

H888474

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FIRST AMENDMENT TO DECLARATION
OF COVENANTS AND RESTRICTIONS,
MISSION BEND, SECTION TWO

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

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WHEREAS, on October 12, 1979, Lancaster Homes, Inc., a Texas corporation (hereinafter referred to as the "Developer"), executed that certain Declaration of Covenants, Conditions and Restrictions, for Mission Bend, Section Two (hereinafter referred to as the "Declaration"), filed for record in the Office of the County Clerk of Harris County, Texas, under County Clerk's File No. F812619 and recorded under Film Code No. 109-91-0195 in the Official Public Records of Real Property of Harris County, Texas, imposing on Mission Bend, Section Two, a subdivision in Harris County, Texas, according to the plat thereof recorded in Volume 280, Page 6 of the Map Records of Harris County, Texas, all those certain covenants, conditions, restrictions, easements, charges, and liens therein set forth for the benefit of said property and each owner thereof, and additionally bringing said subdivision within the jurisdiction of the Mission Bend Homeowners Association, Inc. (hereinafter referred to as the "Association"); and

WHEREAS, the "Amendment" provision of the Declaration (at page 15) provides that the Owners (as defined in the Declaration) of a majority of the total number of Lots in Mission Bend, Section Two, shall have the right, power and authority, from time to time, to amend the Declaration by filing for record in Harris County, Texas, an instrument signed by the then Owners of not less than a majority of the total number of Lots in Mission Bend, Section Two, setting forth said amendments; and

WHEREAS, Developer and the undersigned, being the Owners of at least a majority of the Lots encompassed within and subject to the provisions of the Declaration, now desire to amend the Declaration, pursuant to their right to do so as set forth at page 15 of the Declaration, in order to (a) revise the procedure for in-

creasing the maximum annual assessment, (b) establish a procedure for the levying of special assessments, and (c) clarify the procedure for subsequent revision of the deed restrictions.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: THAT, the Declaration is hereby amended as follows:

ARTICLE I

DEFINITIONS

Section 7. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

ARTICLE VI

028-69-1592

MAINTENANCE CHARGE AND SPECIAL ASSESSMENT

Section 1.(a). Each lot in Mission Bend, Section Two, is hereby subjected to an annual maintenance charge and assessment for the purpose of creating a fund to be designated and known as the "maintenance fund", which maintenance charge and assessment will be paid by the Owner or Owners of each Lot within Mission Bend, Section Two to Mission Bend Homeowners Association on or before the first day of each month, in advance monthly installments, commencing on the first day of the month following conveyance of the first property to a homeowner; provided, however, that the amount of such maintenance charge and assessment shall, anything to the contrary notwithstanding, be chargeable and payable by the owner or owners of any Lot at one-half (1/2) the assessed rate until the first day of the month following completion and occupancy of a permanent structure thereon. The rate at which each Lot will be assessed will be determined annually, and the Board of Directors of the Association may, by majority vote at a public meeting of the Board held pursuant to the Notice of Meetings procedure set out in Article III, Section 3 of the By-laws of the Mission Bend Homeowners Association, adjust same from year to year by not more than ten percent (10%) above the maximum assessment for the previous year. The maximum maintenance charge may be increased by more than ten percent (10%) each year by a vote of 2/3rds of each class of members of the Association who are voting

in person or by proxy, at a meeting duly called for this purpose. The Association shall use the proceeds of such maintenance fund for the use and benefit of all residents of Mission Bend, Section Two, as well as all other sections of Mission Bend Subdivision; provided, however, that each future section of Mission Bend, to be entitled to the benefit of this maintenance fund, must be impressed with and subjected to the annual maintenance charge and assessment on a uniform, per Lot basis, equivalent to the maintenance charge and assessment imposed herety, and further made subject to the jurisdiction of the Association. Future sections of Mission Bend Subdivision may be annexed to the Properties with the consent of two-thirds (2/3) of each class of membership. However, upon submission and approval by the Federal Housing Administration and/or the Veterans Administration of a general plan of the entire development, and approval of each stage of development such future sections of Mission Bend Subdivision may be annexed by the developer without such approval by the membership. The uses and benefits to be provided by said Association shall include, by way of clarification and not limitation and at its sole option, any and all of the following: constructing and maintaining parkways, rights-of-ways, easements, esplanades, and other public areas, payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the Properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment, employing policemen and watchmen, caring for vacant Lots and doing other thing or things necessary or desirable in the opinion of the Association to keep the Properties in the subdivision neat and in good order or which is considered of general benefit to the owner or occupants of the Properties, it being understood that the judgement of the Association in the expenditure of said funds shall be final and conclusive so long as such judgement is exercised in good faith.

Section 1(b). 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 land or 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 2. To secure the payment of the maintenance fund and special assessments established hereby and to be levied on individual residential Lots, there shall be reserved in each Deed (whether specifically stated therein or not) by which the Declarant shall convey such Lots, a Vendor's Lien for benefit of the Association, said lien to be enforceable through appropriate proceedings at law by such beneficiary; provided, however, that such lien shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the construction of improvements on any such lot to the extent of any such maintenance fund charge accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien. Sale or transfer of any lot shall not affect the lien in favor of the Association; however, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien securing such assessment or charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot or the owner thereof from liability for any charges or assessments thereafter becoming due or from the lien thereof. As a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding

valid and subsisting first mortgage lien, for the aforesaid purpose or purposes, the Association shall give the holder of such first mortgage lien sixty (60) days' written notice of such proposed action, which notice shall be sent to the nearest office of such first mortgage holder by prepaid U.S. registered mail, and shall contain a statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Lot covered by such first mortgage lien to the holder thereof.

Section 3. The above maintenance charge and special assessment will remain effective for the full term (and extended term if applicable) of the within covenants.

ARTICLE VII GENERAL PROVISIONS

Section 1. Term. These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then owners of the Lots has been recorded agreeing to change or terminate said covenants in whole or in part. Upon any violation or attempt to violate any of the covenants herein, it shall be lawful for the Association or any other Owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from doing so or to recover damages or other dues for such violations.

The amendments to the Declaration set forth above shall be deemed to be a part of and shall be interpreted in accordance with the Declaration, and shall relate back to the date of the filing thereof. All provisions of the Declaration not amended hereby are

hereby ratified and confirmed in each and every particular, and shall continue in full force and effect pursuant to the terms of the Declaration. This first amendment may be executed in multiple counterparts, which together shall be considered one document.

The Federal Housing Administration and the Veterans Administration have approved this amendment, as provided for in Article VII, Section 3.

IN WITNESS WHEREOF, Developer, the undersigned Owners, the Lienholders, the Veterans Administration and the Federal Housing Administration have executed this First Amendment on the date set forth in their acknowledgement to be effective as of the 21 day of October, 1981.

LANCASTER HOMES, INC.
(OWNER OF _____ LOTS)

BY: _____
"DEVELOPER"

THE STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared _____ of LANCASTER HOMES, INC., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that he executed the same for the purposes and consideration therein expressed in the capacity therein stated as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this _____ day of _____, 1981.

Notary Public in and for
Harris County, T e x a s

My Commission Expires:

(Print or Type Name)