

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRIARGROVE PARK, SECTIONS I THROUGH VI**

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRIARGROVE PARK, SECTIONS I THROUGH VI**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS COUNTY §

WHEREAS, the requisite number of Owners (as hereinafter defined) approved that certain "Amended and Restated Restrictions, Reservations and Covenants for Briargrove Park, Sections I, II, III, IV, V and VI", filed of record on May 8, 1996, in the Official Public Records of Real Property of Harris County, Texas under County Clerk's File No. R916342, which instrument imposes various covenants, conditions, restrictions, easements, charges and liens upon the following real property subdivisions (all of such subdivisions being the Property, as hereinafter defined):

Briargrove Park, Section I, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Volume 72, Page 19, of the Map Records of Harris County, Texas;

Briargrove Park, Section II, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Volume 132, Page 37 of the Map Records of Harris County, Texas and replatted in Volume 215, Page 83, of the Map Records of Harris County, Texas;

Briargrove Park, Section III, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Volume 128, Page 67 of the Map Records of Harris County, Texas;

Briargrove Park, Section IV, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Volume 174, Page 22 of the Map Records of Harris County, Texas;

Briargrove Park, Section V, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Volume 178, Page 129 of the Map Records of Harris County, Texas; and

Briargrove Park, Section VI, subdivision in Harris County, Texas according to the map or plat thereof recorded in Volume 215, Page 124, of the Map Records of Harris County, Texas,

WHEREAS, the Amended and Restated Restrictions, Reservations and Covenants for Briargrove Park, Sections I, II, III, IV, V and VI was corrected by that certain document entitled "Corrections to Amended and Restated Restrictions, Reservations, and Covenants for Briargrove Park Sections I, II, III, IV V and VI" dated July 13, 2001 and filed of record in the Official Public Records of Real Property of Harris County, Texas under County Clerk's File No. V208914 (as amended and corrected, the "Existing Restrictions");

WHEREAS, the Existing Restrictions provide for amendment thereof by an instrument executed by all of the then members of the Board of Directors (as hereinafter defined) of the Association (as hereinafter defined) certifying that Owners of a majority [50% + 1] of the Lots (as hereinafter defined) comprising the Property agreed to change the Existing Restrictions, in whole or in part, and filed for record in the Official Public Records of Real Property of Harris County, Texas; and

WHEREAS, Owners representing not less than a majority of the Lots comprising the Property have agreed to amend and restate the Existing Restrictions for the mutual benefit of the Owners of the Property;

NOW, THEREFORE, the undersigned, being all of the members of the Board of Directors of the Association, execute this Declaration (as hereinafter defined) for the purpose of certifying that Owners of not less than a majority of the Lots comprising the Property have agreed to amend and restate the Existing Restrictions in its entirety, as set forth in this Declaration. On the Effective Date of this Declaration (as hereinafter defined), this Declaration supersedes the Existing Restrictions.

ARTICLE I
Definitions

SECTION 1.1. DEFINITIONS. As used in this Declaration, the terms set forth below will have the following meanings:

A. ANNUAL MAINTENANCE CHARGE - The annual assessment made and levied by the Association against each Owner and such Owner's Lot in accordance with this Declaration.

B. ARCHITECTURAL CONTROL COMMITTEE - The Architectural Control Committee of the Association established and empowered in accordance with Article III of this Declaration.

C. ARCHITECTURAL GUIDELINES - The Architectural Guidelines for the Subdivision adopted and published from time to time by the Board of Directors and the Architectural Control Committee.

D. ARTICLES OF INCORPORATION - The Articles of Incorporation of the Association.

E. ASSOCIATION - Briargrove Park Property Owners, Inc., a Texas non-profit corporation, its successors and assigns.

F. BAYOU LOTS - Lots in Briargrove Park Section I, which back up to Buffalo Bayou, and which are identified in Section 2.4.A.(ii)(b) of this Declaration.

G. BOARD or BOARD OF DIRECTORS - The Board of Directors of the Association.

H. BYLAWS - The Bylaws of the Association as amended and restated from time to time.

I. COMMON AREA - Any real property now owned or hereafter acquired by the Association for the common use and benefit of the Owners, together with all Common Area Improvements thereon.

J. COMMON AREA IMPROVEMENT - Any improvement owned by the Association and now or hereafter located in, on or under the Common Area, including but not limited to, the Subdivision swimming pool, tennis courts, playground area, equipment and pavilion, restroom facility, clubhouse, principal office of the Association, parking area, and all equipment, furnishings, and appurtenances related to the foregoing improvements.

K. DECLARATION - This Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Briargrove Park, Sections I through VI.

L. EFFECTIVE DATE - The date this Declaration is filed for record in the Official Public Records of Real Property of Harris County, Texas.

M. FOOTPRINT - The area of the ground (first) floor slab or alternative foundation permitted under Section 2.3.F (i) of this Declaration of a Residential Dwelling, garage and other areas contained within the poured foundation slab delineated by the foundation blueprint submitted to the Architectural Control Committee as part of the Plans for an Improvement.

N. IMPROVEMENT - A Residential Dwelling, garage, building, structure (including without limitation, a swimming pool, outdoor hot tub, reflecting pond, sauna, whirlpool, lap pool, or similar water amenity, tennis court, greenhouse, playhouse, playground equipment, tree house, pavilion, gazebo, patio or deck cover, or post light), fixture, fence, driveway, sidewalk, or walkway constructed or placed or to be constructed or placed on a Lot; a removable or transportable structure placed or to be placed on a Lot, whether or not affixed to the land, including without limitation, a storage shed; and an addition to or modification of an existing Residential Dwelling, garage, building, structure, fixture, or fence, driveway, sidewalk, or walkway constructed or placed or to be constructed or placed on a Lot.

O. JUDGMENT - The judgment rendered in Briargrove Park Property Owners, Inc., et al. v. Southern Investors Construction Co., Inc. et al., Cause No. 764,636 in the 129th Judicial District Court, recorded at Volume 702, Page 648, in the Deed Records of Harris County, Texas.

P. JUDGMENT WALL - The masonry wall traversing Lots in Briargrove Park Sections IV, V and VI, which serves as an exterior perimeter wall of the Subdivision and resulted from and is controlled by the terms of the Judgment.

Q. LOT or LOTS - Each of the numbered plots of land shown on the Plats.

R. MAINTENANCE FUND - Any accumulation of the Annual Maintenance Charges collected by the Association in accordance with the provisions of this Declaration and interest, penalties, assessments and other sums and revenues collected by the Association pursuant to the provisions of this Declaration.

S. MAJOR ADDITION - An addition or a modification to an existing Residential Dwelling, garage and/or other Improvement on a Lot which enlarges the foundation area (i.e., the Footprint) of such Residential Dwelling, garage and/or other Improvement or, if the foundation area of such Residential Dwelling, garage and/or other Improvement is not enlarged, if the Architectural Control Committee, acting reasonably and in good faith, determines that the addition or modification to such Residential Dwelling, garage and/or other Improvement is a major addition or modification (such as, by way of example and not in limitation, the addition of an upper story living area).

T. MEMBER or MEMBERS - All Owners of Lots who are members of the Association as provided in Article IV of this Declaration.

U. MEMBER IN GOOD STANDING - A Member who is not delinquent in the payment of any Annual Maintenance Charge or Special Assessment levied by the Association against such Member's Lot, or any interest, late charges, costs, or reasonable attorney's fees added to such assessment under the provisions of this Declaration or as provided by law, (b) a Member who does not have any condition on his Lot which violates any provision of this Declaration, the Architectural Guidelines, or the Rules and Regulations, which has progressed to the stage of a certified demand for compliance by the Association, or beyond, and which remains unresolved as of the date of determination of the Member's standing, and (c) a Member who has complied or is then complying with all terms of a judgment obtained against him by the Association, including the payment of all sums due to the Association by virtue of such judgment.

V. MORTGAGE - A security interest, mortgage, deed of trust, or lien instrument granted by an Owner to secure the payment of a loan made to such Owner, recorded in the Official Public Records of Real Property of Harris County, Texas, and creating a lien or security interest encumbering a Lot and some or all Improvements thereon.

W. NEW RESIDENTIAL DWELLING - (i) A Residential Dwelling constructed after the Effective Date of this Declaration or (ii) a Residential Dwelling in existence as of the Effective Date of this Declaration if more than fifty percent (50%) of the exterior structure of the existing Residential

Dwelling and garage combined is being replaced or reconstructed after the Effective Date, (a) excluding normal periodic replacement of the roofing materials and (b) excluding replacement of a Residential Dwelling under Section 2.4.E of this Declaration.

X. NOTICE OF COMPLETION - The notice described in Section 3.7 of this Declaration.

Y. NOTICE OF NON-COMPLIANCE - The notice described in Section 3.9 of this Declaration.

Z. OWNER or OWNERS - Any person or persons, firm, corporation or other entity or any combination thereof that is the record owner of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as a security for the performance of an obligation.

AA. PERIMETER LOTS - Any Lot in the Subdivision with a rear property line that is adjacent to either a residential lot in another subdivision (including Briar Court) or any other real property that is not subject to this Declaration.

BB. PLANS - The final construction plans, drawings, and specifications of a Residential Dwelling or other Improvement of any kind to be erected, placed, constructed, maintained or altered on a Lot including, without limitation, the plans and drawings required under Section 3.2.B of this Declaration.

CC. PLAT or PLATS - The maps or plats for Briargrove Park, Sections I, II, III, IV, V and VI and the Common Area, recorded in the Map Records of Harris County, Texas, and any replat(s) thereof.

DD. PROPERTY - All of the real property comprising Briargrove Park, Sections I through VI, a subdivision in Harris County, Texas, according to the Plats.

