

DATE RECORDED JUL 30 1971

DECLARATION

62287

FILED
At 2:55 O'clock P M

JUL 27 1971

FRANK BORISKIE

County Clerk, Brazos County, Bryan, Texas

By [Signature] Deputy

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by WOLF PEN CREEK CORPORATION, hereinafter referred to as "Declarant", and in conformance with Federal Housing Administration requirements for such a declaration;

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in College Station, County of Brazos, State of Texas, which is described as:

A 10.264-acre tract or parcel of land lying and being situated in the J. E. Scott League, Brazos County, Texas, and being a part of the 87-acre tract described in Volume 48, Page 375 of the Deed Records of Brazos County, Texas, and being more particularly described as follows:

BEGINNING at a point in the northeast right-of-way line of Anderson Street, located N 43° 59' W a distance of 25.4 feet from a southwest interior ell corner of the beforementioned 87-acre tract, said point also being the intersection of the said northeasterly right-of-way line of Anderson Street with the northwesterly right-of-way of Spring Green Street;

- THENCE N 43° 59' W along the beforementioned northeasterly line of Anderson Street for a distance of 983.67 feet to a concrete monument for corner in the centerline of Wolf Pen Creek, said monument marking an angle point in the southerly or southwesterly line of Lot 8, Block 5, of the Redmond Terrace Addition to the City of College Station, Texas, as shown on the plat recorded in Volume 188, Page 107 of the Deed Records of Brazos County, Texas;

THENCE along the beforementioned centerline of Wolf Pen Creek and a common line of the beforementioned Redmond Terrace Addition for the following calls:

S 82° 21' E for a distance of 154.4 feet to a concrete monument;
N 69° 41' E for a distance of 271.6 feet to a concrete monument;
N 87° 26' E for a distance of 114.1 feet to a concrete monument;
N 82° 02' E for a distance of 149.85 feet to a concrete monument;
S 58° 06' E for a distance of 261.5 feet to an "X" mark in a brickwall;
S 87° 16' E for a distance of 117.0 feet to an iron rod for corner, said iron rod being an angle point in the south line of Lot 5, Block 4, of the beforementioned Redmond Terrace Addition;

THENCE S 22° 55' E for a distance of 48.1 feet to an angle point;

THENCE S 40° 29.1' W for a distance of 86.87 feet to an angle point;

THENCE S 21° 48' W for a distance of 94.83 feet to an angle point;

THENCE S 40° 44' W for a distance of 84.35 and corner;

THENCE S 43° 55' E along a fence for a distance of 227.29 feet to

a point for corner in the beforementioned northwest right-of-way line of Spring Green Street;

THENCE S 56° 14' W along the beforementioned northwest right-of-way line of Spring Green Street for a distance of 428.19 feet to the PLACE OF BEGINNING containing 10.264 acres of land more or less.

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 Wolfpen Creek Home Owners 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 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 is described as follows:

All that certain 10.264 acre tract of land hereinabove described by metes and bounds, SAVE AND EXCEPT, all lots, apartment reserves, commercial reserves, and dedications to the City of College Station, Texas, as reflected by the plat of said tract recorded in Volume Page Deed Records of Brazos County, Texas.

Section 5. "Lot" shall mean and refer to any plot of land

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shown upon any recorded subdivision map of the Properties with the exception of the Common Area, Apartment Reserve and Commercial Reserve.

Section 6. "Declarant" shall mean and refer to WOLFPEN CREEK CORPORATION, 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
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall 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, 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 any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right 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 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) 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 equal the total votes outstanding in the Class B membership, or
- (b) on August 1, 1973.

ARTICLE IV

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) monthly assessments or charges along with the monthly mortgage payments, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly 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 his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

(a) In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each lot, which is subject to assessment hereunder, as follows: paint and otherwise care for front building surfaces, trees, shrubs, grass and walks. The Association shall also keep Wolf Pen Creek free of debris so as to permit natural drainage of same and shall take action reasonably calculated to assure adequate drainage of the entire Common Area.

In the event that the need for maintenance or repair is caused through the willful or negligent action of the owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Fifteen Dollars (\$15.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than 3% 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 monthly assessment may be increased above 3% 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 monthly assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the monthly 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 shall be sent to all members not less than 30 days nor more than 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 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

Section 7. Date of Commencement of Assessments: Due Dates.

The monthly assessments provided for herein shall commence as to all

Lots on the first day of the month following the conveyance of the Common Area. The Board of Directors shall fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of each monthly assessment period. Written notice of the monthly 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.

Section 8. 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 6 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 9. 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 or any proceeding in lieu thereof, 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 thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in

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 VI

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 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 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 less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) 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. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration of the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 27th day of July, 1971.

WOLFPEN CREEK CORPORATION, Declarant

By: Robert D. Martell
Robert D. Martell
President

Attest:

J.W. Wood
Secretary

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared ROBERT D. MARTELL, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said WOLFPEN CREEK CORPORATION and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.



GIVEN UNDER MY HAND AND SEAL OF OFFICE
this the 27th day of July, 19 71

Jennie Abel
Notary Public in and for Brazos County,
Texas