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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
HERITAGE SQUARE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "the Declaration" or "this Declaration" where appropriate) made this ___ day of August, 1995, by GENERATION HOMES, L.L.C., an Indiana Limited Liability Company (hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate located in Hamilton County, Indiana, more particularly described in Exhibit "A", the same of which is attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant is in the process of developing the Real Estate into a residential community consisting of ten (10) lots and up to nineteen (19) homes, the same of which will be known as "Heritage Square" (hereinafter generally referred to as the "Community" or "Heritage Square", where appropriate); and

WHEREAS, Declarant, as a part of the development process, desires to subdivide the Real Estate as generally shown on the Plat (hereinafter defined) being recorded simultaneously herewith;

WHEREAS, it is Declarant's intent to provide for the preservation and enhancement of the value of the Real Estate which comprises the Community, including the amenities and improvements thereon, if any, which are a part of such Community and, in this regard, Declarant intends to subject both the Lots (hereinafter defined) and the Owners (hereinafter defined) of any such Lot to the terms of this Declaration, as hereinafter provided; and

WHEREAS, in order to preserve and enhance the value of the Real Estate, Declarant has agreed to and shall administer and enforce the covenants and restrictions contained in this Declaration and shall promote the health, safety and welfare of the Owners of Lots in the Community until Homes have been built on all of the Lots.

NOW, THEREFORE, Declarant hereby declares that the Real Estate and all Lots in the Community are, and shall be, held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared

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to be in furtherance of Declarant's plan to preserve and enhance the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community as a whole and of each Lot to be created therein, and which shall run with the Real Estate and Lots and be binding upon and inure to the benefit of all parties having any rights, title or interest in any part of the Real Estate or any Lot, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

Section 1. The following words, as they appear in this Declaration or any supplements or amendments hereto (unless the context shall prohibit), shall have the following meanings:

(A) "Committee" shall mean the Architectural Control Committee established pursuant to Article IV of this Declaration for the purposes stated therein.

(B) "Community" shall mean the Real Estate including all Lots and the improvements and amenities thereto, if any.

(C) "Declarant" or "Developer", used synonymously throughout this Declaration, shall mean Generation Homes, L.L.C., and any of its successors and/or assigns which it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of any rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure of), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of such foreclosure action against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

(D) "Home" shall mean one (1) single-family attached residence, also sometimes generally referred to as a duplex, approved by the Committee, built on any Lot in the Community.

(E) "Lot" shall mean and refer to each and every plot of land, or any portion thereof, included in the Real Estate designed and intended for use as a building sites for Homes and identified as a Lot on the recorded Plat of the Real Estate including the Secondary Plat or any part thereof.

(F) "Mortgage" shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered.

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(G) "Mortgagee" shall mean any person or entity named as the Mortgagee under any Mortgage or any successors in or assigns to the interest of such person or entity under such Mortgage prior to acquisition of the fee simple title to the property encumbered by such Mortgage.

(H) "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any portion of any Lot which is a part of the Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(I) "Person", whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(J) "Plat" shall mean the primary plat and secondary plat of the Real Estate and any amendments or corrections thereto.

(K) "Real Estate" shall mean those parcels or any parcel of real estate located in Hamilton County, Indiana, and more particularly described in Exhibit "A" attached to and incorporated in this Declaration.

Section 2. Any other term or word defined throughout this Declaration shall have the meaning attributed to it as set forth herein.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate, including each Lot in the Community, and any portion thereof, shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration. As of the date of execution of this Declaration, the Real Estate shall consist solely of those Lots specifically designated on the Plat. The Owner of any Lot shall be automatically subjected to the terms, covenants, conditions, restrictions and provisions of this Declaration (i) by accepting a deed conveying title to any portion of any Lot, or by executing a contract for the purchase of a Lot, whether from Declarant or a subsequent Owner of such Lot, or (ii) by occupying any portion of any Lot in the Community. By accepting a deed for any portion of any Lot, executing a contract for the purchase of any portion of any Lot, or undertaking occupancy of any portion of any Lot, each Owner acknowledges the rights and powers of the Declarant, the Committee, and the other Owners with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and

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consents to and with Declarant, and the Owner and subsequent Owner of any portion of any Lot affected by this Declaration, and to keep, observe, perform and comply with the terms and provisions of this Declaration.