EE. RESIDENTIAL DWELLING - The single family residence and appurtenances to such residence constructed on a Lot.

FF. RULES AND REGULATIONS - Rules adopted from time to time by the Board of Directors concerning the management and administration of the Subdivision for the use, benefit and enjoyment of the Owners.

GG. SPECIAL ASSESSMENT - A special assessment levied by the Board of Directors as provided in Section 5.9 of this Declaration.

HH. SUBDIVISION - The Property, including the roads and streets shown on the Plats and any waterways within the areas shown on the Plats.

II. SUBMISSION FEE - The fee described in Section 3.2.C of this Declaration.

JJ. SUBSTANTIAL COMPLETION - With respect to a New Residential Dwelling or a Major Addition, the earliest of either the date on which a certificate of occupancy is issued by the City of Houston or, if a certificate of occupancy is not required, the date the Residential Dwelling or Major Addition is capable of being used for its intended purposes.

ARTICLE II
General Provisions Relating to Use and Occupancy

SECTION 2.1. USE RESTRICTIONS.

A. GENERAL. The Property must be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration.

B. SINGLE FAMILY RESIDENTIAL USE.

(i) Single Family Residential Purpose; Prohibited Uses. Each Owner must use such Owner's Lot and the Residential Dwelling on such Lot for single family residential purposes only. As used herein, the term "single family residential purposes" is deemed to refer to both the type of structure erected on the Lot and the use of the Lot and specifically prohibits, without limitation, any duplex apartment or house, any other apartment, any multi-family dwelling (including, without limitation a townhouse, condominium, hotel, or boarding house), hospital, nursing home, childcare facility, halfway house, home for the mentally retarded or other group home (except to the extent the enforceability of this provision may be pre-empted by applicable law); or the use for any business, professional or other commercial activity of any type, unless such business, professional or commercial activity is unobtrusive and merely incidental to the primary use of the Lot and the Residential Dwelling for residential purposes. The term "unobtrusive" means, without limitation, that there is no physical evidence of a business, office, professional, or commercial activity from the street or a neighboring Lot, including without limitation: (i) no business, professional, or commercial symbol, structure, logo, icon, flag or sign displayed on the Lot; (ii) no related audio or visual displays (by any means) anywhere on the Lot or on a vehicle parked on the Lot or on a street in the Subdivision; (iii) no clients, customers, employees, contractors, subcontractors, vendors, or the like who go to or on the Lot for any business, professional, or commercial related purpose on a regular basis; and (iv) no noise, odor, or vehicle and/or pedestrian traffic resulting from the business, professional or commercial activity. The allowed incidental business, professional, or commercial activity specifically excludes, without limitation, food service, industrial, manufacturing, warehousing, motor vehicle and equipment repair or storage activities, kennels, aviaries, or any other commercial enterprises involving animals, or any other business activity that may detract from the residential character of the Subdivision. The provisions of this Section will not prevent a living area which is part of a garage structure from being used by a member of the family occupying the Residential Dwelling on the Lot or a bona fide domestic worker, caregiver, or nanny domiciled with the family occupying the Residential Dwelling on the Lot.

(ii) Other Prohibited Uses. No Owner will use or permit such Owner's Lot or Residential Dwelling to be used for any purpose that would (i) constitute a public or private nuisance, which determination may be made by the Board of Directors in its reasonable, good faith judgment; (ii) constitute a violation of this Declaration or any applicable law; or (iii) unreasonably interfere with the use and occupancy of the Subdivision by other Owners.

(iii) Leasing. Lots may be leased for residential purposes only. No Owner will be permitted to lease such Owner's Lot for hotel or transient purposes, which for purposes of this Section 2.1.B is defined as a period of less than six (6) months. No Owner will be permitted to lease less than the entire Lot together with all Improvements on the Lot. An Owner who leases his Lot is not relieved from any obligation to comply with the provisions of this Declaration

(iv) Occupancy. No Residential Dwelling will be occupied by more persons than the total number of bedrooms in the Residential Dwelling multiplied by the two (2); provided that, this restriction will not be applicable to the immediate members of a single family (i.e., husband, wife, children and a domestic worker, caregiver or nanny); for the purpose of this provision, a domestic worker,

caregiver or nanny will be considered to be an immediate member of the family occupying the Residential Dwelling.

C. **PASSENGER VEHICLES.** Except as provided in Section 2.1.D of this Declaration, no Owner, lessee, or occupant of a Lot, including all persons who reside with such Owner, lessee or occupant of the Lot, will park, keep, or store any vehicle on a street in the Subdivision or any portion of a Lot that is visible from a street in the Subdivision or a neighboring Lot, other than an operative passenger vehicle or a permitted pick-up truck. No vehicle will be parked on an unpaved portion of a Lot. Notwithstanding the foregoing, no inoperative vehicle, including a passenger vehicle or permitted pick-up truck, will be kept anywhere on a Lot in view from a street or an adjacent Lot or in the street in front of a Lot. For purposes of this Declaration, a vehicle is deemed "inoperative" if it does not display all current permits, licenses, and license plates required in the State of Texas for such vehicle, or, if displaying a permit, license, or license plate issued by another state, would be ineligible to obtain the required permits, licenses, and license plates from the State of Texas; it is on a jack or blocks; it does not have fully inflated tires; or it is not otherwise capable of being legally operated on a public street or right of way. The term "passenger vehicle" is limited to (i) a vehicle which displays a passenger vehicle license plate issued by the State of Texas or which, if displaying a license plate issued by another state, would be eligible to obtain a passenger vehicle license plate from the State of Texas, and (ii) a sport utility vehicle used as a family vehicle. For purposes of this Declaration, the term "permitted pick-up truck" means a pick-up truck with one (1) ton or less capacity which has not been adapted or modified for commercial use.

D. **OTHER VEHICLES.** No boat trailer, boat, travel trailer, commercial vehicle, mobile home (with wheels), motor home, recreational vehicle, camper, or similar vehicle or device of any kind will be kept on the street in front of a Lot or in a driveway in excess of seventy-two (72) hours during any calendar month; provided, however, such a vehicle or device may be kept on a Lot for more than seventy-two (72) hours during any calendar month if parked in the garage with the door closed or behind a fence so that it is screened from view from a public street and from adjoining Lots at ground level. A boat trailer, boat, travel trailer, mobile home (with wheels), motor home, recreational vehicle, camper or similar vehicle or device of any kind that is not parked in the garage must be parked on a parking surface that has been approved in writing by the Architectural Control Committee. No boat trailer, boat, travel trailer, commercial vehicle, mobile home (with wheels), motor home, recreational vehicle, camper, or similar vehicle or device of any kind will be occupied or otherwise used for residential purposes, temporarily or permanently at any time the vehicle is parked in the Subdivision.

E. **VEHICLE REPAIRS.** No passenger vehicle, pick-up truck, mobile home trailer, recreational vehicle, boat or other vehicle of any kind will be constructed, reconstructed, or repaired on a Lot if such activity lasts more than seventy-two (72) hours in a calendar month and is visible from a street in the Subdivision or a neighboring Lot at ground level. No vehicle repair work will be or become offensive to surrounding residents by reason of noise, odor, dust or the like.

F. **NUISANCES.** No Lot or Residential Dwelling or other Improvement on a Lot will have any conspicuous infestation of pests, rodents, insects or other vermin or any accumulation of trash, debris, or other waste which the Board of Directors, acting reasonably and in good faith, determines to be offensive to surrounding residents or hazardous to the health or well-being of surrounding residents. No condition or activity will be permitted on a Lot which the Board of Directors, acting reasonably and in good faith, determines to be unsightly or offensive to surrounding residents by reason or noise, odor, dust, fumes or the like. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, will be used or placed on a Lot in such a manner so as to become a nuisance. No nuisance will be permitted to exist or operate upon a Lot. For purposes hereof, a nuisance is an activity or condition on a Lot which the Board of Directors, in its reasonable, good faith judgment, determines to be offensive or an annoyance or hazardous to the health or well being of surrounding residents of ordinary sensibilities and/or which is reasonably determined to reduce the desirability of a Lot. The Board of Directors' reasonable, good faith determination that a condition or activity is a nuisance will be conclusive and binding on all parties.

G. CLOTHES DRYING. No outside clothesline or other outside facilities for drying or airing clothes, bedding or similar articles will be erected, placed or maintained on a Lot if visible from a street in the Subdivision or a neighboring Lot at ground level. No clothing, bedding or similar articles will be aired or dried outside if visible from a street in the Subdivision or a neighboring Lot at ground level.

H. SIGNS; DECORATIONS. No sign will be placed or maintained on a Lot if visible from a street in the Subdivision or a neighboring Lot at ground level except:

(i) street signs and such other signs as may be required by applicable law;

(ii) during the time of construction [defined to be from the date that construction commences until the fourteenth (14th) day after Substantial Completion] of a New Residential Dwelling or a Major Addition, one (1) ground mounted job identification sign having a face area not larger than five (5) square feet;

(iii) one (1) ground mounted "for sale" or "for lease" sign, not more than five (5) square feet, which is similar in appearance to other signs customarily used in Harris County, Texas, to advertise residential properties for sale or lease;

(iv) on any Lot, one (1) ground mounted sign not more than one (1) square foot located in the front yard within five (5) feet of the Residential Dwelling, and on a corner Lot, a second ground mounted sign not more than one (1) square foot located in the side yard within five (5) feet of the Residential Dwelling providing notice of security protection for such Lot;

(v) political signs not larger than four (4) feet by six (6) feet to be displayed only for the period of time before and after the date of the election which applicable law requires be allowed; and

(vi) non-commercial holiday and special occasion signs or school/university signs, such as signs announcing birthdays, births or seasonal events, erected for a temporary period of time not to exceed ten (10) days prior to the event and ten (10) days after the event.

