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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

FOR

HERITAGE HILL COUNTRY

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NOTE: To the extent that these restrictions violate 42USC3604(c) by indicating a preference, limitation of discrimination based on race, color, religion, sex, handicap, familial status or national origin, such restrictions are hereby omitted.

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HERITAGE HILL COUNTRY

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF GILLESPIE §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE HILL COUNTRY ("Declaration") is made on December 8, 1998, by U. S. HOME CORPORATION, a Delaware corporation, whose address is 4141 Blue Lake Circle, Dallas, Texas 75244 (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property in Gillespie County, Texas, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Declarant desires to create a residential community known as HERITAGE HILL COUNTRY on the land described on Exhibit "A" and such other land as may be added thereto pursuant to the terms and provisions of this Declaration (collectively, the "Properties").

NOW, THEREFORE, Declarant hereby declares that all of the Properties 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 Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association filed with the Texas Secretary of State, including any and all amendments or modifications thereto.

Section 2. "Association" shall mean and refer to HERITAGE HILL COUNTRY ASSOCIATION, INC., a Texas non-profit corporation, its successors and assigns.

Section 3. "Board of Directors" or "Board" shall mean and refer to the Association's Board of Directors.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, including any and all amendments or modifications thereto.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) now or hereafter owned by the Association for the common use and enjoyment of the Owners, and not otherwise comprising Parcels or Lots, including, without limitation, the clubhouse and related facilities and amenities and roadways.

Section 6. "Declarant" shall mean and refer to not only U. S. Home Corporation, a Delaware corporation, but also any successor, alternate or additional Declarant as appointed by U. S. Home Corporation as a successor, alternate or additional Declarant by written instrument, specifically setting forth that such successor, alternate or additional Declarant is to have, together with U. S. Home Corporation, the Declarant's rights, duties, obligations and responsibilities, in whole or in part, for all or any portion of the Properties. The term "Declarant" shall not include any person or party who purchases a Lot or Parcel from Declarant unless such purchaser is specifically assigned by a separate recorded instrument some or all of the Declarant's rights under this Declaration with regard to the conveyed property.

Section 7. "Development" shall mean and refer to the Heritage Hill Country development, including all of the Properties, Common Areas, Lots and Parcels.

Section 8. "Eligible Mortgage Holder" shall mean those holders of First Mortgages secured by Lots in the Development who have requested notice of certain items as set forth in this Declaration.

Section 9. "First Mortgage" shall mean any Mortgage which is not subject to any lien or encumbrance except the taxes or other liens which are given priority by statute or agreement.

Section 10. "First Mortgagee" shall mean the beneficiary or holder of a First Mortgage.

Section 11. "General Land Plan" shall mean the general plan of development as described in Article X, Section 1(b) of this Declaration, including any amendments or modifications thereto.

Section 12. "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 Area. The Lots may contain detached or attached housing.

Section 13. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot or Parcel 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. The term "Owner" shall include Declarant.

Section 14. "Parcel" shall mean and refer to any part of the Properties other than the Common Area, Lots, streets and roads, and land owned by a governmental body or agency or public utility company, whether or not such Parcel is developed or undeveloped, and without regard to the use or proposed use of such Parcel. Any Parcel, or part thereof, however, for which a subdivision plat has been filed of record shall, as to such portions, cease being a Parcel, or part thereof, and shall become Lots.

Section 15. "Properties" shall mean and refer to that certain real property described on the attached Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association and made subject to this Declaration.

Section 16. "Rules and Regulations" shall mean any written rules or regulations adopted, implemented or published by the Association or its Board of Directors at any time and from time to time, as may be amended, with respect to the use and enjoyment of the Common Areas and the conduct of its members and their guests, invitees, agents and contractors within the Properties.

ARTICLE II PURPOSE

Section 1. Operation, Maintenance and Repair of Common Area. The Declarant, in order to insure that the Common Area and other land for which it is responsible hereunder will continue to be maintained in a manner that will contribute to the comfort and enjoyment of the Owners and provide for other matters of concern to them, and for such other purposes as set forth herein, has organized the Association. The primary purpose of the Association shall be to operate, maintain and repair the Common Area, including, but not limited to roadways and retention areas, the surface water management system and related appurtenances such as lakes, retention/detention areas, ditches, swales, creeks or culverts, privacy gates and any improvements thereon; to maintain certain decorative entranceways and features, including those

within public rights-of way to and within the Properties as designated by the Declarant or the Board of Directors including, but not limited to, the entryway at the intersection of Heritage Boulevard and Highway 290, the frontage along Highway 290 and the landscaping fencing and other decorative items along Heritage Boulevard; to pay for the costs of street lighting for the Common Area and streets and roadways, if necessary; to share in the costs of maintaining and repairing, among other things, streets, roadways, medians and landscaping located outside the Development, but serving such Development, under an agreement with the adjoining landowners or municipalities to share in such costs; and to take such other action as the Association is authorized to take with regard to the Properties pursuant to its Articles and Bylaws, or this Declaration, and with regard to any other areas as designated by the Board of Directors. The Association shall operate, maintain and repair areas referred to in this Section and any other areas designated by Declarant as Common Area, whether or not title to those areas has been or ever will be formally conveyed to the Association.

Section 2. Expansion of the Common Area. Additions to the Common Area may be made in accordance with the terms of Article X which provides for additions to the Properties pursuant to the General Land Plan. The Declarant shall not be obligated, however, to make any such additions. The Association must accept any and all additions to the Common Area made by Declarant. The Association, upon request of the Declarant and without further consideration, shall be required to execute any documents necessary to evidence the acceptance of such Common Area. The Declarant has the right, but not the obligation, to add improvements to the Common Area.

Section 3. Enforcement of Declaration, Rules and Regulations. In addition to its primary purpose, the purpose of the Association is to maintain architectural control within the Development, in accordance with Article IX of this Declaration, and to maintain the general appearance of the Development through enforcement of the provisions of this Declaration and any rules and regulations promulgated pursuant hereto or to the Articles or Bylaws with respect to the use and maintenance of the Lots, Parcels or Common Area.

Section 4. Housing for Older Persons. HERITAGE HILL COUNTRY is intended and shall be operated as a community providing housing for older persons in compliance with the Fair Housing Act, the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601, et seq), as may be amended from time to time, and the Texas Fair Housing Act (Tex. Prop. Code §301.001 et seq.), as may be amended from time to time. The Fair Housing Act, the Fair Housing Amendments Act and the Texas

Fair Housing Act are collectively referred to herein as the "Acts". The Board shall publish and adhere to policies and procedures which demonstrate the intent to provide housing for older persons, including, but not limited to, reliable surveys and affidavits for verification of occupancy. Consistent with Heritage Hill Country purpose to provide housing for older persons, this Declarant and the Board, notwithstanding anything to the contrary contained in the Declaration or otherwise, shall have the authority to, but shall not be obligated to, levy assessments, alter existing facilities or services, adopt reasonable rules and regulations and provide significant facilities or services specifically designed to meet the physical or social needs of older persons in order to be in compliance with such Acts.

ARTICLE III MEMBERSHIP, VOTING RIGHTS AND TURNOVER

Section 1. Entitlement to Membership. Each Owner of a Lot or Parcel shall be a member of the Association, subject to and bound by the Association's Articles, Bylaws, Rules and Regulations and this Declaration. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of an obligation. Ownership, as defined above, shall be the sole qualification for membership. When any Lot or Parcel is owned of record by two or more persons or other legal entity, all such persons or entities shall be members. An Owner of more than one Lot or Parcel shall be entitled to one membership for each Lot or Parcel owned by him or her. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot or Parcel which is subject to assessment, and it shall be automatically transferred by conveyance of that Lot or Parcel. The Declarant shall also be a member so long as it owns one or more Lots or Parcels.

