

Riverbank Homeowners Association

DECLARATION

Declaration of Restrictions filed 12-03-1973;
Clackamas County Recording Certificate # 73 37271
“DECLARATION OF RESTRICTIONS”

Amendment filed 02-06-1976;
Clackamas County Recording Certificate #76 3960
“AMENDED DECLARATION OF RESTRICTIONS AND SUPPLEMENTAL
DECLARATION OF RESTRICTIONS OF RIVERBANK AND RIVERBANK NO. 2,
CLACKAMAS COUNTY, OREGON”

Amendment filed 06-27-1984;
Clackamas County Recording Certificate #84 21739
“SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS RIVERBANK
AND RIVERBANK NO. 2, CLACKAMAS COUNTY, OREGON”

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS, that PAUL H. HEBB, hereinafter known as Declarant, does hereby declare as follows:

WHEREAS, Declarant is the owner of real property in Peach Cove, Clackamas, County, Oregon, according to the plat thereon on record in the office of the county Clerk of Clackamas County, Oregon known as Riverbank and Riverbank No. 2, hereinafter referred to as "said property", and

WHEREAS, Declarant desires to subject said property to the conditions, restrictions and charges for the benefit of said property, and its present and subsequent owners as hereinafter specified; and

WHEREAS, the power to enforce certain of said conditions, restrictions and charges is to reside in Declarant, and in case of transfer to Riverbank Home Owners Association, a non-profit corporation organized under the laws of the State of Oregon, hereinafter referred to as the Association, the power to enforce said conditions, restrictions, reservations and charges is to reside in the Association.

NOW, THEREFORE, Declarant hereby declares that the property described above is and shall be held and conveyed upon and subject to the conditions, covenants, restrictions, easements, reservations and charges hereinafter set forth:

ARTICLE I.

Wherever used in this Declaration, the following terms shall have the following meanings:

1.1 "Dwelling House" and "Garage" shall include both the main portion of such structures and all projections therefrom but shall not include the eaves of such structures, nor uncovered front porches or steps.

1.2 "Lot" means one of the numbered parcels on the plat referred to in the description of the property covered hereby; provided, however, that in the event Lot 9, Riverbank is further divided as hereinafter provided for then as to that parcel, "Lot" means each individual condominium, apartment, or rentable home.

1.3 "Building Site" means a numbered lot as shown on said property; provided, however, that the building site is not to be subdivided during the term of this Declaration, except for Lot 9 Riverbank as hereinafter provided for, in which case each individual condominium, apartment, or rental home shall be considered a "Building site".

1.4 "Street" means any street, highway or other thoroughfare as shown on said plat.

1.5 "Setback" means the minimum distance between the dwelling house or other structure referred to and a given street or property line.

1.6 "Street Frontage" means that portion of a lot or building site which borders on a street.

ARTICLE II. - CORPORATE MEMBERSHIP

2.1 Declarant, as owner of said property or of any other property in Clackamas County, Oregon, which as heretofore or may be hereafter platted as Riverbank and which he may hereafter acquire, and all future owners of record of one or more building sites on said property or on any other property which has heretofore been or may hereafter be platted as Riverbank or who, while holding a contract for purchase from the owner of any building site on said property or such other property which as heretofore been or may be hereafter platted as Riverbank are hereby declared members of the Riverbank Home Owners Association. Such ownership or such holding of contract of purchase shall be the sole qualification for membership in the Association and shall automatically terminate when such ownership shall terminate or be transferred. Each member of the Association shall permanently subject his property to the assessments and collection provisions contained herein.

2.2 The voting power and the property rights and interests of each member of the Association and the general rules applicable to all members by which the voting power and the property rights and interests respectively of each member may and shall be determined and fixed are as follows:

a. Upon all matters that come before the members of the Association, each member who is the owner (by deed or contract) of one such building site shall have one vote and each member who is such owner of more than one such building site shall have as many votes as there are provided, however, that in the case of joint ownership of a building site or building sites, the joint owners shall be considered as a single voting unit and entitled to one vote only for each building site so jointly owned.

b. Each member of the Association shall have an interest in all the property of the corporation as is represented by the ratio of the number of votes to which such member is entitled to the total number of numbered lots included within said property or within any other property which heretofore has been or which shall hereafter be platted as Riverbank; provided, however, that such interest is and shall be appurtenant to the building site within said property of which such member is the owner.