This Section 2.1.H will not be construed to prevent seasonal or holiday decorations, which may be placed on a Lot or Residential Dwelling for a temporary period of time not to exceed thirty-five (35) days prior to the holiday and twenty (20) days after the holiday. The Association or any individual authorized to act on its behalf has the right to remove any sign, advertisement, billboard, poster or advertising device which is placed on a Lot in violation of the provisions of this Declaration and in so doing will not be subject to liability for trespass or other tort in connection with or arising out of such removal.

I. OIL AND GAS OPERATIONS. No derrick or other structure designed for the drilling of oil or gas will be placed or maintained on a Lot, and no oil drilling, oil or gas development, oil refining, quarrying, or mining, of any kind will be permitted, pursued, or maintained on a Lot.

J. OTHER PERMITTED USES. Tract B, Section I, as shown on the Plat, may be used for a sewage lift station site until such time as it is abandoned for that use. When such abandonment occurs, Tract B must be used for single family residential purposes only and divided equally and automatically into two (2) parts and the adjacent half will become part of and the property of the then Owners of the adjoining Lots 854 and 855, Block 31, Section I. Tract C is unrestricted. Lots 30 and 31, Block 1, Section I, may be used for water well sites, water storage and pumping, utility and subdivision maintenance headquarters and storage, until such time as they are abandoned for those uses. When such abandonment occurs, Lots 30 and 31, Block 1, Section I, must be used only for single family residential purposes.

K. GARAGE AND ESTATE SALES. No garage sale, rummage sale, moving sale, or similar activity is permitted on a Lot; provided, however, an estate sale is permitted if the sale is (i) held as the result of the death of the Owner of the Lot on which the estate sale is conducted or as the result of the Owner of the Lot permanently moving to an assisted living care facility or a nursing home and (ii) involves only the sale of personal property owned by such Owner. A request for permission to hold an estate sale must be submitted to the Association in writing by mailing or delivering the request to the Association's principal office so that it is received no later than seven (7) days prior to the proposed date of the sale; the written request must include the date of death of the Owner of the Lot or the date the Owner moved or will be moved to the assisted living care facility or nursing home and the dates the sale will be conducted. The duration of a permitted estate sale will be not more than three (3) consecutive days.

L. TRASH; TRASH CONTAINERS: No garbage or trash, or garbage or trash container, will be maintained on a Lot so as to be visible from a street in the Subdivision or a neighboring Lot at ground level, except to make the same available for collection. Garbage, rubbish, lawn clippings and trimmings, or other items to be picked up at the curbside by the garbage collector servicing the Subdivision or containers holding the same must not be placed on the curbside of a Lot earlier than the day before the scheduled garbage pickup for that Lot. Any such garbage, rubbish, lawn clippings and trimmings, or other items or containers holding the same not so picked up by the garbage collector must be removed from the curbside before midnight on the day of the regularly scheduled garbage pickup. Trash made available for pickup must be placed in tied trash bags or covered containers, or as otherwise provided in a trash disposal contract entered into by the Association.

SECTION 2.2. ALTERATION, MAINTENANCE, AND REPAIRS.

A. ALTERATIONS. Subject to the provisions of Article III of this Declaration and the Architectural Guidelines, each Owner has the right to modify, renovate, alter, repair, rebuild, decorate, redecorate or improve the Residential Dwelling on such Owner's Lot, provided that all such action is performed with a minimum inconvenience to other Owners and does not constitute a nuisance. Notwithstanding the foregoing, the Board of Directors has the authority to require an Owner to remove or eliminate any object situated on such Owner's Residential Dwelling or Lot that is visible from a street in the Subdivision or any other Lot if, in the Board's reasonable good faith judgment, such object detracts from the appearance and/or harmonious design of the Subdivision.

B. MAINTENANCE OF IMPROVEMENTS. No Residential Dwelling or other Improvement on a Lot (including recreational facilities and other amenity Improvements permitted under Sections 2.3 K and 2.3 L and post lights required under Section 2.3 G of this Declaration) will be permitted to fall into disrepair, and each Owner of a Lot, at such Owner's sole cost and expense, must at all times keep the Residential Dwelling and other Improvements on such Owner's Lot in a neat and habitable condition, in good working order and repair, and adequately painted or otherwise finished.

C. MAINTENANCE OF LOTS. The Owner or occupant of each Lot must at all times keep such Lot in a neat and habitable condition and must keep all weeds, grass, trees, shrubs, bushes, and other foliage thereon cut in a sanitary, healthful, and attractive manner. Dead, diseased or damaged trees, shrubs, or bushes, or any foliage which may create a hazard to property or person on a Lot or adjacent Lot must be promptly pruned or removed; provided, however, all trees on a Lot must be preserved, protected, maintained, removed, and replaced in the manner required by this Declaration and the Architectural Guidelines. In no event will an Owner or occupant use a Lot for the storage of materials and equipment (except for normal residential requirements or incident to construction of Improvements on such Lot as herein permitted) or permit the accumulation or dumping of garbage, trash, extra soil, or rubbish of any kind thereon. Under no circumstances will an Owner or occupant burn any garbage, trash, debris, rubbish, or vegetation of any kind on a Lot. The Owner or occupant of a Lot must construct and maintain a suitable fence or enclosure approved in writing by the Architectural Control Committee to screen yard

equipment, wood piles, and storage piles that are incidental to normal residential requirements from public view.

D. **FAILURE TO MAINTAIN.** In the event the Owner or occupant of a Lot fails to maintain the Residential Dwelling or other Improvements on such Owner's or occupant's Lot or fails to maintain such Owner's Lot in a neat and habitable manner as required by this Declaration, and such failure continues for a period of fifteen (15) calendar days after delivery of written notice of such failure from the Association to the Owner, the Association may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause the Residential Dwelling or other Improvements on the Lot to be placed in good working order, repaired, and painted or otherwise finished, cause such Lot to be made neat and habitable, mowed, edged and cleaned, repair the post lights, and do every other thing necessary to secure compliance with this Declaration, and may charge the Owner of such Lot for the cost of such work. The Board of Directors has the exclusive authority to determine whether an Owner is maintaining such Owner's Residential Dwelling, other Improvements and Lot in accordance with the standards of the Subdivision and this Section 2.2 of this Declaration and the Board's reasonable, good faith determination will be conclusive and binding on all parties. The Owner agrees by the purchase of such Lot to pay the cost of such work, plus fifty percent (50%) of such costs for overhead and supervision, immediately upon receipt of a written invoice for such costs and charges. Payment of such costs and charges will be secured by the lien created for the benefit of the Association in Article V of this Declaration and will be enforceable in the same manner provided in Article IX of this Declaration. Interest thereon at the rate set forth in Section 5.2 of this Declaration will begin to accrue on such sum on the thirtieth (30th) day after the written invoice is delivered to the Owner.

SECTION 2.3. TYPE OF CONSTRUCTION AND MATERIALS.

A. **TYPES OF STRUCTURES.** No structure will be erected, altered, placed, or permitted to remain on a Lot other than (i) one (1) detached, single family Residential Dwelling not to exceed the height limitations set forth in Section 2.4.B of this Declaration, together with an attached or detached private garage capable of housing or sheltering not less than two (2) and not more than four (4) vehicles, and (ii) the accessory buildings and structures permitted in this Declaration and the Architectural Guidelines, all of which must be approved in writing by the Architectural Control Committee in accordance with Article III of this Declaration. For purposes of this Declaration, an attached garage is a garage that shares a common wall with the Residential Dwelling located on the Lot.

B. **TEMPORARY STRUCTURES.** Except as otherwise provided in this Section 2.3.B, no structure of a temporary character, dumpster, trailer, mobile home (without wheels and whether or not attached to a foundation), modular or prefabricated home, tent, shack, barn, or other outbuilding structure or building, will be placed on a Lot or adjacent to a Lot, either temporarily or permanently. Notwithstanding the foregoing, (i) one (1) construction office or trailer and/or one (1) dumpster may be placed on a Lot in accordance with the Architectural Guidelines during the construction of a New Residential Dwelling or Major Addition on such Lot, and (ii) temporary structures or equipment used for a party or similar type of special event (e.g., a tent or play equipment) may be installed for periods not to exceed ninety-six (96) hours in duration. A construction office, trailer or dumpster must be removed from the Lot within fifteen (15) days after Substantial Completion. No residence house, garage, or other structure will be moved onto a Lot from another location.

C. **GARAGES, CARPORTS, PORTE-COCHERES.**

(i) General: No carport, porte-cochere, or garage will be constructed on a Lot without the prior written consent of the Architectural Control Committee. A porte-cochere is a covered but otherwise open shelter for a vehicle which extends from, and is an integral part of, a Residential Dwelling from the standpoint of both appearance and construction.

(ii) Lot with Residential Dwelling Existing as of Effective Date: Each Lot on which a Residential Dwelling exists as of the Effective Date of this Declaration must have either one (1) garage capable of housing or sheltering not less than two (2) or more than four (4) vehicles or one (1) carport capable of housing or sheltering not less than two (2) or more than four (4) vehicles. A porte-cochere may not serve as a substitute for the required garage or carport and is permitted on a Lot only if there is either a garage or a carport capable of housing or sheltering not less than two (2) or more than four (4) vehicles.

(iii) Lot with New Residential Dwelling: Any Lot on which a New Residential Dwelling is constructed must have one (1) garage capable of housing or sheltering not less than two (2) or more than four (4) vehicles. Neither a carport nor a porte-cochere may serve as a substitute for the required garage. A carport or porte-cochere is permitted on a Lot only if there is a garage on the Lot capable of housing or sheltering not less than two (2) or more than four (4) vehicles.

