

This Second Amendment to Declaration of Covenants, Conditions and Restrictions for Whittier Heights is being re-recorded to correct the recording information set forth in the first Whereas paragraph below.

TARRANT COUNTY TEXAS
FILED
2006 NOV 20 PM 3:59
SUZANNE HARRISON
COUNTY CLERK

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
WHITTIER HEIGHTS**

STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TARRANT

WHEREAS, Broadland Limited Partnership, Texas limited partnership (the "Declarant"), then being the owner of Lots 1 through 45 of Block A, Lots 1 through 11 of Block B, Lots 1 through 16 of Block C, Lots 1 through 21 of Block D, and Open Space Lots 46-X through 50-X of Block A, 12-X and 13-X of Block B, 17-X of Block C and 22-X of Block D in Whittier Heights, an Addition (the "Addition") to the City of Colleyville, Texas (the "City") according to the plat thereof recorded in Cabinet A, Slides 8667 and 8668 of the Plat Records of Tarrant County, Texas (the "County") filed that certain Declaration of Covenants, Conditions and Restrictions for Whittier Heights executed August 25, 2003 (as heretofore amended, the "Declaration"), recorded in Volume 16073-0335, Page 0116 of the Deed Records of Tarrant County, Texas, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Whittier Heights dated October 7, 2003 recorded as Instrument D203382151 of the Real Property Records of Tarrant County, Texas; and

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WHEREAS, Section 5.14 of the Declaration as amended provides that Declarant shall form a property owners maintenance association; and

WHEREAS, Declarant has determined to form a property owners maintenance association by filing Articles of Incorporation for Whittier Maintenance Association, Inc., a Texas non-profit corporation, on November 13, 2006 and by adopting bylaws for such non-profit corporation. Accordingly, the term "Association" in the Declaration will henceforth refer to Whittier Maintenance Association, Inc., a Texas non-profit corporation, and the term "Association Documents" shall refer to the Articles of Incorporation filed with the Secretary of State on November 13, 2006 and the bylaws adopted by Declarant on November 9, 2006, as such articles and bylaws may hereafter be amended, as well as to additional documents that may hereafter be adopted by Declarant. In connection with the formation of the Association, the following are added as new Articles VI, VII and VIII to the Declaration:

**Article VI
The Association**

A. DELEGATION OF RIGHTS, POWERS AND DUTIES. Declarant hereby delegates to the Association the rights, powers and duties of maintaining, administering, operating and improving the Common Areas (as hereinafter defined) within the Addition, the right to administer and enforce the provision of the Declaration, and the function of collecting and disbursing the assessments and charges hereinafter created.

B. MEMBERSHIP. Every person or entity who is the owner of a Lot (as hereinafter defined) shall be a member of the Association. For the purpose of distinguishing membership of Class B members and Class C members, Class C members shall become Class B members upon the

earlier to occur of (1) determination, which shall not unreasonable, by the Declarant or, after Resignation, by the President of the Association, of substantial completion of a Living Unit (as hereinafter defined) on the Lot and (2) the issuance by the City of Colleyville of a certificate of occupancy for the Living Unit on the Lot.

C. CLASS OF MEMBERS. The Association shall have three classes of members until Resignation (as defined below), at which point the Association shall only have two classes of members until Buildout (as defined below) has occurred, at which point the Association shall only have one class of members. Class A members shall consist of the Declarant, Class B members shall consist of all members who own a Lot on which a Living Unit (as hereinafter defined) has been built and has been occupied. Class C members shall consist of all members other than Declarant who own a Lot on which a Living Unit has not been built and occupied.

D. VOTING RIGHTS. Class A members (and, after Resignation and Buildout, all members) shall be entitled to vote on all matters submitted to a vote of the members. Class B and Class C members shall not be entitled to vote on matters submitted to a vote of the members until such time as Declarant no longer owns a Lot, and files a memorandum confirming such status and its resignation of membership in the Real Property Records of Tarrant County, Texas ("Resignation") as set forth in the Bylaws of the Association. At Resignation, the Association shall no longer have Class A members and all members shall be either Class B or Class C members. At such time as a Living Unit has been built and first occupied on each Lot in the Addition ("Buildout"), the Association shall no longer have Class B members or Class C members. Instead, there shall be no classes of members, and all members shall thereafter be simply "Members" or "members" hereunder.

Members eligible to vote shall be entitled to cast one (1) vote for each Lot owned.

When more than one person or entity holds an ownership interest in a Lot or Lots all such persons or entities shall be members and the vote for the Lots shall be exercised as all members owning an interest in the Lots may among themselves determine, but in no event may more than one vote be cast for any one Lot.

