

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENT:

COUNTY OF HARRIS

THAT WHEREAS, U. S. HOME CORPORATION OF TEXAS is the owner of that certain real property in Harris County, Texas, described as follows:

Lots Seven (7) through Twenty-One (21), both inclusive, in Block Two (2);
Lots Nine (9) through Ninety-Nine (99), both inclusive, in Block Three (3);
Lots One (1) through Twenty (20), both inclusive, in Block Four (4);
Lots One (1) through Five (5), both inclusive, in Block Five (5); Lots One through Forty-six (46), both inclusive, in Block Six (6); Lots Seven (7) through Forty-Eight (48), both inclusive, in Block Eight (8); Lots Nine (9) through Twenty (20), both inclusive, in Block Nine (9); Lots One (1) through Forty-One (41), both inclusive, in Block Ten (10); Lots One (1) through Thirty-Seven (37), both inclusive, in Block Eleven (11); Lots One (1) through Thirty-Three (33), both inclusive, in Block Twelve (12); Lots One (1) through Sixteen (16), both inclusive, in Block Thirteen (13); Lots One (1) through Thirteen (13), both inclusive, in Block Fourteen (14), all out of BIRNAM WOOD, SECTION THREE (3), an addition in Harris County, Texas, according to a map or plat thereof recorded in Volume 211, Page 71 of the map records of Harris County, Texas;

AND WHEREAS, it will convey the said properties, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth:

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to BIRNAM WOOD III COMMUNITY ASSOCIATION, INC., its successors and assigns.

Section 2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or portion of a Lot, on which there is or will be built a detached single family dwelling, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Common Area" shall mean all real property owned by the Association at the time of the conveyance of the first lot, that is for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as follows:

All of that certain 1.50 acre tract of land out of the Ambrose Mays Survey Abstract 543, Harris County, Texas:

Beginning at a point for the most Northerly corner of Lot 46, Block 6 Birnam Wood Section Three as recorded in Volume 218 at Page 71 of the Map Records of Harris County, Texas;

Thence, S 73° 48' 33" W, with the common line of this tract and Block 6 a distance of 158.46 feet to a point for corner, said point being the common Northeasterly corner of Lot 44 and the Northwesterly corner of Lot 45, Block 6;

Thence, N 15° 00' 00" W, a distance of 387.64 feet to a point for corner;

Thence, N 55° 00' 00" E, a distance of 168.10 feet to a point for corner;

Thence, S 15° 00' 00" E, a distance of 440.56 feet to the POINT OF BEGINNING and containing 1.50 acres or 65,604.19 square feet of land.

Section 5. "Lot" shall mean and refer to that portion of any of the plots of land shown upon the recorded subdivision map of BIRNAM WOOD, SECTION THREE (3) on which there is or will be built single family dwellings. There is excepted herefrom the hereinbefore described Common Area along with other Reserves as noted on said subdivision map.

Section 6. "Declarant" shall mean and refer to U. S. HOME CORPORATION OF TEXAS, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Upon conveyance of same to the Association, every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to the title to every Lot, subject to the following provisions:

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

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

(c) The right of the Association to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property:

(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 for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance

with the By-law, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no such event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership: or

(b) January 1, 1985;

provided, however, that the Class B membership shall be reinstated upon annexation to the properties of any additional residential property and/or Common Area, but subject to further cessation in accordance with the limitations set forth in the preceding paragraphs (a) or (b) of this Article, which ever occurs first.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements or ad valorem taxes levied on the Common Area, such assessments to be established and collected as hereinafter provided. The annual and special 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, 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 not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area owed by the Association and areas affecting the houses situated upon the properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Ninety-Six Dollars (\$96.00) per Lot.

