



704.06, Florida Statutes (1997), over the Property, which includes third-party enforcement rights for the District and the Corps;

NOW, THEREFORE, in consideration of the issuance of the District and Corps Permits to construct and operate the permitted activity, and as an inducement to the County, District and Corps in issuing the Permits, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby grants, creates, and establishes a perpetual conservation easement for and in favor of Grantee upon the Property which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this conservation easement shall be as follows:

1. It is the purpose of this conservation easement to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland and/or upland areas included in the conservation easement which are to be enhanced or created pursuant to the Permits shall be retained and maintained in the enhanced or created conditions required by the Permits.

To carry out this purpose, the following rights are conveyed to Grantee and the District and the Corps by this easement:

a. To enter upon the Property at reasonable times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this conservation easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

2. Except for restoration, creation, enhancement, maintenance and monitoring activities, or surface water management improvements, which are permitted or required by the Permits, the following activities are prohibited in or on the Property;

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic or nuisance vegetation, in accordance with the District and Corps approved maintenance plan;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural condition; DP 03332 PG 4833

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing;

g. Acts or uses which are detrimental to the aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of any structural integrity or physical appearance of sites or properties of historical, architectural, or cultural significance.

i. Off-road vehicle use other than for maintenance and monitoring purposes.

3. **Passive Recreational Facilities.** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any District or Corps rule, criteria, the Permits and the intent and purposes of this Conservation Easement. Passive recreational uses that are not contrary to the purpose of this conservation easement may be permitted upon written approval by the District and the Corps Permit Staff.

a. The Grantor may conduct limited land clearing for the purposes of constructing such pervious facilities as docks, boardwalks or mulched walking trails. Grantor shall submit plans for the construction of the proposed facilities to the District and the Corps for review and written approval prior to construction.

b. The construction and use of the approved passive recreational facilities shall be subject to the following conditions:

i. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or upland buffer areas within the Conservation easement area and shall avoid materially diverting the direction of the natural surface water flow in such area;

ii. Such facilities and improvements shall be constructed and maintained utilizing Best Management Practices;

iii. Adequate containers for litter disposal shall be situated adjacent to such facilities and improvements and periodic inspections shall be instituted by the maintenance entity, to clean any litter from the area surrounding the facilities and improvements;

iv. This conservation easement shall not constitute permit authorization for the construction and authorization of the passive recreational facilities. Any such work shall be subject to all applicable federal, state, District, or local permitting requirements.

4. No right of access by the general public to any portion of the Property is conveyed by this conservation easement.

5. Neither Grantee nor the District nor the Corps shall be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

6. Grantor shall pay any and all real property taxes and assessments levied by competent authority on the Property.

7. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions and restrictions of this conservation easement shall be borne by and recoverable against the nonprevailing party in such proceedings.

8. The District and the Corps shall have third party enforcement rights of the terms, provisions and restrictions of this conservation easement. Enforcement of the terms, provisions and restrictions shall be at the discretion of the Grantee, or the District, or the Corps, and any forbearance on behalf of the Grantee or the District or the Corps to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's or District's or Corps's rights hereunder.

9. Grantee shall hold this conservation easement exclusively for conservation purposes. Grantee shall not assign its rights and obligations under this conservation easement except to another organization determined in advance by the District and the Corps to be qualified to hold such interests under state laws. No assignment or conveyance of the conservation easement shall be made unless prior written approval is given by the District and the Corps, to the Grantee.

10. If any provision of this conservation easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this conservation easement shall not be affected thereby, as long as the purpose of the conservation easement is preserved.

11. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

12. The terms, conditions, restrictions and purpose of this conservation easement shall be referred to by Grantor in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Property. Any future holder of the Grantor's interest in the Property shall be notified in writing by Grantor of this Conservation Easement and the third-party enforcement rights of the South Florida Water Management District and the United States Army Corps of Engineers.