(iv) Use. No carport that is visible from a street in the Subdivision or another Lot at ground level will be used for the storage of materials or property other than vehicles permitted under Section 2.1 of this Declaration. No garage or carport will be occupied or otherwise used for residential purposes, except for a living area which is part of the garage structure and occupied by a member of the family occupying the Residential Dwelling on the Lot or a domestic worker, caregiver or nanny domiciled with the family occupying the Residential Dwelling on the Lot and complies with Section 2.4.D (iv) of this Declaration.

D. **SEWAGE DISPOSAL**. No septic tank or sewage disposal plant will be built or maintained on a Lot.

E. **ANTENNAS**. Only satellite dish antennas forty (40") or less, unless otherwise permitted by law, and antennas designed to receive television broadcast signals may be installed in the Subdivision. All other antennas are prohibited, including without limitation, outside antenna for a licensed operator of an amateur radio station, microwave antennas, and short/long wave antennas, unless expressly authorized in the Architectural Guidelines and then only in strict accordance with such Architectural Guidelines.

F. **FOUNDATION, EXTERIOR FINISH AND COLORS**.

(i) Foundation. All Residential Dwellings, garages, and other permanent structures must be built on concrete slabs, except as required by applicable law to be otherwise built on an alternative base or foundation.

(ii) Brick, Stone, or Masonry Exterior Materials.

(a) Residential Dwelling Existing as of Effective Date. The exterior of a Residential Dwelling and the garage attached to such Residential Dwelling in existence as of the Effective Date of this Declaration must be comprised of at least fifty-one (51%) brick, stone or masonry materials. The exterior of an addition to such existing Residential Dwelling or attached garage must be (I) comprised of at least fifty-one percent (51%) brick, stone or masonry or (II) comprised of such percent of brick, stone or masonry materials that when the new addition is completed, the total of the Residential Dwelling, the attached garage and the new addition will be comprised of at least fifty-one percent (51%) brick, stone or masonry.

(b) New Residential Dwelling. The exterior of a New Residential Dwelling constructed on a Lot after the Effective Date of this Declaration and the garage attached to such New Residential Dwelling must be comprised of at least sixty percent (60%) brick, stone or masonry material. The exterior of an addition to such New Residential Dwelling or attached garage constructed after the Effective Date must be (I) comprised of at least sixty percent (60%) brick, stone or masonry material or (II) comprised of such percent of brick, stone or masonry materials that when the new addition is

completed, the total of the Residential Dwelling, the attached garage and the new addition will be comprised of at least sixty percent (60%) brick, stone or masonry.

(c) Computation. When computing the percent of brick, stone or masonry material, the area which comprises a door or window opening will be considered to be comprised of the material which encloses the door or window (i.e., the frame). If a garage is a detached garage or is connected to a Residential Dwelling by means of a covered walkway or other similar structure, the perimeter of the Residential Dwelling will be computed as if the garage did not exist.

(d) Concrete. Concrete and concrete block will not be used as an exposed building surface, unless the exposed concrete and/or concrete block is covered by exterior materials or siding permitted under this Declaration.

(e) Stucco. Stucco and faux brick are not permitted as exterior materials for a Residential Dwelling or garage.

(iii) Non-Brick, Non-Stone or Non-Masonry Exterior Siding. All non-brick, non-stone and non-masonry exterior siding must be wood, wood product or cement fiberboard. Aluminum, steel or other metal siding are not permitted as exterior finishes. For replacement or additional exterior siding: (a) the thickness, visible width, and spacing of such exterior siding must be consistent with that of the exterior siding and each application submitted to the Architectural Control Committee must specify the thickness, width, and spacing of both the existing and the proposed siding; (b) the color of all siding (including unpainted siding) must be harmonious with colors generally used throughout the Subdivision and the color(s) of the other exterior finishes on the Residential Dwelling; and (c) all exterior siding must be installed and maintained to avoid sagging, warping or irregular coloration.

(iv) Other Exterior. Gutters installed on a Residential Dwelling or other Improvement must blend or be painted to blend with the color of the exterior materials to which they are adhered or attached. Walls and roofs of garages, carports, and porte-cocheres must be constructed of the same or similar material (type, quality, and color) as the material used on the walls and roof of the Residential Dwelling. A garage must be enclosed by metal or wood garage door that is harmonious in quality and color with the exterior of the appurtenant Residential Dwelling. A carport or porte-cochere must be adequately supported and constructed of appropriate materials so that the structure has no visible sagging or warping.

(v) Approval of Exterior Finish. All exterior materials and finishes, including mortar, require the approval of the Architectural Control Committee as to compliance with all applicable provisions of this Declaration, if (a) a New Residential Dwelling, new garage, or new Improvement is to be constructed on a Lot, (b) a Major Addition to an existing Residential Dwelling, garage or other Improvement is to be constructed on a Lot, (c) if all of the exterior materials on an existing Residential Dwelling, garage or other Improvement are to be placed or replaced, or (d) if a portion, but not all, of the exterior materials on an existing Residential Dwelling, garage or other Improvement on a Lot is to be replaced and the exterior materials and finishes are not the same or substantially similar to the existing exterior materials. If a portion (but not all) of the exterior material on an existing Residential Dwelling, garage, or other Improvement is to be placed or replaced, and the exterior materials and finishes are the same or substantially similar to the existing exterior materials and finishes on the Residential Dwelling, garage or other Improvements, the prior written approval of the Architectural Control Committee is not required. The minimum percent of brick, stone and/or masonry material required under Section 2.3.F.(ii) of this Declaration for a Residential Dwelling and the garage attached to such Residential Dwelling must be maintained when placing or replacing exterior material to a Residential Dwelling. All information required by this Section 2.3.F to be submitted to the Architectural Control Committee for written approval must be submitted with a sample of the concrete, brick, stone, mortar and/or non-brick, non-stone or non-masonry siding prior to commencing any work. The Association may require the Owner, at the Owner's expense, to repair or replace any concrete, brick, stone, mortar, siding (non-brick, non-stone and non-

masonry) or other exterior wall or roof materials that do not adhere to the requirements set forth in this Section 2.3.F.

(vi) Colors. Only colors that are consistent with the natural setting of the Subdivision and the predominant exterior colors used throughout the Subdivision may be used on the exterior (including the roof) of Residential Dwellings, garages, and other Improvements, or on planter boxes, fences, retaining walls, and foundations. The purpose of this covenant is to maintain harmony of the exterior paint colors of all Residential Dwellings and other Improvements throughout the Subdivision.

G. **EXTERIOR LIGHTING**. Exterior lighting on a Lot will not be installed in a manner that unreasonably disturbs the Owner or occupant of an adjacent or neighboring Lot. The Board reserves the right to require the removal or modification of any lighting which the Board, in its reasonable, good faith judgment determines to be annoying to the Owner or occupant of another Lot. Exterior security lighting must conform to requirements set forth in the Architectural Guidelines. Each Lot, except corner Lots, must have exactly one (1) post light located at the front of the Lot. Each corner Lot must have exactly two (2) lights, one located at the front of the Lot (the same as all interior Lots) and one light located along the side-street. All post lights must conform to the requirements set forth in the Architectural Guidelines and must be approved in writing by the Architectural Control Committee prior to installation or relocation. From and after the installation of a post light, the Owner or occupant of a Lot must keep the post light on the Lot burning during all hours of darkness and will be responsible for the maintenance, repair, and replacement of the post light(s) (including the line providing gas or electricity to the post light) and other exterior lighting. Outside lighting may be replaced with fixtures that conform to the requirements set forth in the Architectural Guidelines.

H. **ROOFING**.

(i) Materials. The Architectural Control Committee has the right to establish specific requirements for the type, quality, size, color, and specifications of roofing materials which may be utilized for Residential Dwellings, garages, and other Improvements on a Lot. If a portion of an existing roof is repaired or added to any existing Residential Dwelling, garage or other Improvement on a Lot, such portion must be of the same type, quality, size, and color as the existing roofing material and will not require the approval of the Architectural Control Committee. If the entire existing roof or any existing or New Residential Dwelling, garage, or other Improvement is replaced or added, the proposed roofing material must be of an acceptable type, quality, size and color that is harmonious with the roofing materials used on Residential Dwellings, garages, or other Improvements throughout the Subdivision and must be approved in writing by the Architectural Control Committee prior to installation. All roofing material must have a minimum of thirty (30) year warranty from a reputable manufacturer; the felt for composition roofs must have a weight of at least thirty (30) pounds. All information required by this Section 2.3.H to be submitted to the Architectural Control Committee for approval must be submitted with a sample of the proposed roofing material to be installed.

(ii) Roofing Additions. No solar or other energy collection panels, equipment or devices, unless indistinguishable from the roofing material, will be installed or maintained on a Lot or Residential Dwelling or other Improvement, including, without limitation, the roof of a Residential Dwelling or other Improvement, if visible from a street in the Subdivision.

I. **WINDOW TREATMENTS AND DOORS**. No foil or other reflective materials will be installed on any window or door, except windows and doors with manufactured applied coatings. Burglar bars or doors are not permitted on the exterior of any windows or doors if visible from a street adjacent to the Lot. Screen doors and storm doors are permitted; however, screen doors and storms doors visible from a street adjacent to the Lot must be approved in writing by the Architectural Control Committee prior to installation.

J. HVAC EQUIPMENT. No window, roof or wall type heating or air-conditioning unit that is visible from a street in the Subdivision or a neighboring Lot at ground level will be used, placed or maintained on or in a Residential Dwelling, garage or other Improvement on a Lot. No air-conditioning equipment will be located on any utility easement or drainage easement or in a manner that causes water to flow onto an adjacent Lot.

