

VILLAGES OF HOMESTEAD AUDUBON VILLAGE



Declaration of Protective Covenants and Conditions

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THIS DECLARATION is made this 5th day of September, 1978, by GROSSMAN HOLDINGS LIMITED, BLEEMAN HOLDINGS LIMITED, THE MERIDIAN BUILDING GROUP LIMITED, and MARKBOROUGH PROPERTIES LIMITED, all Canadian corporations incorporated under the laws of Ontario d/b/a HOMESTEAD PROPERTIES, a general partnership, hereinafter called "Developer."¹

WITNESSEH:

WHEREAS, Developer is the owner of certain property in the City of Homestead, County of Dade, State of Florida, which is more particularly described as follows:

Blocks 1 thru 13, inclusive, and Tract F, HOMESTEAD LAKES TENNESSEE EAST, according to the Plat thereof recorded in Plat Book 109 Page 26, of the Public Records of Dade County, Florida; and Blocks 1 thru 10 inclusive, HOMESTEAD LAKES FARM LIFE WEST, according to the Plat thereof recorded in Plat Book 109, Page 40 of the Public Records of Dade County, Florida.

Lots 1 through 65, inclusive TOWNHOMES OF AUDUBON, according to the Plat thereof recorded in Plat Book 113, Page 32, of the Public Records of Dade County Florida.²

Lots 1 through 92, inclusive, TOWNHOMES OF AUDUBON SOUTH, according to the Plat thereof, recorded in Plat Book 115, Page 91 of the Public Records of Dade County Florida³

Lots 6,7,8,9 in Block 1 and Lots 16 and 17 in Block 2, all of AUDUBON SOUTH, according to the Plat thereof, as recorded in Plat Book 129, at Page 38 of the Public Records of Dade County, Florida.⁴

Lot 1 and Lot 10 in Block 2, Lot 1 in Block 3 and Lot 6 in Block 4, all of AUDUBON SOUTH, according to the Plat thereof, as recorded in Plat Book 129, at Page 38 of the Public Records of Dade County, Florida.⁵

Lots 12 and 13 in Block 1, Lot 12 in Block 2, Lot 1 in Block 4 and Lot 2 in Block 3, all of AUDUBON SOUTH, according to the Plat thereof, as recorded in Plat Book 129, Page 38, of the Public Records of Dade County, Florida.⁶

Lot 10 in Block 1, Lots 5 and 6 in Block 2, Lot 3 in Block 3 and Lot 2 in Block 4, all of AUDUBON SOUTH, according to the Plat thereof, as recorded in Plat Book 129, at Page 38 of the Public Records of Dade County, Florida.⁷

Lots 5 and 11 in Block 1, Lots 2 and 13 in Block 2 and Lot 3 in Block 4, all of AUDUBON SOUTH, according to the Plat thereof, as recorded in Plat Book 129, at Page 38 of the Public Records of Dade County, Florida.⁸

Lots 3 and 4 in Block 1, Lots 4 and 8 in Block 2 and Lots 4 and 5 in Block 4, all of AUDUBON SOUTH, according to the Plat thereof, as recorded in Plat Book 129, at Page 38, of the Public

¹ OR 10169 P 1539 (P12) 9/5/78

² OR 10632 P 258 PARA C 12/27/79

³ OR 10939 P 188 11/20/80

⁴ OR 13459 P 1717 PARA C1 10/23/87

⁵ OR 13675 P 785 PARA C1 5/6/88

⁶ OR 13890 P 17 PARA C1 11/9/88

⁷ OR 14062 P 235 PARA C1 1/31/89

⁸ OR 14134 P 776 PARA C1 5/4/89

Records of Dade County, Florida.⁹

NOW, THEREFORE, Developer hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the values and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

Merger or Consolidation. Upon a merger or consolidation of any association referred to herein with any other association as provided in its Articles of Incorporation, its properties, rights, and obligations, may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one (1) scheme. No such merger or consolidation, however, shall affect or effect any revocation, change, or addition to the covenants established by this Declaration within the Properties.

ARTICLE I

Definitions

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Overall Association" shall mean and refer to VILLAGES OF HOMESTEAD HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not for profit, which is to be incorporated, its successors, and assigns, established pursuant to the VILLAGES OF HOMESTEAD DECLARATION of PROTECTIVE COVENANTS and CONDITIONS recorded (or to be recorded) in the Public Records of Dade County, Florida.

(b) "Audubon Village Homeowners Association" shall mean and refer to VILLAGES OF HOMESTEAD AUDUBON VILLAGE HOMEOWNERS ASSOCIATION, INC, a Florida corporation not for profit which is to be incorporated, its successors, and assigns (also referred herein as the "Association").

