

J825812

002-72-1838

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

12/18/94 J825812 J825812 \$ 11.00

STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS: THAT

THIS DECLARATION, made on the date hereinafter set forth by FRIENDSWOOD DEVELOPMENT COMPANY and KING RANCH, INC., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of 77.567 acres of land in the Harrison McClain Survey, A-529, the Gory Gary Survey, A-303 and the John W. Asbury Survey, A-91, Harris County, Texas, shown on the plat of Mills Branch Village, Section One, recorded in Volume 328, Page 1 in the Map Records of Harris County, Texas.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above, save and except Restricted Reserve "D"; Restricted Reserve "A"; and Lots 1 through 4 of Block 1; Lots 1 through 29 of Block 2; Lots 1 through 66 of Block 3; Lots 1 through 110 of Block 4; and Lots 15 through 23 of Block 8, as shown on the recorded plat of Mills Branch Village, Section One, shall be held, sold and conveyed subject to the following 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. Additional land, including but not limited to the lots and restricted reserves referred to in this paragraph, may be hereafter added or annexed by the Declarant and made subject to the provisions hereof in accordance with Article V, Section 4 hereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Mills Branch Village Community Association, a non-profit corporation incorporated under the laws of the State of Texas, its successors and assigns.

Section 2. "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, Parcel, Apartment or tract of Commercial Land 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 4. "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 5. "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 conveyance of the first Lot, Parcel, Apartment or tract of Commercial Land is: None.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception, however, of any Parcel, Apartment, Commercial Land, public school land, church land, any Common Area and all restricted reserves until such time as the use of said restricted reserves shall be defined by a deed or other legal instrument of record in the office of the County Clerk of Harris County, Texas.

Section 7. "Parcel" shall mean and refer to any residential townhouse or patio home on land situated within the Properties and which land is made subject to residential townhouse or patio home use restriction by virtue of a deed or other legal instrument of record in the office of the County Clerk of Harris County, Texas.

Section 8. "Apartment" shall mean and refer to any residential living unit in an apartment building on land situated within the Properties and which land is made subject to residential apartment use restriction by virtue of a deed or other legal instrument of record in the office of the County Clerk of Harris County, Texas.

Section 9. "Commercial Land" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties and restricted to commercial use or any plot of land within the boundaries of the Properties which is made subject to a commercial use restriction by virtue of a deed or other legal instrument of record in the office of the County Clerk of Harris County, Texas, with the exception of any Lot, Apartment, Parcel, public school land, church land and Common Area.

Section 10. "Declarant" shall mean and refer to Friendswood Development Company and King Ranch, Inc., their successors and assigns if such successors or assigns should acquire the property from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' 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, Parcel, Apartment or tract of Commercial Land, subject to the following provisions:

(a) The right of the Association to establish uniform rules and regulations and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area and to regulate the time and circumstances wherein owners may use such facilities:

(b) The right of the Association to limit the number of guests of members;

(c) 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 assessment against his Lot, Parcel, Apartment or tract of Commercial Land remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) The rights of the Association to dedicate or transfer all or substantially all 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;

(e) The rights of the Association to dedicate or transfer a part (not substantially all) 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 a majority 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.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot, Parcel, Apartment or tract of Commercial Land which is subject to assessment shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot, Parcel, Apartment or tract of Commercial Land which is subject to assessment.

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

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot, Parcel or tract of Commercial Land owned, and two-thirds (2/3) vote for each Apartment owned. When more than one person holds an interest in any Lot, Parcel, Apartment or tract of Commercial Land, all such persons shall be members. The vote of such Lot, Parcel, Apartment, or tract of Commercial Land shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one Lot, Parcel or tract of Commercial Land, or two-thirds (2/3) vote with respect to any Apartment.

Class B. Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot, Parcel or tract of Commercial Land 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) On January 1, 1995.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot, Parcel, Apartment or tract of Commercial Land owned within the Properties, hereby covenants, and each Owner of any Lot, Parcel, Apartment or tract of Commercial Land by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) Annual assessments, and (ii) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees which are incurred by reason of the failure to pay such assessment as required shall be a charge on the land which shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees necessary to collect the assessments 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 toward the common good of the community, civic betterment, municipal, educational and public recreational purposes (but not by way of limitation) as follows:

(1) To render constructive civic service for the promotion of the social welfare of the community and for the citizens within the Properties which are a part of Mills Branch Village, to inculcate civic consciousness by means of active participation in constructive projects which will improve the community, state and nation;

(2) To promote and/or to provide municipal services and educational and public recreational services and facilities for residents within the Properties which are a part of Mills Branch Village;

(3) To acquire, maintain and conduct buildings and property for public services and educational and recreational facilities;

(4) To do any other thing necessary or desirable or of general benefit to the community, including (but not by way of limitation) the following:

(a) All street lighting and street sweeping and maintenance within the Properties which are a part of Mills Branch Village, mosquito abatement, police service, park and public maintenance, community recreation, negotiation of contracts for garbage and refuse removal (which contracts shall be negotiated by the Board of Directors of the Association and which services will be billed directly to each Owner separate from and in addition to the annual assessment), and the enforcement of restrictions upon the use of property within the Properties which are a part of Mills Branch Village;

(b) To provide street lighting, cleaning and sweeping of all of that one-half (1/2) of Northpark Drive, Hamblen Road, and Lake Houston Parkway, streets adjacent to the Properties, mowing and maintenance of all of one-half (1/2) of the esplanades within such adjacent streets, mowing of, maintenance of surface drainage swales in, removal of dead trees and brush from, cleaning out culverts under pathways on, emptying trash and garbage receptacles located in, care of diseased and insect-infested trees, and repairs of pathways in the Common Area.