ARTICLE III. - ANNEXATION & AMENITIES

~~3.1 Upon the sale of a total of twenty (20) lots in Riverbank and Riverbank No. 2, the Declarant will build one tennis court and a gathering place on Tract "A" Riverbank No. 2. Declarant will convey tract "A" Riverbank No. 2 to the Riverbank Home Owners Association prior to December 31, 1975.~~ Deleted per Amendment dated 02-06-1976

3.1 Upon the sale of a total of twenty (20) lots in Riverbank and Riverbank No. 2, the declarant will build one tennis court and a gathering place on the following described property.

See Exhibit "A" attached

Declarant will convey said property to the Riverbank Home Owners Association upon completion of the tennis court and gathering place. Amended 02-06-1976

~~3.2 At any time before January 1, 1985 the Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties not in excess of ninety (90) total additional dwelling units, lots or building sites and the owners and occupants thereof will have full right to use the amenities set forth in Paragraph 3.1 upon assessment for their monthly share of Association expenses. Upon the sale of fifty (50) lots or building sites, the declarant, his successors and assigns agrees to construct one additional tennis court. All amenities to be constructed on Tract "A", Riverbank No. 2.~~
Deleted per Amendment dated 02-06-1976

3.2 At any time before January 1, 1985 the declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties not in excess of ninety (90) total additional dwelling units, lots or building sites and the owners and occupants thereof will have full right to use the amenities set forth in paragraph 3.1 upon assessment for their monthly share of Association expenses.

Upon the sale of fifty (50) lots or building sites, the declarant, his successors and assigns agrees to construct one additional tennis court on the property described in paragraph 3.1.
Amended 02-06-1976

ARTICLE IV. - RESTRICTIONS

4.1 No building site on said property shall be used for any purpose other than residential purposes.

4.2 No animals or fowls shall be raised, kept or permitted upon said property or any part thereof, excepting only domestic dogs, cats, horses and excepting caged pet birds kept within the dwelling house, providing that said dogs, cats, horses and pet birds are not

kept, bred or raised for commercial purposes or in unreasonable numbers and providing that horses may be kept only in accordance with applicable law and zoning restrictions.

4.3 No noxious or offensive trade or activity shall be carried on upon said property or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as a high-class residential district.

ARTICLE V. – CONSTRUCTION

5.1 Only one single-family dwelling house, designed for occupancy by not more than one family, may be constructed on any building site, together with a garage, which garage shall conform generally in architectural design and exterior materials and finish to the dwelling house to which it is appurtenant. No trailer, boat or tent shall be placed, erected, maintained or constructed on any building site for any purpose except that trailers and boats which can be and are stored completely within fully enclosed structures and are not used for living purposes, will not be in violation of those restrictions.

5.2 Lot 9, Riverbank can be used as sites for apartments, condominiums, or rental homes not exceeding 10 in number. In which case each individual apartment, condominium or rental home shall be considered to be a lot or building site. Use of Lot 9, Riverbank for 10 building sites is subject to approval of an adequate sewer system.

5.3 No building shall be in any manner occupied while in the course of original construction or until it complies with all requirements as to area and with all other conditions and restrictions applicable thereto. The construction of any building or structure shall be prosecuted with reasonable diligence continuously from the time of commencement until fully completed. No buildings constructed elsewhere shall be moved to or placed on said property except with the written approval of the Declarant or, after transfer of such power to the Association, by the Association.

5.4 Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or its duly authorized agent of structures or signs for the conduct of its business in connection with said property while the same, or any part thereof, is owned by Declarant.

5.5 No dwelling house, garage, shed, outbuilding, fence, wall or other structure upon any portion of said property shall be placed, erected, maintained or constructed and no alterations which would materially alter the exterior appearance of any such structures shall be made (except as may be erected, constructed, altered or maintained by Declarant or the Association) unless a complete set of plans and specifications therefor, including the exterior color scheme, together with a plot plan indicating the exact location on the building site, shall have been submitted to and approved in writing by Declarant or, after transfer of said power to the Association, by the Association, and a copy of such plans as finally approved deposited for permanent record with Declarant or the Association as the case may be. Said plans and specifications shall be submitted in writing for approval,

over the signature of the owner of the building site or over the signature of his duly authorized agent, on a form satisfactory to Declarant or the Association as the case may be. The approval of said plans and specifications may be withheld not only because of their non-compliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also because of the dissatisfaction of Declarant or the Association, as the case may be, with any or all other matters or things which, in the judgment of Declarant, or the Association as the case may be, would render the proposed structure inharmonious with the general plan of improvement of said property or with the structures erected on other building sites in the immediate vicinity of the building site upon which said structure is proposed to be erected.

