

11

Rest.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
CHIMNEY HILL, SECTION THREE (3)

lee

176-86-2236

6867888 THE STATE OF TEXAS §  
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

39

THAT WHEREAS, U.S. HOME LAND OF TEXAS, INC. (herein sometimes called "Declarant"), is the owner of that certain real property in Harris County, Texas, containing 41.738 acres of land, described by metes and bounds in Exhibit "A" hereto, made a part hereof by reference for all purposes and further described as follows:

- Lots One (1) through Thirteen (13), both inclusive, in Block One (1);
- Lots One (1) through Ten (10), both inclusive, in Block Two (2);
- Lots One (1) through Six (6), both inclusive, in Block Three (3);
- Lots One (1) through Eighteen (18), both inclusive, in Block Four (4);
- Lots One (1) through Thirty (30), both inclusive, in Block Five (5);
- Lots One (1) through Thirty (30), both inclusive, in Block Six (6);
- Lots One (1) through Thirty-Five (35), both inclusive, in Block Seven (7);
- Lots One (1) through Forty (40), both inclusive, in Block Eight (8);
- Lots One (1) through Twenty-Nine (29), both inclusive, in Block Nine (9);

of Chimney Hill, Section Three (3), an addition in Harris County, Texas, according to the Map or Plat thereof recorded in 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 hereinabove set forth;

NOW, THEREFORE, it is hereby declared 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 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.

Hold

-1-



ARTICLE I

178-86-2237

DEFINITIONS

Section 1. "Association" shall mean and refer to CHIMNEY HILL 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.

Section 5. "Lot" shall mean and refer to that portion of any of the plots of land shown upon the recorded subdivision map of CHIMNEY HILL, 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 LAND OF TEXAS, INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development, or if such successors or assigns should acquire more than one developed Lot which has not been built on for the purpose of erecting thereon single family dwellings.

ARTICLE II  
PROPERTY RIGHTS

178-86-2238

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 recreational facilities by an Owner or the Owner's delegate for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(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 membership agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his household, his tenants, or contract purchasers who reside on the property. All such delegates shall be subject to the rules and regulations of the Association and all provisions of the

178-86-2239

Articles of Incorporation and By-Laws of the Association and of this Declaration to the same extent as the Owner, and the Association may take any action against such delegate to enforce such documents as it is authorized to take against the Owner, and the Owner and his delegate shall be bound thereby.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject, by covenants of record, to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification of membership.

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

Class A. Class A members shall be all those Owners as defined in Article I with the exception of the Declarant. Each lot owned by a Class A member or members shall be allowed one vote for each lot which vote may be cast by the owner or co-owners of that lot but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B members shall be the Declarant (as defined in the Declaration) 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 Class A membership equal the total votes outstanding in the Class B membership, or

(b) January 1, 1986;

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) and (b) of this Article, whichever 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

178-86-2241

promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area owned 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 One Hundred Fifty-One and 44/100 Dollars (\$151.44) per Lot.

(a) 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 Works, 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 that resultant by the published CPI number for the fourth month prior to the month in which this declaration was signed by the Declarant.

(b) 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

178-15194 + 339.1

members not less than 30 days nor more than 50 days in advance of the meeting setting forth the purpose of the meeting. The limitation 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.

*Wash Co*

(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%).

(d) So long as there is Class B membership the Board of Directors, by virtue of this Declaration and the powers granted in the Articles of Incorporation and the By-Laws of the Association, shall have the authority at its discretion to enter into trash and garbage disposal contracts with contractors to serve the trash and garbage disposal needs of the Owners, and to assess each Owner a pro rata amount of the cost of such trash and garbage disposal service in addition to the annual assessment which amount, if any, is to be determined independently of and in addition to the maximum annual assessment.

Section 4. Special Assessments for Capital Improvements and 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 may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 50 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate of 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 Assessment: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of March, 1981. 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 a 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 CHIMNEY HILL 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 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

178-86-2245

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 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.