E. SUSPENSION OF MEMBERSHIP RIGHTS. The membership rights (including voting rights, when applicable) of any member may be suspended by action of the Board of Directors as provided in the Bylaws of the Association.

F. BOARD OF DIRECTORS. All actions of the Association shall be taken by action of its Board of Directors or by its officers acting within the scope of their authority. The initial Board of Directors shall be appointed solely by Declarant. After Resignation, Directors shall be elected by the members in accordance with the bylaws.

G. PROPERTY RIGHTS AND COMMON PROPERTIES

1. Definitions

a. "Common Areas" Common Areas refer to that land and facilities shown in the recorded subdivision of the addition labeled as "Private Open Space", "P.O.S." or a similar designation indicating land intended for common

uses; all the areas within easements benefiting the Association, and any other land or facilities within the addition deeded to the Association by Declarant or otherwise acquired by the Association.

b. "Lot" shall mean and refer to any platted lot on the subdivision plat of Broadland, with the exception of the Common Areas.

c. "Living Unit" shall mean and refer to a building situated upon a Lot designed and intended for use and occupancy as a residence.

2. Members Easements of Enjoyment. Subject to these terms, conditions and provisions and such rules as may be promulgated by the Board of Directors of the Association, every member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot. In addition, every member may delegate, in accordance with the bylaws of the Association, his right and easement of enjoyment to members of his family, his guests only if accompanied by a member, and his tenants or contract purchasers who reside on a Lot owned by such member.

3. Title to Common Area. Declarant may retain legal title to the Common Areas or portions thereof until such time as, in the sole opinion of Declarant: 1) the purposes of the Declarant for retaining ownership of such Common Areas has been fulfilled, such purpose may include, but shall not be limited to, the combination of the Common Areas with other property in order to create one or more residential lots and 2) in the sole opinion of Declarant, the Association is able to maintain the Common Areas. After conveyance of Common Area(s) to the Association and until Resignation, Declarant may, if it so desires, maintain and make improvements to the Common Areas at its sole cost, but Declarant has no obligation to do so and the cost incurred by Declarant in so doing shall be a loan to the Association (repayable on such reasonable terms as the Board of Directors of the Association may determine), to be repaid by the Association by means of the assessments provided herein.

Article VII

Maintenance Assessments

A. Creation of Lien and Personal Obligation. Each owner of any Lot shall, by acceptance of the deed thereto, whether or not it shall be so expressed in each such deed or conveyance, be deemed to have covenanted and agreed to pay to the Association periodic assessments, special assessments, cleanup assessments, and charges for the enforcement of the payment of assessments as set forth herein. Such assessments shall be fixed, established and collected from time to time as provided in the bylaws. Such periodic, special, and cleanup assessments together with interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on and a continuing lien against the Lot upon which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorneys fees, shall also be the personal obligation of the owner of the Lot assessed at the time the assessment is made.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of enforcing these covenants, conditions and restrictions as set forth in this Declaration and of promoting the recreation, health, safety, enjoyment and welfare of the Members in the use of the Common Areas and, in particular, for the improvement, landscaping and maintenance of property and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas including, but not limited to, the payment of taxes and insurance thereon, repair and replacement and additions thereto, payment for services, including attorneys' and accountants' fees, labor, equipment, and materials, management and supervision necessary or incidental to such purposes as determined by the Board of Directors, repayment of funds advanced by the Declarant pursuant to Article V.G hereof, plus interest due thereon, expenses of collecting and accounting for assessments, and expenses for preparing and filing tax returns, the preparation, printing and distribution of the roster of members, and for the encouragement of high standards of landscaping, tree planting and maintenance of the Lots within the Addition and otherwise as provided in the Bylaws of the Association. All periodic assessments described in C. below and special assessments described in D. below must be fixed at a uniform rate for all Lots owned by members.

C. Periodic Assessments. The board of directors of the Association will, after consideration of current maintenance costs and future needs of the Association, fix the amount of the periodic assessment and the interval at which such assessment is payable.

D. Special Assessments. In addition to the periodic assessments authorized by C. above, the board of directors may levy in any year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, any unanticipated expense of the Association, including but not limited to, the cost of any construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto. In addition, special assessments may be assessed for the purpose of defraying, in whole or in part, the costs to enforce the payment of the assessments, including, but not limited to, court costs and attorneys fees.

E. Cleanup Assessments. The board of directors may assess against all Lots owned by Class C owners a cleanup assessment to reimburse the Association for the cost of removing trash, debris, and garbage from, and otherwise to mitigate any damage to, the streets, Lots and Common Areas within the Addition due to construction related activity. All cleanup assessment shall be assessed ratably against all Lots owned by Class C members.