Section 2. Classes of Membership; Votes. The Association shall have two (2) classes of voting membership: Class A and Class B. All votes shall be cast in the manner provided in the Bylaws. When more than one person or entity holds an interest in any Lot or parcel, the vote for such Lot or Parcel shall be exercised as such persons determine, but in no event shall more than the number of votes hereinafter designed be cast with respect to any such Lot or Parcel, nor shall split votes be permitted with respect to such Lot or Parcel. The two (2) classes of voting memberships and voting rights related thereto are as follows:

a. Class A: Class A members shall be all Owners of Lots or Parcels, except the Class B member, if any. The voting rights of Class A members shall be as follows:

(i) Lots. Class A members shall be entitled to one (1) vote for each Class A Lot owned; there shall be only one (1) vote per Lot.

(ii) Parcels. Class A members shall be entitled to four (4) votes for each acre owned in a Class A Parcel designated on the General Land Plan for Single-Family Detached or Attached Residential Use.

b. Class B. The sole Class B member shall be the Declarant. Class B Lots and Parcels shall be all Lots and Parcels owned by the Declarant which have not been converted to Class A Lots or Parcels as provided below. The voting rights of the Class B member shall be as follows:

(i) Lots. The Class B Member shall be entitled to nine (9) votes for each Class B Lot which it owns.

(ii) Parcels. The Class B member shall be entitled to thirty-six (36) votes per acre for each Class B Parcel designated on the General Land Plan for Single-Family Detached or Attached Residential Use.

c. Termination of Class B Membership. From time to time, Class B membership may cease and be converted to Class A membership; and any Class B Lots and Parcels then subject to the terms of this Declaration shall become Class A Lots and Parcels upon happening of any of the following events, whichever occurs earlier:

(i) three (3) months after ninety percent (90%) of all Lots and Parcels within all phases of the Development have been conveyed to Owners other than Declarant or successor developers, builders or contractors; or

(ii) on December 31, 2023; or

(iii) when the Declarant waives in writing its right to Class B membership.

Notwithstanding the foregoing, if at any time or times subsequent to any such conversion additional land is added by the Declarant pursuant to Article X hereof, such additional land shall automatically be and become Class B Lots or Parcels, as appropriate. In addition, if following such addition of land the total votes allocable to all Lots and Parcels then owned by the Declarant (calculated as if all such Lots or Parcels are Class B, whether or not they are) shall exceed the remaining total votes outstanding in the remaining Class A membership (excluding the

Declarant), then any Class A Lots and Parcels owned by the Declarant shall automatically be reconverted to Class B.

d. Computation. Where votes of a Class A or Class B Members are determined by the acreage in a Parcel, the votes shall be calculated by multiplying the acreage of the Parcel by the number of votes per acre and rounding to the nearest whole number. For example, if a Class A Parcel designated for use as single-family detached homes shall contain 24.3 acres, the Class A Owner shall be entitled to ninety-seven (97) votes. Acreage shall be as determined in good faith by the Secretary of the Association as provided in the Bylaws. All determinations as to acreage calculations for voting or assessment purposes shall be made by the Secretary of the Association in good faith, based upon such information as is available to the Association. The Owner of any Parcel shall provide the Secretary with either a surveyor's or engineer's certification under seal of the acreage contained within such Parcel, unless the Board permits other evidence thereof. In the event the Owner of a Parcel or any other member shall dispute the acreage contained within a Parcel, it shall be incumbent upon such member to convincingly establish the actual acreage thereof.

Section 3. Turnover Procedure. Following the occurrence of an event specified in Section 2.c above providing for the termination of Class B membership, Declarant shall cause control of the Association to be turned over to the general membership of the Association ("Turnover"). Within thirty (30) days of the first to occur of the events specified in Section 2.c above, the President of the Association shall call a special meeting of the Board of Directors. At such meeting, the Board of Directors shall set a date for a subsequent meeting of the Board of Directors at which Turnover will occur ("Turnover Meeting"), which meeting shall be at least thirty (30) but no more than sixty (60) days after the special meeting. The Board of Directors shall provide at least thirty (30) days' notice to the members of the date and location of the Turnover Meeting. Prior to the Turnover Meeting, a representative of the Declarant, a representative of the Manager, if any, and one or more of then-existing resident directors shall meet as necessary to cause the turnover of all records associated with the existence, maintenance and operation of the Association. At the Turnover Meeting, the then-existing directors appointed by Declarant shall submit their written resignations and new directors shall be elected, as necessary, to fill the Board in accordance with the Bylaws; provided, however, that pursuant to Article IV of the Bylaws, Declarant shall have the right to appoint at least one (1) member of the Board as long as Declarant owns at least one Lot or Parcel subject to the Declaration. On or before the Turnover Meeting, at Declarant's option, Declarant shall convey to the Association title to all remaining Common Area pursuant to Article

VI, Section 7 of this Declaration. From and after the date of Turnover, Declarant shall have no further responsibility or liability associated with the Association, the operations of the Board, the maintenance of any Common Area, or any other matters associated with the Properties. In that regard, at and as of the Turnover Meeting, the Association shall execute and deliver to the Declarant a general release, in form acceptable to Declarant, releasing Declarant from all liability associated with the development, construction, operation and maintenance of the Properties. From and after Turnover, to the extent that any dispute arises between the Association and the Declarant regarding a matter that is allegedly not covered by the release or regarding the release itself, then such dispute, if any, shall be resolved through binding and mandatory arbitration as follows:

a. Demand for arbitration shall be filed in writing with the other party and with the AAA. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

b. No such arbitration shall include, by consolidation, joinder or any other manner, an additional person or entity other than Declarant and the Association, except by written consent signed by the Declarant and the Association and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by Declarant and the Association shall be specifically enforceable in accordance with applicable law and any court having jurisdiction thereof.

c. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

d. All filing fees and AAA costs associated with the arbitration itself shall be paid for by the party who files the notice of arbitration; provided, however, that all such expenses shall be recovered by the filing party in the event said party prevails. Any issues regarding who is the prevailing party shall be determined by Texas law. The prevailing party also shall recover from the non-prevailing party all attorney's fees and

costs, including fees and costs for legal assistants and expert witnesses, and including all fees and costs incurred relative to any challenge or appeal of the arbitration award, or confirmation by a court of law.

e. As to any matter in dispute the resolution of which in the course of normal AAA time schedules would delay substantially the performance or expectation of either Declarant or the Association, either party may require the appointment of private arbitrators knowledgeable in matters of similar nature, and the conduct of expedited proceedings, as follows:

(i) Within five (5) days of such notice, each party shall designate one such arbitrator, at such party's expense;

(ii) Within five (5) days thereafter, the two (2) arbitrators shall jointly select a third arbitrator, whose expenses shall equally be shared by the parties;

(iii) Within fifteen (15) days thereafter, the hearing shall be held before the three-member panel; and

(iv) Within three (3) days after the hearing, the panel shall decide the issue by majority vote.

Notwithstanding the occurrence of an event specified in Section 2.c above, if at any time or times subsequent to the occurrence of such event additional land is added by Declarant pursuant to Article X hereof, such additional land shall automatically be and become Class B Lots or Parcels, as appropriate. In addition, if following such addition of land, the total votes allocable to all Lots and Parcels then owned by the Declarant (calculated as if all such Lots or Parcels are Class B, whether or not they are) shall exceed the remaining total votes outstanding in the remaining Class A membership (excluding the Declarant), then any Class A Lots and Parcels owned by the Declarant shall automatically be reconverted to Class B, and Turnover shall not have occurred.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot or Parcel owned within the Properties, hereby covenants, and each Owner of any Lot or Parcel, 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) annual assessments or charges, (b)

special assessments for capital improvements and unexpected operating costs, and (c) special individual assessments, as applicable, including, but not limited to, reasonable fines imposed in accordance with this Declaration and the Bylaws, such assessments to be established and collected as hereinafter provided. The annual, special and special individual assessments, together with interest, costs and reasonable attorney's 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 or charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass automatically to successors in title. Notwithstanding any provision of this Declaration or the Articles or Bylaws to the contrary, the Declarant, in its sole discretion, may require purchasers of new homes from the Declarant to make a one-time capital contribution to the Association as a part of the original purchase contract, which contributions may be used by the Association for any purpose whatsoever in the Association's sole discretion. If such a capital contribution is ever required in a purchase contract by Declarant, Declarant shall have no obligation to continue such requirement in other purchase contracts or to make such requirement in every purchase contract.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area and the carrying out of the purposes and the other responsibilities and obligations of the Association under this Declaration, the Articles, the Bylaws and any maintenance agreement with adjoining land owners or municipalities. Without limiting the generality of the foregoing, such funds may be used for the acquisition, improvement and maintenance of Properties, services and facilities related to the use and enjoyment of the Common Area and other areas located outside the Development, but benefitting the Development, such as entryways, streets and roadways, including the costs of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes and assessments made or levied against the Common Area, the procurement and maintenance of insurance, the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful, and such other needs as may arise.