K. RECREATIONAL FACILITIES. Free-standing playhouses or other similar play structures and basketball goals are permitted on a Lot only with the prior written approval of the Architectural Control Committee and are governed by the Architectural Guidelines, which cover, without limitation, the number, type, location, size, materials, quality, approval, and construction of such buildings and structures. Permanently installed barbecue grills or other types of outdoor cooking equipment must be located so as not to be visible from a street in the Subdivision or neighboring Lot at ground level.

L. SWIMMING POOLS, TENNIS COURTS AND OTHER AMENITY STRUCTURES. Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools, tennis courts, playhouses, and other amenity structures may be constructed, installed, and maintained on a Lot, subject to the provisions of this Declaration and only with the prior written approval of the Plans for the same by the Architectural Control Committee. No swimming pool that is totally above ground is permitted on a Lot. Each swimming pool, lap pool, outdoor hot tub, reflecting pond, sauna, and whirlpool on a Lot must be regularly cleaned, maintained, and treated with chemicals so that the water amenity is at all times usable and the water is at all times clear.

M. DRIVEWAYS AND SIDEWALKS. All driveways on a Lot must provide reasonable vehicular access to the garage. All driveways, driveway approaches, and sidewalks on a Lot which are visible from a street in the Subdivision must be constructed of poured concrete, unless other materials are approved in writing by the Architectural Control Committee prior to construction. Chert, gravel, loose stone and/or asphalt driveways, driveway approaches, and sidewalks are prohibited. No driveway or sidewalk on a Lot will be painted. A driveway or sidewalk may be stained with the prior written approval of the Architectural Control Committee. Sidewalks must be placed on all Lots adjacent to the street curb and must be four (4) feet in width. All driveways, driveway approaches, and sidewalks on a Lot must be properly maintained, repaired and replaced by the Owner of the Lot. The Board of Directors has the authority to determine whether a driveway, driveway approach, or sidewalk on a Lot is being properly maintained in accordance with the standards of the Subdivision and the Board's reasonable, good faith determination will be conclusive and binding on all parties.

N. ACCESSORY STRUCTURES. Any type of building or structure on a Lot that is not attached to the Residential Dwelling on a Lot (other than the Residential Dwelling itself, a garage structure (whether attached or detached) and any attached patio/deck cover) is considered an accessory structure, including without limitation, tool and/or storage sheds, gazebos, and children play structures. Accessory buildings and structures must be approved in writing by the Architectural Control Committee prior to construction and are governed by the Architectural Guidelines, which cover, without limitation, the number, type, location, size, materials, quality, approval, and construction of such buildings and structures.

SECTION 2.4. SIZE AND LOCATION OF RESIDENTIAL DWELLINGS AND OTHER IMPROVEMENTS.

A. ALLOWABLE AREA OF INTERIOR LIVING SPACE; NUMBER OF STORIES. The minimum and maximum allowable area of interior living space in a Residential Dwelling will be as set forth below. For purposes of this Declaration, the term "interior living space" excludes steps, porches, exterior balconies, carports, porte-cocheres and garages.

(i) Minimum and Maximum Square Footage of Residential Dwellings.

(a) The ground floor interior living space of a Residential Dwelling must be at least eighteen hundred (1,800) square feet on each Lot within Blocks One (1) through Twelve (12), Briargrove Park, Section I and at least two thousand (2,000) square feet on all other Lots in Briargrove Park, Sections I, II, III, IV, V, and VI.

(b) The total interior living space within all floors of a Residential Dwelling, together with the total interior space (including living space and non-living space) within all floors of a garage, will not exceed six thousand five hundred (6,500) square feet on any Lot in Briargrove Park, Sections I, II, III, IV, V, and VI.

(ii) Number of Stories of Residential Dwellings. No Residential Dwelling will have more than two (2) stories of living space above the finished concrete slab (or alternative foundation permitted under Section 2.3.F.(i)) of the Residential Dwelling.

(a) All Residential Dwellings constructed in Briargrove Park Sections I, IV and V may be one or one and one-half stories with no Residential Dwelling exceeding one and one-half stories, except as set forth in Subsections (b) and (c) below.

(b) A Residential Dwelling constructed on the following Lots may be one, one and one-half or two stories with no Residential Dwelling exceeding two stories:

Bayou Lots - Briargrove Park Section I, Lots 828-874, Block 31;
Briargrove Park Section II - all Lots; and
Briargrove Park Section III - all Lots

(c) A Residential Dwelling constructed on the following Lots must be one and one-half stories (i.e., a one or two story Residential Dwelling on any such Lot is prohibited):

Briargrove Park Section IV:
Lots 1116-1119, Block 41;
Lots 1120-1123, Block 42;
Lots 1130-1137, Block 42;
Lots 1144-1151, Block 42
Lots 1158-1165, Block 42
Lots 1172-1179, Block 42

Briargrove Park Section IV (Cont.):
Lots 1186-1189, Block 42
Lots 1190-1193, Block 49
Lots 1200-1207, Block 49
Lots 1214-1221, Block 49
Lots 1228-1235, Block 49
Lots 1242-1245, Block 49

and

Briargrove Park Section V
Lots 1318-1328, Block 40

Briargrove Park Section VI (all Lots)
Lots 1106-1109, Block 41

(iii) Wall Plate Height; Upper Floor; Dormers. No Residential Dwelling will have a wall plate height (main roof frame line) of more than twelve (12) feet above the top of the ground (first) floor finished concrete slab (or alternative foundation permitted under Section 2.3.F.(i)). In the case of a Bayou Lot, the wall plate height limitation will apply only to the front wall of a one and one-half or two story Residential Dwelling constructed on such Lot. The finished area of the upper floor of a one and one-half story Residential Dwelling must be contained within the attic space formed by the ceiling covering the ground (first) floor and the roof. Dormers will be permitted on the upper floor, subject to the Architectural Guidelines.

B. **MAXIMUM ALLOWABLE HEIGHT OF BUILDING.** No Residential Dwelling will exceed the heights set forth below measured from the top of the first ground (first) floor finished concrete slab (or alternative foundation permitted under Section 2.3.F.(i)) to the highest ridgeline of the roof. The

highest ridgeline of a garage, carport, or porte-cochere will not exceed the highest ridgeline of the Residential Dwelling on the Lot.

<u>Number of Stories</u>	<u>Maximum Height (Feet)</u>
One (1)	Twenty-Four (24)
One and One-Half (1-1/2)	Twenty Eight (28)
Two (2)	Thirty (30)

C. **ROOF PITCH.** The slope of the roof of a Residential Dwelling and a garage must have a minimum pitch of four (4) inches vertical to twelve (12) inches horizontal and a maximum pitch of nine (9) inches vertical to twelve (12) inches horizontal. Peaks and valleys are not included for purposes of minimum and maximum pitch requirements. Roof dormers and patio/deck covers are subject to the Architectural Guidelines.

D. **SETBACKS; LOCATION OF IMPROVEMENTS.**

(i) Residential Dwelling Building Setbacks.

(a) Front Setbacks. No Residential Dwelling or other Improvement on a Lot (other than fences, post lights, sidewalks, walkways, and driveways) will be located nearer to the front property line than the setback shown on the Plat for such Lot.

(b) Rear Setbacks. No Residential Dwelling on a Perimeter Lot or a one story Residential Dwelling on any other Lot will be located nearer to the rear property line than the greater of five (5) feet or the rear building setback line or the utility easement shown on the Plat for such Lot. No part of a one and one-half or two story Residential Dwelling will be located nearer to the rear property line than the greater of eighteen (18) feet or the rear building setback line or the utility easement shown on the Plat for such Lot, except as provided below in this subsection (b). However, if (i) the Footprint percentage on a Lot as of the Effective Date does not exceed the 42% Footprint limitation for one and one-half and two story Residential Dwellings set forth in Section 2.4.D.(v) of this Declaration and (ii) an upper floor is added to such Residential Dwelling or an existing upper floor is enlarged, the ground (first) floor of such Residential Dwelling may be located no nearer to the rear property line than the greater of five (5) feet or the rear building setback line or the utility easement shown on the Plat for such Lot and the new or enlarged upper floor of such Residential Dwelling may be located no nearer to the rear property line than the greater of eighteen (18) feet or the rear building setback line or the utility easement shown on the Plat for such Lot.

(c) Side Setbacks. No one story or one and one-half story Residential Dwelling will be located nearer to a side property line than five (5) feet, except on a corner Lot, in which case no Residential Dwelling will be located nearer to the side property line adjacent to the side street than the building setback line shown on the Plat. No ground (first) floor of a two story Residential Dwelling will be located nearer to a side property line than five (5) feet and no upper (second) floor of a two story Residential Dwelling on a Lot will be located nearer to a side property line than ten (10) feet. For the purpose of this Declaration, eaves, steps, unroofed porches, and roof overhangs will not be considered in such setback measurements; provided, however, no portion of an Improvement on one (1) Lot may encroach onto another Lot, except for a Residential Dwelling located on the Lots consolidated as of the Effective Date of this Declaration as provided in subparagraph (vii) of this Section 2.4.D.

(d) Additions to Existing Residential Dwellings. Notwithstanding Section 8.3 of this Declaration (grandfather provision), an addition made to any Residential Dwelling after the Effective Date of this Declaration must comply with the setback limitations set forth in this Section 2.4.D(i).