178-86-2246

ARTICLE V

ARCHITECTURAL CONTROL

No buildings or improvements of any character shall be erected or placed or the erection thereof begun, or changes made in the design thereof after original construction, on any Lot until the construction plans and specifications and a plan showing the location of the structure or improvements have been submitted to and approved in writing by the Architectural Control Committee, as hereinafter specified, or its duly authorized representative, as to compliance with these restrictions, quality of material, harmony of external design with existing and proposed structures and as to location with respect to topography and finish grade elevation. With respect to Chimney Hill, Section Three (3), there shall be two (2) Architectural Control Committees, and the rights and powers herein contained shall apply to both, provided that as to new construction, the Architectural Control Committee shall be Larry Young, Lane Lance and John Bily, and the Architectural Control Committee as to other than new construction (with respect to Lots not owned by a developer, builder or building company) shall be appointed by the Board of Directors of the Association, and shall consist of three (3) or more representatives so appointed. The term Architectural Control Committee as herein used shall therefor apply to both such committees with respect to the type of property to which their respective jurisdictions pertain. As to the Architectural Control Committee respecting new construction, if there exists at any time one or more vacancies, the remaining member or members of such Committee may designate successor member(s) to fill such vacancy or vacancies provided that Declarant may from time to time, without liability of any character for so doing, remove and replace any such members of the Architectural Control Committee as it may in its sole discretion determine.

176-86-2247

With respect to any vacancies in the Architectural Control Committee respecting other than new construction, the Board of Directors of the Association shall appoint person(s) to fill such vacancies as shall occur from to time to time, without liability of any character for so doing. The Declarant, Architectural Control Committee and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. In the event the Committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. Declarant hereby retains its rights to assign the duties, powers and responsibilities of the Architectural Control Committee to Chimney Hill Community Association, Inc., when one hundred percent (100%) of all Lots in Chimney Hill, Section Three (3), and all subsequent sections of Chimney Hill are occupied by residents, and the term "Architectural Control Committee" herein shall include the Association, as such assignee. The approval or lack of disapproval by the Architectural Control Committee shall not be deemed to constitute any warranty or representation by such Committee including, without limitation, any warranty or representation relating to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations. Anything contained in this Paragraph V or elsewhere in this Declaration to the contrary notwithstanding, the Architectural Control Committee, and its duly authorized representative, is hereby authorized and empowered, at its sole and absolute discretion, to make and permit reasonable modifications of the deviations from any

178-86-2248

of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Subdivision Lot and of the size and location of any such building or improvement when, in the sole and final judgment and opinion of the Committee, or its duly authorized representative, such modification and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as a whole, provided the V.A. and/or F.H.A. consent thereto.

The Architectural Control Committee may require the submission to it of such documents and items (including as examples, but without limitation, written request for and description of the variances required, plans, specifications, plot plans and samples of materials) as it shall deem appropriate, in connection with its conditions of a request for a variance. If the Architectural Control Committee shall approve such request for a variance, the Architectural Control Committee may evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Architectural Control Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including as examples, but without limitation, the type of alternate materials to be permitted, and alternate fence height approved or specifying the location, plans and specifications applicable to an approved out building), and signed by a majority of the then members of the Architectural

178-86-2249

Control Committee (or by the Committee's duly authorized representative). Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from the Architectural Control Committee; or (b) failure by the Architectural Control Committee to respond to the request for variance. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning and/or the term of the Architectural Control Committee shall have expired and the Board of Directors of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this Declaration shall be permitted it being the intention of Declarant that no variances be available except at the discretion of the Architectural Control Committee, or if it shall have succeeded to the authority of the Architectural Control Committee in the manner provided herein, the Board of Directors of the Association. The Architectural Control Committee shall have no authority to approve any variance except as expressly provided in this Declaration.

ARTICLE VI

EXTERIOR MAINTENANCE

In the event a Class A Member who is the 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, trim trees and shrubs, mow grass, plant grass or other suitable vegetation 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.

176-86-2250

ARTICLE VII  
USE RESTRICTIONS

1. All Lots shall be known and described as Lots for residential purposes 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. 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 by any Class A Member (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 or 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 constructed on said Lots must have a ground floor area of not less than 800 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 700 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 40% of brick veneer around the outside perimeter of the ground floor of the building.