Section 3. Special Assessments. In addition to the annual assessment authorized above, the Association may levy, from time to time, a special assessment for the purpose of defraying, in whole

or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and for other purposes such as covering unanticipated or unbudgeted expenses as designated by the Association, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose and the consent of the Class B member, if any.

Section 4. Notices and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast one-third (1/3) of all of the votes of each class of membership shall constitute a quorum.

Section 5. Special Individual Assessments. The Board shall have the power to levy special individual assessments against a particular Lot or Parcel as follows:

a. To cover the costs, including overhead and administrative costs, of providing benefits, items or services to any Lot or Parcel upon request of the Owner, which benefits, items or services the Board may (but shall not be obligated to) offer from time to time; such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred;

b. To cover costs incurred in bringing the Lot or Parcel into compliance with the terms of this Declaration, the Bylaws or rules of the Association, or costs incurred as a consequence of the conduct of the Owner of the Lot or Parcel, their licensees, invitees or guests;

c. For fines levied pursuant to this Declaration and the Bylaws; and

d. For any other costs or expenses specifically authorized by this Declaration to be levied against a particular Lot or Parcel.

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this

Section.

Section 6. Assessment Rate. The annual assessment shall be fixed by the Board of Directors based upon a budget prepared annually by the Board which reflects the sources and estimated amount of funds to cover the estimated expenses of the Association (including reserve contributions, if any). Subject to Section 7 of this Article, the annual assessment shall be levied equally against all Lots which have been made subject to this Declaration. The initial annual assessment for each Lot for the first assessment year shall be a maximum of \$948.00 per Lot. If an assessment year shall have fewer than twelve months, the assessment amount shall be proportionately reduced. The Board may not increase the annual assessment by more than ten percent (10%) of the prior year's annual assessment without the vote or written consent, or any combination thereof, of two-thirds (2/3rds) of the Class A Members, and the consent of the Class B Member, if any. Each Parcel designated on the General Land Plan for Single-Family Residential Use and subjected to this Declaration shall be assessed at a rate per acre equal to two hundred percent (200%) of the sum assessed for Lots.

Declarant may, but shall not be obligated to, pay a subsidy to the Association (in addition to any amounts paid by Declarant under Section 7 below) in order to reduce the total annual assessment which would otherwise be necessary to be levied against all Lots and Parcels to cover the estimated expenses of the Association (including reserve contributions, if any). Any such subsidy shall be disclosed as a line item in the income portion of the budget. The subsidy shall be treated as a loan from the Declarant to the Association.

Section 7. Declarant's Assessment. Notwithstanding Section 6 above, the rate of annual assessment for a Lot or Parcel, including Lots or Parcels owned by the Declarant, for which a certificate of occupancy or similar certificate certifying that a dwelling is available for occupancy (a "Certificate of Occupancy") has not been issued by the appropriate governmental agency shall be fixed at twenty-five percent (25%) of the assessment rate for Lots and Parcels for which a Certificate of Occupancy has been issued. Notwithstanding any provision of this Declaration or the Articles or Bylaws to the contrary, so long as there is Class B membership in the Association, the Declarant may, on an annual basis, elect either to pay annual assessments on its unsold Lots or Parcels or pay the difference between the Association's operating expenses, excluding management fees owed or paid to Declarant, and otherwise to be funded by annual assessments (after applying all income received by the Association from other sources) and the sum of the revenues of the Association from all sources. "All sources"

includes, but is not limited to, revenues from the operation of Common Areas, capital contributions, accounting service fees, property management fees, guest fees, user fees, and the annual assessments levied against the owners of Lots or Parcels, other than the Declarant. Such difference, herein called the "deficiency", shall not include any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or special assessments, and Declarant shall not be responsible, in any event, for any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or special assessments. Any sums paid by the Declarant to the Association in excess of the annual assessment otherwise due on the Declarant's unsold Lots or Parcels shall be considered to be the payment of a subsidy to the Association pursuant to Section 6 of this Article. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class B membership, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

Section 8. Exemption from Assessments. The assessments, charges and liens provided for or created by this Article shall not apply to the Common Area of this Association or any other homeowner association or condominium association, any property dedicated to and accepted for maintenance by a public or governmental authority or agency, any property owned by a public or private utility company or public or governmental body or agency, or any property utilized for commercial purposes.

Section 9. Date of Commencement of Annual Assessments; Due Dates. Subject to the provisions of Section 7 above, the annual assessments provided for herein shall commence as to a particular Lot or Parcel on the first day of the month following (i) the conveyance of the Common Area to the Association or (ii) the month in which such Lot or Parcel is first made subject to this Declaration, whichever is later. The first annual assessment due on each Lot or Parcel shall be adjusted at the time the obligations for assessments commence. The Board shall fix the amount of the annual assessment to be paid against each Lot or Parcel at least ten (10) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board, and may be either on an annual, quarterly or monthly basis. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Parcel have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot or Parcel is binding upon the Association as of the date of its issuance.

Section 10. Lien for Assessments. All sums assessed to any Lot or Parcel pursuant to this Declaration, together with interest and all costs and expenses of collection, including reasonable attorney's fees, shall be secured by a continuing lien on such Lot or Parcel in favor of the Association.

Section 11. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or \$5.00, whichever is greater, provided that such interest or charge shall not exceed the maximum rate allowed by law. A late fee may also be imposed on any unpaid assessment in an amount determined by the Board from time to time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien, either judicially or non-judicially, against the Lot or Parcel. No owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Area, or abandonment of his or her Lot or Parcel, or for any other reason.

Section 12. Foreclosure. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot or Parcel the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. The lien may be foreclosed through judicial or non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 et seq. (Vernon 1984), as it may be amended (the "Foreclosure Statute"), in like manner for any deed of trust on real property. In connection with the lien created herein, each Owner of a Lot or Parcel hereby grants to the Association, whether or not it is so expressed in the deed or other conveyance to such Owner, a power of sale to be exercised in accordance with the Foreclosure Statute.

The Association, acting on behalf of the Owners, shall have the power to bid on the Lot or Parcel at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. The Association may sue for unpaid assessments and other charges without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot or Parcel shall not affect the assessment lien or relieve such Lot or Parcel from the lien for any subsequent assessments. However, the sale or transfer of any Lot or Parcel pursuant to foreclosure of the First Mortgage shall extinguish the lien as to any installments of such assessments due

prior to such sale or transfer. A Mortgagee or other purchaser of a Lot or Parcel who obtains title pursuant to foreclosure of the First Mortgage shall not be personally liable for assessments on such Lot or Parcel due prior to such acquisition of title. Such unpaid assessments shall be deemed to be common expenses collectible from Owners of all Lots or Parcels subject to assessment under this Declaration, including such acquirer, its successors and assigns.

