

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

STATE OF TEXAS §  
COUNTIES OF HARRIS §  
AND MONTGOMERY §

KNOW ALL MEN BY THESE PRESENTS 169-18-1807

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

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WITNESSETH

WHEREAS, Declarant is the owner of 171.639 acres of land in the John W. Asbury Survey, A-91, the H. T. & B. R. R. Co. No. 5 Survey, A-422, and the Harrison McClain Survey, A-529 in Harris County, Texas, shown on the plat of Elm Grove Village, Section One, recorded in Volume 239, Page 33 in the Map Records of Harris County, Texas.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above, save and except Unrestricted Reserves "B" and "C" and Lots 17 thru 32 of Block 5, Lots 87 thru 133 of Block 4, Lots 1 thru 72 of Block 3, Lots 17 thru 27 of Block 1, and Lots 1 thru 21 of Block 2 as shown on the recorded plat of Elm Grove Section One, 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. Additional land, including but not limited to the lots and unrestricted 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 Elm Grove Village Community Association, 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, Apartment, Parcel 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 3. "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 4. "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 the conveyance of the first Lot, Parcel, Apartment or tract of Commercial Land is:

-None-

Section 5. "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 6. "Parcel" shall mean and refer to any residential townhouse or patio house on land situated within the Properties and which land is made subject to residential townhouse or patio house 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 7. "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 8. "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 subject to a use restriction other than residential 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 9. "Declarant" shall mean and refer to Friendswood Development Company and King Ranch, Inc., its 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 charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) 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;

(c) 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 of 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 Owner of a Lot, Parcel, Apartment or tract of Commercial Land 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, 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 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 vote be cast with respect to any one (1) Lot, Parcel or tract of Commercial Land, or two-thirds (2/3) vote with respect to any Apartment.

Class B. The 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, 1989.

#### 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: (1) annual assessments, and (2) 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, 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 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 his successors in title unless expressly assumed by them.

Section 2. Purposes 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 Elm Grove 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 Elm Grove 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:

All street lighting and street sweeping and maintenance within the Properties which are a part of Elm Grove Village, mosquito abatement, police service, fire protection, 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 Elm Grove Village.

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 Seventy-Six and no/100 Dollars (\$76.00) per Lot; Fifty and no/100 Dollars (\$50.00) per Apartment, and Eight-Eight Cents (\$0.88)

per 100 square feet, or fraction thereof, of Commercial Land.

- (a) From and after January 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) published by the U. S. Department of Labor, specifically the Consumer Price Index for Urban Wage Earners and Clerical Workers, U. S. City Average, All Items, unadjusted for seasonal variation. The maximum assessment for any year shall be the amount determined by (a) taking the dollar amount specified above in the first sentence of this Section, (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 fourth month prior to the month in which this declaration was signed by the Declarant.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment amount specified above in the first sentence of this Section and used in the above CPI adjustment formula may be changed by a vote of the members, provided that any such change 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, written notice of which shall be sent to all members not less than 30 days nor more than 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 Section 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 at proportionately uniform rates for all Lots, Parcels, Apartments and 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 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 at such time as 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 and 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, 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 effect 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 Thomas S. Foster Survey, A-1720 Harris County, A-718, Montgomery County, Texas; the Harrison McClain Survey, A-529 Harris County, A-345 Montgomery County, Texas; the H.T. & B.R.R. Co. No. 5 Survey, A-422 Harris County, A-282 Montgomery County, Texas; the M. H. Short Survey, A-1722 Harris County, Texas, A-535 Montgomery County, Texas; and the Richard Williams Survey, A-1721 Harris County, A-660 Montgomery 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 or annexation.

FIRST INTERNATIONAL BANK IN HOUSTON 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 6th day of July, 1977.

ATTEST:

B. B. Pierce  
Secretary

ATTEST:

Larry L. Lovelace

FRIENDSWOOD DEVELOPMENT COMPANY  
Acting Herein for Itself and for  
KING RANCH, INC. (Declarant) *20*

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

FORMS *BM*  
O K  
TRANS. *DPS*  
O K  
CNTRL. *[Signature]*

FIRST INTERNATIONAL BANK IN HOUSTON, N.A.  
(Formerly First International Bank in Houston) *20*

By: [Signature]  
Vice President

STATE OF TEXAS  
COUNTY OF HARRIS

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 considerations therein expressed and in the capacity therein stated, and as the act and deed of said FRIENDSWOOD DEVELOPMENT COMPANY, which company acted in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6<sup>th</sup> day of July, 1977.

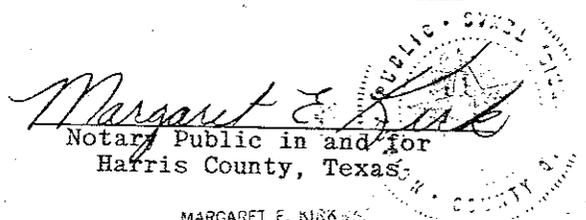


STATE OF TEXAS  
COUNTY OF HARRIS

*Coralee Casey*  
Notary Public in and for  
Harris County, Texas  
CORALEE CASEY  
Notary Public in and for Harris County, Texas  
My Commission Expires 7-31-78

BEFORE ME, the undersigned authority, on this day personally appeared Perry Russell and Larry L. Linenschmidt known to me to be the persons whose names are subscribed to the foregoing instrument, and known to me to be the Senior Vice President and Administrative Office of FIRST INTERNATIONAL BANK IN HOUSTON, a national banking association, and acknowledged to me that they executed the said instrument for the purpose and considerations therein expressed, as the act of said corporation and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 8th day of July, 1977.



*Margaret E. Kirk*  
Notary Public in and for  
Harris County, Texas  
MARGARET E. KIRK  
Notary Public in and for Harris County, Texas  
My Commission Expires February 3, 1978  
S.S. # 465-06-0602

er Recording Return To  
3. Mitchell, Jr.  
ndswood Development Company  
). Drawer 809  
nble, Texas 77338