5.6 Declarant, at his election, shall have the right to transfer all of his rights and powers under this Article to the Association and when so transferred, the Association shall be vested with all of the rights and powers and shall perform all of the duties of said Declarant expressed in this Article. The Association has, in its by-laws, provided for the appointment of three persons, who need not be members, to constitute a Review Board whose duties (in case of such transfer) shall be to assist the Association in all matters referred to in this Article and to perform such other functions as the association may assign to such Review Board from time to time.

5.7 Declarant or (in case of transfer) the Association may at any reasonable hour or hours, after reasonable notice, enter and inspect any of said property as to its maintenance or improvements to determine if there has been compliance with the provisions hereof; and the Declarant or (in case of transfer) the Association, and/or any agent, or officer thereof, shall not thereby be deemed guilty in any manner of trespass for such entry or inspection.

5.8 The records of Declarant or (in case of transfer) of the Association shall be conclusive evidence as to all matters shown by such records, showing that the plans and specifications for the improvements or other matters herein provided for have been approved, and that said improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Association by the Secretary thereof, shall be conclusive evidence that shall fully justify and protect any title company certifying, guaranteeing or insuring title to said property, or any portion thereof, or any lien thereon and for any interest therein as to any matters referred to in said certificate, and shall fully protect any purchaser or encumbrancer in acting thereon.

ARTICLE VI. – SETBACKS

6.1 Each dwelling house, garage or other structure shall have a set back of not less than fifteen (15) feet from each side and rearline of the building site on which it is located. Provided, however, on Lot 9 Riverbank said set back applies only to the total structures constructed on the said Lot 9, not to each individual apartment, condominium or rental home.

ARTICLE VII. - SIGNS AND EASEMENTS

7.1 No sign or other advertising device of any character shall be erected on any one lot or building site or maintained upon any part of said property except one sign not larger than 18" x 24", advertising the property for sale or for rent.

7.2 Declarant hereby reserves to himself, his successors and assigns, perpetual easements under, over and across strips of land five (5) feet in width running along and interior to the side lines and rear lines of each building site owned, except for those on Lot 9 Riverbank, for the purpose of erecting, constructing, maintaining and operating sewers and drainage systems, and poles, pipes, wires, cables, guys, anchors and conduits for lighting, heating, power, water, telephone and any other method of conducting and performing any public or quasi-public utility service or function beneath, upon, or above the surface of the ground within said five-foot strips of land, and Declarant similarly reserves the right to cut and/or trim any tree or other growth on such five-foot strips which may interfere with or menace the construction, maintenance or operation of said utilities.

ARTICLE VIII. – ASSESSMENTS

8.1 All said property (excepting streets or parks now or hereafter established; open spaces and areas maintained as park like strips or areas for planting purposes; land dedicated, used or taken or sold for public or community improvements or use; and lots owned by Declarant or successors which are not improved with a dwelling house) shall be subject to an annual charge or assessment as hereinafter specified, except that, if such charge or assessment is only for water service, each building site shall not be subject to such charge or assessment until water is hooked up on the building site; and, if such charge or assessment, or portion thereof, is for purposes other than water service, then each building site shall be subject only to that part of the assessment which does not apply to water service until water is hooked up on the building site. Deleted per Amendment dated 06-27-1984

8.1 All said property (excepting streets or parks now or hereafter established; open spaces and areas maintained as parklike strips or areas for planting purposes; land dedicated, used or taken or sold for public or community improvements or use; and lots owned by Declarant or successors which are not improved with a dwelling house) shall be subject to an annual charge or assessment as hereinafter specified. Amended 06-27-1984

8.2 Water: Said annual charge or assessment initially shall be five (\$5.00) dollars per month per bathroom plus a charge set by the Declarant or his successors and assigns based upon the square footage of lawn area. Said charges or assessments are subject to increase with increases in cost.

Other: The annual charge or assessment for maintenance, operation and improvements of the common area shall be set by the association in accordance with the procedure set forth in the bylaws of the association. Deleted per Amendment dated 06-27-1984

8.2 The annual charge or assessment for maintenance, operation and improvements of the common areas shall be set by the Association in accordance with the procedures set forth in the bylaws of the association. Amended 06-27-1984

8.3 The right to fix, collect and enforce the collection of such charges or assessments, including interest thereon, and expend the same, shall be vested in Declarant or his successors and assigns until such right shall be transferred by it to the Association by an instrument which shall be recorded in the office of the County Clerk of Clackamas County, Oregon.