(ii) Lot Size; Residential Dwelling Location. No Residential Dwelling will be placed or maintained on a Lot with a frontage of less than seventy (70) feet, except on those few Lots shown on the

official recorded maps or plats in Exhibit B to the Judgment that have a frontage of less than seventy (70) feet. No Residential Dwelling will be placed or maintained on a Lot with an area of less than seventy-six hundred and fifty (7,650) square feet. Provided, however, that no Residential Dwelling will be placed or maintained on a Lot within Briargrove Park, Section III with a frontage of less than sixty-eight (68) feet, and no Residential Dwelling will be placed or maintained on a Lot within Briargrove Park, Section III with an area of less than nine thousand (9,000) square feet. All Residential Dwellings in Briargrove Park, Section II must face Twin Circle Drive. Residential Dwellings on corner Lots with a building line of less than twenty-five (25) feet on the side street must face the street on which the Lot has a building line of at least twenty-five (25) feet. Residential Dwellings on corner Lots which have building lines of at least twenty-five (25) feet on both streets may face either or both streets.

(iii) Garage and Carport Setbacks and Location.

(a) Setbacks. No garage or carport will be located (I) nearer to the side property line of a Lot than three (3) feet; or (II) nearer to the rear property line of a Lot than the greater of five (5) feet or the rear building setback line or the utility easement shown on the Plat for such Lot; or (III) nearer to a side street than the building setback line shown on the Plat for such Lot; (IV) except on a corner Lot, in which case no garage or carport will be located nearer to the side property line adjacent to a side street than the building setback line shown on the Plat for such Lot; . No garage or carport on a Lot will be located nearer to the front property line than the setback shown on the Plat. No porte-cochere on a Residential Dwelling will be placed or maintained nearer to the side property line than five (5) feet, nor nearer to a street than the minimum building setback line shown on the Plat. Notwithstanding Section 8.3 of this Declaration (grandfather provision), an addition made to any garage, carport or porte-cochere after the Effective Date of this Declaration must comply with the setback limitations set forth in this Section 2.4.D (iii).

(b) Location. No garage, carport or porte-cochere will be located within an easement, including but not limited to the utility easement shown on the Plat for the Lot. No attached or detached garage that faces the street in front of the Lot will be nearer to the front of the Residential Dwelling than thirty (30) feet, measured from the wall of the garage nearest to the front setback line and the front wall of the Residential Dwelling nearest to the front setback line. No garage located on the front of a Residential Dwelling which faces the side of a Lot will be nearer than thirty (30) feet to the side property line that the garage faces. No carport will be located on the front of a Residential Dwelling or nearer to the front of the Residential Dwelling than twenty (20) feet, measured from the support column of the carport and the front wall of the Residential Dwelling nearest to the front setback line of the Lot.

(iv) Living Area within and above Garages. All areas in a garage used as living area must comply with the setback requirements for Residential Dwellings set forth in Section 2.4.D.(i) of this Declaration. Accordingly, (a) the exterior wall of the living area on the ground (first) floor in a garage structure must be constructed or relocated to be not nearer to the side property line of a Lot than five (5) feet and not nearer to rear property line of a Lot than the greater of five (5) feet or the rear building setback line or the utility easement shown on the Plat for such Lot, and (b) the exterior wall of the living area on the upper floor in a garage structure must be constructed or relocated to be not nearer than eighteen (18) feet from the rear property line of a Lot with a one and one-half or two story Residential Dwelling and not nearer than five (5) feet from the side property line of a Lot with a one and one-half story Residential Dwelling and not nearer than ten (10) feet from the side property line of a Lot with a two story Residential Dwelling.

(v) Footprint Percentage. The total area of the Footprint on a Lot on which a New Residential Dwelling or Major Addition is constructed will not exceed the percent of the total area of the Lot set forth below:

<u>Footprint</u>	<u>Maximum Percent of Total Lot Area:</u>
One story	47%
One and one-half story and two story	42%

(vi) Limitation on Driveway Access. Lots adjacent to Seagler Road, Westheimer Road or the Beltway 8 feeder road will not have direct driveway access to said streets, except for the following Lots: Lot 1105, Block 40, Section 1; Lot 480 Block 17, Section 1; Lot 1, Block 1, Section 3; and Lot 10, Block 1, Section 3.

(vii) No Subdivision; Lot Consolidation Limits. No Lot in the Subdivision may be further subdivided and no Owner may convey any portion less than the entirety of a Lot as shown on the Plat. The following Lots have been consolidated as of the Effective Date of this Declaration: Lot 713 and Lot 714, Block 26 in Section 1; and Lot 1068 and Lot 1069, Block 3 in, Section 1. Upon the Effective Date of this Declaration, the consolidation of two (2) or more Lots [for the purpose of constructing one (1) Residential Dwelling thereon] is prohibited.

E. **DAMAGED RESIDENTIAL DWELLING, GARAGE, CARPORT, AND PORTE-COCHERE REPLACEMENT.** Notwithstanding Section 8.3 of this Declaration, a Residential Dwelling, garage, carport or porte-cochere (i) damaged as a result of an insurable casualty (e.g. fire, flood, wind, or other natural disaster) or a non-insurable casualty or other act outside the control of the Owner or resident (including without limitation a cracked slab or other major structural failure) (ii) that was constructed or altered in compliance with the deed restrictions in place at the time such Residential Dwelling, garage, carport or porte-cochere was originally constructed or altered but is not structurally in compliance with this Declaration at the time the casualty occurs, at the Owner's discretion may be rebuilt under the provisions of the deed restrictions in place at the time such Residential Dwelling or garage was originally constructed or altered, subject to the following replacement requirements. The replacement structure must be identical to the Residential Dwelling, garage, carport or porte-cochere located on the Lot prior to the occurrence of the casualty as to the Footprint, height, number of stories, roof pitch, and the same, if available, or similar exterior materials, finishes, and color, except that any area in a garage used as living area must comply with the setback requirements for Residential Dwellings as set forth in Sections 2.4.D(i) and 2.4.D(iv) of this Declaration. Any deviation from the replacement requirements set forth above will require the entire Residential Dwelling or garage to be rebuilt in compliance with this Declaration. Except as permitted in this Section 2.4 E, all provisions of this Declaration and the Architectural Guidelines apply to the rebuilding of a replacement Residential Dwelling under this Section.

SECTION 2.5. WALLS, FENCES AND HEDGES.

A. **WALLS AND FENCES.** No fence or wall (except the Judgment Wall) higher than two (2) feet above the ground will be placed or maintained nearer to the front of the Lot than the front building line, except on Lot No.195, Block 8, Briargrove Park Section I and Lots No. 1 and No. 10, Block 1, Briargrove Park Section III. No fence or wall (except the Judgment Wall) higher than two (2) feet above the ground will be placed or maintained nearer to either street than the building lines on Lots which have a twenty-five (25) foot minimum building line on two (2) sides. On corner Lots that have a building line of less than twenty-five (25) feet on the side street, no fence wall (except the Judgment Wall) higher than two (2) feet above the ground will be placed or maintained nearer to the street than the side property line. No chain link or wire fence will be constructed if visible from a street in the Subdivision. All concrete block fences will have an applied exterior finish or finishing materials on the outside face of such fence or any face visible from a street in the Subdivision.

B. **MAINTENANCE OF FENCES.** Ownership of any wall or fence erected on a Lot will pass with title to such Lot and each Lot Owner is responsible for to maintaining such wall or fence.

C. MAINTENANCE OF JUDGMENT WALL. The Owner of any Lot in Briargrove Park Sections IV, V or VI traversed by the Judgment Wall must, at the Owner's sole cost and expense, maintain, in a good state of repair, that portion of the Judgment Wall located upon or bounding the Lot of such Owner. The repair and/or replacement of all or a portion of the Judgment Wall must be made in a manner that the repaired and/or replaced wall consists of the same materials, design, height, and location as existed prior to the repair and/or replacement. Should such Owner (including any subsequent Owner) of a Lot traversed by the Judgment Wall fail or refuse for any reason to maintain such wall in a good state of repair, then the Association, after thirty (30) days written notice of its intention to do so, delivered or mailed postage prepaid to the Owner of such Lot at the Owner's last known address, as reflected on the records of the Association, will have, and is hereby expressly given and granted, the right to enter upon such Lot and upon the easement of any side thereof, as the case may be, and make such repairs as, in the opinion of the Association, will be necessary, to the portion of the Judgment Wall located upon the Lot of said Owner. Neither the Association nor its officers, agents, or contractors will be liable, in any manner, to the said Owner of such entry, or for any damages done to any persons or property of said Owner in effecting such repairs. Said Owner will be liable to the Association for the reasonable cost of the repairs so made and effected, plus fifty percent (50%) of such cost for overhead and supervision, plus interest at the rate set forth in Section 5.2 of this Declaration until paid; which amounts will be payable immediately, upon demand. Payment will be secured by the lien created for the benefit of the Association in Article V of this Declaration. Interest thereon will begin to accrue on such sum on the thirtieth (30th) day after the written invoice is delivered to the Owner. The obligation to so maintain and repair the Judgment Wall will continue for such period as this Declaration is in effect.

D. HEDGES. No hedge, shrubbery, or massed planting that obstructs sight-lines of streets will be placed or permitted to remain on a corner Lot where such hedge, shrubbery or mass planting interferes with traffic sight-lines for streets within the Subdivision or interferes with the view of cross traffic. The determination of whether any such obstruction exists will be made by the Board of Directors, whose reasonable, good faith determination will be conclusive and binding on all Owners.

SECTION 2.6. RESERVATIONS AND EASEMENTS.

A. COMMON AREA. The Common Area and Common Area Improvements are reserved for the common use, benefit, and enjoyment of the Owners, subject to such reasonable Rules and Regulations governing the use thereof as may be promulgated and published by the Association. An Owner's right to use the Common Area and the Common Area Improvements is appurtenant to title to a Lot, subject to this Declaration and any Rules and Regulations relating to the Common Area and Common Area Improvements, and such Owner will be deemed to acknowledge and agree that all such Rules and Regulations, if any, are for the mutual and common benefit of the Owners.

