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**AMENDMENT  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
HERITAGE COVE**

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INST # 5481885 OR BK 03688 PG 3366 RECORDED 08/18/2002 02:34:10 PM  
CHARLIE GREEN, CLERK OF COURT, LEE COUNTY  
DEPUTY CLERK M. Bernard

**THIS AMENDMENT** is made this 13<sup>th</sup> day of June, 2002 by U.S. HOME CORPORATION, a Delaware Corporation authorized to do business in the State of Florida, hereinafter called the "Declarant" to the Declaration of Covenants, Conditions and Restrictions for HERITAGE COVE.

**WHEREAS**, the Declaration is recorded in Official Records Book 3178, Page 0965 through 1052, and as later amended in Official Records Book 3335 at Pages 4253-4257, and as later amended in Official Records Book 3440 at Pages 2570-2575, Public Records of Lee County, Florida; and

**WHEREAS**, pursuant to Section 15.10 of this Declaration, the Declarant reserved, in his sole discretion, the right to unilaterally modify or amend the governing documents in any way; and

**WHEREAS**, the Declarant is desirous of adding new Section 5.30 to this Declaration, pursuant to its reserved right to amend;

**NOW, THEREFORE**, the Declarant amends the Declaration to add new Section 5.30 to this Declaration as follows:

**5.30 55 OR OVER AGE COMMUNITY.**

**5.30.1 Statement of Intent.** It is hereby declared by the developer, U.S. Home Corporation, that the developer desires and intends to provide housing for older persons, as defined in the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995 (hereinafter referred to as the "Acts") and the Federal Rules and Regulations (hereinafter referred to as the "Federal Regulations") as promulgated by the Department of Housing and Urban Development (hereinafter sometimes referred to as "HUD"). It is more specifically the desire and intention of this community to meet the exemption for housing for older persons as is provided for in 24 CFR Part 100, Section 100.304 (hereinafter referred to as the "55 or Over Housing Exemption"). Section 100.304 implements Section 807(b)(2)(c) of the Acts which exempts housing communities intended and operated for occupancy by at least one (1) person 55 years of age or over per unit that satisfy certain criteria. In this endeavor, the following occupancy restrictions and procedures shall govern. Further, the Association shall do whatever is required by the Acts and Federal Regulations to publish its intention to comply with, and adhere to, policies and procedures which demonstrate an intent to provide housing for persons 55 year of age or over. The Acts and Federal Regulations, as amended from time to time, are hereby incorporated by reference into this document. Reference to the Acts and to the Federal Regulations in this document shall mean the Acts and the Federal Regulations as they are amended from time to time.

**5.30.2 Fair Housing Definitions:**

(A) "Acts" shall mean and refer to the (Federal) Fair Housing Amendments Act of 1988 (Pub.L. 100-430, approved September 13, 1988; 102 STAT.1619 and the Housing for Older Persons Act of 1995.)

(B) "FEDERAL REGULATIONS" shall mean and refer to the Federal rules and regulations promulgated by the Department of Housing and Urban Development, which became effective on March 12, 1989 and May 3, 1999.

(C) "55 OR OVER HOUSING EXEMPTION" shall mean and refer to the exemption for housing for older persons (55 or over housing) as is originally provided for in Section 807(b)(2)(C) of the Acts.

**5.30.3 Minimum Age Restrictions.** Permanent occupancy of a unit shall be restricted as follows provided that the restrictions contained in the remaining provisions of this Section are met:

(A) No persons under the age of eighteen (18) years shall be permitted to permanently reside in the units.

(B) However, a person under the age of eighteen (18) years may be permitted to visit and temporarily reside in a unit for a period of time not to exceed thirty (30) days in the aggregate in any calendar year, nor more than fifteen (15) consecutive days. The visitation time periods shall not be cumulative from year to year. Only overnight visitation shall be considered in the computation. So by way of example, if an under-aged person visits overnight, two (2) days of visitation shall be computed. If an under-aged person visits during the day only and does not stay overnight, no days of visitation shall be computed.

**5.30.4 Age Restriction.** At least eighty percent (80%) of the occupied Lots or Units shall be occupied by at least one permanent occupant who is 55 years of age or older, and all permanent occupants must be at least eighteen (18) years of age or older. A "permanent occupant" shall be defined in these restrictions as a person who occupies a residential structure on a Lot or Parcel for more than eight (8) weeks in any calendar year. A surviving or divorced spouse who is a permanent occupant under the age of 55 years and who was the spouse of a permanent occupant 55 years of age or older will be allowed to remain as a permanent occupant. Other than the Declarant, no Owner may rent or sell a residential structure unless at least one person who will occupy the residential structure is a permanent occupant 55 years of age or older. The Board shall have the right to require prior age verification from all prospective occupants. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to sell Lots or Units which shall be permanently occupied by at least one person who is 50 years of age or older; provided that such sales do not conflict with any federal, state or local law. The Declarant or the Board shall have the right to promulgate, from time to time, reasonable rules and regulations governing the visitation and temporary residence of, or use of the Common Area and facilities by, persons under eighteen (18) years of age.

