. The turnover of control of the Association by the Developer shall occur not later than ninety (90) days after conveyance of title to at least ninety percent (90%) of the Lots within the Properties. At the Turnover Meeting the members shall elect a Board of Directors and the Directors appointed by the Developer shall resign.

16.2 Procedure for Calling Turnover Meeting. No more than 75 days and no less than 60 days prior to the Turnover Meeting, the Association shall notify in writing all members of the date, time and place of the Turnover Meeting.

16.3 Early Turnover. The Developer may turn over control of the Association to owners other than the Developer prior to the turnover deadline set forth above by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of owners other than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of Developer's decision to cause its appointees to resign is given to the owners, neither the Developer, nor its appointees, shall be liable in any manner for doing so, even if owners other than the Developer refuse or fail to assume control.

16.4 Developer Representative. The Developer is entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5 %) of the Lots. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting a majority of the Directors.

17. DURATION OF COVENANTS; AMENDMENT OF DECLARATION.

17.1 Duration of Covenants. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Community Association, the Developer and any owner, their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of the recording of the Community Association Declaration in the public records of the county. Upon the expiration of the initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of potential successive ten (10)'year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, unless during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the public records of the county, and may be relied upon for the correctness of the facts recited therein as they relate to the termination of this Declaration.

17.2 Proposal. Amendments to this Declaration may be proposed at any time by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. Any amendments so proposed must be submitted to a vote of the owners not later than the next annual meeting.

17.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Villas II Documents, this Declaration may be amended at any time if a duly proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests of the Association present in person or by proxy and voting at any annual or special meeting called for the purpose, provided that the text of each proposed amendment has been given to the members with notice of the meeting. However, no amendment shall be effective to change the share of liability for assessments or ownership of the common surplus of the Association, or the voting rights,

appurtenant to any Villa, unless the owner and his institutional mortgagee (if any) consent in writing to the amendment. Until control of the Association has been turned over to owners other than the Developer, this Declaration may also be amended by vote of two-thirds (2/3rds) of the Board of Directors, without need for a vote of the owners.

17.4 Certificate; Recording. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where this Declaration is recorded, and shall be executed by the President or Vice-President 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 the county.

17.5 Amendment of Provision Relating to Developer. As long as the Developer holds any Lot in the Neighborhood 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.

18. GENERAL PROVISIONS.

18.1 Waiver. Any waiver by any person of any provisions of this Declaration, or breach thereof, must be in writing to be effective, and shall not operate or be construed as a waiver of any other provision or subsequent breach.

18.2 Severability. If any Section, subsection, sentence, clause, phrase or portion of this Declaration or any of its recorded exhibits is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and its invalidity shall not affect the validity of the remaining portions.

18.3 Headings and Capitalization. The headings of the sections subsections, paragraphs and subparagraphs herein, and the capitalization of certain words, are for convenience only, and are not intended to affect the meaning or interpretation of the contents.

18.4 Notices. Any notice required to be sent to any owner under this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner on the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

18.5 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretations shall be binding upon all parts 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.

19. 55 OR OVER AGE COMMUNITY.

19.1 **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.

19.2 **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.

19.3 **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.

19.4 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.

19.5 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 Villas 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.

19.6 **Exceptions to Section 19.6.**

(A) Surviving Spouse or Cohabitant. Section 19.6 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 19.4 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.

19.7 **Contract/Covenant.** Every Owner and lessee shall be deemed to have a contract with the Association to ensure that the occupancy requirement in Section 19.4 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.

19.8 **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.

19.9 **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 Villas 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 19.9(A). Costs and attorney's fees incurred by the Association in connection with the exercise of its remedies under this Section 19.9(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 19.9(B).

19.10 **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 19.6(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 19.8 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.

19.11 **Additional Occupants.** Even though a person under the age of 55 years is given grandfather status under Section 19.6(A) above or is provided with an exception under Section 19.6(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 19.6(A) above; or

(C) That additional person is legally married to the surviving spouse or cohabitant mentioned in Section 19.6(B) above.

19.12 **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.

19.13 **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 Villas 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.

