

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WHITTIER HEIGHTS  
("DECLARATION")

FILED  
TARRANT COUNTY TEXAS  
2003 SEP 25 PM 1:19

THE STATE OF TEXAS §  
COUNTY OF TARRANT §

KNOW ALL MEN BY THESE PRESENTS:  
BY \_\_\_\_\_

WHEREAS, BROADLAND LIMITED PARTNERSHIP, a Texas limited partnership (the "Declarant"), is the owner of Lots 1 through 45 of Block A, Lots 1 through 11 of Block B, Lots 1 through 15 of Block C, Lots 1 through 21 of Block D, and Open Space lots 46X through 50X of Block A, 12X and 13X of Block B, 17X of Block C, and 22X of Block D in Whittier Heights, an Addition to the City of Colleyville (the "City"), Texas, according to the plat thereof (the "Plat") attached hereto as Exhibit A and recorded in Cabinet A, Slide #'s 8667 & 8668 of the Records of Tarrant County (the "County"), Texas (the "Addition").

WHEREAS, Declarant has subdivided the Addition into single-family lots as shown on the Plat. As used herein, "lot" and "lots" shall refer only to the numbered plots shown on the Plat and shall not refer to public areas, parks, esplanades, tracts owned or subsequently acquired by any public body, or any plot or tract shown as a reserve whether designated as unrestricted or not.

WHEREAS, Notice is hereby given that, by this Declaration, Declarant does not intend to contradict, amend, or alter any City Ordinances or Regulations. Any party intending to acquire any interest in the Addition should perform independent investigation of City Ordinances and Regulations to make their own determination that the party's intended use is compatible with the relevant ordinances and regulations.

NOW, THEREFORE, Declarant declares that the Addition shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth which are for the purpose of establishing a general scheme for the development of all of the lots and houses to be constructed in the Addition and for the purpose of enhancing and protecting the value, attractiveness and desirability of said lots and houses and which shall run with the land and be binding on all parties having or acquiring any right, title or interest in the Addition or any part thereof (or in Additional Phases, if any, as defined in Section 5.15 of this Declaration), and which shall inure to the benefit of each owner thereof.

ARTICLE I

CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

Section 1.1 Residential Use. All lots shall be used for single-family residential purposes only. Except as permitted by the Committee (defined in Section 2.1 of this Declaration), no building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family residence per lot and a private garage as provided below. Except as permitted by the Committee, neither a residence nor any other improvement on any lot may exceed the maximum height allowed by the City.

Section 1.2 Single-Family Use. Each residence may be occupied by only one family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together as a single housekeeping unit, together with any household servants.

Section 1.3 Garages and Driveways. Except as permitted by the Committee, each residence

shall have a detached or attached garage suitable for parking not less than two (2) or more than three (3) standard size automobiles, which garage shall conform in design and materials with the main structure. Except as permitted by the Committee, no garage shall have a vehicular access door or opening which faces any public right-of-way. Garage doors shall be closed at all times except to allow the entry and exit of vehicles and persons and except as necessary during the time that cleaning of or storing in the garage is occurring. All driveways must be accessed from the front of the lot unless otherwise approved by the Committee. All driveways and driveway aprons or parking aprons must be kept free of any storage of vehicles or other material and must be kept clean of any dirt, debris, or stain. For purposes of this Section, "storage" shall mean the parking or placing of any object or material for more than one day.

Section 1.4 Pool Houses and Cabanas and Other Structures Detached from the Main House Structure. Unless approved by the Committee, no residence shall have a detached garage, pool house, pool cabana, or other structure detached from the main house structure.

Section 1.5 Restrictions on Resubdivision. Except as permitted by the Committee, no lot may be subdivided into one or more smaller lots, and except as permitted by the Committee, no lot may be platted into larger lots without the prior written consent of the Committee.

Section 1.6 Driveways. All driveways shall be surfaced with concrete or other substance approved by the Committee. The Committee may restrict driveways to certain areas of lots and may impose aesthetic requirements for driveways at one or more lots which are different than requirements at other lots. Circular driveways are not be permitted without the approval of the Committee.

Section 1.7 Uses Specifically Prohibited.