Section 3. Maximum Annual Assessment. Until April 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two-Hundred and No/100 Dollars (\$200.00) per Lot or Parcel; One-Hundred Forty and No/100 Dollars (\$140.00) per Apartment; and Two and No/100 Dollars (\$2.00) per one hundred (100) square feet, or fraction thereof, of Commercial Land.

(a) From and after April 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be adjusted in conformance with the Consumer Price Index (CPI) for All Urban Consumers, published by the U.S. Department of Labor, Bureau of Labor Statistics, or such successor index as may be published by the U.S. Department of Labor or ten percent (10%), whichever is greater. The maximum assessment for any year shall be the amount determined by (a) taking the dollar amount specified in Section 3 above, (b) multiplying the amount by the published CPI number for the fourth month prior to the beginning of the subject year; and (c) dividing that resultant by the published CPI number for the month in which this Declaration was signed by the Declarant, or by multiplying the existing assessment by one hundred ten percent (110%), whichever is greater.

(b) From and after April 1 of the year immediately following the conveyance of the first Lot to an Owner, the regular annual assessment amounts specified above in Section 3 and used in the above adjustment formula may be changed by a vote of the members of the Association, provided that any such change shall have the assent of a majority of the votes of the members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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 a majority of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 hereof shall be sent to all members not less than thirty (30) days nor more than sixty (60) 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 of the preceding meeting. Subsequent meetings can continue to be called in the aforesaid manner with the required quorum at any subsequent meeting(s) being one-half (1/2) of the required quorum at the preceding meeting until a quorum is present and votes are cast. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed and/or adjusted at proportionately uniform rates for all Lots, Parcels, Apartments or tracts of Commercial Land and may be collected on a monthly basis. Notwithstanding anything to the contrary herein contained, the annual assessments levied against Lots owned by the Declarant shall be one-half (1/2) the annual Lot assessment provided for herein.

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 first Lot. The annual assessment provided for herein shall commence as to a Parcel, Apartment, or a tract of Commercial Land on the first day of the eighth month following the date on which said lands are conveyed by Declarant to a subsequent Owner or on the first day of the fourth month following the issuance by the appropriate governmental authority of a building permit applicable to land within the properties which have been theretofore restricted to such use by virtue of a deed or other legal instrument of record in the Office of the County Clerk of Harris County, Texas, or on the first day of the fourth month after building construction commences, whichever event occurs sooner. 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, Parcel, Apartment or tract of Commercial Land 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 or authorized agent of the Association setting forth whether the assessments on a specific Lot, Parcel, Apartment or tract of Commercial Land have been paid.

Section 8. Effect of Non-Payment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate of interest per annum allowed in the State of Texas. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the services as stated in Article IV, Section 2 hereof or by non-use of the Common Area or abandonment of his Lot, Parcel, Apartment or tract of Commercial Land.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot, Parcel, Apartment or tract of Commercial Land shall not affect the assessment lien. However, the sale or transfer of any Lot, Parcel, Apartment or tract of Commercial Land pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot, Parcel, Apartment or tract of Commercial Land from liability for any assessments thereafter becoming due or from the lien thereof.

RECORDER'S MEMORANDUM:
At the time of recording, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

ARTICLE V

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or thereafter 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 of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement 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 the term of forty (40) 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 by an instrument signed by not less than fifty-one percent (51%) of the Owners. Any amendment must be recorded.

Section 4. Annexation. Additional land within the Harrison McClain Survey, A-529, the Gory Gary Survey, A-303, and the John W. Asbury Survey, A-91, Harris County, Texas, owned by Declarant, its successors or assigns, may be added or annexed to said Properties and made subject to the terms hereof by the Declarant, its successors or assigns, without the consent of Owners at any time or from time to time by the recording of an instrument expressly stating an intention to so annex such additional land; however, Declarant shall not be obligated to add or annex such additional land. Such additional land which may be added or annexed shall become subject to the annual assessment existing at the time of such addition of annexation.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 13th day of December, 1984.

FRIENDSWOOD DEVELOPMENT COMPANY
Acting Herein for Itself and for
KING RANCH, INC. (Declarant)

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FORMS
OK
TRANS
OK
CNTRL

By Pope B. Shealy
Pope B. Shealy, Vice President



G. B. Mitchell, Jr.
G. B. Mitchell, Jr., Asst. Secretary

COUNTY OF MONTGOMERY

This instrument was acknowledged before me on this 13th day of December, 1984, by POPE B. SHEALY, Vice President of FRIENDSWOOD DEVELOPMENT COMPANY, an Arizona corporation, on behalf of said corporation, which corporation also acted as attorney-in-fact on behalf of KING RANCH, INC., a Texas corporation.

After Recording Return to
G. B. Mitchell, Jr.
Friendswood Development Company



Coralee Casey
Notary Public, State of Texas
CORALEE CASEY