

AMENDMENT AND REINSTATEMENT OF  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by the VILLAS AT INDIAN RIVER HOME OWNERS ASSOCIATION, a Florida Corporation, hereinafter referred to as "Declarant."

WITNESSETH:

Whereas Declarant is the owner of certain property located in Merritt Island, County of Brevard, State of Florida, which is more particularly described as:

All of the "Common Areas" as expressly designated in THE VILLAS AT INDIAN RIVER UNIT 1, a Planned Unit Development, according to the plat thereof as recorded in Plat Book 24 at pages 84 & 85 of the Public Records of Brevard County, Florida.

NOW THEREFORE, Declarant 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 value 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.

## ARTICLE 1

### DEFINITIONS

Section 1. "Association" shall mean and refer to the VILLAS AT INDIAN RIVER PROPERTY OWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Areas" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The "Common Areas" to be owned by the Association at the time of conveyance of the first lot are described as follows:

ALL of the "Common Areas" as expressly designated in THE VILLAS AT INDIAN RIVER, UNIT 1, a Planned Unit Development according to the Plat thereof as recorded in Plat Book 24 at page 84 & 85, of the Public Records of Brevard County, Florida.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties

with the exception of the "Common Areas."

## ARTICLE 2

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the "Common Areas" which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the "Common Areas."

(b) the right of the Association to suspend the voting rights and the right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the association to dedicate or transfer all or any part of the "Common Areas" to any public agency, authority, or utility for such purposes and subject to such conditions agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of the membership has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right to enjoyment to the "Common Areas" and facilities to the members of his family, his tenants, or contract purchasers who reside on the



property.

### ARTICLE 3

#### MEMBERSHIP VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Each lot is entitled to one membership vote and all lot owners of each lot shall provide with notice to the Association of the individual entitled to cast the vote for that lot.

#### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. The Declarant, for each lot owned within the properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such as assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, penalties, costs and reasonable attorneys' fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, penalties, costs and reasonable attorneys' fees shall also be the personal obligation OF THE PERSON WHO WAS THE OWNER of such property at the time that the assessment fell due.

Section 2. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the "Common Areas."

Section 3. The annual assessment is set by the Board of Directors and may not exceed a five percent increase over the previous year's assessment without vote of the membership. Any increase in the annual assessment above the five percent increase over the previous year's assessment must be approved by a majority of the association members who are voting in person or by proxy at a meeting at which a quorum of the membership is in attendance.

Section 4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the 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, reconstruction, repair or replacement of a capital improvement to a "Common Area," including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 2/3rds of the votes of the membership who are voting either in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days

nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of at least ten percent (10%) of the members or of proxies entitled to cast votes shall constitute a quorum. If a quorum equaling 10% of the membership is not present then a subsequent meeting can be called where the required number for a quorum shall be half of the original needed. No such subsequent meeting can be held in excess of 60 days following the original meeting.

Section 6. Uniform Assessment Rate. Both annual assessments and special assessments must be fixed at a uniform rate for all lots and shall be due in full no later than 30 days after the start of the fiscal year unless The Board of Directors authorizes periodic installment payments which shall be available to all Lot owners.

Section 7. Date of Commencement of Annual Assessment Due Dates: The annual assessment provided for therein shall commence as to all lots on the first day of January of each successive year and shall accrue interest of the highest lawful rate from the due date until paid, if not paid in full within thirty (30) days. Further a late charge of \$4.00 per month for unpaid balances shall accrue if not paid by February 1st. The late charge is a penalty which shall continue to accrue monthly thereafter unless other arrangements have been made with the treasurer. Written notice of the annual assessment shall be sent to the owner of the property subject thereto. The due dates as established herein, but may be changed by the Board of Directors.



The Association shall, upon request of the record owner of that Lot, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on that owner's Lot have been paid. A properly executed certificate of the Association as to the status of the dates of this issuance.

Section 8. Effect of nonpayment of assessments; remedies to the Association. Regardless of how title is acquired, an Owner, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the Owner. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor, for a share of common expenses or otherwise, up to the time of conveyance, without regard to any right the grantee may have to recover from the grantor the amount paid by the grantee. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Area.

Assessments, and installments thereof, not paid in full within thirty (30) days from the date when they are due shall bear interest at the highest lawful rate from the due date until paid. Additionally, the Board of Directors may levy a late fee of four dollars (\$4.00) for each monthly the assessment remains unpaid, beginning with the original due date of any unpaid assessment. Such late charges are not to be considered additional interest on unpaid assessments. The Association has a lien on each Lot for any unpaid assessment on such Lot, with

interest and for late charges, reasonable attorneys' fees, at both trial and appellate levels, and costs incurred by the Association incident to the collection of the assessments or enforcement of the lien. The lien is effective from and after the recordation of a Claim of Lien in the Public Records of Brevard County, stating the description of the Lot, the name of the record owner, the amounts due and due dates. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A Claim of Lien shall be signed and acknowledged by an officer or agent of the Association. The person making full payment is entitled to a release of the lien. The Association may bring an action to foreclose a lien for unpaid assessments in the same manner as a mortgage of real property is foreclosed, and may also bring an action at law to recover a money judgment for the unpaid assessments without waiving its rights under any Claim of Lien. If an Owner shall be in default in the payment of an assessment or any part thereof, the Board of Directors may accelerate the remaining installments for assessments for the fiscal year, upon notice to the Unit Owner, whereupon the unpaid balance of the assessment due for the remainder of the fiscal year shall become due upon the date stated in the Notice, but not less than fifteen (15) days after the delivery of such Notice to the Lot Owner.