Section 13. Homestead. By acceptance of a deed thereto, the Owner and spouse thereof, if married, of each Lot or Parcel shall be deemed to have waived any exemption from liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may otherwise have been available for reason of the homestead exemption provisions of Texas law, if for any reason such are applicable. This section is not intended to limit or restrict in any way the lien or rights granted to the Association by this Declaration, but to be construed in its favor.

Section 14. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot or Parcel shall not affect the assessment lien. However, the sale or transfer of any Lot or Parcel pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Parcel from liability for any assessments thereafter becoming due or from the lien thereof. This Section may not be amended without the prior written consent of all holders of First Mortgages on Lots or Parcels.

ARTICLE V RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Responsibilities. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area, and shall keep the same in good, clean and proper condition, order and repair. The Association shall also maintain and care for the other land designated in Article II hereof in the manner therein required. The Association shall be responsible for the payment of all costs, charges and expenses incurred in connection with the operation, administration and management of the Common Area and performance of its other obligations hereunder. The Association shall operate and maintain areas designated by Declarant as Common Area, whether or not title to those areas has been formally conveyed to the Association. Notwithstanding the foregoing to the contrary, the Association shall have the right to

delegate some or all of its responsibilities under this Section 1 pursuant to the terms of Section 2 below.

Section 2. Manager. The Association may obtain, employ and pay for the services of any entity or person, hereinafter called the "Manager", to assist in managing its affairs and carrying out its responsibilities hereunder to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable, whether such personnel are furnished or employed directly by the Association or the Manager. The Association shall enter into a management agreement with any such person or entity, which agreement shall delineate the responsibilities and authority of such Manager and the payment of fees to such Manager as compensation for its services. Such fees shall accrue during the entire term of such agreement. However, payment of those fees by the Association may be postponed for any period of time as may be provided in such management agreement therein. No reserve shall be required to be set aside or established by the Association or the Declarant for the future payment of any deferred fees. The initial Manager shall be U. S. Home Corporation, who shall have the right to assign its management obligations and duties to any party or entity, including a subsidiary of the Declarant.

Section 3. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Articles or Bylaws.

Section 4. Insurance. The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary. The Association additionally shall cause all persons responsible for collecting and disbursing Association monies to be insured or bonded with adequate fidelity insurance or bonds.

By virtue of taking title to any Lot or Parcel, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of any Lot or Parcel, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry property insurance on his Lot or Parcel and all structures construed thereon and a liability policy covering damage or injury occurring on the Lot in an amount not less than \$100,000 per occurrence. Each owner shall furnish a copy of such insurance policy or policies to the Association within ten (10) days of the Association's request for same. The property insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably

available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall remain in effect at all times. Authority to adjust losses under policies obtained by an owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within thirty (30) days after receipt by the owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot or Parcel as a special individual assessment pursuant to Article IV, Section 5 hereof.

Section 5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, its Articles or Bylaws, or by law and every other right or privilege reasonably implied from the existence of any right or privileges granted herein or therein or reasonably necessary to effectuate any such right or privilege.

ARTICLE VI RIGHTS TO COMMON AREAS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot or Parcel, subject to the following provisions:

a. The right of the Association from time to time, in accordance with its Bylaws, to establish, modify and rescind reasonable Rules and Regulations regarding use of the Common Areas, Lots and Parcels, all of which taken together allow the Association to make rules governing all of the Properties subject to the Declaration;

b. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

c. The right of the Association to suspend the voting rights and right to use of the Common Area by an owner for any period during which any assessment levied under this Declaration against his or her Lot or Parcel remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its Rules and Regulations; subject to satisfaction of the due process

requirements, if any;

d. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility as provided by the Articles;

e. The right of the Association to grant easements as to the Common Areas or any part thereof as provided by the Articles;

f. The right of the Association to otherwise deal with the Common Area as provided by the Articles;

g. The right of the Association to open the Common Area for use by non-members of the Association;

h. The right of the Association to sell, lease or transfer all or any part of the Common Area that has been deeded to the Association, as provided by the Articles; and

i. The right of the Association to enter into agreements with neighboring landowners or municipalities for the maintenance of streets, roadways, medians, landscaping and entryways located outside the Development.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to his or her tenants who reside at the owner's Lot or parcel, provided the Owner waives his or her use in writing.

Section 3. Prohibition of Certain Activities. No damage to or waste of the Common Area or any part thereof shall be committed by any Owner or any tenant or invitee of any Owner. No noxious, destructive or offensive activity shall be permitted on or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become an unreasonable annoyance or nuisance to any other Owner. No owner may maintain, treat, landscape, sod or place or erect any improvement or structure of any kind on the Common Area without prior written approval of the Board of Directors.

Section 4. Signs Prohibited. No signs of any kind shall be displayed in or on the Common Area without the prior written consent of the Board. This Section, however, shall not apply to the Declarant.

Section 5. Animals. No animals shall be permitted on or in the Common Area at any time except as may be provided in the Rules and Regulations.

Section 6. Rules and Regulations. No Owner or other permitted user shall violate the reasonable Rules and Regulations for the use of the Common Area, as the same are from time to time adopted by the Association.

Section 7. Title to Common Area. Prior to the sale of the first Lot to any person other than a builder, the Declarant shall convey and the Association shall accept title to any Common Area free and clear of encumbrances but subject to such easements, reservations, conditions and restrictions as may then be of record. Declarant may convey to the Association real property and improvements located within the Development at any time and from time to time. The Association shall accept such property free and clear of encumbrances and shall thereafter maintain the property as Common Area at the Association's expense for the benefit of the Members, subject to any restrictions set forth in the deed.

ARTICLE VII EASEMENTS

Section 1. Ingress/Egress. Subject to the Rules and Regulations, a non-exclusive easement for the use and benefit of the Owners and occupants of any Lot or Parcel, their guests and invitees, shall exist for the pedestrian traffic over, through and across sidewalks, paths, walks and other portions of the Common Area as may be from time to time intended and designated for such purpose and use, and for vehicular and pedestrian over, through and across such portions of the Common Area as may from time to time be paved and intended for such purposes, which easements alone or together with other recorded easements granted by Declarant shall provide reasonable access to the public ways. Nothing herein shall be construed to give or create in any person the right to park upon any portion of the Common Area.

Section 2. Utilities. Each Lot or Parcel and the Common Area shall be subject to the existing easements for public utilities purposes (including, but not limited to, fire and police protection, garbage and trash removal, reclaimed and potable water and sewage systems, electric and gas service, cable television, telephone and irrigation well and pumps) and the utilities and applicable governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access to any Lot or Parcel or the Common Area in furtherance of such easements. Each Owner shall be obligated to maintain any easement areas contained within such Owner's Lot or parcel, whether or not shown on any recorded plat and whether or not required to be maintained by the utility company holding such easement.

Section 3. Future Utility Easements and Agreements. The

Declarant reserves the right, for itself and its designee (so long as Declarant or said designee owns Lot or Parcel) and for the Board, without joinder or consent of any person or entity whatsoever, to grant such additional easements including, but not limited to, reclaimed and potable water and sewage systems, irrigation, wells and pumps, cable television, television antennas, electric, gas, water, fire and police protection, telephone or other utility easement, or to relocate any existing utility easement in any portion of the Properties as the Declarant, its designee, or the Board shall deem necessary or desirable for the proper operation and maintenance of the Properties, or any portion thereof, or for general health and welfare of the owners, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with these find any Lot or Parcel for permitted purposes. In addition, Declarant reserves the right, for itself and its designee (so long as Declarant or said designee owns a Lot or Parcel), without the joinder or consent of any person or entity whatsoever, to enter into license, marketing, shared facilities or other agreements with utility providers, operators or owners for the provision of any such utilities to the Properties. Declarant shall be entitled to receive and continue to receive all royalties, fees, compensation or other revenues provided for in such license, marketing, shared facilities or other agreements entered into by Declarant, whether accruing or paid prior to or after the occurrence of Turnover pursuant to Article III, Section 3 hereof, and the Association shall not be entitled thereto.