13. Any amendments or modifications to the terms, conditions, restrictions, or purpose of this conservation easement, or any release or termination thereof, shall be subject to the prior review and written approval of the District and the Corps. The District and the Corps shall be

provided no less than 90 days advanced notice in the manner described herein of any such proposed amendment, modification, termination, or release. The approval of amendments for activities authorized by the appropriate governmental agencies shall not be withheld, provided the amendment is consistent with the permits or permit modifications and the intent of this Conservation Easement. This conservation easement may be amended, altered, released or revoked only by the written agreement between the parties hereto and the District and the Corps or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Lee County.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions and purpose imposed with this conservation easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this conservation easement and all mortgages and liens have been subordinated; that Grantor has good right and lawful authority to convey this conservation easement; and that it hereby fully warrants and defends the title to the conservation easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, CONSTANTINE BENETIS has hereunto set its authorized hand this 28<sup>th</sup> day of NOVEMBER, 2000

Signed, sealed and delivered  
presence as witnesses:

Niki K. Starbuck  
Witness: Niki K. Starbuck

Janet L. Nipper  
Witness: JANET L. Nipper

U.S. Home Corporation,  
A Delaware Corporation

By: [Signature]  
Constantine Benetis  
Vice President Project Manager

STATE OF FLORIDA

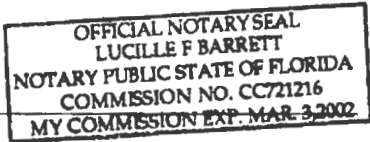
COUNTY OF Lee

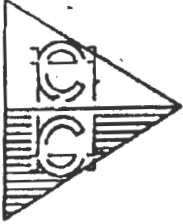
On this 28<sup>th</sup> day of November, 2000, before me, the undersigned notary public, personally appeared Constantine Benetis as Vice President Project Manager of U.S. Home Corporation, a Delaware Corporation, who is personally known to me or who produced \_\_\_\_\_ as identification, and acknowledged that he executed the same on behalf of said corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lucille F. Barrett  
Signature of Notary Public  
Printed Name: LUCILLE F. BARRETT

My commission expires: MAR 3, 2002





# INK ENGINEERING, INC.

ENGINEERS

SURVEYORS

PLANNERS

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

NOVEMBER 8, 2000  
JOB # 9720  
FILE # 9720CONE.LGL

PAGE 1

## DESCRIPTION

A PRESERVATION AREA LYING IN THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 45, RANGE 24 EAST, LEE COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS:


TRACT "H" OF HERITAGE COVE, PHASE I, A SUBDIVISION AS RECORDED IN PLAT BOOK 64, PAGES 90-100 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

TRACT CONTAINS 8.85 ACRES, MORE OR LESS.

BEARINGS SHOWN HEREON ARE BASED ON THE EAST LINE OF THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING S.00°26'02"W.

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

INK ENGINEERING INC. (LB 856)

  
GORDON D. MEIERS  
PROFESSIONAL SURVEYOR MAPPER  
FLORIDA CERTIFICATE NUMBER 2858

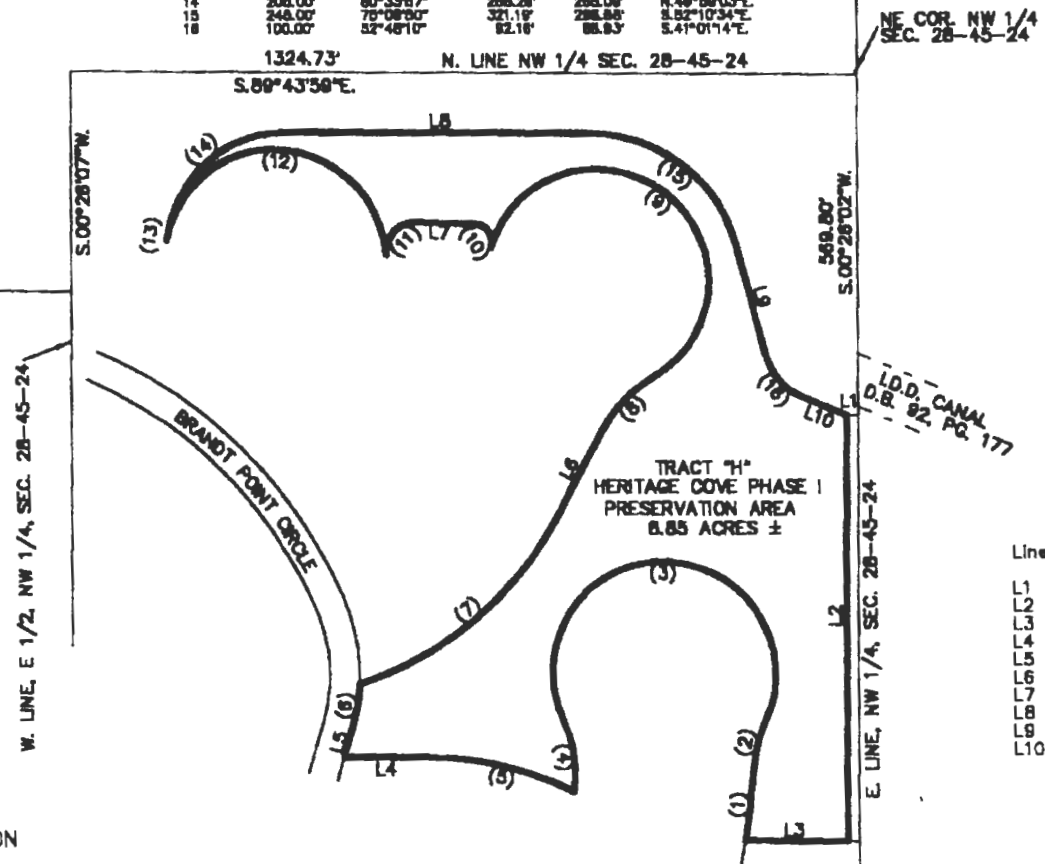
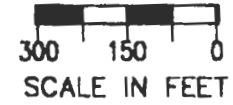