178-86-2251

Section 3

3. No building or other improvements shall be located on any lot nearer to the front lot line or nearer to the street sideline than the minimum building setback line shown on the recorded plat. No building shall be located on any lot nearer than ten (10) feet to any side street line.

Subject to Paragraph B of this Section, No building shall be located nearer than five (5) feet to any interior lot line, except that a garage or other permitted accessory building located sixty (60) feet or more from the front lot line may be located within three (3) feet of an interior lot line; provided, however, that a dwelling may be located as near as three (3) feet to any interior lot line so long as the distance between any adjacent dwelling and the dwelling situated as close as three (3) feet to an interior lot line

is not less than ten (10) feet; provided, however, in no event shall the sum of the side yard widths on any lot be less than fifteen (15) percent of the width of the lot (except in the case of a garage or other permitted accessory building set back sixty (60) feet as above prescribed).

This distance shall be measured (to the nearest foot) along the front setback line shown on the recorded plat. For the purposes of this covenant or restriction, eaves, steps and unroofed terraces shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot.

4. "Zero Lot Line Detached". Upon prior written approval of the Architectural Control Committee, improvements may be constructed so as to have one outside wall abutting the side property line designated as the "zero setback line" for that Lot, except in the case of corner lots or unless a different layout is authorized in writing by the Architectural Control Committee. Corner lots may



have a "zero setback line" opposite the side street. To provide for uniformity and proper utilization of the building area within the Lots, dwellings or appurtenant structures on a Lot shall not be less than six (6) feet from the dwelling or appurtenant structure on any contiguous Lot(s).

No windows, doors or other openings may be placed in the wall built on or parallel to the zero setback line unless the wall is a minimum of three (3) feet from the zero setback line except that walls on the zero setback line may have openings if such wall faces onto a reserve or easement.

The side wall of the dwelling or appurtenant structure built on the zero setback line shall be constructed using permanent low-maintenance material consisting of masonry with brick-face exterior or similar material as approved by the Architectural Control Committee; and such walls shall satisfy the City of Houston Building Code as to fire resistance. The Owner of any adjacent Lot shall not attach anything to a side wall or fence located upon the zero setback line; nor shall the Owner of any adjacent Lot alter in any manner, i.e. structure, color, material or otherwise, a side wall or fence located upon the zero setback line without the (i) written approval of the Architectural Control Committee and (ii) written consent of the adjoining Lot Owners.

At no place within Chimney Hill, Section Three (3), shall more than one (1) of the above described residence placement methods be on one (1) side of a street between two (2) corner lots or within a cul-de-sac without the prior written consent of the Architectural Control Committee.

5. A. Composite Building Site. Any Owner of one or more adjoining Lots (or portions thereof) may consolidate such Lots or portions into one single-family residence building site, with the privilege of placing or constructing

improvements on such site, in which case setback lines shall be measured from the resulting side property lines rather than from the lot lines shown on the recorded plat. Any such proposed composite building site(s) must be approved by the Architectural Control Committee.

B. Resubdivision of Lots. No Lot shall be resubdivided, nor shall any building be erected or placed on any such resubdivided Lot, unless each building site resulting from such resubdivision shall have a minimum width of not less than forty-five (45) feet at the front building line; provided, however, that nothing contained herein shall be construed to prohibit the resubdivision of any Lot or Lots within the Properties by the Owner thereof prior to construction of residence(s) thereon if such resubdivision results in each resubdivided Lot or building site having the minimum Lot width aforesaid. Any such resubdivision must be approved by the Architectural Control Committee.

Lots or building sites resulting from composition or resubdivision of platted Lots which have not been replatted of record may be described by metes and bounds; provided that the Federal Housing Administration, Veterans Administration and the Board of Directors of the Association consent thereto.

6. 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.