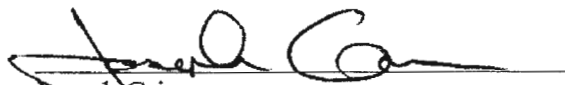
(iii) Any amendment which is necessary to delete any or all amendments approved by the Association relating to the Acts and/or Federal Regulations.

(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, U.S. Home Corporation, a Delaware corporation, does hereby execute this Declaration of Covenants, Conditions and Restrictions through its undersigned, duly authorized agent, this 28 day of June, 2000.

U.S. HOME CORPORATION,
a Delaware corporation

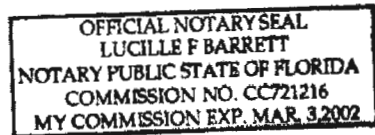

Joseph Grimes,
Division President
10481 Six Mile Cypress Pkwy.
Ft. Myers, Florida 33912

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 28 day of June,
2000, by Joseph Grimes, Division President of U.S. Home Corporation, a Delaware corporation.
He is personally known to me or did produce _____ as identification.

(SEAL)



Notary Public

Print Name

Lucille F. Barrett
LUCILLE F. BARRETT

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6/22/00



INK ENGINEERING, INC.

ENGINEERS

• SURVEYORS

• PLANNERS

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

FEBRUARY 27, 2001
JOB NUMBER 9720
9720P2BSK1.LGL

SHEET 1 OF 2

PARCELS OF LAND LYING IN SECTION 28, TOWNSHIP 45 SOUTH,
RANGE 24 EAST, LEE COUNTY, FLORIDA.

DESCRIPTION OF PARCELS

PARCELS OF LAND LYING IN SECTION 28, TOWNSHIP 45 SOUTH,
RANGE 24 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 18, BLOCK B1, AND LOTS 1 THROUGH 18, BLOCK
B2, AND LOTS 1 THROUGH 8, BLOCK B3, AND LOTS 1 THROUGH
28, BLOCK B4, OF HERITAGE COVE, PHASE II, AS SHOWN ON
THE PLAT OF HERITAGE COVE, PHASE II, AS RECORDED IN
PLAT BOOK 67, PAGE 54 OF THE PUBLIC RECORDS OF LEE
COUNTY, FLORIDA.

SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS
AND RIGHTS OF WAY OF RECORD.

REFER TO 8 1/2" X 11" SKETCH. (SHEET 2 OF 2)

INK ENGINEERING, INC., LB 856

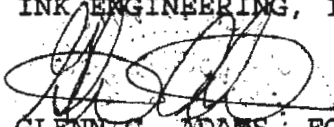

GLENN C. ADAMS, FOR THE FIRM
PROFESSIONAL LAND SURVEYOR
FL. CERT. NO. 6062

EXHIBIT A

THIS INSTRUMENT WAS PREPARED BY
INK ENGINEERING, INC.
 SURVEYORS - ENGINEERS - PLANNERS
 3660 CENTRAL AVE., SUITE 8, FT. MYERS, FLORIDA 33901
 TEL. 889-0455 FAX 889-0456

HERITAGE COVE, PHASE II
 (A REPLAT OF BLOCKS "B", "F", & "G", OF HERITAGE COVE PHASE I
 PLAT BOOK 64, PAGES 90-100)
 A SUBDIVISION IN
 SECTIONS 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST,
 LEE COUNTY, FLORIDA