(c) The "Properties" shall mean and refer to all existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions hereof. Developer may from time to time bring other lands under the provisions hereof by recording Supplemental Declarations, as provided in Article VI, Section 6 hereof.

(d) "Audubon Village Neighborhood Club" shall mean and refer to Tract A, as shown on the plat of

⁹ OR 14240 P 1646 PARA C1 8/25/89

HOMESTEAD LAKES FARM LIFE WEST, as recorded in Plat Book 109, Page 40, and such additional nonpublic areas and facilities provided for the common or joint use of all residents of the Properties (all such property being also referred to herein as "Neighborhood Common Area"), as may from time to time be designated¹⁰ as Neighborhood Common Area under these covenants and conditions, each such designation to be by recorded instrument; together with the landscaping and any improvements thereon including, without limitation, all structures recreational facilities, open space walkways sprinkler systems and street lights but excluding any public utility installations thereon. The Audubon Village Neighborhood Club shall be conveyed to the Audubon Village Homeowners' Association before the first Lot is conveyed to a homeowner¹¹.

(e) "Lot" shall mean and refer to any residential Lot (but not any parcel designated as a Tract) or residential condominium unit within the Properties and any such lot or condominium unit shown upon any resubdivision of the Properties. When a Lot is contiguous to a Lake (as hereinafter defined) the boundary of the Lot shall be deemed to extend to the deep cut line of the Lake.

(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot or Tract situated upon the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

The record owner of fee-simple title to any Tract shall be considered an Owner hereunder at the rate of 4.5 Lots per acre until said Tract is subdivided into Lots, at which time the actual number of Lots shall control for purposes of this Declaration.

(g) "Member" shall mean and refer to all those Owners who are members of the Audubon Village Homeowners' Association as provided in Article III, Section 1 hereof.

(h) "Developers" shall mean and refer to GROSSMAN HOLDINGS LIMITED. BLEEMAN HOLDINGS LIMITED. THE MERIDIAN BUILDING GROUP LIMITED and MARKBOROUGH PROPERTIES LIMITED their successors and/or assigns, if such successors and/or assigns should acquire the rights of Developer created by this Declaration together with more than one (1) undeveloped Lot or Tract for the purpose of development. The rights of Developer created by this Declaration shall not accrue to any successor or assign of Developer unless by written instrument in a form recordable in the Public Records of Dade County. Florida.

(i) "Tract" shall mean and refer to Tract F as shown on the plat of HOMESTEAD LAKES TENNESSEE EAST as recorded in Plat Book 109. Page 26, of the Public Records of Dade County. Florida. When a Tract is contiguous to a Lake the boundary of the Tract shall be deemed to extend to the center of the Lake as shown on the above-described Plat.

The use of the term "subdivided" in this Declaration with respect to Tracts shall also include subjecting

¹⁰ OR 10581 P 121 PARA D1 11/20/79

¹¹ OR 10433 P 1752 6/25/1979

Tracts or portions thereof to the condominium form of ownership,

(j) "Architectural Control Committee" shall mean and refer to the VILLAGES OF HOMESTEAD ARCHITECTURAL CONTROL COMMITTEE as established by the VILLAGES of HOMESTEAD DECLARATION of PROTECTIVE COVENANTS and CONDITIONS recorded (or to be recorded) in the Public Records of Dade County, Florida.

ARTICLE II

Property Rights in Neighborhood Common Area

Section 1. Ownership. The Neighborhood Common Areas are hereby dedicated to the joint and several use, in common, of the Owners of all Lots and Tracts that may, from time to time constitute the Properties. Before the sale of any Lot to a homeowner, the Developer shall convey and transfer all of its interest in the Audubon Village Neighborhood Club to the Audubon Village Homeowners Association, and the Association shall accept such conveyance. Thereupon, the Association shall be responsible for the maintenance thereof in a continuous and satisfactory manner without cost to the general taxpayers of the City of Homestead. It is intended that all real estate taxes against the Neighborhood Common Areas shall be proportionately assessed against and payable as part of the taxes of the Lots and Tracts within the Properties. However, in the event that any such taxes are assessed directly against the Neighborhood Common Areas, the Audubon Village Homeowners' Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property thereon accruing from and after the date these covenants are recorded and such taxes shall be prorated between Developer and the Audubon Village Homeowners' Association as of the date of such recordation. The Developer shall have the right, from time to time, to enter upon the Audubon Village Neighborhood Club during periods of construction upon adjacent properties and for the purpose of completion of the facilities on the Neighborhood Common Areas which the Developer is committed to construct or provide, as appropriate, in accordance with the Stage I Common Areas Development Plan submitted to the Veteran's Administration for those portions of the Neighborhood Common Areas which may be brought under this Declaration pursuant to the annexation provisions hereinafter set forth.¹² The Owner of a Lot or Tract shall have no personal liability for any damages for which the Audubon Village Homeowners' Association is legally liable or arising out of or connected with the existence or use of any of the Audubon Village Neighborhood Club or any other property required to be maintained by the Audubon Village Homeowners' Association.