(a) Other than dog houses under forty-eight (48) inches in height, no temporary structure, shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses and play structures, greenhouses, gazebos, and buildings for storage of lawn maintenance equipment) may be placed on a lot, except an Open Space lot. All temporary structures permitted herein must be approved by the Committee in advance of placement on a lot and may be located only in places which are not visible from, or are adequately screened from view of, any right-of-way, whether public or private, and from Open Space lots, as enumerated hereinabove, in the sole judgment of the Committee. Any buildings for storage of lawn maintenance equipment on a lot, except those of Declarant or of the Maintenance Association (defined in Section 5.14 of this Declaration), whether permanent or temporary structures, shall be built of materials and be of architectural character compatible with the design of the house on the lot. Notwithstanding the limitations herein, with the prior approval of the Committee, temporary or permanent structures shall be permitted for the purpose of allowing the Declarant and one or more homebuilders to coordinate and promote activities directly or indirectly associated with lot and house sales in the Addition and other temporary structures for uses of Declarant or the Maintenance Association such as management and maintenance of Open Space, which temporary or permanent structures may be for the purpose of equipment and materials storage and offices. No building material of any kind or character shall be placed upon a lot until the owner thereof is ready to begin construction of improvements, and then such material shall be placed within the property lines of the lot upon which the improvements are to be erected.

(b) No boat, boat trailer, marine craft, hover craft, aircraft, recreational vehicle, pick-up camper, travel trailer or other trailer of any kind, motor home, camper body or similar vehicle or equipment may be parked for more than two consecutive days within the Addition, unless completely concealed from view adjacent lots, Open Space lots, and rights-of-way, whether public or private. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This

restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a residence of a lot, including Open Space lots, in the vicinity.

(c) No trucks with tonnage in excess of three quarters of a ton nor any vehicle which display any advertisement shall be permitted to park overnight on a street in the Addition without the prior approval of the Committee.

(d) No vehicle of any size which transports inflammable or explosive cargo is permitted in the Addition at any time.

(e) No vehicles or similar equipment shall be parked or stored in an area visible from any right-of-way whether public or private except passenger automobiles, passenger vans, and pickup trucks that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas.

(f) No structure of a temporary character, such as a trailer, basement, tent, shack, barn or other out-building, shall be used on any property at any time as a dwelling house.

(g) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in the Addition, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Addition. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted within the Addition.

(h) No animals, livestock or poultry of any kind shall be raised, bred or kept on any property in the Addition except that dogs, cats, or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the property so that no person shall quarter on the premises, cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the quietude, health or safety of the community. It is the pet owner's responsibility to keep the lot clean and free of pet debris and to conform with all City Ordinances and Regulations affecting animals within the City. All animals must be properly tagged for identification.

(i) No lot or other area in the Addition shall be used as a dumping ground for any waste. Trash, garbage or other waste shall not be kept except in covered sanitary containers in appropriate locations which may be specified by the Committee and, unless otherwise expressly permitted by the Committee, such containers shall be situated and enclosed or screened so as not to be visible from any public right-of-way, private drive or adjacent lot. All equipment for the storage or other disposal of waste material shall be kept clean and in sanitary condition. Materials incident to construction of improvements may be stored on lots during construction so long as construction progresses without undue delay.

(j) No individual water supply system shall be permitted in the Addition, except as may be approved by the Committee for irrigation.

(k) No individual sewage disposal system shall be permitted in the Addition. During construction at a lot, including landscape improvements, with the written permission of the Committee and according to its requirements, a lot owner may maintain on the lot a portable toilet facility supplied by a commercial service approved by the Committee for such purposes.

(l) No garage, garage house or other out-building may be occupied by any person prior

to the erection of a residence.

(m) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front or side wall or window of a residence, or in any second floor window or wall. All utility meters, outdoor equipment, air-conditioning compressors, air-conditioning and heating units, sprinkler and other control devices, junction boxes, and similar items in the sole discretion of the Committee must be visually screened from rights-of-way and adjoining lots including Open Space lots in a manner approved by the Committee and must be located in areas acceptable to the Committee.

(n) It is the intent of the Committee to insure that antennas, discs, dishes or other similar equipment do not detract from the overall appearance of the neighborhood as they are considered unsightly. No antennas, discs, dishes, or other equipment for sending or receiving sound or video messages shall be permitted in this Addition except antennas for AM or FM radio reception and for UHF and VHF television reception and satellite antennas of size specifically allowed by federal law and the City. All antennas shall be located inside the attic of the main residential structure or otherwise in locations approved by the Committee, which in its sole discretion may require screening of said antennas. No use shall be made of any lot or structure thereon for any other type of radio or television or similar broadcasting system.

(o) No noxious or offensive activity shall be undertaken within the Addition, which is or may become an annoyance or nuisance to the neighborhood. Nothing herein shall prohibit an owner's use of a residence for quiet, inoffensive activities so long as such activities do not materially interfere with adjoining or nearby homeowner's use and enjoyment of their residences and yards. No exterior spotlighting shall be permitted which creates a nuisance for adjacent homeowners.