**5.30.5 Guest Visitation Limitation.** Use of units by the following guests of the designated occupant when the designated occupant is not present in the unit shall be restricted as follows: No guest shall use or occupy a unit in excess of thirty (30) days in a calendar year, of which the maximum number of continuous days shall be fifteen (15). Each day as well as part of a day shall be counted in this computation. This Section shall be in addition to restrictions pertaining to guests which may be contained elsewhere in the constituent documents and Rules and Regulations of the Association, as amended from time to time. The designated occupant shall be considered to be not present in the unit when the designated occupant does not stay overnight in the unit along with the guest.

(A) A "guest" shall mean and refer to any person who is visiting a unit without requirement to contribute money, perform any services or provide any other consideration to the Owner in connection with such visit/occupancy. A permanent occupant of a unit shall not be considered as a guest. Furthermore, an Owner of a unit shall never be considered a guest of the unit he or she owns, unless the Owner is visiting a lessee in the unit.

(B) Registration of Guests. All guests who visit when the designated occupant is not present in the unit must register with the Association prior to or upon arrival at Heritage Cove. The Board of Administration shall be empowered to adopt a form for use in connection with the registration of such guests, for which the guests must sign. The form shall include an acknowledgment of the following: (i) relationship to the designated occupant; (ii) the intended length of stay; (iii) that the guest has received a copy of the constituent documents and Rules and Regulations of the Association, or summation thereof, and agrees to abide by them; (iv) and such other reasonable information determined by the Board of Administration from time to time. Such guest shall not be entitled to visit unless he or she registers with the Association as required in this Section.

(C) Unauthorized Guest Visit. Any guest visit not authorized pursuant to the terms of this Section shall be deemed improper, entitling the Association to bar access of the guest to the unit and recreational facilities and/or shall entitle the Association to obtain an injunction removing the guest and his or her personal belongings from the unit.

(D) Other Restrictions. The restrictions on guests in this Section shall be in addition to other restrictions which may be contained elsewhere in the constituent documents and Rules and Regulations of the Association.

**5.30.6 Exceptions to Section 5.30.4**

(A) Surviving Spouse or Cohabitant. Section 5.30.4 shall not be applicable in the case of the death of the designated occupant whose surviving spouse or cohabitant is under 55 years of age provided that the surviving spouse or cohabitant resided with the designated occupant at the time of the designated occupant's death. Under such circumstances, the surviving spouse or cohabitant shall be allowed to continue to occupy the unit irrespective of age so as to prevent disruption of the lives of surviving spouses and cohabitants under age 55, when the over 55 designated occupant dies. Notwithstanding however, no persons under the age of eighteen (18) years shall be permitted to permanently reside in the units.

(B) Recipient of Legacy. The Federal Regulations recognize that the 20% requirement is not intended to exclude all incoming households, therefore Section 5.30.4 shall not be applicable in the event that an Owner of a unit dies and the unit is inherited by an individual who is under 55 years of age, the recipient of legacy and his or her household shall be allowed to occupy the unit. Notwithstanding however, no persons under the age of eighteen (18) years shall be permitted to permanently reside in the units.

**5.30.7 Contract/Covenant.** Every Owner and lessee shall be deemed to have a contract with the Association to ensure that the occupancy requirement in Section 5.30.4 is met at all times. Even though this occupancy requirement is a contract between the Association and the Owner or lessee, as applicable, this amendment shall be deemed to be a covenant running with the land. Furthermore, the Owner shall be responsible to ensure that his/her lessee(s) comply with this occupancy requirement.

**5.30.8 Proof of Age.**

(A) All persons occupying units shall deliver to the Association, a completed Association form demonstrating proof of age and any other documentation required by the Association.

(B) Any person(s) not providing such documentation, when and as requested by the Board of Administration, shall be validly presumed by the Association and by a Court of law to be under the age of 55 years, even though the persons may actually be 55 years of age or over.

**5.30.9 Remedies for Non-Compliance.** The Association concurrently shall have any one or more of the following remedies for non-compliance in addition to those provided elsewhere in the constituent documents.

(A) Lease of a Unit.

(i) In the event of a lease of a unit, and the occupancy and other requirements of this amendment are not met, the Association shall be entitled to file for and obtain an injunction against the Owner of the unit and lessee(s) and/or other occupants on the unit, removing the unauthorized lessee(s) and/or other unauthorized occupants.

(ii) The Association shall also be entitled to evict the unauthorized lessee(s) and other unauthorized occupants on the unit, as agent for the Owner(s). This right of eviction by the Association shall apply only:

(a) After the expiration of seven (7) working days from the date on which the Association mails notice to the Owner(s) by certified mail, return receipt requested, or provides notice by hand delivery; and

(b) Provided that the Owner(s) fail(s) to commence eviction proceedings on his/her/their own and fails to so notify the Association, within the seven (7) day period.

