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BLACKBURN-RILEY

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by BLACKBURN-RILEY, INC., a Corporation duly organized under the laws of the State of Texas, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Wheeler Ridge, Phase IV, Brazos County, State of Texas, which is more particularly described as:

Being all those certain lots, tracts or parcels of land lying and being situated in Brazos County, Texas, and being Lots One (1) through Thirty-two (32), Block Four (4), WHEELER RIDGE, PHASE IV, an addition to the City of Bryan, Texas, according to plat recorded in Volume 474, page 767, Deed Records of Brazos County, Texas.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

SECTION 1. "Association" shall mean and refer to WOODCREST HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

SECTION 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely

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as security for the performance of an obligation.

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

SECTION 4. "Common Area" shall mean all real property (including the improvements thereto) maintained by the Association for the common use and enjoyment of the owners.

SECTION 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

SECTION 6. "Declarant" shall mean and refer to BLACKBURN-RILEY, INC., its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

SECTION 2. The association shall have two classes of voting membership:

Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to seven (7) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or
- (b) on July 1, 1984.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments of charges, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed.

SECTION 2. Purpose of Assessments. The assessment levied by the Association shall cover yard maintenance on all unfenced areas and general incidentals.

SECTION 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be one hundred eighty (\$180.00) dollars per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above five (5%) percent by a vote of two thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

(d) No assessment will be paid by the developer, but models and sites under construction will be maintained by the developer and not the Woodcrest Homeowners Association.

SECTION 4. Notice and Quorum for any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all members not fewer 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 (60%) percent 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 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

SECTION 6. 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 title to owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

SECTION 7. Effect of Nonpayment of Assessments: 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 rate of fifteen (15%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, 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 Common Area or abandonment of his lot.

SECTION 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments there- after becoming due or from the lien thereof.

ARTICE IV

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be com- menced, erected or maintained upon the Properties, nor shall any exterior addition, painting, change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE 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 hereafter imposed by the provisions of this

Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver 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 way affect any other provisions which shall remain in full force and effect.

SECTION 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not fewer than ninety (90%) percent of the lot owners, and thereafter by an instrument signed by not fewer than seventy five (75%) percent of the lot owners. Any amendment must be recorded.

SECTION 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two thirds (2/3) of each class of members.

SECTION 5. Party Walls: General Rules of Law to Apply. Each wall which is built as part of the original construction of the homes upon the Properties and placed on the dividing line between the lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

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

Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who

has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the rights of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Weatherproofing. Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

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

Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision of a majority of the arbitrators shall be final and conclusive of the question involved.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 1st day of November, 1982.

ATTEST:



BLACKBURN-RILEY, INC.

By: 
Philip E. Blackburn, Jr., President

THE STATE OF TEXAS :

COUNTY OF BRAZOS :

This instrument was acknowledged before me on Nov. 1,
1982, by PHILIP E. BLACKBURN, JR., President of BLACKBURN-RILEY,
INC., a Texas Corporation.

Mary Ann Broz
Notary Public in and for Brazos
County, Texas.

My commission expires: 6/26/84

Mary Ann Broz
(printed name of Notary)