Section 2. Members' Easements. Each Member and each tenant, agent, and invitee of such Member shall have a permanent and perpetual easement for the use of the Audubon Village Neighborhood Club, Such easements

¹² OR 10581 P 121 PARA D2 11/20/79

shall be reciprocal and in common with all other Members, their tenants, agents, and invitees, subject to the following:

(a) The right and duty of the Association to levy assessments against each Lot and Tract for the purpose of maintaining the Audubon Village Neighborhood Club.

(b) The right of the Association to suspend the voting rights and the right to use of the recreational facilities constructed on the Neighborhood Common Areas of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.¹³

(c) The right of the Association to charge reasonable admission and other fees for the use of the Audubon Village Neighborhood Club and for goods and services provided by the Club.

(d) The right of the Association to adopt and enforce rules and regulations governing the use of the Audubon Village Neighborhood Club and all facilities at any time situated thereon.

(e) The right of the Association to dedicate or transfer all or any part of the Audubon Village Neighborhood Club to any public agency, authority, or utility for such purposes and subject to such conditions as set forth in this Article and as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded.

In the event any Neighborhood Common Area as herein defined is dedicated to the City of Homestead for public purposes, said Neighborhood Common Area shall cease to be subject to these Covenants and Conditions as of the date of said dedications except as provided in this subparagraph (e); provided, however if a reversionary interest is retained in any Neighborhood Common Area dedicated to the City of Homestead, in the event said Neighborhood Common Area reverts to the dedicator, these covenants and conditions shall apply in full force and effect to said Neighborhood Common Area as if said dedication had never occurred.

If any Neighborhood Common Area is dedicated to the City of Homestead and the City required supervisory maintenance of said Neighborhood Common Area to be performed by the Dedicator, the provisions of this Declaration shall apply to the extent necessary to provide said supervisory maintenance, and the Association shall provide said supervisory maintenance according to the covenants and conditions of this Declaration.

The right of an Owner to the use and enjoyment of the Audubon Village Neighborhood Club shall extend to the members of his immediate family who reside with him, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

Section 3. Easements Appurtenant. The easement provided in Section 2 shall be appurtenant to and shall

¹³ OR 10581 P 121 PARA D3 11/20/79

pass with the title to each Lot or Tract.

Section 4. Maintenance. The Audubon Village Homeowners' Association shall at all times maintain the Audubon Village Neighborhood Club in good repair and shall replace as often as necessary, any and all improvements situated on the Audubon Village Neighborhood Club, including, but not limited to the clubhouse, all recreational facilities, landscaping, paving, drainage structures, street lighting fixtures and appurtenances, sidewalks, and other structures, except utilities, all such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board members. Maintenance of street lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article IV. Such assessments shall be against all Lots equally and against all undeveloped Tracts at the rate of 4.5 Lots per acre. At such time as said Tracts are subdivided into Lots, the assessment shall be made equally against all actual Lots. No Owner may waive or otherwise escape liability for the assessments for such maintenance by nonuse of the Audubon Village Neighborhood Club or abandonment of his right to use said Neighborhood Common Area.

Section 5. Operation of Audubon Village Neighborhood Club. The Audubon Village Homeowners' Association at all times shall operate, supervise, control, and manage the Neighborhood Club and any income producing activities that may be established or permitted to operate in the Neighborhood Club. The Association, in its sole discretion, shall determine all activities and programs to be carried on in the Neighborhood Club and shall employ the necessary personnel required therefor as it determines in its sole discretion. The operation, supervision, and management of the Neighborhood Club may be delegated by the Association as set forth in Article IV, Section 5 of this Declaration.

Section 6. Utility Easements. Public utilities may be installed underground in the Neighborhood Common Area when necessary for the service of the Properties, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 7. Public Easements. Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Neighborhood Common Area.

ARTICLE III

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Tract shall be a Member of the Audubon Village Homeowners' Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a member of said Association. Membership in the Audubon Village Homeowners' Association shall be automatic and appurtenant to and may not be separated from the ownership of

any Lot or Tract that is subject to assessment.