PLAT BOOK 67 PAGE 54
 SHEET 2 OF 4
 OCTOBER, 2001

LEGEND	
DR.	DRAINAGE
P.U.E.	PUBLIC UTILITY EASEMENT
R/W	RIGHT WAY

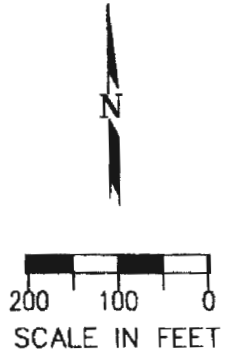
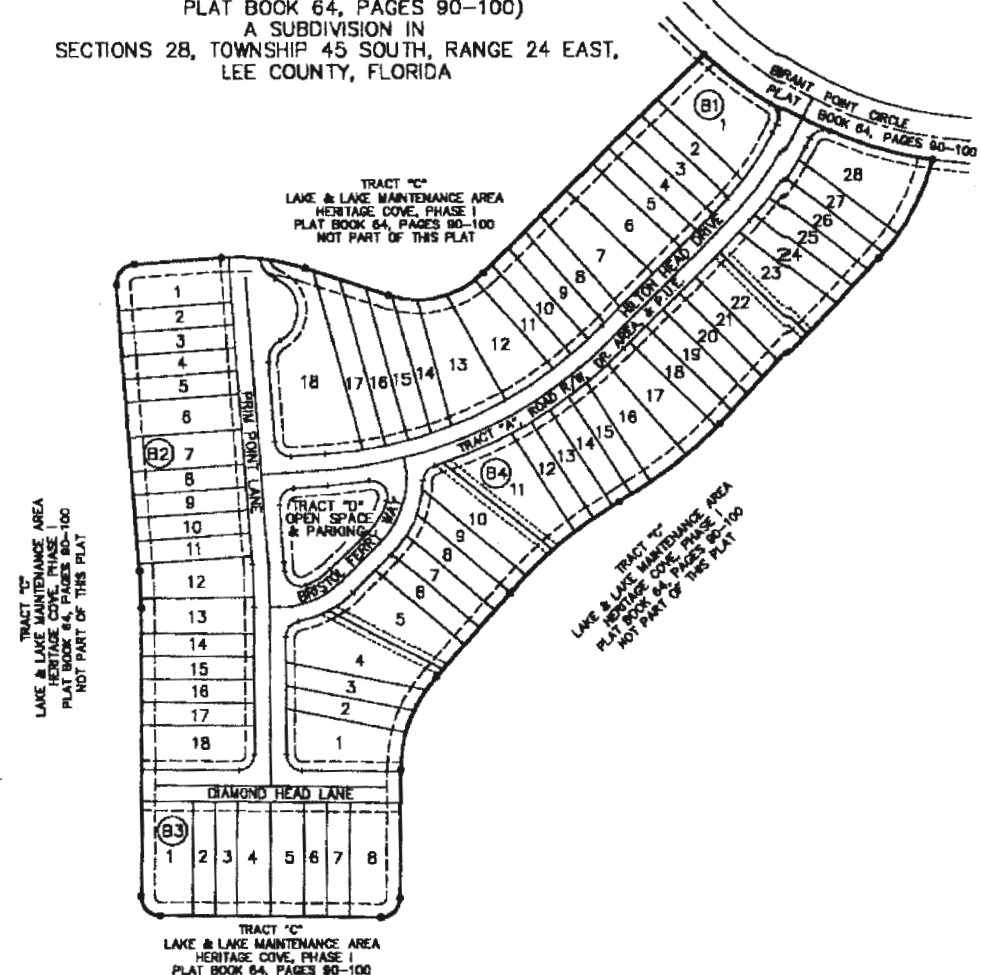


EXHIBIT B

REFER TO ATTACHED DESCRIPTION

THIS SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL
 RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS OR RIGHTS OF WAY OF RECORD.

SHEET 2 OF 2

INK ENGINEERING, INC., LD 856
 DATE: *[Signature]*
 GLENN C. ADAMS, FOR THE FIRM
 PROFESSIONAL LAND SURVEYOR
 FLA. CERTIFICATE NO. 6062

OR BK 03427 PG 3965

SKETCH (NOT A SURVEY)

PART OF HERITAGE COVE, PHASE II
 PLAT BOOK 67, PAGE 54
 SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST
 LEE COUNTY, FLORIDA

DATE	2/27/01
SCALE	1"=200'
DRAWN	G.C.A.
CHECK	
APPROVED	



INK ENGINEERING, INC.
 ENGINEERS SURVEYORS PLANNERS
 (841) 931-0455 3660 CENTRAL AVE., SUITE 8 FT. MYERS, FLORIDA 33901

FILE: 9720P2BSK1
 NO. 026
026

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of THE VILLAS II AT HERITAGE COVE ASSOCIATION, INC., a Florida corporation, filed on July 14, 2000, as shown by the records of this office.

The document number of this corporation is N00000004751.

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



CR2EO22 (1-99)

EXHIBIT C

Katherine Harris
Katherine Harris
Secretary of State