Section 2. Dedication of Public Streets. Declarant hereby expressly acknowledges that all streets shown on the Plat, to the extent that they have not been previously dedicated, shall be hereafter dedicated to the public.

ARTICLE III
PROPERTY RIGHTS

Section 1. General Provisions.

(A) All easements described in this Declaration or on the Plat are permanent easements which shall be appurtenant to and run with the land comprising the Real Estate. Such easements shall at all times inure to the benefit of and be binding upon the Owners, their respective heirs, successors, personal representatives and/or assigns.

(B) The covenants and restrictions contained in this Declaration shall run with and bind the land comprised of the Real Estate and shall inure to the benefit of and be enforceable by the Declarant, or the Owner of any portion of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and/or assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2015, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Section 2. Declarant's Rights. Declarant shall have the same rights as any other Owner as to any portion of any Lot owned by it from time to time, except as otherwise expressly provided for herein. In addition, until the last portion of any Lots shown upon, and identified as a Lot on any recorded Plat of the Real Estate (whether heretofore or hereafter recorded, including the Secondary Plat) is conveyed to an Owner other than Declarant. Declarant shall have the right and easement over the Real Estate for the completion of improvements and making repairs to improvements upon Lots, or upon other portions of the Real Estate and for the purpose of marketing Lots, and to invite and escort the public thereon for such purpose.

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ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Creation. There shall be, and is hereby, created and established an Architectural Control Committee to perform the functions provided for herein. The Committee shall consist of two (2) authorized representative of the Developer and who shall be subject to removal by Developer at any time with or without cause, until Homes have been constructed on all of the Lots. After such time, the Owners of the Lots shall be responsible for creating their own Committee if they so desire, for the purposes set out herein.

Section 2. Purposes and Powers of Committee. The Committee shall regulate the external design, appearance and location of Homes, buildings, structures and other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(A) In General. No Home, building, structure or improvement of any type or kind shall be repainted, constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specification shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings submitted to the Committee shall be drawn to a scale of one inch (1"), equals ten feet (10'); or one-quarter inch (1/4") or one-eighth inch (1/8") equals one foot (1'); or to such other scale as the Committee may require. When required by the Committee, such plans shall be prepared by either a registered land surveyor, engineer or architect. Any such plans submitted for a Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

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(B) Power of Disapproval. The Committee may refuse to grant permission to repaint, construct, place or make the requested improvements, when:

- (i) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this Declaration or any Plat of the Real Estate recorded in the Office of the Recorder of Hamilton County, Indiana;
- (ii) The design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent Homes or structures; or
- (iii) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.

(C) Rules and Regulations. The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to be reviewed for approval by it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any subdivision plat of the Real Estate, recorded in the Office of the Recorder of Hamilton County, Indiana, as long as the same are not inconsistent with this Declaration or any Plat.

Section 3. Duties of Committee. The Committee shall approve or disapprove proposed repainting, construction or improvements within fifteen (15) days after all required information shall have been submitted to it by an Owner. One (1) copy of submitted material shall be retained by the Committee for its permanent files. All notifications to Owners making application shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

Section 4. Liability of Committee. Neither the Committee, nor the Developer, nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 5. Inspection. The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VII.

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Section 6. Nonapplication to Developer. Notwithstanding any other provisions of this Declaration requiring the approval of the Committee, Developer, or any entity related to approval of the Committee in connection with any construction, installation, painting or repainting by Developer, or any entity related to Developer, of any residence, building, structure, or other improvement on the Real Estate or the installation or removal of any trees, shrubs, or other landscaping on the Real Estate.

ARTICLE V

USE RESTRICTIONS

Section 1. Lot Use and Size of Buildings. Every Lot or portion thereof is a residential Lot upon which the Developer will construct no more than two (2) single family attached Homes, and said Lots shall be used exclusively for single-family residential purposes. No business buildings shall be erected on any Lot, and no business may be conducted on any part thereof, other than the home occupations permitted in any Zoning Ordinance of Hamilton County, Indiana. Any attached garage erected or used as an accessory to a Home shall be of a permanent type of construction and shall conform to the general architecture and appearance of such Home.