Section 2. Voting Rights. The Audubon Village Homeowners' Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. Class A Members owning undeveloped Tracts shall be entitled to 4.5 votes for each acre of said Tract in which they hold the interest required for membership by Section 1. At such time as said Tracts are subdivided into Lots, the vote shall be converted to one (1) vote per actual Lot. When more than one person holds such interest or interests in any Lot or Tract, all such persons shall be Members, and the vote for such Lot or Tract shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot or 4.5 votes per acre with respect to any undeveloped Tract.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot and 13.5 votes per acre for each acre of undeveloped Tract in which it holds the interest required for membership in Section 1. At such time as said Tracts are subdivided into Lots, the vote shall be converted to three (3) votes per actual Lot.¹⁴ It is further provided however, that the Class B membership shall cease and be converted to Class A membership on the occurrence of the earlier of the following events:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31, 1982.

ARTICLE IV

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of the Assessments. The Developer for each Lot or Tract owned by it within the Properties hereby covenants, and each Owner of any Lot or Tract by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Audubon Village Homeowners' Association as hereinafter provided:

- (1) annual assessments or charges, which shall include assessments for the maintenance and operation of the Audubon Village Neighborhood Club as provided in Section 4 and 5, of Article II, including such reasonable reserves as the Audubon Village Homeowners Association may deem necessary, and
- (2) special assessments for capital improvements; such assessments to be fixed, established, and collected from time to time as hereinafter provided.

¹⁴ OR 10581 P 121 PARA: D4 11/20/79

The annual, special, and other assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. All assessments, both annual and special, by the Audubon Village Homeowners' Association shall be against all Lots and Tracts subject to its jurisdiction, fixed at a uniform rate per Lot, and may be collected on a monthly basis.

Section 2. Purpose of Assessments. The annual assessments levied by the Audubon Village Homeowners' Association shall be used exclusively for the general purpose of promoting the recreation, health, safety, and welfare of the Members of the Audubon Village Homeowners' Association, their families residing with them, their guests, and tenants; and, in particular for the improvement, maintenance, and operation of properties, services, and facilities, if any, devoted to this purpose and related to the use and enjoyment of the Audubon Village Neighborhood Club facilities situated upon the Properties, including, but not limited to, the capital improvement repair, replacement and additions thereto, and for the cost of labor, equipment materials, management and supervision thereof.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 2 hereof, the Audubon Village Homeowners' Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part the cost of any construction or reconstruction, repair, or replacement of a capital improvement that in the judgment of the Board benefits all Lots and Tracts, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Members who are voting in person or by proxy at a meeting duly called for this purpose, as provided in the By-laws of the Audubon Village Homeowners' Association.

Section 4. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Audubon Village Homeowners' Association to be the date of commencement; provided, however, that such commencement date shall be subsequent to the conveyance of the Audubon Village Neighborhood Club to the Association.

The annual assessments shall be payable in monthly installments due the first day of each month, or in annual or quarter-annual installments if so determined by said Board.

The amount of the annual assessment that may be levied for the balance remaining in the first year of assessment shall be an amount bearing the same relationship to the annual assessment provided for in Section 2 hereof as the remaining number of months in such calendar year bears to the total number of months in said calendar

year.

The due date of any special assessment levied under Section 3 hereof shall be fixed in the resolution authorizing such assessment.

Section 5. Duties of the Board of Directors. The Board of Directors of the Audubon Village Homeowners' Association shall fix the date of commencement and the amount of assessment against each Lot and Tract subject to the Association's jurisdiction for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto that shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Audubon Village Homeowners' Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of said Association, setting forth whether such assessment has been paid as to any particular Lot or Tract. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

The Audubon Village Homeowners' Association, through the action of its Board of Directors, may enter into an agreement or agreements from time to time with one or more persons, firms, or corporations for the purpose of providing professional management, operation of and maintenance services for the Audubon Village Neighborhood Club. The Audubon Village Homeowners' Association shall have all other powers provided in its Articles of Incorporation.

Section 6. Amounts of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot or Tract to an Owner, the maximum annual assessment shall be \$ 120.00 per Lot.

(a) from and after January 1 of the year immediately following the conveyance of the first Lot or Tract to an Owner, the maximum assessment may be increased each year not more than the greater of 5% above the maximum assessment for the previous year or the "Adjusted Maximum Annual Assessment" as hereinafter defined without a vote of the membership.