Section 4. Declarant's Ingress-Egress. Declarant retains for itself, its successors in interest, agents, employees and assigns, a non-exclusive easement for ingress and egress over and across all streets, roadways, Common Area, driveways and walkways that may from time to time exist within the Properties.

Section 5. Encroachments. All of the properties and all of the Lots and Parcels therein shall be and are singularly and collectively subject to easements from encroachments which now or hereafter exist or become into being, caused by settlement or movement of the Building or other improvements on the Properties, or caused by inaccuracies in construction or reconstruction of the building or such improvements upon the Properties or encroachment caused by the intentional or unintentional placement of utility meters and related devices, all of which encroachment shall be permitted to remain undisturbed, and such easements shall and do exist and shall continue as valid easements so long as such encroachments exist. A valid easement for the maintenance of such encroachments is herein created so long as such encroachments exist.

Section 6. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in this Declaration, the Association shall have the right, but shall not be obligated, to enter upon any property within the Development for emergency, security and safety reasons, which right may be exercised by the manager and all policemen, fireman, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Association to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 7. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of property located outside the Development, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property. L

ARTICLE VIII USE RESTRICTIONS

Section 1. Residential Use. No Lot or Parcel may be used for any purpose other than as and for residential purposes except that a Resident may conduct business activities within a Lot or Parcel so long as : (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot or Parcel; (b) the business activity conforms to all zoning requirements for the Development; (c) the business activity does not involve regular visitation of the Lot or Parcel by clients, customers, suppliers of other business invitees or door-to-door solicitation of residents of the Development; and (d) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a

hazardous or offensive use, or threaten the security or safety of other residents of the Development, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provisions of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot or Parcel shall not be considered a business or trade within the meaning of this subsection.

This restriction shall not apply to any portion of the Properties that is designated by Declarant as for commercial use and upon which commercial structures are or will be constructed. Notwithstanding the foregoing restrictions, real estate brokers, owners and their agents may show Lots or Parcels, for sale or lease, and every person, firm or corporation purchasing a Lot or Parcel recognizes that the Declarant, its agents and designated assigns, shall have the right to (a) use Lots or Parcels, and improvements erected thereon, for sales offices, field construction offices, storage facilities and general business offices, (b) maintain fluorescent-lighted or spotlighted model homes which are open to the public for inspection seven (7) days per week for such hours as the Declarant deems appropriate or necessary, and (c) conduct any other activities on Lots or Parcels to benefit sales efforts.

Section 2. Lot Upkeep. After acquiring title from Declarant, all Owners of Lots or Parcels, whether or not improved by a dwelling, shall, as a minimum, keep the grass regularly cut and all trash and debris removed.

Section 3. Maintenance of Improvements. Each Owner shall maintain in good condition and repair all improvements constructed upon his or her Lot or Parcel including, without limitation, the residential dwelling.

Section 4. Lawns. Each Lot or Parcel acquired from the Declarant on which there is a completed dwelling shall be maintained in a good and neat condition and repair by the Owner thereof, except for such maintenance as may be designated as the responsibility of a sub-association, if any, of which such Lot or

Parcel is a part. In this context, the words "Lot" or "Parcel" shall include that portion of the property from the boundary of the Lot or Parcel to the adjacent paved road surface. "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized, that mulched areas be regularly remulched and kept weeded and that bushes, hedges and other vegetation be regularly trimmed so that its appearance is in harmony with the neighborhood. All Lots or Parcels must have grassed front and side lawns and grassed or mulched rear lawns, unless otherwise specifically approved, in writing, by the Committee. Rear yards must be installed within ninety (90) days from the day of closing title to any Lot or Parcel, unless specifically approved, in writing, by the Committee.

Section 5. Failure to Maintain. If the Owner of a Lot or Parcel shall fail to maintain his or her Lot or Parcel as required hereby, either the Declarant or the Association, after giving such Owner at least ten (10) days written notice, shall be authorized to undertake such maintenance at the Owner's expense. Entry upon an Owner's Lot or Parcel for such purpose shall not constitute a trespass. If such maintenance is undertaken by the Association or Declarant, the charge therefor shall be secured by a lien on the Lot or Parcel and added to and become part of the Lot or Parcel assessment next due and payable by the Owner.

Section 6. Use of Accessory Structures. No tent, shack, barn, metal utility shed or other buildings, other than the dwelling and its required garage, shall at any time be placed or erected on any Lot or Parcel and used temporarily or permanently as a residence or for any other purpose, except temporary buildings, offices or facilities used by Declarant, builders or contractors, with the written approval of the Declarant. A utility shed that conforms to the aesthetics of the main Residence and has been approved by the Committee may be erected on a Lot or Parcel by an Owner.

Section 7. Nuisance. No noxious or offensive activity shall be carried on upon any Lot or Parcel, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted on any Lot or Parcel other than in a garage and concealed from public view.

Section 8. Garbage and Trash. All garbage cans and similar receptacles and other garbage containers shall be kept inside the garage at all times except during the day of garbage collection.

Section 9. Walls, Fences and Hedges.

→→→ See FIFTH AMENDMENT 9/23/2003

a. Except for decorative hedge plantings not to exceed three feet (3') in height, no walls, fences or hedges shall be erected or maintained nearer to the front line than the walls of the dwelling situated on such Lot which is nearest to such front Lot line, unless otherwise approved in writing by the Committee. All side and rear fences and walls ~~must be at least~~ six feet (6') in height, unless otherwise approved in writing by the Committee. Lots adjacent to or bordering on the Common Area comprised of the lakes and creek must comply with subsection b hereof. No chain link type fence shall be located on any Lot. **SHALL NOT EXCEED 2.04.**

b. On those Lots adjacent to or bordering on the Common Area comprised of the lakes and creek, only see-through metallic tubular bars between posts may be utilized as proper fencing materials. These fences must be at least four feet (4') in height and approved, in writing, by the Committee.

Section 10. Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on or in any Lot or Parcel other than cats, dogs and other household pets, provided they are not kept, bred or maintained for any commercial purposes or become a nuisance to the neighborhood. No person owning or in custody of an animal shall allow it to stray or go upon another Lot or Parcel without the consent of the Owner of such Lot or Parcel. All animals shall be on a leash when outside the Owner's Lot or Parcel.

Section 11. Signs; Resale. No signs shall be displayed on Lots or Parcels with the exception of a maximum of one (1) "For Sale" or "For Rent" sign not exceeding 24 inches by 36 inches in size. Notwithstanding anything to the contrary herein contained, Declarant shall have the exclusive right to maintain signs of any type and size on any portions of the Properties it owns and on the Common Area in connection with its development and sale of Lots and Parcels.

Section 12. Antennae. No television, radio or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcast or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or Parcel or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the type of antennae that are permissible hereunder and establish reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. To the extent that reception of an acceptable signal would not be

impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land use and building regulations.

Section 13. Vehicle Parking. No vehicle shall be parked within the Properties except on a paved parking surface, driveway or within a garage. No trucks or vehicles that are primarily used for commercial purposes, other than those temporarily present on business, nor any trailers, may be parked within the Properties. Boats, boat trailers, campers, travel trailers, mobile homes, recreational vehicles and the like, and any vehicles not in operable condition and validly licensed, shall only be permitted to be kept within the Properties if such are kept inside a garage and concealed from public view.

Section 14. Occupancy of Units.

a. General.

(1) Residential structures located on a Lot or Parcel within Heritage Hill Country are intended for the housing of persons fifty-five (55) years of age or older. The provisions of this Section 14 are intended to be consistent with, and are set forth in order to comply with the Acts and the exemptions therefrom regarding discrimination based on familial status. The Declarant or the Association, acting through its Board, shall have the power to amend this Article, without the consent of the Members or any person except Declarant, for the purpose of making this Article consistent with the Act, the regulations adopted pursuant thereto and any judicial decisions arising thereunder or otherwise relating thereto in order to maintain the intent and enforceability of this Article.