8.4 Each such annual charge or assessment shall be fixed in advance on or about the 1st day of July of each year, commencing in 1973, covering the ensuing twelve months ending the 30th day of June of the following year. Each such charge or assessment shall be due and payable on the 15th day of October in the year which it is fixed, and if not then or theretofore paid shall thereafter be delinquent and bear interest at the rate of six percent (6%) per annum. Declarant or (after transfer of the right) the Association shall file in the office of the County Clerk of Clackamas County, State of Oregon, within 120 days after delinquency, a statement of the amount of any charges or assessments, together with interest as aforesaid, which have become delinquent with respect to any portion of said property and upon payment in full thereof shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessment with interest as aforesaid shall constitute a lien on the whole building site with respect to which it is fixed from the date the notice of delinquency thereof is filed in the office of the County Clerk of Clackamas County, State of Oregon, until the same is released as herein provided. Such lien may be enforced by the Declarant or (after transfer of the right) the Association in the manner provided by law with respect to a lien on real property. The property owner shall be liable for the costs, expenses and disbursements including reasonable attorney's fees of Declarant or of said Association of processing and, if necessary, enforcing said liens, all of which costs, disbursements, expenses and attorney's fees shall be secured by such lien.

8.5 The purchasers of portions of said property by the acceptance of deeds therefore, whether from Declarant or subsequent owners of said property or by the signing of contracts or agreements to purchase the same shall become personally obligated to pay such charges or assessments, including interest, upon the portion or portions of said property purchased or agreed to be purchased by them, and shall thereby become subject to the right and power of Declarant or (after transfer) of the Association to institute proceedings for the collection of such charges, assessments and interest and the enforcement of the liens securing the same. Such rights and powers shall continue in Declarant and (after transfer of the right) in the Association, and such obligations shall run with the land so that the successor owner of record or any portion of said property, and the holder or holders of contracts or agreements for the purchase thereof shall in turn become liable for the payment of such charges or assessments together with interest on such as may have become delinquent.

8.6 The proceeds received from such charges or assessments shall be kept in a commercial bank, in either a checking or savings account, or both, and shall be applied to

the payment of any or all of the following and may be accumulated as a reserve fund for one or more of the following:

a. Real and personal property taxes and assessments which may be levied by any municipal or other governmental authority upon the streets and parks now or hereafter opened, laid out or established and other open spaces maintained and acquired for the general use of the owners of lots or building sites within riverbank or any improvements thereon.

b. ~~Providing for water service for Riverbank and the structures thereon and the maintenance and repair of the water system. In this connection, Declarant or (after transfer) the Association may use monies collected hereunder to purchase water from outside Riverbank or to participate in the maintenance of a water system in cooperation with property owners or associations thereof whether within or beyond the boundaries of Riverbank.~~

~~In this connection, if water service is available to Riverbank through any organized water district or municipality or other public body, neither Declarant nor the Association shall have any responsibility with respect to any private water system from the time such water service first becomes available to River Bank and each owner of a building site shall be obligated to do whatever is necessary to hook up to such water service including any costs required for a water meter. Deleted per Amendment dated 06-27-1984~~

b Expenses incident to the enforcement of the restrictions, conditions, covenants, charges and agreements contained in this Declaration, and the collection of the charges or assessments provided for in this Article.

Amended 06-27-1984

c Expenses incident to the conduct of the business of the Association, and all licenses, franchises, or other taxes or assessments levied against the Association or payable by it. Amended 06-27-1984

d. Expenses incident to providing any other services as approved by a two-thirds majority of the members of the association. Amended 06-27-1984

e. None of the monies collected hereunder shall be paid to Declarant as a salary or other compensation. Amended 06-27-1984

ARTICLE IX. – WATER SERVICE

Upon the sale of a total of twenty (20) lots in Riverbank and Riverbank No. 2 Declarant may transfer to a corporation organized by the lot owners pursuant to ORS Chapter 554 or any similar statute authorizing landowners to incorporate themselves for the

purpose of furnishing their land with water for domestic use, all of the water system developed and now owned by Declarant which serves Riverbank and Riverbank No. 2. Amended 06-27-1984

ARTICLE IX X – TERM Amended 06-27-1984

9.1 10.1 In construing this Declaration, or any part thereof, stipulations which are necessary to make this Declaration or any of its terms or provisions reasonable are implied. Amended 06-27-1984

9.2 10.2 The determination by any court that any of the provisions of this Declaration are unlawful or void shall not affect the validity of any of the other provisions hereof. Amended 06-27-1984