Adjusted Maximum Annual Assessment. The "Adjusted Maximum Annual Assessment" shall be computed by reference to the statistics published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics, designated "Consumer Price Index-U.S. City Average for Urban Wage Earners and Clerical Workers, 1967 equals 100, All Items" , hereinafter called the "Consumer Price Index"¹⁵. For purposes of identification, the Consumer Price Index for August 1977 was 183.3. The "Adjusted Maximum Annual Assessment" shall be computed by the following formula:

i = Consumer Price Index for November, 1977 ¹⁶

I = Consumer Price Index for November, 1978

For the first adjustment, and for the month of November immediately preceding the calendar year in question for future adjustments.

$\frac{I - i}{i}$ Plus 1.0 multiplied by \$120.00 = "Adjusted Maximum Annual Assessment"

If the Bureau of Labor Statistics shall change the method of determining the Consumer Price Index, the formula for determining "Adjusted Maximum Annual Assessment" shall be altered or amended, if possible, so as to continue the base period and base figure, but in the event it shall be impossible to do so, or in the event the Bureau of Labor Statistics shall cease to publish the said statistical information and it is not available from any other source, public or private, then and in any such event a new formula for determining "Adjusted Maximum Annual Assessment" shall be adopted by the Association. Any such new formulas for computing increases in assessments are subject to prior acceptance by the Veteran's Administration.¹⁷

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Tract to an Owner, the maximum annual assessment may be increased above the greater of 5% of the previous year's maximum annual assessment or the Adjusted Maximum Annual Assessment by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The assessment for each Lot shall be equal to the assessment for each other Lot and the assessment for each Tract shall be at the rate of 4.5 Lots per acre until said Tract is subdivided into Lots, at which the assessment shall be made equally against all actual Lots. The Board of Directors of the Association shall, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for each year in an amount not to exceed the maximum annual assessment as herein defined.

Section 7. Effect of Nonpayment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid within thirty (30) days after the date when due (being the dates specified in Section 4 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors, and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the date when due, the assessment shall bear Interest from the date when due, at the rate of ten percent (10%) per annum, however, in no event shall this

¹⁶ <http://data.bls.gov/cgi-bin/surveymost?mw> (185.4)

¹⁷ OR 10581 P 121 PARA D5 11/20/79

interest rate exceed the maximum allowable by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the property or may foreclose the lien against the property, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment attorneys' fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee, including attorneys' fees incurred by an appeal of such action, to be fixed by the court, together with the costs of the action.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Audubon Village Neighborhood Club or abandonment of his Lot or Tract. It shall be the legal duty and responsibility of the Audubon Village Homeowners Association to enforce payment of the assessments.

In addition to the rights of collection of assessments stated in this Section 7, any and all persons acquiring the title to or the interest in a Lot or Tract as to which the assessment is delinquent including without limitation persons acquiring title by operation of law and by judicial sale, shall not be entitled to the occupancy of such Lot or Tract or the enjoyment of the Audubon Village Neighborhood Club, until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 8 of this Article.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage encumbering any lot or Tract to any institutional lender or governmental agency now or hereafter placed upon the Properties subject to assessments. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due of from the lien thereof.¹⁸ Any unpaid assessment that cannot be collected as a lien against a Lot or Tract by reason of this Section shall be deemed to be an assessment divided equally among, payable by, and a lien against all Lots and at the rate of 4.5 Lots per acre for all undeveloped Tracts subject to the jurisdiction of the association levying the assessment, including the Lot or Tract as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Such assessments shall be collected as provided in Section 10, hereof. Liens for assessments under this Article IV shall be of equal dignity with liens for assessments of the Overall Association.

Section 9. Collection of Assessments. The Overall Association shall collect the assessments of the Audubon Village Homeowners' Association upon certification by the Audubon Village Homeowners' Association to the Overall Association from time to time of the amount of the assessment levied by the Audubon Village

¹⁸ OR 10581 P 121 PARA D6 11/20/79

Homeowners' Association with respect to each Lot or Tract subject to such assessment. In the event that only a portion of the assessments are collected, the amount collected shall be prorated in the same proportion that the assessments of the Overall Association and the Audubon Village Homeowners' Association bear to the total assessment levied. In the event any past due assessment is to be divided equally among and payable by all of the Lots or Tracts subject to assessment by the Audubon Village Homeowners' Association as provided in Section 8 hereof, any amounts representing assessments due the Overall Association shall be divided equally among all Lots and at a rate of 4.5 Lots per acre for all undeveloped Tracts subject to assessment by the Overall Association.