(ii) In addition, the Declarant and the Board, notwithstanding anything to the contrary contained in the Declaration or otherwise, shall have the authority, but shall not be obligated, to levy assessments, alter existing facilities or services, adopt reasonable rules and regulations and provide significant facilities or

services specifically designed to meet the physical or social needs of older persons in order to be in compliance with the Act.

(iii) Nothing in this Section is intended to restrict the ownership of or transfer of title to any Lot; provided, no Owner may occupy a Lot unless the requirements of this Section are met nor shall any Owner permit occupancy of a Lot in violation of this Section. Owners shall be responsible for including the statement that Lots within Heritage Hill Country are intended for the housing of persons fifty-five (55) years of age or older, as set forth in this Section, in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Lot, which agreements or contracts shall be in writing and signed by the tenant or purchaser and for clearly disclosing such intent to any prospective tenant, purchaser or other potential occupant of the Lot. Every lease of a Lot shall provide that failure to comply with the requirements and the restrictions of this Section shall constitute a default under the lease.

b. Age Restriction.

(i) At least eighty percent (80%) of the occupied Lots within the Properties shall at all times have as a permanent occupant therein at least one (1) person who is fifty-five (55) years of age or older (the "Qualifying Occupant"); provided, in the event of the death or divorce of a person who was the sole Qualifying Occupant of a Lot, the surviving or divorced spouse of such Qualifying Occupant may continue to occupy the Lot so long as the provisions of the Act and the regulations adopted thereunder are not violated by such occupancy. For purposes of this Section 14, an occupant shall not be considered a "permanent occupant" unless such occupant resides in the Lot for at least eight (8) weeks in any calendar year.

(ii) No Lot shall be permanently occupied by any person under the age of eighteen (18). The Declarant or the Board shall have the right to promulgate and amend, from time to time, revocable rules and regulations governing the visitation and temporary occupancy of, or use of, the common area facilities by persons under eighteen (18) years of age.

(iii) Any Lot sold or leased by a Class A member must be permanently occupied by at least one Qualifying Occupant.

→→→ See THIRD AMENDMENT 11/28/2001

→→→ See AFFIDAVIT

(iv) Notwithstanding anything to the contrary contained herein, for so long as Declarant owns a Lot or Parcel for development and sale in the Development, the Declarant shall have the sole right, but not the obligation, to sell no more than twenty percent (20%) of the Lots to permanent occupants age forty-five (45) years or older who are not Qualifying Occupants under this Section; provided such occupancy does not violate the Acts or the regulations promulgated thereunder.

c. Change in Occupancy; Notification.

In the event of any change in occupancy of any Lot, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the owner of the Lot shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Lot and such other information as the Board may reasonably require to verify the age of each occupant. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Lot for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this Section, in addition to all other remedies available to the Association under this Declaration and Texas law.

d. Monitoring Compliance; Appointment of Attorney-in-Fact.

(i) The Association shall maintain age records on all occupants of Lots. The Board shall adopt policies, procedures and rules to monitor and maintain compliance with this Section, including policies regarding visitors, updating of age records and enforcement. The Association shall periodically distribute such policies, procedures and rules to the owners and make copies available to owners, their tenants and mortgagees upon reasonable request.

(ii) The Association shall have the power and authority to enforce this Section in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the occupants

of Lots, requiring copies of birth certificate of other proof of age for each occupant of the Lot to be provided to the Board on a periodic basis, and taking action to

evict the occupants of any Lot which does not comply with the requirements and restrictions of this Section. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER LOT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Lot which in the judgment of the Board are reasonably necessary to monitor compliance with this Section.

(iii) Each owner shall be responsible for ensuring compliance of its Lot with the requirements and restrictions of this Section and the rules of the Association, the Board and the Declarant, adopted hereunder by itself and by its tenants and other occupants of its Lot. EACH OWNER, BY ACCEPTANCE OF TITLE TO A LOT, AGREES TO INDEMNIFY, DEFEND AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES AND CAUSES OF ACTION WHICH MAY ARISE FROM FAILURE OF SUCH OWNER'S LOT TO SO COMPLY.

→→→ See FIRST AMENDMENT 5/27/1999 →→→ See SECOND AMENDMENT 11/29/2001

ARTICLE IX
ARCHITECTURAL CONTROL

Section 1. General. No exterior change or modification shall be made to any residential dwelling constructed by the Declarant on a Lot or Parcel, nor shall any buildings, fences, walls, structures or other improvements be added to any Lot or Parcel after it has been conveyed by the Declarant, until the plans and specifications showing the nature, kind, shape, height, materials and color to be used on the exterior, and location of the same, shall have been submitted to and approved in writing by the Board of Directors, or by an architectural committee composed of three (3) or more representatives appointed by the Board. The Board may require payment of a reasonable fee in connection with such approval. No approval shall be given by the Board of Directors or its designated committee pursuant to the provisions of this Article unless it determines, in its sole discretion, that such approval shall (i) assure harmony of external design, materials and location in relation to surrounding buildings and topography within the Properties, (ii) protect and conserve the value and desirability of the Properties as a residential community, (iii) be consistent with the provisions of this Declaration, and (iv) conform to or enhance, in the sole opinion of the Board or its designated committee, the aesthetic appearance of the Properties. Neither the Association, the Board nor any member of the Board or its designated committee shall have any liability to anyone by reason of any acts or action

taken in good faith pursuant to this Article. The Board shall have the right and power to adopt, amend and promulgate regulations in order to effectuate the purpose of this Article. This Article shall not apply to activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

Section 2. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board will change from time to time and that interpretation, application and enforcement of this Declaration may vary accordingly. Approval of proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

Section 3. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and not for engineering, structural design or quality of materials. Neither the Architectural Review Committee nor the Declarant shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for reviewing drainage plans or ensuring the effectiveness thereof, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the Architectural Review Committee, nor any member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Lot or Parcel, nor for any defect in any structure constructed from approved Plans.

Neither the Declarant, the Association, the Architectural Review Committee, the Board nor the officers, directors, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits Plans and every Owner agrees that he will not bring any action or suit against the Declarant, the Association, the Architectural Review Committee, the Board or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, promises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does

not extend to claims, demands and causes of action not known at the time the release is given.

Section 4. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right, in addition to any other remedy provided herein for the enforcement of this Declaration, to enter the property, remove the violation and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a special individual assessment in accordance with Article IV, Section 5 of this Declaration.

Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article may be excluded by the Board from further construction activity within the Development. In such event, neither the Association, its officers, nor its directors shall be held liable to any Person for exercising the rights granted by this Article.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Architectural Review Committee.

Section 5. Notice of Violation. To evidence any violation of this Declaration by any Owner, the Board of Directors may file, but is not required to file, in the deed records of Gillespie County, Texas, a notice of violation setting forth (i) the violation, (ii) the name of the Owner and Lot or Parcel, and (iii) a sufficient legal description of the Lot or Parcel. Such notice shall be signed and acknowledged by an officer or duly authorized agent or attorney of the Association. The cost of preparing and recording such notice shall be assessed as a special individual assessment against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing pursuant to Article IV, Section 5 hereof.

ARTICLE X ADDITIONAL PROPERTY

Section 1. Additions Generally.

a. Additions to the Properties. Additional land may be brought within the jurisdiction and control of the Association in the manner specified in Section 2 of this Article and made subject to all the terms of this Declaration as if part of the Properties initially included within the terms hereof, provided such is done within twenty-five (25) years from the date this instrument is recorded. Notwithstanding the foregoing, however, under no circumstances shall the Declarant be required to make such additions, and until such time as such additions are made to the Properties in the manner hereinafter set forth, no other real property owned by the Declarant or any other person or party whomsoever, other than the Properties, shall in any way be affected by or become subject to the Declaration. All additional land which, pursuant to this Article, is brought within the jurisdiction and control of the Association and made subject to the Declaration shall thereupon and thereafter be included within the term "Properties" as used in this Declaration. Notwithstanding anything contained in this Section 1, the Declarant neither commits to nor warrants or represents that any such additional development shall occur.

b. General Land Plan. The present general plan of development shall not bind the Declarant to make any such additions or adhere to the general plan of development. Such general plan of development may be amended or modified by the Declarant, in whole or in part, at any time, or discontinued. As used herein, the term "General Land Plan" shall mean such general plan of development, together with any amendments or modifications thereof hereafter made.