- (e) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be adjusted in conformance with the Consumer Price Index (CPI) published by the U.S. Department of Labor, specifically the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average. All items, unadjusted for seasonal variation. The maximum assessment for any year shall be the amount determined by (a) taking the dollar amount specified above in the first sentence of this Section, (b) multiplying that amount by the published CPI number for the fourth month prior to the beginning of the subject year and (c) dividing the resultant by the published CPI number for the fourth month prior to the month in which this declaration was signed by the Declarant.
- (f) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, The maximum annual assessment amount

specified above in the first sentence of this Section and used in the above CPI adjustment formula may be changed by a vote of the members, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 50 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix the annual assessment at an

amount not in excess of the maximum. As long as there is a Class B membership the Board of Directors may charge and collect a fraction of the annual assessment on each Lot until the conveyance of said Lot by Declarant to an Owner, provided that, after any conveyance of the Common Area, any such fractional charge to Declarant shall not be less than fifty percent (50%).

Section 4. Special Assessments for Capital Improvements or Taxes. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and any ad valorem taxes assessed against the Common Area provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be on-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 50 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except as provided in Section 3 (c) hereof,

and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) 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 of Directors. 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 specified Lot have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any Assessments not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of 7-1/2 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the BIRNAM WOOD III COMMUNITY ASSOCIATION, INC., or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association acting on behalf of the Lot Owners shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding nonpayment of such defaulting Owner's portion of the premium. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages granted or created by the Owner of any Lot to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any

Lot pursuant to a foreclosure under such purchase-money or improvement mortgages or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to and accepted by a local public authority; and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessment created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessment.

Section 11. Management Agreements. Each owner of a lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to the Lot Owners. All management agreements shall be made with responsible parties having experience adequate for the management of a project of this type.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, antenna, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to the and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

The persons serving on the Architectural Control Committee, or their successors, shall serve for a period of ten years from the date of the appointment of the first Architectural Control Committee, at which time the Architectural Control Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association. In the event of the death or resignation of any person serving on the Architectural Control Committee, the remaining person(s) serving on the Committee shall designate a successor or successors, who shall have all of the authority and power of his or their predecessors(s). A majority of the Architectural Control Committee may designate someone serving on the Committee to act for it. No person serving on the Committee shall be entitled to compensation for services performed pursuant

to this Article V. However, the Committee may employ one or more architects, engineers, attorneys, or other consultants to assist the committee in carrying out its duties hereunder; and the Association shall pay such consultants for such services as they render to the committee.

ARTICLE VI

EXTERIOR MAINTENANCE

In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval of two-thirds (2/3) vote of the Board of directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and exterior of the buildings and any other improvements erected thereon. The costs of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VII

USE RESTRICTIONS

1. All Lots shall be known and described as Lots for residential purpose only (hereinafter sometimes referred to as "residential lots"), and no structure shall be erected, placed, altered, or permitted to remain on any residential lot other than one (1) single-family dwelling not to exceed two (2) stories in height and a detached or an attached garage for not less than one (1) or more than three (3) cars. Carports on residential lots are prohibited. As used herein, the term "residential purposes" shall be construed to prohibit the use of said property for duplex houses, garage apartments or apartment houses; and no Lot shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purposes. No building of any kind or character shall ever be moved onto any Lot within said subdivision (except greenhouses, storage houses or similar structures not for occupancy that are approved by the Architectural Control Committee), it being the intention that only new construction shall be placed and erected thereon. Each single family dwelling may be occupied by only one family consisting of one or more persons related by blood, adoption or marriage and no more than two unrelated persons living and cooking together as a single housekeeping unit together with any household servants. Each single family dwelling shall contain no more than one housekeeping unit.

2. Any single story residence contracted on said Lots must have a ground floor area of not less than 1,000 square feet, exclusive of open or screened porches, terraces, driveways, and garages. Any residence other than a single story residence must have not less than 800 square feet of ground floor living area exclusive of open or screened

porches, terraces, driveways, and garages. The construction of any residence will involve the use of not less than 50% brick veneer around the outside perimeter of the ground floor of the building.

(g) No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building set-back lines shown on the recorded plat. No side yards at the front building set-back line shall be less than 5 feet, except a three (3) foot side yard shall be permissible for a garage or other permitted accessory building located sixty (60) feet or more from the front property line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of a building on any Lot to encroach upon another Lot. If two or more Lots, or fractions thereof, are consolidated into the building site in conformity with the provisions of Section 4 below, these building set-back provisions shall be applied to such resultant building site as if it were one original, platted Lot.