B. PUBLIC UTILITIES. Title to a Lot or portion thereof will not include title to any utility lines in, under, or on any easement or street. Easements affecting all Lots re reserved, as shown on the Plats, for the installation, removal, replacement, and maintenance of utilities and drainage facilities. In addition to the easements shown on the Plats, there is hereby designated and dedicated for use of all public utilities an unobstructed aerial easement five (5) feet wide from a plane twenty (20) feet above the ground, upward, located adjacent to said easements as shown on the Plats. No Residential Dwelling will be constructed or placed on any easement shown on the Plats; no other Improvement will be constructed or placed on any easement shown on the Plats without the prior written consent of the Architectural Control Committee.

C. DRAINAGE. No Owner of a Lot will construct Improvements on a Lot or grade a Lot or permit a Lot to remain in or be placed in such condition that causes water falling on such Lot to drain onto another Lot or other property adjacent to such Lot. No fence, wall, or other obstruction, which does not provide an opening or a horizontally hinged gate, opening to the north, between the elevation of the top of the natural ground and the top of the driveway [approximately two (2) feet] will be constructed across the drainage easements along the west line of Lots 221 and 248, Block 8; Lots 375 and 388, Block

13; Lots 411 and 424, Block 14; and Lot 854, Block 31. The same restrictions will be in effect, except that the gate must open toward the east, on the drainage easement across Lots 854, Block 31; and those drainage easements along the north Line of Lot 831, Block 31; and Lot 450, Block 15. Applications for approval of Plans for New Residential Dwellings must be submitted with an engineer certified drainage plan in accordance with Section 3.2.B of this Declaration.

SECTION 2.7. TREE PRESERVATION AND PROTECTION FOR NEW RESIDENTIAL DWELLINGS AND MAJOR ADDITIONS. Each Lot on which construction of a New Residential Dwelling or a Major Addition commences after the Effective Date of this Declaration must have (i) a minimum of two (2) 4" diameter trees (measured 12 inches above the ground level) located in the front yard or one (1) tree greater than fifteen (15) inches in diameter (measured 12 inches above the ground level) located in the front yard and a second (2nd) tree located any place on the Lot and (ii) all corner Lots will, in addition, have one (1) 4" diameter tree (measured 12 inches above the ground level) located in the yard adjacent to the side street. If there are no existing trees on the Lot to fulfill these requirements, one (1) or more trees, as the case may be, must be planted on or before the date of Substantial Completion of the New Residential Dwelling or Major Addition. During the period demolition and/or construction occurs on a Lot on which a New Residential Dwelling or Major Addition is being constructed, all trees on the Lot which are over 4" in diameter (measured 12 inches above the ground level) and are located more than six (6) feet outside the perimeter foundation of the New Residential Dwelling or an existing Residential Dwelling to which a Major Addition is being constructed and the garage, excluding the area covered by the driveway, will be protected during the demolition and construction period in accordance with the Architectural Guidelines. No such demolition, construction, or modification on a Lot may commence unless the Required Submittal Materials have been submitted to the Architectural Control Committee in accordance with Section 3.2.B of this Declaration and the Architectural Control Committee has approved in writing the Plans, including without limitation, the site development plan showing the trees that are required to be protected during any demolition and/or construction period.

ARTICLE III **Architectural Approval**

SECTION 3.1. ARCHITECTURAL CONTROL COMMITTEE. The Architectural Control Committee will consist of not less than three (3) members who will serve at the discretion of the Board of Directors. Members of the Architectural Control Committee must be at all times Members in Good Standing of the Association. Members of the Architectural Control Committee may be removed at any time by the Board and will serve for such term as may be designated by the Board or until resignation or removal by the Board.

SECTION 3.2. APPROVAL OF IMPROVEMENTS REQUIRED.

A. PLAN APPROVAL AND CITY PERMIT. In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Subdivision, to establish and preserve a harmonious design for the Subdivision, and to protect and promote the value of the Property, the Lots and the Residential Dwellings and all other Improvements thereon, no Improvement of any kind will be demolished, commenced, erected, installed, placed, moved on to, altered, replaced, relocated, added to, permitted to remain or maintained on a Lot or Residential Dwelling or other Improvement thereon which affects the exterior appearance of the Lot or Residential Dwelling or other Improvement thereon, unless Plans for the demolition and/or construction of such Improvement have been submitted to and approved in writing by the Architectural Control Committee in accordance with the terms and provisions of this Article III. The Owner of the Lot on which such demolition, construction, change, or alteration is to occur will be responsible for obtaining any permit required by the City of Houston code or ordinance or any other applicable law prior to commencement of any demolition and/or construction and/or alteration or change. The Architectural Control Committee has the authority to review and approve all Plans and

the demolition and/or construction of and/or alteration or change to all Residential Dwellings and other Improvements on a Lot.

B. REQUIRED SUBMITTAL MATERIALS. Prior to the commencement of construction of a Residential Dwelling or other Improvement on a Lot, the Owner thereof must submit to the Architectural Control Committee at the principal office of the Association Plans and related data for such Improvement, which will include the following (the "Required Submittal Materials"):

(i) A check in the amount of the then applicable Submission Fee (hereinafter defined), made payable to "Briargrove Park Property Owners, Inc.";

(ii) All Required Submittal Materials described in subparagraphs (iii), (iv) and (v) of this Section 3.2.B must be scalable drawings. Reduced or enlarged scaled reproductions are not permitted.

(iii) Three (3) copies of an accurately scaled, drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, (a) the Residential Dwelling or other Improvement to be constructed on said Lot, (b) the location of all driveways, walkways, sidewalks, decks, terraces, patios and outbuildings, (c) the relationship of items (a) and (b) to any setback requirements applicable to the Lot or Residential Dwelling or other Improvement, and (d) the location of all trees that are more than six (6) feet from the outside perimeter foundation of a New Residential Dwelling or Major Addition and garage, excluding the driveway, and any additional or replacement trees that will be needed to meet the two (2) or three (3) tree requirement, as the case may be, set forth in Section 2.7 of this Declaration;

(iv) Three (3) copies of an accurately scaled, drawn and dimensioned engineer certified drainage plan showing the proposed drainage structures and how the Lot will drain to an existing city street adjacent to the Lot, if the application is for approval of Plans for a New Residential Dwelling or a Major Addition to an existing Residential Dwelling;

(v) Three (3) copies of an accurately scaled, drawn and dimensioned foundation plan, floor plans and exterior elevation drawing of the front, back, and sides of the Residential Dwelling or other Improvement to be constructed on the Lot;

(vi) Three (3) copies of written specifications and, if requested by the Architectural Control Committee, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Residential Dwelling or other Improvement on such Lot, including, without limitation, the type and color of all concrete, brick, stone, masonry, roofing, siding, and other materials to be utilized on the exterior of a Residential Dwelling or other Improvement and the color of paint or stain to be used on all doors, shutters, trim work, eaves, and cornices on the exterior of such Residential Dwelling or other Improvement;

(vii) A written statement of the estimated date of commencement, if the proposed Residential Dwelling or other Improvement is approved, and the estimated date of completion; and

(viii) Such other plans, drawings, specifications or other information or documentation as may be required by the Architectural Control Committee or the Architectural Guidelines.

C. APPROVAL PROCEDURE.

(i) The Architectural Control Committee will not commence its review of an application until it has received all Required Submittal Materials. The Architectural Control Committee will, in its reasonable, good faith judgment, determine whether the Plans and other data submitted by any Owner for approval are acceptable. The Architectural Control Committee reserves the right to request any additional information deemed by it to be necessary to properly evaluate the application. In the event the

Architectural Control Committee requests additional information, the Owner's application will be deemed to be disapproved, whether so stated in the communication or not, and a new approval period, as set forth in Section 3.5 of this Declaration, will commence upon the date of actual receipt by the Architectural Control Committee of the additional information requested. One (1) copy of all Plans and related data submitted to the Architectural Control Committee will be retained in the records of the Architectural Control Committee and one (1) copy will be returned to the Owner marked "approved", "approved as noted" or "disapproved". The Board of Directors has the right to establish a fee sufficient to cover the expense of reviewing the Plans and related data and to compensate any consulting architects, designers, engineers, inspectors, attorneys, and/or other professionals retained to review and inspect such Plans and to monitor construction progress, inspect for compliance with the approved Plans and otherwise enforce the terms hereof (the "Submission Fee"). The Submission Fee is subject to change from time to time, as deemed appropriate in the reasonable judgment of the Board of Directors. In the event that Plans are disapproved and revised Plans are subsequently submitted to the Architectural Control Committee for approval, the Architectural Control Committee may require payment of another Submission Fee for such resubmittal.

(ii) The Association may (but is under no duty to) employ an independent architect, designer, engineer, inspector, and/or attorney who is neither a resident of the Subdivision nor an Owner to review and inspect the Plans submitted to the Architectural Control Committee pursuant to the provisions of this Declaration. Such party(ies) will be employed in an advisory capacity to assist and advise the Architectural Control Committee but no recommendation of such independent architect, designer, engineer, inspector, and/or attorney will be binding upon the Architectural Control Committee.

(iii) The Architectural Control Committee has the right to disapprove any Plans upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations; any failure to comply with any of the provisions of this Declaration or the Architectural Guidelines; failure to provide the Required Submittal Materials or other requested information; objection to exterior design, appearance, or materials; objection on the grounds of incompatibility of any such proposed Improvement with the scheme of development proposed for the Subdivision; objection to the location of the proposed Improvement; objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of the Improvement; or any other matter which, in the reasonable good faith judgment of the Architectural Control Committee would render the proposed Improvement inharmonious with the general plan or scheme for the Subdivision. The Architectural Control Committee has the right to approve any submitted Plans with conditions or stipulations by which the Owner must comply and which must be incorporated into the Plans for the proposed Improvement. Approval of the Plans by the Architectural Control Committee for Improvements to one particular Lot or Residential Dwelling will not be deemed an approval or otherwise obligate the Architectural Control Committee to approve similar Plans of any or the features or elements for the Improvements for any other Lot or Residential Dwelling within the Subdivision.