Section 2. Procedure for Making Additions to the Properties. Additions to the Properties may be made, and thereby become subject to this Declaration, by, and only by, one of the following procedures.

→→→ See SUPPLEMENT 8/29/2000 & 12/18/2001

a. Additions by Declarant. The Declarant shall have the right from time to time, whether prior to or after Turnover, in its discretion and without need for consent or approval by either the Association or its members, to bring within the jurisdiction and control of the Association and make subject to the scheme of this Declaration, any additional land. In the Declarant's sole discretion, portions of this land may be designated as Common Area. The additions authorized under this subsection shall be made by the Declarant filing of record a Supplement to Declaration of Covenants, Conditions and Restrictions with respect to the additional land. Such Supplement need only be executed by the Declarant and shall not require the joinder or consent of the Association or its members. Such Supplement may contain such complementary additions and modifications of the covenants and

restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added land or permitted use thereof. In no event, however, shall such Supplement revoke, modify or add to the covenants established by this Declaration as such affect the land described on the attached Exhibit "A".

b. Mergers. Upon a merger or consolidation of the Association with another non-profit corporation as provided in its articles, its property (whether real or person or mixed), rights and obligations may, by operation of law, be transferred to the surviving or consolidated corporation or, alternatively, the property, rights and obligations of the other non-profit corporation may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other land as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with the Properties.

Section 3. General Provisions Regarding Additions to the Properties.

a. Regardless of which of the foregoing methods is used to add additional land to that subject to the terms and provisions of this Declaration, no addition shall revoke or diminish the rights of the Owners of the Properties to the utilization of the Common Area as established hereunder except to grant to the Owners of the land being added to the Properties the right to use the Common Area according to the terms and conditions as established hereunder, and the right to vote and be assessed as hereinafter provided.

b. Nothing contained in this Article shall obligate the Declarant to make additions to the Properties.

Section 4. Voting Rights of the Declarant as to Additions to the Properties. The Declarant shall have no voting rights as to the land added to the Properties or any portion thereof until such land or portion thereof is actually added to the Properties in accordance with the provisions of this Article. Upon such land or portion thereof being added to the Properties, the Declarant shall have the Class B voting rights as to the Lots and Parcels thereof as is provided by Article III, Section 2 of this Declaration.

Section 5. Assessment Obligation of the Declarant as to Additions to the Properties. The Declarant shall have no

assessment obligation as to the land or any portion thereof added to the Properties until such land or portion thereof is actually added to the Properties in accordance with the provisions of this Article. At such time, the Declarant shall have, but only as to such of the additional land as is added, the assessment obligation and be entitled to the same assessment exemption, upon the same terms and conditions as contained in Article III, Section 6 of this Declaration, and shall have the same right as therein provided to waive its exemption and become subject to assessment, as determined and set forth in such Section.

Section 6. Voting Rights of Owners Other than the Declarant as to Additions to the Properties. Any Lots or Parcels of land added to the Properties which are owned by Owners other than the Declarant, or its assignees by separate written document, shall be entitled to voting rights identical to those granted by Article III, Section 2 of this Declaration to other Owners of Class A Lots and Parcels.

Section 7. Assessment obligation of Owners Other Than the Declarant as to Additions to the Properties. Any Lots or Parcels of land added to the Properties which are owned by Owners other than the Declarant, or its assignees by separate written document, shall be subject to assessments, both annual, special and otherwise in accordance with the terms and provisions of the Declaration in the same manner as all other owners of Class A Lots and Parcels within the Properties.

ARTICLE XI MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of First Mortgages on Lots in the Development. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer or guarantor of a First Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot number, therefore becoming an "Eligible Holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or

charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a First Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; or

(c) any lapse, cancellation or material modification of any insurance policy maintained by the Association.

Section 2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 3. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 4. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the First Mortgagees or Class "A" Members representing at least sixty-seven percent (67%) of the total Class "A" votes and the Class "B" Member, if any, consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner of a Lot;

(c) By act or omission change, waive or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of

this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Property losses for other than the repair, replacement or reconstruction of such property.

First Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and First Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 5. Other Provisions for Mortgagees. To the extent possible under Texas law:

(a) Any restoration or repair of the Development after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of First Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of First Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

Section 6. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage or condemnation pursuant to Sections 10.5(a) and (b) of this Article or to the addition of land in accordance with Article XI.

(a) The consent of Members representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of First Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage appertain shall be required to terminate the Association.

(b) The consent of Members representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of Eligible Holders of First Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a Mortgage appertain shall be required to materially amend any provisions of the Declaration, Bylaws or Articles of Incorporation or to add any material provisions thereto which establish, provide for, modify, govern or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of the Common Property;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Property;
- (vi) responsibility for maintenance and repair of the Community;
- (vii) expansion or contraction of the Community or the addition, annexation or withdrawal of Community to or from the Association;
- (viii) boundaries of any Lot;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or otherwise convey his or her Lot;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xii) any provisions included in the Declaration, Bylaws or Articles of Incorporation which are for the express benefit of holders, guarantors or insurers of First Mortgages on Lots.

Section 7. VA/HUD Approval. As long as the Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U. S. Department of Housing

and Urban Development ("HUD") for insuring by the U. S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Development, the following actions shall require the prior approval of the VA or HUD: annexation of additional property to the Development; dedication of Common Property to any public entity; mergers and consolidations; dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

Section 8. Amendments by Board. Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 9. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request; provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 10. Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or Texas law for any of the acts set out in this Article.

ARTICLE XII GENERAL PROVISIONS

Section 1. Deed Restrictions. In addition to this Declaration, the Declarant may record for parts of the Properties specific deed restrictions, declarations of covenants, conditions and restrictions, and community association documents applicable thereto either by master instrument or individually recorded instruments. Such documents may vary as to different parts of the Properties in accordance with the Declarant's General Land Plan and the location, topography and intended use of the land made subject thereto. To the extent that part of the Properties are made subject to such specific documents, such land shall be subject to both the specific documents and this Declaration. The Association shall have the power to enforce all restrictions if expressly provided for therein, and to exercise any authority granted to it by them. Nothing contained in this Section 1 shall require the Declarant to impose uniform restrictions, or to impose restrictions of any kind on all or any part of the Properties.

Section 2. Enforcement. The Association, or any Owner, 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 or by 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. If a person or party is found in the proceedings to be in violation of, or attempting to violate, the provisions of this Declaration, he shall bear all expenses of the litigation, including court costs and reasonable attorneys' and legal assistants' fees and costs, for all trial, appellate, bankruptcy and arbitration proceedings or otherwise and in perpetration thereof, incurred by the party enforcing the provisions of this Declaration. Declarant shall not be obligated to enforce this Declaration by any person other than itself. The Association may levy fines. The Board shall have the authority to adopt reasonable rules with regard to the levying of a fine and the procedures by which fines will be implemented. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the owner, and if applicable, its licensee or invitee.