Section 10: Effect on Developer :Notwithstanding any provision that may be contained to the contrary in this instrument, the Developer shall be liable for assessments against Lots and Tracts owned by the Developer, provided that vacant Lots and Tracts, Lots and Tracts with partially completed structures and Lots and Tracts with completed structures which are not and have not previously been occupied, shall be assessed at a rate equal to 25% of regular assessments on such Lots and Tracts as long as the viability of the Association will not be jeopardized.¹⁹

Section 11. Trust Funds. The portion of all regular assessments collected by the Audubon Village Homeowners' Association for reserves for future expenses, and the entire amount of all special assessments, shall be held by the Overall Association in trust for the Owners of all Lots and Tracts, as their interest may appear.

Section 12. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 6 hereof shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast 60% of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 13. Special Taxing Districts. In the event a Special Taxing District is established to provide any services currently rendered by the Audubon Village Homeowners' Association, these Covenants and Conditions shall no longer be of any force and effect as to those services provided by said Special Taxing District; provided, however, the Covenants and Conditions set forth herein shall continue to bind and run with the land as herein provided as to all of the Properties for services not provided by said Special Taxing District. If said Special Taxing District is terminated for any reason, these Covenants and Conditions shall thereupon apply in full force and effect as if said Special Taxing District had never been created.

¹⁹ OR 10581 P 121 PARA D7 11/20/79

ARTICLE V

Rules and Regulations

Section 1. Compliance by Owners. Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations adopted by the Board of Directors of the Audubon Village Homeowners' Association.

Section 2. Enforcement. Failure of an Owner to comply with such restrictions, covenants, or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief or any combination thereof, including costs and attorneys' fees incurred in bringing such actions, and if necessary, costs and attorneys' fees for appellate review. The Audubon Village Homeowners' Association shall have the right to suspend voting rights and use of the Audubon Village Neighborhood Club facilities the maintenance for which is the responsibility of the Association.

ARTICLE VI

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Architectural Control Committee, the Overall Association, the Audubon Village Homeowners' Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended as provided in Section 5 of this Article VI.

Section 2. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any 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 Developer, any 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. These covenants may be enforced by the Architectural Control Committee, the Developer, any Owner of a Lot or Tract subject to these Covenants and Conditions, the Overall Association, and the Audubon Village Homeowner's Association. In the event legal action is taken to enforce these covenants, as herein provided, the prevailing party shall be entitled to recover the costs of

such action, including attorneys' fees, and appellate costs and attorneys' fees if necessary.²⁰

Section 4. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 5. Amendment. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges, and liens of this agreement may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of any instrument executed by:

(1) Deleted.²¹

(2) by Owners during the initial 30 year period by an instrument signed by not less than 90% of the Members, and thereafter by an instrument signed by not less than 75% of the Members; provided, however, no such amendment authorized by Subparagraph (2) of this Section 5 shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed amendment is sent to every Owner at least ninety (90) days in advance of any action and provided further that no amendment which adversely affects the rights of the Developer, as provided herein (and in any modification required by the Veteran's Association), shall be valid without the written consent of the Developer to such amendment.²²

Any amendment of this Declaration must be recorded in the Public Records of Dade County, Florida.

Section 6. Annexation. Additional property may be annexed to the Properties by the Developer without the consent of the Members within 5 years of the date of this instrument, provided that the Federal Housing Administration and the Veteran's Administration, to the extent either of both of them have jurisdiction over the Properties by reason of them insuring loans within the Properties, determine(s) that the annexation in in accord with the general plan heretofore approved by them/it. The recording of a Supplemental Declaration (executed by the Developer alone) in the Public Records of Dade County shall be conclusive evidence that the annexation evidenced thereby is in accord with the general plan heretofore approved by such Administration(s) having such jurisdiction if any. Such annexation shall also be permitted with the consent of two-thirds (2/3rds) of each class of Members. Such annexation shall be effected by the recordation of Supplemental Declarations in the Public Records of Dade County. The property which may be subject to such annexation must be all or any portion or portions of that certain property identified in Exhibit "A:" to the Amendment to Declarations dated October 25, 1984 and recorded March 5, 1985 in Official Records Book 12432 Page 1504 of the Public Records of Dade County, Florida²³, provided that the Developer shall have the right, by recording an appropriate release in the Public Records of the County, to remove from the effect of these annexation provisions any portion of such property so described in such

²⁰ OR 10581 P 121 PARA D9 11/20/79

²¹ OR 10581 P 121 PARA D10 11/20/79

²² OR 10581 P 121 PARA D11 11/20/79

²³ OR 12432 P 1504 PARA C 11/25/84

Amendment.²⁴

Section 7. Hazard or Liability Insurance. No person other than the Owner, or a mortgagee where permitted by the mortgage, shall have the right to place hazard or liability insurance for that Lot or Tract. Neither Developer nor the Audubon Village Homeowners' Association shall impose a requirement to insure through a particular company or agent or to require that such policies be approved by them. Proceeds of insurance claims shall not be required to be paid to anyone other than the Owner of the Lot or Tract and/or the mortgagee, or in the case of a condominium, to the condominium association in accordance with the declaration of condominium.