(h) None of said Lots shall be re-subdivided in any fashion except that any entity owning two or more adjoining Lots may subdivide or consolidate such Lots into building sites, with the privilege of placing or constructing improvements as permitted in Sections 2 and 3 above on each such resulting building site, provided that such subdivision or consolidation does not result in any building sites with less than fifty-five (55) feet at the front building line in BIRNAM WOOD SECTION THREE (3).

(i) Easements for the underground service may be crossed by driveways and walkways, provided that the builder makes prior arrangements with the utility company furnishing electric service and provides and installs the necessary electric conduit of approved type and size under such driveways and walkways prior to construction thereof. Such easement for the underground services shall be kept clear of all other improvements, including buildings, patios, or other pavings, and neither grantor nor any utility company using the easement shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants, to shrubbery, trees, flowers or other improvements (other than crossing driveways or walkways provided conduit has been installed as outline above) of the Owner and located on the land covered by said easements.

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

(k) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

(l) No signs of any character shall be allowed on any Lot except on sign of not more than five square feet advertising the property for sale or rent; provided, however

U.S. Home Corporation of Texas, and any entity similarly building in BIRNAM WOOD SECTION THREE (3) has the right, during the construction and sales period, to construct and maintain such facilities as it determines are necessary or convenient including, but without limitation, signs, offices, storage areas and models units.

(m) No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, and maintained or permitted in any Lot.

(n) No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. All incinerators or other equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. Provided further, that no Lot shall be used for the open storage of any materials whatsoever which storage is visible from the street, except that new building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

(o) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other house-type pets may be kept provided that they are not kept, bred or maintained for any commercial purposes, not to exceed a total of three (3) adult animals. All animals must be properly tagged for identification and penned in an approved enclosure. No animal may be chained or leashed outside an enclosure unless being walked on a leash. Whenever an animal is removed from its enclosure it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash of chain, rope, plastic, leather or similar material.

(p) No fence, wall, or hedge shall be placed, or permitted to remain, on any Lot nearer to the street on which said Lot fronts than the front building set back line or the front of the main residence on such Lot, exclusive of the garage, whichever is farther from the street, except for decorative subdivision entry fences, or fencing used for enclosing community facilities installed by U. S. Home Corporation of Texas and or BIRNAM WOOD III COMMUNITY ASSOCIATION, INC., which are approved in accordance with Article V hereof. Also, no chain link fence will be permitted in any

location. No fencing shall be constructed, placed or erected without written approval of the Architectural Control Committee.

(q) No shrub, tree planting, fence, wall, or hedge which obstructs sight lines at elevations between 2 and 6 feet above the roadway shall be planted, constructed, or permitted to remain on any corner Lot within the triangular area formed by the street property line and a line connecting then at 25 feet from the intersection of the public street right of way lines. Or in the case of a rounded property corner from the intersection of the public street right of way lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a public street right of way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

(r) No motor vehicle, trailer, marine craft, aircraft or other vehicle or equipment except a passenger automobile, passenger van, pick-up truck or motorcycle may be parked, either temporarily or permanently on any part of any Lot, easement, Common Area, or right of way, or in the street adjacent to any Lot, easement, Common Area or right of way.

No passenger automobile, passenger van, pick-up truck or motorcycle may be parked at any time on any part of any Lot, easement, Common Area, or right of way or in the street adjacent thereto unless said passenger automobile, passenger van, pick-up truck or motorcycle is in daily use as a motor vehicle on the streets or highways of the State of Texas.

This restriction includes but is not limited to a prohibition against truck-tractors, tractors, tractor-trailers, all vehicles of more than two axles, flat bed trucks, stake bed trucks, dump trucks, garbage trucks, step vans, moving vans, buses, motor homes, campers, mobile homes, travel trailers, camper trailers, utility trailers, all non-motorized vehicles, all types of industrial or construction equipment or any similar vehicle not specifically excepted, and all types of marine craft including but not limited to all power boats, outboard motor boats, motor boats, sail boats, row boats, canoes, all unpowered boats, all rafts, all boat trailers or carriers, and similar marine craft and all types of aircraft, aircraft trailers or carriers.

This restriction shall not apply to any vehicle or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity of the vehicle.