9.3 10.3 All of the conditions, restrictions and charges set forth in this Declaration are imposed upon said property for the direct benefit thereof and of the owners thereof as a part of the general plan of development, improvement, building occupation and maintenance hereby adopted therefor by Declarant; and such conditions, restrictions and charges shall run with the land and continue and be in full force and effect until July 1, 1995, and shall as then in force, be continued automatically and without further notice from that time for a period of 25 years and thereafter for successive periods of 25 years each without limitation unless at least two years prior to July 1, 1995, or at least two years prior to the expiration of any successive 25-year period thereafter, a written agreement executed by the then record owners of 75% or more of said property then subject to this Declaration, exclusive of streets, parks and open spaces, be placed on record in the office of the County Clerk of Clackamas, County, Oregon, changing, modifying or extinguishing any of said conditions, restrictions or charges as to all or any part of the property then subject thereto in the manner and to the extent therein provided, in such event the unextinguished, unchanged and unmodified conditions, restrictions and charges as therein changed or modified shall continue in full force for successive period of 25 years each unless and until further changed, modified or extinguished in the manner herein provided; provided [sic], however, that said conditions, restrictions and charges or any of them, may be changed, modified or extinguished at any time, by an instrument executed by the declarant or (after transfer) the Association, acting by its President and Secretary, under authority of a resolution to that effect adopted by a majority of 75% or more of the votes cast in favor of such resolution at any meeting of the members of the Association called for that purpose upon such notice to said members as may be prescribed by the Bylaws of said Association, if the transfer has been made; provided, further, that Declarant also reserves to himself, his heirs and assigns, the right and power, so long as the ownership of the affected property shall be in the Declarant, to change any of the requirements contained herein pertaining to setbacks as to said property. The foregoing provisions in this subparagraph **9.3 10.3** contained shall not affect the perpetual utility easements hereinbefore reserved. Amended 06-27-1984

9.4 10.4 Said annual charges or assessments may nevertheless be terminated on July 1, 1995, or on the first day of any year thereafter with the written consent of the owners

of record of at least 75% or more in the area of said property then subject to said charges or assessments. **Amended 06-27-1984**

ARTICLE XI - ENFORCEMENT COSTS **Amended 06-27-1984**

In any legal or equitable proceedings by Declarant or the Association, or both, or the owner or owners of any portion of said property or their and each of their legal representatives, heirs, successors and assigns, for the enforcement or to restrain a violation of this Declaration or any provisions hereof, the losing party shall pay to the prevailing party such attorneys' fees as the Court may deem reasonable in such suit or action. However, nothing contained in this Declaration or in any form of deed which may be used by Declarant or his successors, heirs and assigns, in selling said real property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or re-entry for breach or violation of any one or more of the provisions hereof.

ARTICLE XII – SURVIVAL **Amended 06-27-1984**

The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by the Declarant, the Association, and the owner or owners of any portion of said property, and their and each of their legal representatives, successors, heirs and assigns, and failure by Declarant or by the Association or by any of the property owners or their legal representatives, heirs, successors or assigns to enforce any of such conditions, restrictions or charges herein contained shall in no event be deemed a waiver of the right to do so.

ARTICLE XIII – ASSIGNMENT **Amended 06-27-1984**

Any or all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned; and upon any such assignment and assume such duties or by exercising any of the rights or powers or assuming any of said duties, it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein, all the members of the Association are deemed to have consented to any such assignment or to have approved any merger or consolidation which is duly authorized by the Association. In the case of any assignment by Declarant of all or any of his rights, powers, and duties to the Association, shall be deemed accepted by the Association without any further act of consent or acceptance by the members thereof and the Association shall thereafter assume such duties or obligations.

EXHIBIT "A"

IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON

Beginning at the most easterly northeast corner of Lot 4, Block II, Riverbank No. 2, said corner being on the westerly right of way line of River Lane Road; thence on a 725 foot radius curve to the right (delta 07° 08' 50"), a distance of 90.44 feet to a point on the northerly line of said plat; thence along said northerly line of a 20 foot radius reverse curve to the left (delta 115° 51' 13"), a distance of 40.44 feet to a point; thence North 53° 18' 13" west 205.20 feet to a point; thence North 20° 50' 24" West 200 feet to a point; thence Westerly 200 feet, more or less, to a point on the easterly right of way line of River Lane Road, which is 200 feet north from the intersection of the northerly line of that certain 50 foot road and parking easement across Tract A as shown on said plat with the easterly right of way line of River Lane Road; thence 20° 52' 10" West along said Easterly right of way line 200 feet to said intersection; thence continuing South 20° 52' 10" West 50.20 feet to the southerly line of said easement; thence Southeasterly along said southerly line 250 feet, more or less, to the most northerly corner of said Lot 4, Block II; thence South 53° 18' 13" East 176.76 feet to the place of beginning. Amended 02-06-1976