

DECLARATION  
 OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS

147-34-1604

THE STATE OF TEXAS    X  
 COUNTY OF HARRIS     X

KNOW ALL MEN BY THESE PRESENTS:

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

FOREST BEND, SECTION 3, RESERVE F, an addition in Harris County, Texas, according to the plat thereof, recorded in Volume 180, Page 73 of the Map Records of Harris County, Texas, from which property there has been, or will be, cut out 20 Building Sites for 141 Townhouse Lots, all as hereinafter provided, said Building Sites being more fully described in Exhibit I, attached hereto and made a part hereof for all purposes; and all the remainder of said property shall constitute Common Area.

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 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 FOREST BEND TOWNHOUSE HOMEOWNERS 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, which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be

owned by the Association at the time of the conveyance of the first lot is described as follows: All of the properties above described and the buildings, structures and improvements thereon. SAVE AND EXCEPT the 20 Building Sites above described and shall include for example, but not by way of limitation, all recreational facilities, community facilities, swimming pools, pumps, trees, landscaping, pipes, wires, conduits and other public utility lines situated thereon.

Section 5. "Lot" or parcel shall mean and refer to that portion of any of the twenty (20) Building Sites (which except the Common Area) on which there is or will be constructed a single family townhouse which is to be individually and separately owned. For all purposes hereunder it shall be understood and agreed that said twenty (20) Building Sites constitute one hundred forty-one (141) lots until such time, if any, as it may be determined that the number of single family townhouses are more or less than 141 in which case the number of separate lots shall be the number of single family townhouses built on the twenty (20) Building Sites. Declarant shall be the owner of all of said 141 lots SAVE AND EXCEPT only those particular lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof. "Townhouse" shall mean a single family residence unit joined together with at least one more single family residence by a common wall, or walls, and/or roof and/or foundation.

Section 6. "Declarant" shall mean and refer to U. S. HOME CORPORATION OF TEXAS, its successors and assigns if such successors or assigns shall 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. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. the right of the Association to charge a 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 for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

c. the right of the Association to dedicate or transfer all or any part of the Common 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-Laws, 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.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot. As a right running with the real property, ownership of each Lot shall entail the use and enjoyment of all walks, stairs, pavement, driveways, parking areas, entrances and exits owned by the Association and there shall always be access by both pedestrians and vehicles to and from each Townhouse to a street dedicated to public use without hindrance of such communication ways by the Association and/or Owners of the Townhouses. Title to the Common Area shall remain undivided in the Association so as to preserve the rights of the Owners with respect to their use and enjoyment of the Common Area.

### 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 vote for each Lot owned. When more than one 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 event shall more than one 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. two (2) years from the date hereof.

#### 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, 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, and of the homes 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 \$300.00 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 may be increased each year not more than 3 percent above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above three percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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 any such fractional charge to Declarant shall not be less than twenty five percent (25%).

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, 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 Section 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 sixty percent (60%) 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 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 assessment on a specified Lot has been paid.

Section 8. Effect of Non-Payment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) percent per annum. The Association may bring an action at law against the owner-member personally obligated to pay the same, or foreclose the lien against the property. No owner-member may waive or otherwise escape the 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 purposes 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 payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment 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. Water and Sewer Use Fees. Since the Association will pay water and sewer fees for each member monthly, a separate bank account shall be maintained by the Association for the deposit of such funds from the annual assess-

ments provided for herein, and to prevent said funds from becoming co-mingled with other Association funds.

#### ARTICLE V

#### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The Owner of a Townhouse shall not cut through or make any penetration through a party wall for any purpose whatsoever.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner, who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request

therefore, the Board of Directors of the Association shall select an arbitrator for the refusing party.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot after its purchase from Declarant, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony or 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.

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, carports, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, patios, window and door fixtures and hardware; maintenance and repair of these areas and items shall be the sole responsibility of the individual Lot owner.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, and not covered or paid for by insurance on such Lot, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VIII

USE RESTRICTIONS

Section 1. All buildings or structures on the property shall be of new construction.

Section 2. Each Lot conveyed shall be designated by a separate legal description and shall constitute a freehold estate subject to the terms, conditions and provisions hereof.

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Section 3. The Lots shall be used only for residential purposes, as a private residence, and no professional, business or commercial use shall be made of the same, or any portion thereof, nor shall any Owner's or resident's use of a Lot endanger the health or disturb the reasonable enjoyment of any other Owner or resident.

Section 4. No buildings other than Townhouses, being single family residences joined together by a common wall or walls, and/or roof and/or foundation, shall be constructed on the Lots.

Section 5. No building or structure shall be moved onto said Lots.

Section 6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 7. No advertising signs (except one "For Rent" or "For Sale" sign of not more than five square feet per Lot) billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Lots.