The ground floor area of the Home, exclusive of one (1) story open porches and garages and other attached residential accessory buildings, shall not be less than seven hundred (700) square feet in the case of a one (1) story structure, nor less than seven hundred (700) square feet in the case of a multiple story structure.

Section 2. Setback Lines. Building setback lines of twenty-five feet (25') are established on the Plat of the Real Estate. No Home shall be erected or maintained between the established setback lines and the Lot lines of said Lot.

No Home or attached accessory building shall be erected closer than twenty feet (20') to the rear Lot line (unless a greater distance is established on any Plat of all or any part of the Real Estate).

Section 3. Garages and Storage Area. No garage shall be erected which is not permanently attached to the Home and no unenclosed storage area may be erected on any Lot. No enclosed storage area shall be erected which is not permanently attached to the Home. All Homes are required to have a garage which will accommodate at least one (1) automobile.

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Section 4. Accessory and Temporary Buildings. No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot herein, except that used by the Developer or the builder of an Owner's Home during the construction.

Section 5. Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent. No structure of a temporary character may be used as a residence.

Section 6. Nuisances. No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any Lot. No noxious, unlawful, or otherwise offensive activity shall be carried out on any Lot; nor shall anything be done thereon which may be or may become an annoyance or nuisance in the Community.

Section 7. Fences or Other Structures. No fence or other structure shall be erected on or along any common Lot line (excluding the common Lot line between Lot 9 and Lot 10 as designated on the Plat) or on any Lots in the Community, the purposes or result of which will be to obstruct reasonable vision, light, air, or use of the driveways between the Homes to be constructed on the Lots. Picket fences may be constructed in the rear yards of the Homes constructed on the Lots subject to the approval of the Committee and any such fence shall be kept in good repair and erected so as to enclose the Lot and decorate the same without hindrance or obstruction to any other Lot. No picket fence in the rear yard shall be higher than four feet (4'). Any fence constructed in any front yard of any Lot shall be in the form of a picket fence, the same of which must comply with all state and local ordinances and codes and must also meet the approval of the Committee. Fencing style and color shall be consistent in the Community; provided, however, that no fencing shall be installed on any Lot without the prior written approval of the Committee.

Section 8. Site Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street and property lines and a line connecting points twenty-five feet (25') from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten feet (10') from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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Section 9. Driveways. All driveways shall be paved simultaneously with construction of the Home, and the type of construction and materials must be first approved by the Committee.

Section 10. Sidewalks. All sidewalks shall conform to the standards set forth by the Committee and shall be installed by the builder of an Owner's Home simultaneously with the construction of the Home.

Section 11. Vehicle Parking. No camper, motor home, truck, trailer, boat, or recreational vehicle of any kind may be stored on any Lot in open public view. No vehicle parking of any kind or at any time shall occur on the streets depicted on the Plat.

Section 12. Mailboxes. All mailboxes shall conform to the standards set forth by the Committee and shall be installed by the builder of an Owner's Home simultaneously with the construction of the Home.

Section 13. Signs. No sign of any kind shall be displayed to the public view on any Lot except that one (1) sign of not more than six square feet (6') may be displayed at any time for the purposes of advertising a Lot for sale or rent, or may be displayed by a builder to advertise the Lot during construction and sale; provided, however, that the Developer shall be excluded from this Section 13, and may place signs in designated areas established by the Developer.

Section 14. Vegetation. Each Owner shall keep his Lot clear from unsightly weeds and growth at all times; provided, however, that the foregoing provision shall not prevent the Owner, with the prior written approval of the Committee, from maintaining portions of his Lot in its natural unimproved state as long as such natural areas are part of an integrated landscape plan. Failure to comply with this provision shall entitle (but not obligate) Developer, the Association, or the Department of Metropolitan Development of Hamilton County, Indiana, to cut weeds and clear the Lot of such growth at the expense of the Owner, and any cost incurred by the Association with respect thereto shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the enforcement of assessments generally.