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

8. No signs of any character shall be allowed on any Lot except one sign of not more than nine square feet advertising the property for sale or rent; provided, however,

178-86-2254

U.S. Home Land of Texas, Inc., and any entity similarly building in CHIMNEY HILL, SECTION ONE (1) 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 model units.

9. 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.

10. 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 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.

11. 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

176-86-2255

exceed a total of three (3) adult animals. All animals must be property 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 agent and must be restrained by a proper leash of chain, rope, plastic, leather, or similar material.

12. No fence, wall, or hedge shall be placed, or permitted to remain, on any Lot nearer to the street on which said Lot fronts and 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 Land of Texas, Inc. and/or CHIMNEY HILL COMMUNITY ASSOCIATION, INC., which are approved in accordance with Article V hereof. Also, no chain link or wire fence will be permitted on any Lot owned by a Class A Member. No fencing shall be constructed, placed or erected without strict compliance with Article V.

13. 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 lines and a line connecting them at points 25 feet from the intersection of the public street right-of-way lines, or in the case of 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 foilage line is maintained at sufficient height to prevent obstructions of such sight lines.

14. 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 part of any 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.

15. Garage doors shall be closed at all times except for immediate entry and exit.

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.

17. No outbuildings 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

178-86-2257

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 out-building shall be constructed unless it shall be concealed from public view behind an approved fence.

18. 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 damage 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 a 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.

#### 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 CHIMNEY HILL, SECTION THREE (3). No shrubbery, fence, or other obstruction shall be placed within any drainage easement.

Right of use of 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 CHIMNEY HILL, SECTION THREE (3), designated herein as Underground Residential Subdivision, which underground service area embraces all of the Lots which are platted in CHIMNEY HILL, SECTION THREE (3). 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. Declarant 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 wires. 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 known 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 Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant'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 Declarant or the lot owners in the Underground Residential Subdivision be changed so as to permit the erection therein of one or more mobile homes, the electric company shall not be obligated to provide electric service to any such mobile home unless (a) Declarant has paid to the electric 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 electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably



178-86-2260

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 the electric 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 way 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 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 forty (40) 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 forty

(40) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be properly recorded in Harris County, Texas.

Section 4. 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 in instruments of record at County Clerk's File Number E631825, Film Code Number 132-14-1706 et seq. and at County Clerk's File Number E631826, Film Code Number 132-14-1714 et seq. of the 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.

Section 8. Books and Records. The books, records and papers of the Association shall, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation, By-Laws of the Association, and Restrictive Covenants shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost.

Section 9. Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 10. Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

Section 11. Joinder by Lienholder. The undersigned lienholder joins herein solely for the purpose of subordinating the liens held by it of record upon the Properties to the covenants, conditions and restrictions hereby imposed by the Declarant with, however, the stipulation that such subordination does not extend to any lien or charge imposed by or provided for in this Declaration.

176-86-2263

EXECUTED this the 17th day of February, 1981.

DECLARANT: U.S. HOME OF TEXAS LAND, INC.

ATTEST: By: G. Douglas A. Crawley (Name) Vice President (Capacity)

Russell Bird (Name) Assistant Secretary (Capacity)

LIENHOLDER: GIBRALTAR SAVINGS ASSOCIATION

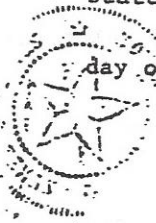
ATTEST: Sandy Johnson (Name) Asst. Secretary (Capacity)

By: James D. Hurst (Name) Vice President (Capacity)

178-86-2265

THE STATE OF TEXAS § COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared G. DOUGLAS A. CRAWLEY, Vice President of U.S. HOME OF TEXAS LAND, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation and in the capacity therein stated.



GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 12th day of February, 1981.

Deborah M. Olson Notary Public in and for The State of Texas My Commission Expires September 8, 1984

THE STATE OF TEXAS § COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared James D. Hurst, Vice President of Gibraltar Savings Assoc., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation and in the capacity therein stated.



GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 17th day of February, 1981.

Sheila Lopez Notary Public in and for The State of Texas

SHEILA LOPEZ Notary Public in and for the State of Texas My Commission Expires 11-5-84