Section 8. The foregoing covenants of this Article VIII shall not apply to the activities of FOREST BEND TOWNHOUSE HOMEOWNERS ASSOCIATION, INC., a non-profit corporation incorporated or to be incorporated under the laws of the State of Texas, or Declarant. Declarant may maintain, while constructing and selling the Townhouses, in or upon such portions of the property as Declarant determines, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs.

Section 9. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except dogs, cats or other common household pets (not to exceed a total of two (2) pets) may be kept, provided that they are not kept, bred, or maintained for any commercial purposes.

Section 10. All rubbish, trash, or garbage shall be kept screened by adequate planting or fencing so as not to be seen from neighboring Lots and streets, and shall be regularly removed from the property, and shall not be allowed to accumulate thereon.

Section 11. Drying of clothes shall be confined to individual patios and must be kept screened by adequate planting or fencing so as not to be seen from neighboring Lots and streets.

Section 12. Without prior written authorization of the Board of Directors no television or radio antennas of any sort shall be placed, allowed or maintained on any Lot or any portion of the exterior of the improvements located on the property, nor upon any structure situated upon the property.

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Section 13. All fixtures and equipment installed within a Townhouse commencing at a point where the utility lines, pipes, wires, conduit or systems enter the exterior walls of the Townhouses, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Townhouse or impair any easement of hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Townhouses or their Owners.

Section 14. No vehicle shall be parked on streets or driveways so as to obstruct ingress and egress by Owners of Lots, their families, guests and invitees except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible. For a period not to exceed forty-eight (48) hours, family, guests and invitees of Owners of Lots may park their vehicles in the guest parking areas provided on the properties. Guest parking areas are not intended for use by the Owners of Lots for parking or storing boats, trailers, camping units, or any personal vehicles and the Board of Directors may insure the proper use of said areas in such legal manner as it deems necessary.

Section 15. Except in the individual patio area appurtenant to a Townhouse, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property, except as installed in accordance with the initial construction of the building or as approved by the Association's Board of Directors or their designated architectural committee. Maintenance, upkeep and repairs of any patio shall be the sole responsibility of the individual Lot owner and not in any manner the responsibility of the Association.

#### ARTICLE IX

#### EASEMENTS

Section 1. Each Townhouse and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and over-hang of the structures built by Declarant. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event a multi-family building containing two or more Townhouses is partially or totally destroyed and then rebuilt, the Owners of the Townhouses agree that valid easements shall exist for any encroachment resulting therefrom.

Section 2. There is hereby created an easement across all properties for the purposes of necessary ingress and egress to install, replace and repair and maintain utilities including, but not limited to water, sewer, telephone, electricity and gas. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on the property until approved by Declarant or the Association's Board of Directors. In the event that any utility company furnishing a service covered by the general easement herein provided requests a specific easement by separate recordable instrument, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 3. Underground single phase electric service shall be available to all residential Lots aforesaid and to the recreation buildings to be constructed on the Common Area and the metering equipment shall be located on the exterior surfaces of their walls at a point to be designated by the utility company. The utility company furnishing the service shall have a two foot wide easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service on the Townhouse buildings.

Section 4. Neither Declarant nor any utility company using the easements shall be liable for any damage done by them, their employees, or agents, to shrubbery, trees, flowers, or improvements other than those built by Declarant and located on the land covered by said easements.

Section 5. The Owners of the respective Lots shall not be deemed to separately own pipes, wires, conduits, or other service lines running through their property which are utilized for or serve other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot.

Section 6. Easements and alleys for the installation and maintenance of utilities and drainage facilities are reserved as shown by the plat and instruments recorded in the office of the County Clerk of Harris County, Texas, and by instruments that may hereafter be recorded in said office as provided in Section 2 of this Article IX above. Copies of these shall be kept on file in the initial registered office of the Association. No shrubbery, fence, or other obstruction shall be placed in any easement or alleyway. Right of use for ingress

or 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.

#### ARTICLE X

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver to 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 this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) 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 percent (75%) of the Lot Owners. Any amendment must be properly recorded in Harris County, Texas.

Section 4. Annexation. Additional land within the area described in Volume 180, Page 73 of the Map Records of Harris County, Texas, may be annexed by the Declarant without the consent of members within seven (7) years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

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 6. FIIA/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, mergers and consolidations, mortgaging of Common Area, dedication of Common Area, and Amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. Books and Records. The books, records and papers of the Association shall at all times during reasonable business hours, be subject to inspection by any member. Copies of the Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association. Upon order additional copies may be purchased at a reasonable cost.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 25th day of July, 1972.

U. S. HOME CORPORATION OF TEXAS



By D. Verne Harlin  
Secretary

By Charles Monaco  
Charles Monaco, President

THE STATE OF TEXAS X  
COUNTY OF FORT BEND X

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared CHARLES MONACO, President of U. S. HOME CORPORATION OF TEXAS, a Texas corporation, 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 25th day of July, 1972.

Judy A. Boyd  
Notary Public in and for  
Fort Bend County, TEXAS  
JUDY A. BOYD

*Hand for pick-up*