Section 8. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Neighborhood Common Area, and amendment of this Declaration of Protective Covenants and Conditions. This Declaration is being submitted to the Federal Housing Administration and the Veterans Administration for approval. Notwithstanding anything to the contrary contained in Section 5 of this Article, Developer shall have the right from time to time without the necessity of joinder or consent by any Lot or Tract Owners, to amend, add to, change, modify, and derogate the provisions of this instrument in such a way as may be required by the Federal Housing Administration or the Veterans Administration in order for said Administrations to approve financing of residential units on Lots within the Properties. Federal Housing Administration or Veterans Administration approval of any such document executed by Developer shall be conclusive evidence that the amendment or other change was required by the Federal Housing Administration or the Veterans Administration pursuant to this provision.

Section 9. Effective Date. This Declaration shall become effective upon its recordation in the Dade County Public Records.

Section 10. Cumulative Effect. The provisions of this Declaration shall be cumulative to the provisions of the VILLAGES OF HOMESTEAD DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS creating the Overall Association and the DECLARATION OF RESTRICTIONS being recorded by Developer.

²⁴ OR 11250 P 944 PARA C 10/15/81

EXECUTED as of the date first above written.

GROSSMAN HOLDINGS LIMITED,
BLEEMANHOLDINGS LIMITED, THE MERIDIAN
BUILDING GROUP LIMITED and MARKBOROUGH
PROPERTIES LIMITED

Signed. Sealed and Delivered in the presence of:

By //s// GEORGE E. MILLS , JR
Attorney-in-fact

//s// BRENDA NEISHLOSS

By //s// EMILIO A. CERRA
Attorney-in-fact

//s// DANLENE G. VINCENT

STATE OF FLORIDA)
): SS
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 5th day of September, 1978, by Emilio A. Cerra and George E. Mills, Jr. the attorneys-in-fact for GROSSMAN HOLDINGS LIMITED, BLEEMAN HOLDINGS LIMITED, THE MERIDIAN BUILDING GROUP LIMITED and MARKBOROUGH PROPERTIES LIMITED, All Canadian corporations on behalf of said corporations.

PAMELA CAMBRON
Notary Public



**NOTICE OF PRESERVATION OF USE RESTRICTIONS
UNDER MARKETABLE RECORD TITLE ACT**

Pursuant to Chapter 712, Florida Statutes, the undersigned Claimant files this Notice and in support thereof states:

1. The name and address of the entity filing this Notice is Villages of Homestead Audubon Village Homeowners' Association, Inc. (the "Association"), a Florida not-for-profit corporation, c/o Board of Directors, 1851 S. Canal Drive, Homestead, Florida 33035, the Articles of Incorporation of which were originally filed in the office of the Secretary of State on January 17, 1979, the Association having been organized for the purpose of operating and administering the Audubon Village Homeowners community, pursuant to the recorded covenants pertaining thereto which were filed of record in the Official Records for Miami-Dade County, Florida, as follows:

<u>Name</u>	<u>Recording Date</u>	<u>O.R. Book/Page #</u>
DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS	September 28, 1978	10169/1550
DECLARATION OF RESTRICTIONS	September 28, 1978	10169/1560

2. The Association has sent a Statement of Marketable Title Action in the form set forth in Section 712.06(1)(b), Florida Statutes, to all members of the Association and attaches hereto an Affidavit executed by a member of the Board of Directors of the Association affirming that the Board of Directors caused the Statement of Marketable Title Action to be mailed to all members of the Association and further attaches the original Statement of Marketable Title Action which was mailed to all members of the Association as composite Exhibit "A."

3. The lands affected by this Notice are depicted and legally described in O.R. Book 10169 at Page 1550, as follows:

Blocks 1 through 13 inclusive and Tracts D, E, F, G, H, I, J and K, HOMESTEAD LAKES TENNESSEE EAST, according to the Plat thereof, recorded in Plat Book 109, Page 26, of the Public Records of Miami-Dade County, Florida, and Blocks 1 through 10 inclusive and Tracts C, D and E, HOMESTEAD LAKES FARM LIFE WEST, according to the Plat thereof, recorded in Plat Book 109, Page 40, of the Public Records of Miami-Dade County, Florida.