Section 15. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall at all times be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. Owners of Lots, and the builders of their Homes, shall maintain appropriate sized commercial dumpsters on the Lot at all times during construction of the Home and shall keep the Lot free and clear of trash, rubbish and blowing and drifting debris.

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Section 16. Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be located in a garage or house such that they are completely concealed from public view. Any such gas or oil storage tank may not be buried on an Owner's Lot.

Section 17. Tree Preservation. No trees may be removed from any Lot without the approval of the Committee, and such requests shall be made to the Committee in writing. In the event the Committee does not indicate in writing its approval or disapproval of a request for tree removal within thirty (30) days after submission, the Committee is deemed to have approved such request.

Section 18. Water Supply and Sewage Systems. No private or semi-private water supply and/or sewage disposal system may be located upon any Lot which is not in compliance with regulations or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction over such matters. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any Lot.

Section 19. Antenna. Any antenna used by an Owner on any Lot shall be maintained in the attic space of the Home and shall not be attached to or made a part of the exterior of the Home.

Section 20. Satellite Dishes. A maximum of one (1) satellite dish may be installed on each Lot; provided, however, no satellite dish shall be installed (i) which is larger than twenty-four inches (24") in diameter; and (ii) without the prior written approval of the Committee. All permitted satellite dishes shall, by landscaping or otherwise, be aesthetically concealed on all sides, unless attached to a Home in which case it shall be substantially concealed, from views by other Owners in the Community. All permitted satellite dishes shall be installed so as not to constitute a nuisance or to have an offensive effect on other Owners in the Community. Any Owner desiring to install a satellite dish which meets the requirements of this Section shall submit to and for the approval of the Committee an application and two (2) copies of plot plans, showing the proposed location and description of the satellite dish and the surrounding landscaping and other means of concealment. No satellite dish shall be positioned in a front yard, on a roof or, if not attached to a Home, more than four feet (4') off the ground unless, in addition to meeting all other criteria, the Committee determines, in its sole discretion, that the proposed location is necessary because any other location on the Lot would be inadequate and would have a more offensive effect on surrounding Owners.

Section 21. Awnings. No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot.

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Section 22. Swimming Pools. No above-ground swimming pools shall be permitted on any Lot.

Section 23. Solar Panels. No solar heat panels shall be permitted on roofs of any structures on any Lot. All such panels shall be enclosed within a fenced area and shall be concealed from the view of neighboring Lots and the streets.

Section 24. Modular Homes. Modular-type construction shall not be permitted on any Lot.

Section 25. Lot Access. All Lots shall be accessed from the interior streets of the subdivision.

ARTICLE VI

FIRST FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. Upon written request to the Declarant, identifying the name and address of the holder, insurer or guarantor of a First Mortgage of a Lot or Home on a Lot and the address of such party (a holder of a First Mortgage on a Lot or Home on a Lot who has so requested such notice) shall be hereinafter referred to as an "eligible mortgage holder" and an insurer or governmental guarantor of a First Mortgage on a Lot or Home on a Lot who has so requested such notice shall be hereinafter referred to as an "eligible insurer or guarantor"), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of the following:

(A) Any condemnation loss or any casualty loss which affects a material portion of the Community or any Lot or Home on a Lot on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurers or guarantors, as applicable.

(B) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article.

(C) Any default in the performance by the Owner of any obligation under the Declaration which is not cured within thirty (30) days.

Section 3(A) Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the First Mortgagees of the Lots or their

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successors or assigns (based upon one vote for each First Mortgage owned), and at least seventy five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor or builder, including the Developer) or the Lots (based upon one vote for each Lot owned) have given their prior written approval, the Owner shall not be entitled to:

(i) Terminate the legal status of the Community;

(ii) Add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Insurance of Fidelity Bonds;
- (3) Expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community;
- (4) Boundaries of any Lot;
- (5) Leasing of a Lot or a Home on a Lot;
- (6) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot; and
- (7) Any provisions which are for the express benefit of a First Mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Lots, except in accordance with procedures set forth in this Declaration in the event of amendment or termination is made as a result of destruction which might occur pursuant to any plan of expansion or phased development contained in this Declaration;

(iii) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of a Home on a Lot.