(p) Except as permitted by the Committee, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the public right-of-way lines and a line connecting them at points ten (10) feet from the intersection of the public right-of-way lines, or, in the case of a rounded property corner, from the intersection of the public right-of-way lines are extended. The same sight-line limitations shall apply on any lot within ten (10) feet of the intersection of a public right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines, in the sole determination of the Committee.

(q) Except for children's playhouses and play structures, dog houses, greenhouses and gazebos, no building constructed elsewhere shall be moved onto any lot other than an Open Space lot, except for buildings for storage of lawn maintenance equipment, which lawn maintenance equipment storage buildings shall be built of materials and be of architectural character compatible with the design of the house, it being the intention that only new construction be placed and erected thereon. All such improvements and their locations on a lot require Committee approval. Children's play equipment such as sandboxes, temporary swimming pool having a depth of less than 24 inches, playhouses and tents shall not require approval of the Committee, provided that such equipment is not more than six (6) feet high, in good repair (including painting), and every reasonable effort has been made to permanently screen and shield such equipment from view of any lots, including Open Space lots, and right-of-way, whether public or private. Equipment higher than six (6) feet shall require approval as to design, location, color, material, use, base grade elevation, and screening. Any addition, exterior alteration, or change to an existing building shall be compatible with the design character of the original building and any new detached structure shall be compatible with the parent structure, as determined by the Committee.

(r) No structures, planting or materials shall be placed or permitted to remain on any lot which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow within drainage channels or swales or which may obstruct or retard the flow of water through drainage channels, swales, or easements.

(s) The grading, slope and drainage plan of all lots, as shown on the Grading Plan defined in Section 3.6 of this Declaration may not be altered without the prior written approval of the Committee, the City and other appropriate agencies having authority to grant such approval.

(t) Unless approved otherwise by the Committee, no sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than five (5) square feet advertising the property for sale. A scale drawing of any proposed sign and post(s) shall be submitted for Committee approval, along with such information as the Committee may require including but not limited to dimensions, paint or vinyl letter colors, and the information to be supplied on the face and back of the sign. Declarant and its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing requirements, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. All signs are subject to the approval of the Committee and may be required by the Committee to be removed, if, in the sole judgment of the Committee, same are found to be inconsistent with the high standards of the Addition.

(u) The drying of clothes in a location visible from any right-of-way, whether public or private, and from any Open Space lot is prohibited. The owners and occupants of any lots at the intersections of streets or adjacent to a church, park, playground, Open Space lot, school ground, or other facilities where the rear yard is visible to public or private view shall, if required by the Committee, construct a suitable enclosure to screen from public view the equipment which is incident to normal residences, such as clothes drying equipment, yard equipment and storage piles.

(v) Except within fireplaces in the main residential dwelling and except for outdoor cooking, no outdoor burning of anything shall be permitted anywhere within the Addition without approval of the Committee.

(w) No carport shall be permitted on a lot. No porte cochere shall be permitted on a lot without the approval of the Committee.

(x) No abandoned, derelict or inoperative vehicles may be stored or located on any lot unless approved by the Committee and stored in the garage at all times with the garage door closed.

(y) No retaining walls visible from any public right-of-way or easement shall be permitted without the prior written approval of the Committee. Under no circumstances shall wooden retaining walls be permitted without the approval of the Committee. Materials used in retaining walls must be complementary to materials used in construction of the home on the lot, as determined by the Committee. All aspects of retaining walls must receive Committee approval, which may impose specific requirements for some or all retaining walls in the Addition.

Section 1.8 Minimum Floor Area. The total air-conditioned living area of the main residential structure, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be not less than 3,250 square feet, except that the Committee may grant variances permitting houses of smaller size if, in its sole judgment, it deems the proposed improvements on the lot to be compatible with the aesthetic intent of the Declarant. The first story of two story houses must contain at least 1,700 square feet, unless approved otherwise by the Committee.

Section 1.9 Structure Materials; Exterior Items and Surfaces. Unless otherwise approved by the Committee, the total exterior vertical wall area of each structure exclusive of doors and windows, shall be at least 75% masonry (brick, stone, or, with Committee approval, stucco). The exterior of chimney flues shall be of masonry material acceptable to the Committee. Gas log heaters and prefabricated fireboxes, if vented through the roof, shall be enclosed in a masonry chimney with dimensions and materials approved by the Committee. Installation of all types of exterior items and surfaces such as address numbers or external ornamentation, lights, mail chutes, mailboxes, roofing materials and exterior paint or stain, shall be subject to the approval of the Committee as to size, design, materials and location. Roofing material of each home shall be that specifically approved by the Committee for that home.