4. The real property interest claimed under this Notice is the right to preserve those certain use restrictions, covenants and agreements set forth in the:

- a. Declaration of Protective Covenants and Conditions recorded on September 28, 1978 in Official Records Book 10169 at Page 1550, Public Records of Miami-Dade County, Florida;

per cost

b. Declaration of Restrictions recorded on September 28, 2008 in Official Records Book 10169 at Page 1560, Public Records of Miami-Dade County, Florida;

all as same have been or may be amended from time to time.

Dated this 4th day of September, 2008.

Joseph Duvall
Witness Signature

LARRY DIEHL
Printed Name

Judy Call
Witness Signature

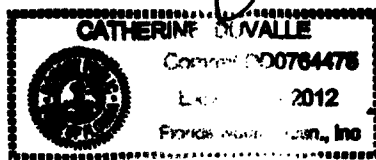
CINDY STINGONE
Printed Name

VILLAGES OF HOMESTEAD AUDUBON VILLAGE HOMEOWNERS' ASSOCIATION INC., a Florida not-for-profit corporation

By: *Larry Diehl*
Larry Diehl, President

Attest: *Cindy Stingone*
Cindy Stingone, Secretary

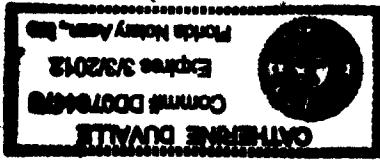
STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)



The foregoing instrument was acknowledged before me this 4th day of September 2008, by Larry Diehl, President of Villages of Homestead Audubon Village Homeowners' Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has presented _____ as identification.

Catherine Duvalle
NOTARY PUBLIC, State of Florida

My Commission Expires:
STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)



The foregoing instrument was acknowledged before me this 5th day of September 2008, by Cindy Stingone, Secretary of Villages of Homestead Audubon Village Homeowners' Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. She is personally known to me or has presented _____ as identification.

Catherine Duvalle
NOTARY PUBLIC, State of Florida

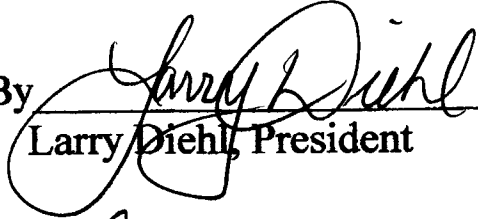
My Commission Expires: 3/3/2012

STATEMENT OF MARKETABLE TITLE ACTION

The Audubon Village Homeowners Association, Inc. (The "Association") has taken action on February 6, 2008, to ensure that The Declaration of Protective Covenants and Conditions, recorded on September 28, 1978 in Official Records Book 10169, Page 1550 and The Declaration of Restrictions recorded on September 28, 1978, in Official Records Book 10169 at Page 1560 all of the Public Records of Miami-Dade County, Florida, as may be amended from time to time, currently burdening the property of each and every member of the Association, retain its status as the source of marketable title with regard to the transfer of a member's residence. To this end, the Association shall cause the notice required by chapter 712, Florida Statutes, to be recorded in the Public Records of Miami-Dade County, Florida. Copies of this notice and its attachments are available through the Association pursuant to the Association's governing documents regarding official records of the Association and the applicable Statute.

Exhibit A
1 of 2

Audubon Village Homeowners Association, Inc.

By 
Larry Diehl, President

By 
Cindy Stingone, Secretary

**AFFIDAVIT OF MAILING OR HAND DELIVERING OF
STATEMENT OF MARKETABLE TITLE ACTION
TO LOT OWNERS**

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI-DADE)

BEFORE ME, personally appeared Larry Diehl, who after being duly sworn, deposes and says that the Statement of Marketable Title Action approved at the special meeting of the Board of Directors of Villages of Homestead Audubon Village Homeowners' Association, Inc. for preservation of use restrictions under Marketable Record Title Act held February 6, 2008 at 7:00 P.M. at Audubon Clubhouse, 1851 S. Canal Drive, Homestead, Florida 33035, was mailed or hand delivered in accordance with the Bylaws and applicable law. The Statement of Marketable Title action was mailed or hand delivered to each lot owner at the address last furnished to the Association, as such address appears on the books of the Association, on February 6, 2008.

VILLAGES OF HOMESTEAD AUDUBON
VILLAGE HOMEOWNERS' ASSOCIATION, INC.

By: *Larry Diehl*
Larry Diehl, President

The foregoing instrument was acknowledged before me this 4 day of September, 2008, by Larry Diehl, as President of Villages of Homestead Audubon Village Homeowners' Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me, or has produced _____ as identification and did take an oath.

Catherine Duvalle

NOTARY PUBLIC, State of Florida

My Commission Expires:
3/3/2012



Exhibit A
2 of 2