For the purposes of this section, an addition or amendment to such documents shall not be considered material if it is made for

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the purpose of correcting clerical, typographical or technical errors; for clarification only; to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; to induce any of the agencies or entities mentioned or referred to above to make, purchase, sell, insure or guarantee First Mortgages covering Lots or Homes on Lots; or to bring such documents into compliance with any statutory requirements, and any such addition or amendment to such documents which is so considered not to be material may be made by Declarant acting alone and without the consent, approval or joinder of the Owners, the Association, any First Mortgagees, any other mortgagees or any other person or entity.

In the event that an eligible mortgage holder who receives a written request to approve additions or amendments fails to deliver or mail to the requesting party a negative response within thirty (30) days of the date of the requesting party's notice shall be deemed to have approved such request.

Section 3(B) FHA/VA Approval. The following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration if, at the time such action is taken, the Federal Housing Administration or the Veterans Administration is then the Owner of a Lot in the Community, any eligible mortgage holder or an eligible insurer or guarantor:

- (i) Amendment of this Declaration; provided, however, that such approval is not and shall not be required for any amendment or supplement to this Declaration made by Declarant or the Owners of any Lots for any purposes set forth in Section 4(A) above.

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ARTICLE VII

INSURANCE

Section 1. Owner's Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Lot, his Home, and other personal property, and fixtures, furniture, furnishings, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant.

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ARTICLE VIII

AMENDMENT

Section 1. By the Owners. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(A) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the Owners at which the proposed amendment is to be considered.

(B) Resolution. A resolution to adopt a proposed amendment may be proposed by the Owners having in the aggregate at least a majority of the Owners.

(C) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the Owners duly called and held.

(D) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of the votes of all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lots within and upon the Real Estate. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner.

(E) Special Amendments. No amendment to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of this Declaration.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). In the event that a proposed amendment is deemed by the Owners of the Association to be one which is not of a material nature, the Owners shall notify all Mortgagees whose interests have been made known to the Owners of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30)

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days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained herein.

Section 2. By Developer. Developer hereby reserves the right so long as Developer, or any entity related to Developer, owns any Lot within and upon the Real Estate to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer, without the approval of any other person or entity, including but not limited to an Owner, in order to bring Developer into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration or any other governmental agency to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 3. Recording. Each amendment to the Declaration shall be executed by Developer only in any case where Developer has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided, that any amendment requiring the consent of Developer shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and no amendment shall become effective until so recorded.

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ARTICLE IX
GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions may be by any proceeding at law or in equity instituted by the Declarant or any Owner against any person violating or attempting to violate any covenant or restriction, either to restrain any such violation, to compel compliance, or to recover damages, and against any Lot, to enforce any lien created by these covenants; and failure 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. Attorney's fees and costs of any such action to restrain any such violation or to recover damages as determined by the court shall be assessable against and payable by any Owner or other persons violating the terms contained herein.

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Section 2. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation nor threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Community shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

Section 3. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or alternatively, the properties, rights and obligation of another corporation may, by operation of law, be added to the properties, rights, and obligations as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Community, except as hereinabove provided.

Section 4. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. ®

Section 5. Titles. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 6. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner appear on the records of the Assessor of Hamilton County, Indiana.

Section 7. Captions. The Article and Section headings herein are intended to convenience of reference only and shall not be given any substantive effect.

Section 8. Construction. In the event of an apparent conflict between this Declaration and any other document relating

INSTR.

#

9558094

to the Real Estate, the provisions of this Declaration shall govern.

Section 9. Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

IN WITNESS WHEREOF, Declarant has caused this document to be executed as of the day and year first above written.

"DECLARANT/DEVELOPER"

GENERATION HOMES, L.L.C.,
An Indiana Limited
Liability Company

By: Daniel C. Chapman
Daniel C. Chapman,
Operating Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared DANIEL C. CHAPMAN, the Operating Manager, of GENERATION HOMES, L.L.C., and who acknowledged execution of the foregoing Declaration of Covenants, Conditions, and Restrictions for and on behalf of said Declarant, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 1st day of August, 1995.