Section 1.10 Side-Line and Front Line Setback Restrictions. Except as otherwise approved by the Committee, no structure shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum setback lines shown on the Plat. The Committee may establish front and side yard setbacks that are farther from the adjacent street(s) than those setbacks shown on the Plat. Said Committee established setbacks shall be observed in lieu of the setbacks shown on the Plat. For the purposes of these covenants, eaves and steps and open porches shall not be considered as a part of the structure, provided however, that this shall not be construed to permit any portion of a structure on a lot to encroach upon another lot or to violate any City Ordinance.

Section 1.11 Waiver of Setback Requirements. With the prior written approval of the Committee, any structure may be located further back or closer to any property line of a lot than provided above, where, in the sole judgment of the Committee, the proposed location of the structure will not substantially detract from the appearance and value of the lot and will not substantially detract from the appearance of the adjoining lots.

Section 1.12 Fences and Walls.

(a) Without written approval of the Committee, fences and walls located on a lot shall (i) comply with City requirements, including those regarding height, location and materials; (ii) not extend nearer to the front street than five (5') feet behind the front of the house, unless a special front yard fence is required by the Committee; (iii) be constructed of material and design required or approved by the Committee and be painted as required by the Committee; (iv) be constructed so that the sides containing the structural supports are not visible from any public right-of-way unless approved by the Committee; (v) be of a height approved by the Committee; (vi) for any fence on the side of a corner lot adjacent to a street, be at least five (5') feet inside the property line of such lot, except as provide in Section 1.12 (b) below; (vii) be stained or sealed with a stain or seal approved by the Committee. Fences may be privately installed but must be constructed to professional levels of quality. The design, specifications and contractors approved for building fences in the Addition may be specified by the Committee. If the Committee does so specify contractors approved for building fences in the Addition, then no contractors other than those specified by the Committee may build fences in the Addition.

(b) At corner lots, any fence visible from a public right-of-way shall be uniform, as required by the Committee, with respect to design, construction specifications, materials, and color, and said fence shall be placed in the specific location required by the Committee for each lot. Said Committee requirements generally shall include but not be limited to the following: (i) the location between the structure and the side street property line of such fence; (ii) the distance of the fence from the street the lot fronts on; (iii) whether a formal foundation planting along the outside of the fence is required; (iv) whether such fence shall be constructed of cedar or similar material, have trim boards, metal posts, and masonry columns constructed of a material required by the Committee; (v) the height of such fence; and (vi) other design criteria of such fence.

(c) The Committee may require that some or all retaining walls in the Addition be constructed of a uniform color, materials, design, and construction specifications.

Section 1.13 Sidewalks. All sidewalks shall, at a minimum, conform to City specifications and regulations. The Committee may impose standards in addition to those required by the City with respect to sidewalk location, dimensions, surface finish, and construction specifications.

Section 1.14 Mailboxes. Mailboxes shall be constructed and located in accordance with the specifications of the Committee and according to requirements of the City and of the U.S. Postal Service (or its successor). Said Committee specifications may include mailbox design (including mailbox post or stanchion and address numbers), manufacturer or source of supply, materials, paint and paint color, location, and related planting area (including plant materials, irrigation and maintenance), other criteria of such mailboxes (including mailbox post or stanchion and address numbers). No mailboxes may be constructed or installed without the prior written consent of the Committee.

Section 1.15 Commencement of Construction. Each residence constructed on each lot, and any other improvements thereto, shall be commenced promptly after conveyance of the lot by Declarant and completed with due diligence but only after approval by the Committee of the plans and specifications prepared in connection with such construction.

Section 1.16 Utilities. Except as to special street lighting or other aerial facilities which may be required by the City or which may be required by the franchise of any utility company or which may be installed by Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals, transformers and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed in the Addition whether upon individual lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Addition, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility or unless said aerial utilities are approved by the Committee.

Section 1.17 Use and Maintenance of Open Space Lots. Notwithstanding any provision in this Declaration to the contrary, any and all property in Open Space lots shall be subject to all conditions, limitations and restrictions on the use and maintenance of the Open Space lots as described in special conditions of the Committee and the Declarant. No modifications or additions to grade elevations, landscape planting, or physical improvements of any kind may be made in such Open Space lots without the prior written approval of the Declarant or, upon its dissolution and termination by, by David Spurgeon Bagwell or his assigns.

## ARTICLE II

### ARCHITECTURAL CONTROL

Section 2.1 Appointment. Declarant may designate, appoint, and remove members of an Architectural Control Committee (herein called the "Committee") composed of two (2) or more individuals, each generally familiar with residential and community development design matters, including landscaping, and knowledgeable about Declarant's concern for a high level of taste, design, materials, construction, and landscaping standards within the Addition. Declarant may increase or decrease the number of members of the Committee at any time. In exercising its authority herein, the Committee shall use its reasonable best efforts to ensure a high level of taste, design, quality, harmony