Section 9. Enforcement of Liens for Assessments and Personal Obligation of Owner. In the event an Owner fails to pay assessments, in full and when due as provided in this



Declaration, the Association may at any time thereafter institute an action to foreclose the lien in favor of the Association against the Owner's Unit, and/or to institute an action at law against the Owner personally obligated to pay such assessment. The Association's acceptance of any subsequent payment of any assessment, in whole or in part, shall not be deemed a waiver of the Association's right to enforce its lien against any Unit or to enforce the Owner's obligation to pay any such assessments as provided in this Declaration.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage. 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 the 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 or from the lien thereof.

Section 11. Exempt Property. All property dedicated to and accepted by a local public authority and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Florida shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE 5

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association. In the event the Board fails to approve or disapprove such design and location within thirty days after the plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

## ARTICLE 6

### GENERAL PROVISIONS

Section 1. Enforcement. The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one 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 3. Amendment. The covenants and constrictions of this Declaration shall run with and bind the land, for the term of twenty years from the date of this Declaration and its recording, after which time they shall automatically extended for successive periods of ten years. This Declaration may be amended during the first twenty year period by an instrument signed by not less than ninety percent of the Lot owners, and thereafter by an instrument signed by not less than seventy-five percent of the Lot owners. Any amendment must be recorded.

Section 4. Annexation.

(a) Additional residential property and "Common Areas" may be annexed to the Properties with the consent of two thirds of the Association members.

(b) Additional land within the area described in that certain warranty deed dated July 24, 1974, as recorded in Official Record Book 1462, at Pages 941 through 955, of the Public Records of Brevard County, Florida, may be annexed by the Declarant without the consent of members within five years of the date of this instrument provided FHA and the VA determine that the annexation is in accordance with the general plan heretofore approved by them.

Section 5. Sale Transfer or Conveyance of Common Areas. Subject to approval of seventy-five percent of the Association membership, each Lot having one (1) vote, the Board



of Directors shall have the authority to sell, transfer or convey all or any part of the common areas, with the proceeds of such sale, if any, being applied to capital improvements or repair or replacement of existing common elements, but not to reduce annual common area assessments.

#### ARTICLE 7

#### OTHER COVENANTS, RESTRICTIONS AND LIMITATIONS

Section 1. Residential Use. All of the Lots at VILLAS AT INDIAN RIVER, UNIT 1, are restricted to the residential use of a single family, their household, servants and guests.

Section 2. No Trade, Business, Profession, Etc. No trade, business, profession, or any other type of commercial activity shall be carried out upon any land in this Planned Unit Development.

Section 3. No structure of a temporary character, trailer, basement, tent, garage, or other outbuilding shall be used on any Lot, with the exception of aluminum tool sheds located upon cement base; however, the previously listed items cannot be used as a temporary residence. Construction sheds may be placed on a Lot and remain there temporarily during the course of active construction of a residence for a period not to exceed eight (8) months.

Section 4. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 5. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

Section 6. No Lot shall be used or maintained as a dumping area for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No commercial vehicles such as busses (including school busses), trucks, dump trucks, storage moving vans, trailers or semitrailers shall be parked, stored, kept, maintained or disassembled, and no lot shall be used as a dumping ground for automobile, truck, or trailer parts to the end that such storage, dumping, or keeping would constitute a nuisance or annoyance or create an unsightly or unhealthy neighborhood condition.

Section 7. Easements for ingress and egress and installation and maintenance of utilities and drainage are reserved as shown in the recorded Plat of the VILLAS AT INDIAN RIVER, UNIT 1. There are also reserved easements and rights-of-way for the public utilities on those portions of the dedicated streets which are not utilized for street purposes. Within all of these easements, no structures, plants 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 change the direction of flow of drainage channels in the

easements. The easement area of each Lot, and all improvements in it, shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

The Declarant reserves the right to assign the use of any and all easements shown on the recorded Plat before the total property being subject matter hereof is sold by the Declarant, for installation of utilities or other uses deemed by it to be necessary for the service of said lands; and any wall, fence, paving, planting or other improvements placed thereon by the owner of the property on which the easement lies shall be removed at the expense of the owner if required by the Declarant or its assignees.

Section 8. Topsoil-Drainage. No sod or topsoil shall be removed from the land without permission of the Declarant or its successors. No change in elevation of the land shall be made without the permission of the Declarant or its successors. No change in the elevation of the land shall be made without protecting adjoining Lots from surface water drainage caused by the change.

Section 9. No sign, temporary or permanent, shall be affixed to the subdivision main entrance sign. This is inclusive of all garage sale signs, for sale signs, or lost animal signs. No sign of any kind shall be displayed on any lot on a permanent basis, except that "For Sale" or "For Rent" signs may be displayed, provided same shall not exceed five square



feet in size, and provided further that this shall not be a restriction upon the Declarant or builders erecting signs advertising said subdivision.

Section 10. Water Supply. No individual water supply system for drinking purposes or household use shall be permitted on any Lot. This provision, however, shall not preclude the installation of any individual water supply system for irrigation or sprinkler purposes; provided, however, that such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the prevailing zoning and building departments of the governing authority.

Section 11. Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot.

Section 12. Minor Violations. When a building has been erected or the construction thereof is substantially advanced and is situated on any building Lot in such a manner that the same constitutes a violation or violations of any of the above covenants, the Declarant, its successors and assigns, shall have the right, at any time, to release such building, plot or portions thereof from such part of the provisions of any of the said covenants as are violated; PROVIDED, HOWEVER, that said Declarant shall not release a violation of any of said covenants except as to violations it determines to be minor, and the power to release any such building, plot or portions thereof from such violations shall be dependent on a determination by it that such violation or violations are minor.