(iii) The lease shall specify, and if it fails to so specify the lease shall be deemed to specify, that the lessee(s) and all other occupants shall abide by the constituent documents for Heritage Cove and the Rules and Regulations of the Association; and shall specify that the Association has the remedies provided for in this Section 5.30.9(A). Costs and attorney's fees incurred by the Association in connection with the exercise of its remedies under this Section 5.30.9(A) provided that the Association prevails, shall be the responsibility of the Owner(s) of the unit, and shall to the extent awarded by a Court under Chapter 83, Florida Statutes, shall also be the responsibility of the lessee(s).

(B) Other Occupancies (other than Leases). In the event of an existing Ownership; in the event of use by guests; or in the event of a sale, gift, or other transfer of title; and the occupancy requirements of this amendment are not met, the Association may disapprove the transfer and shall be entitled to file for and obtain an injunction against the Owner(s) of the unit and all occupants in the unit, removing the unauthorized occupants (including the Owner(s). In that event, if the Association prevails, the Owner(s) shall be responsible for costs and attorney's fees incurred by the Association in connection with its enforcement of this Section 5.30.9(B).

**5.30.10 Registration Required.** All Owners, lessees and occupants must register with the Association at the time of becoming a member of the Association or, in the case of a non-Owner, at the time of the commencement of the lease agreement, by delivery of the items referred to below. Furthermore, no persons shall attain grandfather status under Section 5.30.6(A) above unless the person registers with the Association by delivery of the items referred to below. These items are as follows:

(A) A fully completed and signed Association form to be provided by the \_\_\_\_\_ Association; and

(B) Documentation demonstrating proof of age as provided for in Section 5.30.8 above; and

(C) In the event of a lease, a fully executed copy of the lease must also be delivered (if not already on file with the Association). It shall be the responsibility of the particular Owner, not the Association, to provide the lessee(s) and/or other occupants of the unit with the registration form for the lessee(s) occupant(s) to complete and return to the Association within five (5) days from the date of receipt.

**5.30.11 Additional Occupants.** Even though a person under the age of 55 years is given grandfather status under Section 5.30.6(A) above or is provided with an exception under Section 5.30.6(B) above, this shall not entitle additional persons to occupy the unit, unless:

(A) That additional person is 55 years of age or older; or

(B) That additional person is also accorded grandfather status under Section 24.6(A) above; or

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(C) That additional person is legally married to the surviving spouse or cohabitant mentioned in Section 5.30.6(B) above.

**5.30.12 Non-Occupancy Status.** Each Owner or lessee, as applicable, shall notify the Association of any periods of time during which the unit becomes unoccupied. As used in this Section, "unoccupied" is defined to mean any intended absence of all permanent residents of the unit, for a period in excess of six (6) months. It is understood that this is a necessary requirement because the Federal Regulations require record keeping of occupied and unoccupied units.

**5.30.13 Additional Provisions.** Special provisions concerning the Acts and Federal Regulations.

(A) Notwithstanding any other provision in this Declaration, to the contrary, the following shall apply: Upon the affirmative vote of two-thirds (2/3) of the Owner's voting interests of the Association which vote may be evidenced by written agreement or consent, present and voting at a duly called meeting, any one or more of the following amendments to this Declaration may be approved and become effective.

(i) Any amendment which is necessary to enable Heritage Cove to attain or retain the "55 or Over Housing Exemption" of the Acts.

(ii) Any amendment which is necessary to refine those amendments approved by the Association relating to the Acts and/or Federal Regulations.

(iii) Any amendment which is necessary to delete any or all amendments approved by the Association relating to the Acts and/or Federal Regulations.

(iv) Any amendment which is made which otherwise relates to the Acts and/or Federal Regulations.

(v) Any amendment which may be required due to regulations adopted from time to time by the Federal National Mortgage Association (FNMA).

IN WITNESS WHEREOF, we have hereunto affixed our hands and the seal of said corporation, this 13<sup>th</sup> day of June, 2002.

U.S. HOME CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_  
Printed: DARIN McMURRAY  
Title: DIVISION PRESIDENT

WITNESSES:

Barbara J. Upton  
Signature

BARBARA J. UPTON  
Printed Name

Sharon B. Obney  
Signature

Sharon B. Obney  
Printed Name

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STATE OF FLORIDA       )  
COUNTY OF LEE        )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of June, 2002, by Darin McMurray, Div. Pres. (title) of U.S. HOME CORPORATION, a Delaware corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did not take an oath.

(Notary Seal)



Sharon B Obney  
My Commission CC946324  
Expires June 18, 2004

Sharon B. Obney  
Signature of Notary Public  
Sharon B. Obney  
(Print, type or stamp commissioned name of Notary Public)

Commission No: \_\_\_\_\_

This Instrument prepared by:  
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