F. Subordination to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon a Lot subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or other proceeding or conveyance in lieu of foreclosure. Such sale or transfer shall not relieve such Lot or its owner from liability for any assessments thereafter coming due nor from the lien of any such subsequent assessment.

G. Change in Assessments. Periodic assessments, special assessments and cleanup assessments may be changed by the board of directors at any time as they deem necessary. The

board will give each member written notice of the change, which change shall be effective on the next due date, or on such other effective date as may be determined by the board of directors.

H. Due Date of Assessments. The periodic assessments provided for herein shall become due and payable on the date specified by the board of directors and the due date of any special assessment shall be fixed by the resolution authorizing such assessment. The board of directors may, at its option, set the periodic assessments to be due in monthly, quarterly, semi-annual or annual installments and determine the due dates thereof, and such due dates may be changed again by the board of directors to monthly, quarterly, semi-annual or annual assessments as often as the board of directors may reasonably determine to be appropriate.

I. Duties of the Board of Directors. The board of directors shall prepare and maintain a roster of the Addition and assessments applicable thereto which shall be kept in the office of the Association or elsewhere as may be approved by the board of directors, and shall be open to inspection upon prior appointment by any owner. Written notice of assessments and of any subsequent changes thereto shall be sent to every owner subject thereto.

The Association shall upon request at any time furnish to any owner liable for assessments a certificate in writing signed by an officer of the Association, setting forth whether and to what extent assessments against Lots owned by that owner have been paid. A reasonable charge may be made by the board for the issuance of such certificate and such certificate shall be conclusively deemed evidence of payment of any assessment therein stated to have been paid.

J. Remedies of Association. If any assessments as provided herein are not paid when due, then the amount of such assessment shall, together with interest thereon and costs of collection thereof as hereinafter provided, forthwith become a continuing lien on the Lot against which such assessment was made and shall bind such Lot in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If any assessment is not paid within 15 days after its due date, at the option of the Association, the assessment shall be increased by a late charge of One Hundred Dollars and No/100 (\$100.00) and will bear interest from the date of delinquency at the rate of 10% per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the Lot against which such assessment is made and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys fees to be fixed by the court, together with cost of the action. No owner may waive or otherwise escape liability for the assessments provided for herein by nonusage of the Common Areas or abandonment of his Lot.

K. Exempt Property. All Common Areas and all properties exempt from taxation by the laws of the State of Texas, upon the terms and to the extent of such legal exemption, shall be exempt from the assessments, charges and liens created herein; provided, however, that no Lot on which a Living Unit has been constructed shall be exempt from said assessments, charges or liens.

Article VIII
Miscellaneous

A. Engaging in Political Activity. Reference is made to the Articles of Incorporation for the Association which preclude the Association from engaging in certain political activities.

B. Grass Cutting Standards for Class C Members. The Association shall be empowered to enforce, by proceedings at law or in equity, the standards established by the City of Colleyville for weeds, grass and uncultivated plants on all lots owned by Class C members.

C. Holiday Celebrations. In promoting decorations and activities relating to seasonal holidays, the Association and its Board of Directors and the Holiday Committee, if so constituted, shall use all reasonable means to ensure that all such decorations and activities are inoffensive in the context of the diversity of religious and secular beliefs held by the members and shall, as much as possible, not promote any particular religious ideology but shall honor the seasonal celebrations in a universal multicultural environment.

D. Committees. The activities of the Association may be conducted through committees as constituted from time to time in accordance with the bylaws.

E. Maintenance of Evergreen Screen. The Association shall maintain any and all evergreen screens as installed by the Declarant for the benefit of all Members of the Association.

F. Easements. All easements granted, reserved, conveyed, established, set forth and provided for in the Declaration, as amended, are perpetual and run with the land. In the event the restrictions, conditions and covenants of said Declaration are terminated or expire, the easements shall continue.

Except as specifically set forth herein above, the Declaration is unchanged and shall remain in full force and effect and shall govern the Addition.

Executed this 9th day of November, 2006.

DECLARANT:

BROADLAND LIMITED PARTNERSHIP

By: The David Bagwell Company,
its general partner

By: *David S. Bagwell*
David S. Bagwell, President

JOINDER:

The undersigned, being a lienholder of the property affected by the foregoing Declaration, joins in the execution hereof for the purpose of consenting to the covenants, conditions and restrictions therein contained and of subordinating said lien to said covenants, conditions and restrictions.