(s) Garage doors shall be closed at all times except for immediate entry and exit.

ARTICLE VIII

EASEMENTS

Section 1. All easements and alleys for the installation and maintenance of utilities and drainage facilities are reserved as shown on the plat of BIRNAM WOOD SECTION THREE (3). No shrubbery, fence, or other obstruction shall be placed in any easement or alleyway. Right of use for ingress and egress shall be had at all times over any dedicated easement, and for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement, that would constitute interference with the use, maintenance, operation or installation of such utility.

Section 2. An underground electric distribution system will be installed in that part of BIRNAM WOOD SECTION THREE (3), designated herein as Underground Residential Subdivision, which underground services area embraces all of the Lots which are platted in BIRNAM WOOD SECTION THREE (3), at the execution of this agreement between Company and Developer or thereafter. The owner of each Lot containing a single dwelling unit, shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Developer has either by designation on the plat of the Subdivision or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wire. In addition, the owner of each Lot containing a single dwelling unit shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type know as single phase, 240/120 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Underground Residential subdivision at no cost to Developer (except for certain conduits, where applicable, and except at hereinafter provided) upon Developer's representation that the Underground Residential Subdivision is being developed for residential dwelling units, including homes, all of which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent and all of which structures are wired so as to provide for separate metering to each dwelling unit. Should the plans of the developer or the lot owners in the Underground Residential subdivision be changed so as to permit the erection therein of one or more mobile homes, company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the Company an amount representing the excess in cost, for the entire underground Residential Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the owner of each affected lot, or the applicant for service to any mobile home, shall pay to the Company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by Company to be necessary.

ARTICLE IX

GENERAL PROVISIONS

Section 1. 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, including the right of the Association to recover reasonable attorney's fees in connection with the enforcement hereof. 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of an be enforceable by

the Association, or the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) years period by an instrument signed by not less than seventy-five percent (75%) of the Lot owners and thereafter by an instrument signed by not less than sixty percent (60%) of the Lot Owners. Any amendment must be properly recorded in Harris County, Texas.

Section 5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 5. Annexation. Additional residential property and common area within the area described at File Code Numbers D 144353, D 144351, D 179645, D 179644, D 146514, D 693834, D 445626, D 379258, D 379257, D 825050, D 814881, D 146513, D 144355, D 033771, D 107334, D 442970, Film Code Numbers 118-30-0027, 118-29-2582, 120-30-0104, 120-30-0101, 118-32-1499, 150-33-0259, 135-35-1623, 131-38-1181, 131-38-1177, 158-31-1178, 157-39-0631, 118-32-1496, 118-30-0032, 112-24-0771, 116-28-2163, 135-32-1868, 135-32-1869, 135-32-1870 official Public Records of Real Property of Harris County, Texas, may be annexed to the Properties with the consent of two-thirds (2/3) of each class of membership; or upon submission and approval by FHA/VA of an overall plan of the entire development, and subsequent approval of each stage of development, such additional stages may be annexed by the Board of Directors without approval by the membership.

Section 6. Mergers and Consolidations. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of each class of the voting membership.

Section 7. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, conveyance and/or dedication of Common Area, Amendment of this Declaration of Covenants, Conditions and Restrictions, Mergers and Consolidations, Mortgaging of the Common Area, and Management Agreements.

AMENDMENT TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
BIRNAM WOOD, SECTION THREE (3)

THE STATE OF TEXAS

KNOWN ALL MEN BY THESE

PRESENTS:
COUNTY OF HARRIS

THAT WHEREAS, by instrument dated November 19, 1976, U. S. HOME CORPORATION OF TEXAS, as declarant, caused to be filed that certain Declaration of Covenants, Conditions, and Restrictions at document file No. E961204 and at Film Code No. 153-12-2078 of the Official Public Records of Real Property of Harris County, Texas; which said instrument established Covenants, Conditions and Restrictions on the properties described therein; and

WHEREAS, Article IX, General Provisions, Section 3, Amendment, provide as follows:

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the sate this Declaration is recorded, after which time said covenants shall be automatically extended for a successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners and thereafter by an instrument signed by not less than sixty percent (60%) of the Lot Owners. Any amendment must be properly recorded in Harris County, Texas.