MY COMMISSION EXPIRES:
December 11, 1998

COUNTY OF RESIDENCE:
Hamilton

Russell L. Jones
Russell L. Jones, Notary Public

b:\generation\declaraf.cov

This document prepared by Russell L. Jones, Attorney at Law, 11711 North Pennsylvania Street, Suite 109, Carmel, Indiana 46032

Exhibit "A"

A part of the East half of the Northeast Quarter of Section Twenty-five (25), Township Eighteen (18) North, Range Three (3) East, described as follows: Begin at a point on the West line of the East Half of the Northeast Quarter of Section 25, Township 18 North, Range 3 East, 636.6 feet North of the South line of said Northeast Quarter; thence North on the West line of said East Half 250.0 feet; thence East parallel with the South line of said East Half 481.42 feet to the West Right-of-Way line of the Monon Railroad; thence Southeasterly along said West Right-of-Way line 250 feet; thence West parallel with the South line 484.87 feet to the place of beginning, containing 2.7 acres more or less.



CHICAGO TITLE

Tracy M. Clark
RECORDED
HAMILTON CO. IN
95 OCT 26 PM 3: 26

INSTR. # 95 58094

INST. # 9558095



HAMILTON COUNTY RECORDER

MARY L. CLARK • RECORDER

INSTRUMENT NUMBER 9558095

DATE OF PLAT 10-23-95

RECORDING DATE 10-26-95

TIME 3:26P

RECORDING FEE \$ 18.00

GRANTOR (DEVELOPER/OWNER) Generation Homes LLC
Jerome R. Schafer & Daniel C. Chapman

GRANTEE (NAME OF PLAT) Heritage Square

LEGAL DESCRIPTION P of E1/2 NE 1/4, Sec 25, Twp 18N, R3 E.
Containing 2.77 acres

PLAT CABINET & SLIDE NUMBER PC 1 Slide 615

NUMBER OF LOTS 10 numbered 1 thru 10.

TRANSFERRED: YES X NO

DATE OF TRANSFER 10-26-95

CROSS REFERENCE # 1558094

CHICAGO TITLE

10.00
①

CERTIFICATE OF CORRECTION

9609621899
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 05-28-1996 At 02:42 pm.
CERC 10.00
Vol. 0 Page 0


I, the undersigned, do hereby certify that I am the Registered Land Surveyor that certified the Secondary Plat for Heritage Square, said plat being recorded October 26, 1995 as Instrument No. 9558095 in Plat Cabinet 1, Slide 615 in the Office of the Recorder of Hamilton County, Indiana.

I further certify that said plat as recorded contained errors in labelling that should be corrected as follows:

1. The 20' Rear Building Setback Line (20' R.B.S.L.) along the west side of Lots 1, 2, 3 and 4 should be corrected to read "20' Rear Building Setback Line & Utility and Drainage Easement" (20' R.B.S.L. & U. & D.E.).
2. The 25' Building Setback Line & Utility and Drainage Easement (25' B.S.L. & U. & D.E.) along the easterly side of Lot 4 should be corrected to read "30' Building Setback Line & Utility and Drainage Easement" (30' B.S.L. & U. & D.E.).
3. The 5' Side Yard Setback Lines (5' S.Y.) along the south line of Lot 6 and along the north line of Lot 7 should both be corrected to read "5' Side Yard Setback Line & Utility and Drainage Easement" (5' S. Y. & U. & D.E.).
4. The 20' Rear Building Setback Line (20' R.B.S.L.) along the east side of Lots 6, 7, 8 and 9 should be corrected to read "20' Rear Building Setback Line & Utility and Drainage Easement" (20' R.B.S.L. & U. & D.E.).



Certified this 20th day of May, 1996


BISHOP & ASSOCIATES, INC.
Michael L. Bishop, L.S.
Registered Land Surveyor No. S0511
State of Indiana

(317) 889-5737
(317) 888-5033 FAX