**LEGEND**

I.D.D. IONA DRAINAGE DISTRICT  
 SEC. SECTION  
 COR. CORNER  
 LB LICENSED BUSINESS  
 D.B. DEED BOOK  
 PG. PAGE

**CURVE TABLE**

NO.	RADIUS	DELTA	ARC	CHORD	CHORD BEARING
1	1147.80'	08°43'38"	114.71'	114.89'	N.07°13'50"E
2	200.00'	29°39'43"	88.80'	88.02'	N.14°57'22"E
3	187.00'	23°01'28"	780.79'	338.83'	S.88°52'00"W
4	200.00'	34°42'08"	121.13'	118.28'	S.07°47'41"E
5	547.50'	28°34'58"	284.01'	281.74'	N.78°42'33"W
6	328.00'	14°07'41"	80.14'	78.84'	N.10°06'02"E
7	987.50'	43°01'17"	448.90'	438.26'	N.88°11'48"E
8	200.00'	30°27'22"	132.88'	131.53'	N.43°08'49"E
9	187.00'	22°14'28"	723.83'	348.38'	N.87°48'44"E
10	30.00'	108°38'28"	58.32'	47.81'	N.38°24'42"E
11	80.00'	88°28'33"	83.33'	74.02'	S.44°00'48"W
12	187.00'	188°28'08"	840.09'	371.00'	N.88°28'03"W
13	300.00'	01°03'48"	8.57'	8.57'	N.10°14'58"E
14	200.00'	80°33'87"	288.28'	288.08'	N.48°08'00"E
15	248.00'	78°08'00"	321.18'	288.88'	S.52°10'34"E
16	100.00'	52°48'10"	82.18'	88.83'	S.41°01'14"E



**LINE TABLE**

Line	Bearing	Distance
L1	N.88°33'58"W.	20.00'
L2	S.00°28'02"W.	708.71'
L3	N.88°33'58"W.	173.15'
L4	WEST	141.14'
L5	N.17°08'53"E.	48.26'
L6	N.28°48'08"E.	157.16'
L7	N.88°14'28"W.	97.39'
L8	S.88°43'58"E.	516.56'
L9	S.14°37'08"E.	198.00'
L10	S.87°25'18"E.	82.79'

REFER TO ATTACHED DESCRIPTION

BEARINGS SHOWN HEREON ARE BASED ON THE EAST LINE OF THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY FLORIDA, BEING S.00°26'02"W. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD.

PAGE 2

INK ENGINEERING, INC. (LB 856)  
 DATE: 11/8/00  
  
 GORDON A. MEIERS, FOR THE FIRM  
 PROFESSIONAL LAND SURVEYOR  
 FLA. CERTIFICATE NO. 2888

(NOT A FIELD SURVEY)		SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST	
SKETCH OF DESCRIPTION		LEE COUNTY, FLORIDA	
PRESERVATION AREA		DATE: 11/8/00	
SEC. 28 TWP. 45 S. RGE. 24 E.		INK ENGINEERING, INC.	
LEE COUNTY, FLORIDA		ENGINEERS SURVEYORS PLANNERS	
		(941) 931-0455 3660 CENTRAL AVE., SUITE B, FT. MYERS, FLORIDA 33901	
		DWG. NO. 9720CONE	
		JOB NO.: 9720	

DB 88 0332 PG 4038