and

WHEREAS, U. S. HOME CORPORATION OF TEXAS is the Owner of all of the lots contained in BIRNAM WOOD, SECTION THREE (3); and WHEREAS, it is the desire of the parties hereto to amend said Declaration of Covenants, Conditions and Restrictions as hereinafter set out; and

WHEREAS, Article VII, Section 14 presently reads as follows:

No motor vehicle, trailer, marine craft, aircraft or other vehicle or equipment except a passenger automobile, passenger van, pick-up truck or motorcycle may be parked, either temporarily or permanently on any part of any Lot, easement, Common Area, or right of way, or in the street adjacent to any Lot, easement, Common Area, or right of way.

No passenger automobile, passenger van, pick-up truck or motorcycle may be parked at any time on any part of any Lot, easement, Common Area, or right of way or in the street adjacent thereto unless said passenger automobile, passenger van, pick-up truck or motorcycle is in daily use as a motor vehicle on the streets or highways of the State of Texas.

This restriction includes but is not limited to a prohibition against trucks, tractors, tractor-trailers, all vehicles of more than two axles, flat bed trucks, stake bed trucks, dump trucks, garbage trucks, step vans, moving vans, buses, motor homes, campers, mobile homes, travel trailers, camper trailers, utility trailers,

AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

THAT U. S. Home Corporation, a Delaware corporation authorized to transact business in the State of Texas, hereinafter called "U.S. Home", and Birnam Wood III community Association Inc., a Texas non-profit corporation, hereinafter called "Association"; and the owners of real property in Birnam Wood Section III Subdivision of Harris County, Texas, hereinafter called "Residents", have this date entered into the following agreement:

RECITALS

3. By instrument dated November 19, 1976, filed at Document File No. E961204 and Film Code No. 153-12-2078 and amended by instrument dated June 23, 1977, filed at Document File No. F195423 and Film Code no. 168-17-1288 of the Official Public Records of Real Property of Harris County, Texas, U. S. Home, as Declarant, caused to be filed that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration", which said instruments established Covenants, Conditions, and Restrictions on the property described therein.

4. It is the desire of the parties as evidenced by their signatures affixed hereto, to amend said Declaration in the following particular, to-wit:
ARTICLE VII, Use Restrictions, Section 16, of the Declaration of Covenants, Conditions and Restrictions, as amended by instrument filed at Document File No. F195423 and Film Code No. 168-17-1288 of the Official Public Records of Real Property of Harris County, Texas, which reads as follows:

16. "No Television, radio or other antennae of any type shall be erected or permitted to remain outside of a building on any residential Lot."

Shall be amend to read as follows:

16. "Upon approval by the Architectural Control Committee, one television antenna per lot may be attached to the exterior of the main residence located on the lot provided that such antenna be attached to the rear of the house and provided further that such antenna not exceed the height of the house by more than five (5) feet. No such antenna may exceed eight (8) feet in width and may not be supported by guide wires which are visible from the street in front of the house. No more than one television antenna and no radio or no other antennae of any kind may be erected or permitted to remain outside of a building on any residential lot."

WITNESSETH

Now therefore, in consideration of the premises and the mutual benefits of the parties hereto, and in accordance with the provisions of Article IX, General Provisions, Section 3, Amendment, of the Declaration, it is hereby agreed as follows, to-wit:

1. "ARTICLE VII, Use Restrictions, Section 16, of the Declaration of Covenants, Conditions and Restrictions, as amended by instrument dated June 23, 1977, file at Document File No. F195423 and Film Code No. 168-17-1288 of the Official Public Records of Real Property of Harris County, Texas is hereby amended to read as Follows:

16. "Upon approval by the Architectural Control Committee, one television antenna per lot may be attached to the exterior of the main residence located on the lot provided that such antenna be attached to the rear of the house and provided further that such antenna not exceed the height of the house by more than five (5) feet. No such antenna may exceed eight (8) feet in width and may not be supported by guide wires which are visible from the street in front of the house. No more than one television antenna and no radio or no other antennae of any kind may be erected or permitted to remain outside of a building on any residential lot."