TEXAS STATE BANK

By:

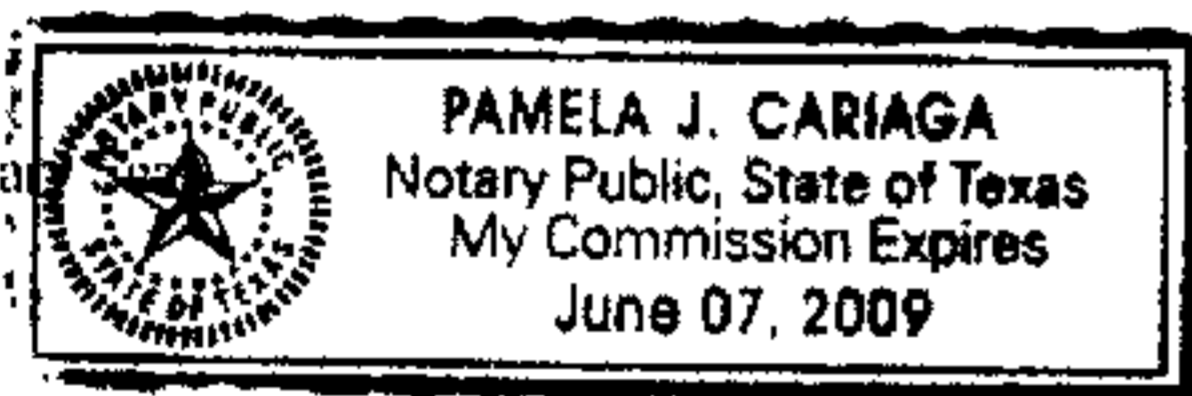
Wayne R. Reynolds
Printed Name: Wayne R. Reynolds
Title: Senior Vice President

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on the 9th day of November 2006, by David S. Bagwell, the President of David Bagwell Company, a Texas corporation, on behalf of said corporation in its capacity as general partner of Broadland Limited Partnership, a Texas limited partnership, on behalf of such partnership.

(Notary Seal)



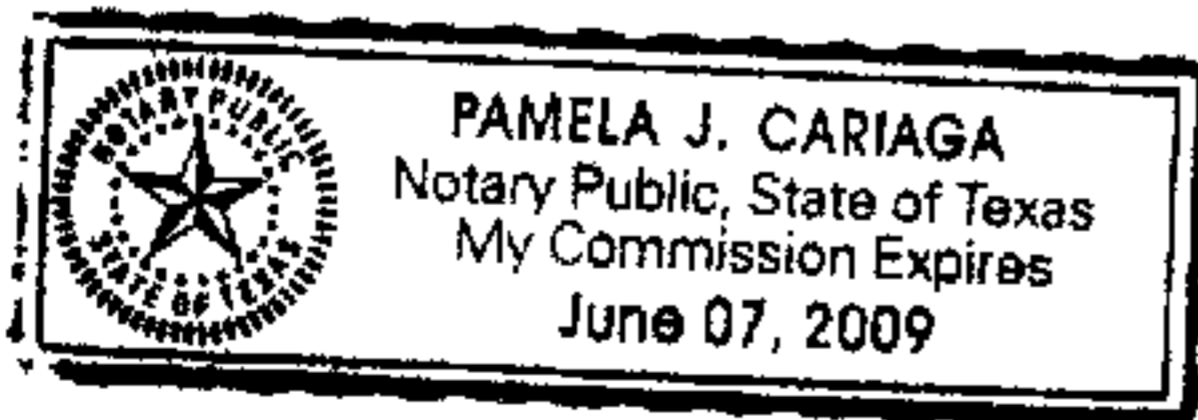
Pamela J. Cariaga
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF TARRANT

This instrument was acknowledged before me on the 9th day of November 2006, by Wayne R. Reynolds, Senior Vice President of Texas State Bank, on behalf of said association.

(Notary Seal)



Pamela J. Cariaga
Notary Public, State of Texas

CARRINGTON COLEMAN
901 MAIN ST STE 5500

DALLAS TX 75202

Submitter: CARRINGTON COLEMAN



SUZANNE HENDERSON
TARRANT COUNTY CLERK
TARRANT COUNTY COURTHOUSE
100 WEST WEATHERFORD
FORT WORTH, TX 76196-0401

DO NOT DESTROY
WARNING - THIS IS PART OF THE OFFICIAL RECORD.

Filed For Registration: 11/20/2006 04:00 PM
Instrument #: D206366537
OPR 8 PGS \$40.00

By: _____



D206366537

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE
OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR
RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.



CARRINGTON COLEMAN
901 MAIN ST STE 5500

DALLAS TX 75202

Submitter: CARRINGTON COLEMAN

SUZANNE HENDERSON
TARRANT COUNTY CLERK
TARRANT COUNTY COURTHOUSE
100 WEST WEATHERFORD
FORT WORTH, TX 76196-0401

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Filed For Registration: 01/29/2007 02:50 PM
Instrument #: D207031983
OPR 9 PGS \$44.00

By: _____



D207031983

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL OR USE
OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR
RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.