

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

149-97-0740

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS: THAT
COUNTY OF HARRIS §

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 155.504 acres of land in the Amasa Turner Survey, A-757, and the John W. Asbury Survey, A-91, Harris County, Texas, shown on the plat of Fosters Mill Village, Section One, recorded in Volume 290, Page 114 in the Map Records of Harris County, Texas.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above, save and except Unrestricted Reserve "G", and Lots 1 thru 30 of Block 9; Lots 1 thru 61 of Block 12; Lots 1 thru 25 of Block 13; Lots 1 thru 12 of Block 14; Lots 1 thru 30 of Block 15; Lots 1 thru 7 of Block 16; and Lots 1 thru 15 of Block 18, as shown on the recorded plat of Fosters Mill 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 unrestricted reserve 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 Kings Point Trail 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 unrestricted reserves until such time as the use of said unrestricted 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 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.

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, 1990.

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. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for street lighting, cleaning and sweeping of all of that one-half (1/2) of Kingwood Drive, a street adjacent to the Properties, mowing and maintenance of all of one-half (1/2) of the esplanades within such adjacent street, mowing of, maintenance of surface drainage swales in, removal of dead trees and brush from, cleaning out cluverts under pathways on, emptying trash and garbage receptacles located in, care of diseased and insect-infested trees, and repairs of pathways and fences in the Common Area.

Section 3. Maximum Annual Assessment. Until July 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Thirty-Six and No/100 Dollars (\$36.00) per Lot or Parcel; Twenty-Four and No/100 Dollars (\$24.00) per Apartment; and Forty Cents (\$.40) per one hundred (100) square feet, or fraction thereof, of Commercial Land.

(a) From and after July 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. 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.

(b) From and after July 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 two-thirds ($2/3$) 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 two-thirds ($2/3$) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under 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 at the preceding meeting. 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 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 or 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.

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 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 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 during the first forty (40) year period by an instrument signed by not less than ninety percent (90%) of the Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Any amendment must be recorded.

Section 4. Annexation. Additional land within the Amasa Turner Survey, A-757, 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.

FANNIN BANK, as lienholder of the hereinabove described land, has hereunto caused its name to be signed and its seal to be affixed, and the same to be done and attested by the signatures of its duly authorized

officers for the purpose of consenting to, ratifying, confirming and adopting this Declaration of Covenants, Conditions and Restrictions and for the purpose of subordinating its lien to the same.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 10th day of December, 1979.

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

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ATTEST:

B. B. Pierce
B. B. Pierce, Secretary

By: J. C. Byrd
J. C. Byrd, Vice President

O K FORMS
O K TRACS
O K CNTRL

ATTEST:

Ivan Olson
Ivan Olson, Assistant Cashier

FANNIN BANK
By: Glenn Harris, Jr.
Glenn Harris, Jr., Senior Vice President

STATE OF TEXAS
COUNTY OF MONTGOMERY



BEFORE ME, the undersigned authority, on this day personally appeared J. C. BYRD, known to me to be the person whose name is subscribed to the foregoing instrument as Vice President of FRIENDSWOOD DEVELOPMENT COMPANY, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated, and as the act and deed of FRIENDSWOOD DEVELOPMENT COMPANY, which company acted in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 10th day of December, 1979.

Coralee Casey
Notary Public in and for
Harris County, Texas

CORALEE CASEY
Notary Public in and for Harris County, Texas
My Commission Expires 1-16-80

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Glenn Harris, Jr., known to me to be the person whose name is subscribed to the foregoing instrument as Senior Vice President of FANNIN BANK, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated and as the act and deed of said FANNIN BANK.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of December, 1979.

Patricia Richardson
Notary Public in and for
HARRIS County, Texas

PATRICIA RICHARDSON
Notary Public in and for Harris County, Texas
My Commission Expires April 13, 1980

After Recording Return to
G. B. Mitchell, Jr.
Friendswood Development Company
Two Kingswood Place, Suite 110
700 Rockwood Drive
Kingwood, Texas 75361