Section 3. Severability. Invalidation of any one of these covenants or restrictions, or any provision contained herein, by judgment or court order, shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Amendment.

a. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by the vote or written consent, or any combination thereof, of two-thirds (2/3) of the votes of the Class A members, and the Class B member, if any. Any amendment must be recorded. No amendment which affects the rights of Declarant shall be effective without the prior written consent of Declarant.

b. Anything in this Declaration to the contrary notwithstanding, if any amendment to this Declaration is required at any time by an institutional mortgagee, such as a bank, savings and loan association, insurance company, purchaser of first mortgages, such as the Federal National Mortgage Association or any governmental agency, such amendment shall be effective upon recording of such amendment executed by the Declarant in the public records of Gillespie County, Texas, without the necessity of the approval or joinder of any other Owners or the Association. No

such amendment may adversely affect the lien or priority of any institutional first mortgagee recorded prior to such amendment.

c. Until the completion of the contemplated improvements on the Properties, and closing of all Lot or Parcel sales, the Declarant specifically reserves the right, without the joinder of any person or other legal entity, to make amendments to this Declaration and its exhibits or in the General Land Plan as may be required by any governmental authority or, as may be necessary or desirable in Declarant's sole judgment. This paragraph shall take precedence over any other provision of this Declaration or its institutional first mortgagee recorded prior to such amendment. No such amendment to this Declaration or its exhibits may adversely affect the lien priority of an institutional First Mortgagee recorded prior to such amendment.

Section 5. Interpretation. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation". The headings used herein are for indexing purposes and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 6. Declarant's Rights; Obligations of Cooperation by Association. Until such time as Declarant has completed all of the contemplated improvements and has sold all of the Lots and Parcels within the Development, the following provisions shall apply and control notwithstanding any provisions contained in this Declaration to the contrary:

a. The Association hereby grants the Declarant an easement across all Common Area and additions to Common Area for the construction of water, sewer, drainage, water retention and electric facilities; for the installation of any other services and facilities deemed by Declarant necessary or desirable for the development of the Properties and Common Area; and for the conduct of all construction, sales and marketing activities deemed necessary or desirable by the Declarant.

b. The Association grants the Declarant the right to alter the boundaries of the Common Area whether or not they have been previously deeded to the Association, provided that such alteration does not substantially, materially and adversely affect the function and use of the Common Area. The Association and each Owner hereby irrevocably appoint the Declarant or its officers as their attorney-in-fact to execute and/or deliver any documents, plats, deeds or other written instruments necessary or convenient to accomplish the addition of Common Area and Properties, to create

easements as deemed necessary by Declarant and to adjust the boundary or boundaries of the Common Area. Such appointment shall be deemed coupled with an interest and irrevocable.

c. Neither the Association nor its members, nor the use of the Common Area by the Association or its members, shall interfere with the completion of the contemplated improvements or the marketing and sale by Declarant of Lots or Parcels within the Development.

d. Declarant reserves and the Association grants to Declarant the right to make such use of Lots or Parcels, and the Common Area, as may facilitate completion and sale of Lots or Parcels by the Declarant. Without limiting the foregoing, Declarant shall have the right to maintain a sales office, model units, administration office and/or construction office (which may be a construction trailer or a temporary or permanent building) on Lots or Parcels or on the Common Area. Declarant further shall have the right to erect and maintain signs on Lots or Parcels or on the Common Area, shall have the right to bring prospective purchasers upon the Common Area, shall have the right to use Common Area for any sales purposes, shall have the right to grant the right of use of the Common Area to any prospects or any other individuals or group in its sole discretion and shall be entitled to conduct all other marketing activities desired by Declarant. By way of example and not by way of limitation or definition, such Common Area may include the clubhouse, pool and other amenities.

e. Without the express prior written consent of Declarant, no amendments shall be made to the Declaration and no Rules and Regulations shall be adopted by the Association which shall modify the assessments or other charges on Declarant's Lots or Parcels, or which shall restrict, impair or in Declarant's sole judgment adversely affect Declarant's activities on the Common Area, delegation of use of the Common Area or marketing and sale of the remaining Lots or Parcels in the Development, whether or not such activities are enumerated in the preceding paragraphs.

Section 7. Declarant Loans to the Association. Declarant reserves the right, but not the obligation, to provide from time to time for certain capital improvements or working capital for the benefit of the Association and its Members. In such event, the Declarant may consider the cost of developing such capital improvements as a loan to the Association, repayable by the Association to the Declarant at such time and with such interest as may be reasonably agreed to by the Association and the Declarant prior to the development of such improvement by Declarant. Any such loan shall be evidenced by a promissory note made by the Association in favor of Declarant and such note shall be deemed

reasonable upon execution by the Association.

Section 8. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to make the Development safer than it otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE COMMUNITY, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES AND DECLARANT, AND ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY WITHIN THE DEVELOPMENT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF DWELLINGS ON LOTS RESULTING FROM ACTS OF THIRD PARTIES.

Section 9. Litigation. No judicial or administrative proceeding (including, without limitation, arbitration proceedings) shall be commenced or prosecuted by the Association unless approved by Class "A" Members representing at least seventy-five percent (75%) of the total Class "A" votes and the Class "B" Member, if any. This Section shall not apply, however, to (a) actions or proceedings brought by the Association to enforce the provisions of this Declaration (including, without limitation, the judicial or nonjudicial foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IV hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by Class "A" Members representing at least seventy-five percent (75%) of the total Class "A" votes and the Class "B" Member, if any.

Section 10. Use of the Words "Heritage Hill Country". No Person shall use the words "Heritage Hill Country" or any derivative or any other term which Declarant may select as the name of the development or any component thereof in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Heritage Hill Country" in printed or promotional matter solely to specify that particular property is located within the Development, and the Association shall be entitled to use the words "Heritage Hill Country" in its

name.

Section 11. Dispute Resolution. Subject to the provisions of Article III, Section 3 hereof, prior to filing a lawsuit against the Association, the Board, or any officer, director or property manager of the Association, an Owner must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors or the property manager, if any, of the Association. The Owner shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the request.

IN WITNESS HEREOF, the Declarant has executed this Declaration as of the date first above written.

DECLARANT: U. S. HOME CORPORATION

By: George A. d'Hemecourt III
Its: DIVISION PRESIDENT

ATTEST:

Division Secretary

STATE OF TEXAS §
 Gillespie §
COUNTY OF ~~DALLAS~~ §

BEFORE ME, a Notary Public in and for the State of Texas, duly authorized to take acknowledgements, personally appeared George d'Hemecourt, Division President and Division Secretary, respectively, of U. S. Home Corporation, a Delaware corporation, on behalf of such corporation on this the 10th day of December 1998



Sharon K. Jung
Notary Public in and for
the State of Texas

EXHIBIT "A"

Lots Thirty-Seven (37) through One Hundred Thirty-Two (132), inclusive, and Lots One Hundred Ninety (190) through One Hundred Ninety-Four (194), inclusive, of Heritage Hill Country, Unit 1, a planned unit development in the City of Fredericksburg, Gillespie County, Texas, according to the Plat thereof recorded in Volume 2, Pages 140-142 of the Plat Records, Gillespie County, Texas.

43

THE STATE OF TEXAS } I, DORIS LANGE, Clerk of
County of Gillespie } the County Court of said County.

do hereby certify that the foregoing instrument of writing with
its certificate of authentication was filed for record on date
stamped hereon and duly recorded this 14th day of
December A.D. 19 98, at 8:55 o'clock A M., in the
Real Property records of said County, in Volume
360, on Pages 551-598

Witness my hand and seal of the County Court of said
County, at office in Fredericksburg, Texas, the day and
year last above written.

DORIS LANGE
Clerk, County Court, Gillespie County, Texas

By Beth Seelig Deputy
Beth Seelig

FILED FOR RECORD
AT 11:22 O'CLOCK A. M

DEC 11 1998

DORIS LANGE
CLERK COUNTY COURT
GILLESPIE COUNTY, TEXAS
By Mary Ann Seelig Deputy

JAC
07-00

Dec Cov

TITLE PAGE

Filed 11th day of December A.D. 1998 at 11:22 o'clock A M.

and recorded 14th day of December A.D. 1998 at 8:55 o'clock A. M.

in Volume 360, pages 551-598 , Official Public Records of Real Property.

DORIS LANGE, Clerk County Court, Gillespie County, Texas.

Filmed by *Jeff Duldig* Deputy.
Deputy Clerk