(c) This agreement is made and accepted subject to the provisions, covenants, conditions and restrictions contained and set out in the aforesaid Declaration of Covenants, Conditions and Restrictions; and further subject to the Articles of Incorporation and the By-Laws of the Birnam Wood III Community Association, Inc., and all amendments lawfully made thereto.

(d) The parties hereto agree that this amendment shall not affect any other provision not specifically set out herein and in all other respects do hereby ratify and confirm said Declarations of Covenants, Conditions and Restrictions and all Corrections and Amendments lawfully made thereto.

EXECUTED by the parties on the dates set out adjacent to their respective signatures.

AMENDMENT TO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
BIRNAM WOOD, SECTION THREE (3)

THE STATE OF TEXAS

KNOWN ALL MEN BY THESE

PRESENTS:
COUNTY OF HARRIS

THAT WHEREAS, by instrument dated November 19, 1976, U. S. HOME CORPORATION OF TEXAS, as declarant, caused to be filed that certain Declaration of Covenants, Conditions, and Restrictions at document file No. E961204 and at Film Code No. 153-12-2078 of the Official Public Records of Real Property of Harris County, Texas; which said instrument established Covenants, Conditions and Restrictions on the properties described therein; and

WHEREAS, Article IX, General Provisions, Section 3, Amendment, provide as follows:

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for a successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners and thereafter by an instrument signed by not less than sixty percent (60%) of the Lot Owners. Any amendment must be properly recorded in Harris County, Texas.

and

WHEREAS, U. S. HOME CORPORATION OF TEXAS is the Owner of all of the lots contained in BIRNAM WOOD, SECTION THREE (3); and

WHEREAS, it is the desire of the parties hereto to amend said Declaration of Covenants, Conditions and Restrictions as hereinafter set out; and

WHEREAS, Article VII, Section 14 presently reads as follows:

(t) No motor vehicle, trailer, marine craft, aircraft or other vehicle or equipment except a passenger automobile, passenger van, pick-up truck or motorcycle may be parked, either temporarily or permanently on any part of any Lot, easement, Common Area, or right of way, or in the street adjacent to any Lot, easement, Common Area, or right of way.

No passenger automobile, passenger van, pick-up truck or motorcycle may be parked at any time on any part of any Lot, easement, Common Area, or right of way or in the street adjacent thereto unless said passenger automobile, passenger van, pick-up truck or motorcycle is in daily use as a motor vehicle on the streets or highways of the State of Texas.

This restriction includes but is not limited to a prohibition against trucks, tractors, tractor-trailers, all vehicles of more than two axles, flat bed trucks, stake bed trucks, dump trucks, garbage trucks, step vans, moving vans, buses, motor homes, campers, mobile homes, travel trailers, camper trailers, utility trailers,

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all non-motorized vehicles, all types of industrial or construction equipment or any similar vehicle not specifically excepted, and all types of marine craft including but not limited to all power boats, outboard motor boats, motor boats, sail boats, row boats, canoes, all unpowered boats, all rafts, all boat trailers or carriers, and similar marine craft and all types of aircraft, aircraft trailers or carriers

This restriction shall not apply to any vehicle or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity of the vehicle.

and

WHEREAS, it is the desire of the parties hereto to amend Article VII, Section 14 to read as follows:

(u) No motor vehicle may be parked or stored on any part of any Lot, easement, right-of-way, or common area or in the street adjacent to any Lot, easement, right-of-way, or common area unless such vehicle is completely concealed from public view inside a garage or other approved enclosure, except passenger automobiles, passenger vans, motorcycles, or pick-up trucks that are in operating condition, having current license

plates and inspection stickers, are in daily use as a motor vehicles on the streets and highways of the State of Texas and which do not exceed six feet six inches in height, or seven feet six inches in width or twenty-one feet in length.

No non-motorized vehicle, trailer, boat, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored, on any lot, easement, right-of-way, or common area or in the street adjacent to such lot, easement, right-of-way or common area unless such object is completely concealed from public view inside a garage or other approved enclosure.

This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the in immediate vicinity.

and

WHEREAS, it is the desire of the parties hereto to amend Article VII, Use Restrictions of said Declaration of Covenants, Conditions and Restrictions to include the following Sections 16, 17, and 18 as follows:

16. No television, radio or other antennae of any type shall be erected or permitted to remain outside of a building on any residential Lot.

(e) No outbuilding shall exceed twelve (12) feet in height and must be approved in strict compliance with Article V. Every outbuilding, except a greenhouse, shall correspond in style and architecture to the dwelling to which it is appurtenant. No building of any kind or character which is of frame construction on the exterior shall be erected on any lot unless same, at the time of construction, shall receive at least two coats of paint, unless otherwise approved by the Architectural Control Committee. No outbuilding shall be constructed unless it shall be concealed from public view behind an approved fence.

Grass and weeds shall be kept mowed to prevent unsightly appearances. Dead or damaged trees, which might create a hazard to property or persons on any lot or adjacent lot, shall be promptly removed or repaired and if not removed by owner upon request, then the Association may remove such trees at the owner's expense and shall not be liable for damages done in such removal. A ground cover of grass or other suitable vegetation must be maintained upon each Lot owned by a Class

A Member. The Association shall have the right, upon ninety (90) days written notice to any Class A Member who fails to maintain suitable ground cover, to enter upon such Lot and to plant grass or other suitable ground cover vegetation, the expense of which shall be a charge against the Lot and shall be added to the annual assessment in accordance with Article VI. The Association shall not be liable for any damage done in such planting.

NOW, THEREFORE, for and in consideration of the premises and the mutual benefits of the parties hereto it is hereby stipulated and agreed by and between the parties hereto that Article VII, Section 14 of the Declaration of Covenants, Conditions and Restrictions hereinabove referred to shall be amended to read as follows:

No motor vehicle may be parked or stored on any part of any Lot, easement, right-of-way, or common area or in the street adjacent to any Lot, easement, right-of-way, or common area unless such vehicle is completely concealed from public view inside a garage or other approved enclosure, except passenger automobiles, passenger vans, motorcycles, or pick-up trucks that are in operating condition, having current license plates and inspection stickers, are in daily use as motor vehicles on the streets and highways of the State of Texas and which do not exceed six feet six inches in height, or seven feet six inches in width or twenty-one feet in length.

No non-motorized vehicle, trailer, boat, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored, on any lot, easement, right-of-way, or common area or in the street adjacent to such lot, easement, right-of-way or common area unless such object is completely concealed from public view inside a garage or other approved enclosure.

This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity.

It is hereby further stipulated and agreed by and between the parties hereto that Article VII, Use Restrictions of said Declaration of Covenants, Conditions and Restrictions be amended to include, Sections 16, 17 and 18 as follows:

16. No television, radio or other antennae of any type shall be erected or permitted to remain outside of a building on any residential Lot.

No outbuilding shall exceed twelve (12) feet in height and must be approved in strict compliance with Article V. Every outbuilding, except a greenhouse, shall correspond in style and architecture to the dwelling to which it is appurtenant. No building of any kind or character which is of frame construction on the exterior shall be erected on any lot unless same, at the time of construction, shall receive at least two coats of paint, unless otherwise approved by the Architectural Control Committee. No outbuilding shall be constructed unless it shall be concealed from public view behind an approved fence.

Grass and weeds shall be kept mowed to prevent unsightly appearances. Dead or damaged trees, which might create a hazard to property or persons on any lot or adjacent lot, shall be promptly removed or repair and if not removed by owner upon request, then the Association may remove such trees at the owner's expense and shall not be liable for damages done in such removal. A ground cover of grass or other suitable vegetation must be maintained upon each Lot owned by a Class A Member. The Association shall have the right, upon ninety (90)

Days written notice to any Class A member who fails to maintain suitable ground cover, to enter upon such Lot and to plant grass or other suitable ground cover vegetation, the expense of which shall be a charge against the Lot and shall be added to the annual assessment in accordance with accordance with Article VI. The Association shall not be liable for any damage done in such planting.

In all other things, said Declaration of covenants, Conditions and Restrictions are hereby RATIFIED and CONFIRMED, SIGNED and ACKNOWLEDGED on the date specified by the signatures of respective parties, the instrument to be effective as of November 19, 1976.