(iv) Except for a deemed approval under Section 3.5 of this Declaration, all Architectural Control Committee approvals must be in writing to be effective.

D. MODIFICATIONS TO PLANS. The Owner must submit to the Architectural Control Committee for any revisions, modifications, or changes to Plans previously approved by the Architectural Control Committee. The Plans for such revisions, modifications, or changes must be approved in writing by the Architectural Control Committee in the same manner specified above, including payment of another Submission Fee, if required by the Architectural Control Committee.

E. CONSTRUCTION PROCEDURES. The Board of Directors has the authority to establish general construction rules, procedures and guidelines for the demolition, construction, and/or modification of a New Residential Dwelling and/or Major Addition, including without limitation, the establishment of charges, fees, deposits and bonds applicable to builders and contractors in connection with such work. Such rules, procedures and guidelines will be set forth in writing in the Architectural

Guidelines and/or in the Association's builder guidelines and deposit agreement contract among the Owner, contractor and the Association covering the demolition and construction and/or modification project.

F. MAJOR ADDITION. The Architectural Control Committee, acting reasonably and in good faith, has the authority to determine whether an addition to or renovation or modification of an existing Residential Dwelling or other Improvement is a Major Addition for purposes of this Declaration.

G. BAYOU LOTS. The Architectural Control Committee, acting reasonably and in good faith, has the authority to approve Plans that accommodate the topography of the Bayou Lots. The authority for accommodation, however, will not apply to the provisions in this Declaration regarding the number of stories, height of the Residential Dwelling and garage, building set back lines, maximum Footprint percentage and exterior building materials and all Plans and construction for the Bayou Lots listed in Section 2.4.A.(ii)(b) must comply with such provisions restrictions as they are set forth in this Declaration.

H. FAILURE TO COMMENCE CONSTRUCTION. If (i) demolition of the Residential Dwelling or other Improvement has not commenced within sixty (60) days after the start date set forth in the Required Submittal Materials approved by the Architectural Control Committee and/or (ii) construction of the Residential Dwelling or other Improvement has not substantially commenced within one hundred eighty (180) days after the start date set forth in the Required Submittal Materials approved by the Architectural Control Committee, then no demolition and/or construction may be commenced on such Lot or Residential Dwelling and the Owner of such Lot must resubmit all Plans for a Residential Dwelling or other Improvement to the Architectural Control Committee for approval in the same manner specified above. For purposes hereof, the construction of a New Residential Dwelling or other Improvement is deemed to commence on the date that any construction materials or equipment are delivered to or moved onto the Lot.

SECTION 3.3. ADDRESS OF COMMITTEE. The address of the Architectural Control Committee will be at the principal office of the Association.

SECTION 3.4. ARCHITECTURAL GUIDELINES. The Architectural Guidelines provide an outline of minimum acceptable standards for proposed Improvements; however, such outline will serve as a minimum guideline only and the Architectural Control Committee may impose other requirements in connection with its review of any proposed Improvement. The Architectural Guidelines will become effective upon the recording in the Official Public Records of Real Property of Harris County, Texas. The Architectural Guidelines may be amended and supplemented in the manner provided in the Architectural Guidelines.

SECTION 3.5. FAILURE OF COMMITTEE TO ACT ON PLANS. Any request for approval of a proposed Improvement on a Lot will be deemed approved by the Architectural Control Committee, unless (a) a written disapproval, or (b) a written request for additional information or materials or (c) a written notice of up to a thirty (30) day extension of the approval period is transmitted to the Owner by the Architectural Control Committee within sixty (60) days after the date the Architectural Control Committee has received all Required Submittal Materials. Notwithstanding the foregoing, (x) such deemed approval will not apply to any of the use restrictions set forth in this Declaration, and (y) such deemed approval will not operate to permit an Owner to construct or maintain an Improvement on a Lot that violates any provision of this Declaration or the Architectural Guidelines. The Architectural Control Committee at all times retains the right to object to an Improvement on a Lot that violates any provision of this Declaration or the Architectural Guidelines. The date the Required Submittal Materials will be deemed "received" will be the date all Required Submittal Materials have been delivered to the principal office of the Association.

SECTION 3.6. COMMENCEMENT OF WORK AFTER APPROVAL. After the Architectural Control Committee grants written approval of a proposed demolition, construction or modification of an Improvement on a Lot, copies of the necessary City permits must be provided to the Architectural Control Committee, if requested. After the commencement of demolition, construction or modification of a Residential Dwelling or other Improvement, the work thereon must be performed diligently and continuously and to the end that the Residential Dwelling or other Improvement achieves Substantial Completion (a) within the time frame approved by the Architectural Control Committee at the time it approves the Plans for the proposed Improvement and (b) in strict conformity with the Plans for the Residential Dwelling or other Improvement submitted to the Architectural Control Committee. No Improvement on a Lot may be left in a partially completed condition and no construction will cease for an extended period of time, such period of time being as determined by the reasonable, good faith judgment of the Architectural Control Committee. All construction work must be conducted in accordance with the Architectural Guidelines.

SECTION 3.7. NOTICE OF COMPLETION. Promptly upon completion of the Improvement on a Lot, the Owner must deliver a written notice of the completion of the Improvement ("Notice of Completion") to the Architectural Control Committee at the principal office of the Association stating the date the Improvement was completed. The date of the first meeting the Architectural Control Committee holds after delivery of the Notice of Completion to the principal office of the Association will be the date the Architectural Control Committee is deemed to have received the Notice of Completion. If the Notice of Completion fails to state a completion date, the date the Architectural Control Committee receives the Notice of Completion will be deemed to be the completion date of the Improvement, provided the Improvement is, in fact, completed as of such date.

SECTION 3.8. INSPECTION OF WORK. The Architectural Control Committee or its duly authorized representative has the right to inspect any Improvement on a Lot at any time and from time to time before or up to ninety (90) days after the Architectural Control Committee receives a Notice of the Completion to insure conformity of the Improvement with the Plans approved by the Architectural Control Committee. In the event the Owner fails to deliver a Notice of Completion, the Architectural Control Committee or its duly authorized representative has the right to inspect any Improvement on a Lot at any time before or up to ninety (90) days after the Architectural Control Committee determines the Improvement has been completed. Each New Residential Dwelling or Major Addition constructed after the Effective Date is subject to an inspection by the Architectural Control Committee or its authorized representative upon Substantial Completion.

SECTION 3.9. NOTICE OF NONCOMPLIANCE. If, as a result of inspections or otherwise, the Architectural Control Committee finds that any Improvement on a Lot has been constructed or undertaken without obtaining the approval of the Architectural Control Committee, or has been completed other than in strict conformity with the Plans approved by the Architectural Control Committee, or has not been completed within the required time period after the date of approval by the Architectural Control Committee, the Architectural Control Committee will notify the Owner in writing of the noncompliance ("Notice of Noncompliance"), which notice will be given, in any event, within ninety (90) days after the Architectural Control Committee receives a Notice of Completion from the Owner. The Notice of Noncompliance will specify the particulars of the noncompliance and will require the Owner to take such action as may be necessary to remedy the noncompliance. If the Owner does not comply with the Notice of Noncompliance within the period specified by the Architectural Control Committee in the Notice of Noncompliance, the Association may, acting through the Board of Directors, at its option but with no obligation to do so, (a) record a Notice of Noncompliance against the Lot on which the noncompliance exists in the Official Public Records of Real Property of Harris County, Texas; (b) remove the noncomplying Improvement on the Lot; and/or (c) otherwise remedy the noncompliance (including, if applicable, completion of the Improvement in question), and, if the Board elects to take any action with respect to such violation, the Owner must reimburse the Association upon demand for all expenses incurred therewith, plus fees and interest as provided in Section 9.9.A and Section 5.2 of this Declaration. The permissive (but not mandatory) right of the Association to remedy or remove any noncompliance (it

being understood that no Owner may require the Board to take such action) will be in addition to all other rights and remedies that the Association may have at law, in equity, under this Declaration, or otherwise. Any expenses incurred by the Association as a result of the Owner's noncompliance will be secured by the lien established in Article V of this Declaration.

SECTION 3.10. FAILURE OF COMMITTEE TO ACT AFTER NOTICE OF COMPLETION. If, for any reason other than the Owner's act or neglect, the Architectural Control Committee fails to notify the Owner of any noncompliance within ninety (90) days after receipt by the Architectural Control Committee of a written Notice of Completion from the Owner, the Improvement on a Lot will be deemed in compliance if the Improvement on a Lot in fact was completed as of the date of Notice of Completion; provided, however, that no such deemed approval will operate to permit any Owner to construct or maintain an Improvement on a Lot that violates any provision of this Declaration or the Architectural Guidelines, the Architectural Control Committee at all times retaining the right to object to an Improvement on a Lot that violates any provision of this Declaration or the Architectural Guidelines.

SECTION 3.11. APPEAL TO ASSOCIATION BOARD. If the Architectural Control Committee disapproves a proposed Improvement or modification or addition to an existing Improvement on a Lot, or if the Architectural Control Committee delivers to the Owner a Notice of Noncompliance, the Owner may appeal the decision to the Board of Directors by giving written notice of such appeal to the Association, the Architectural Control Committee and the Board within twenty (20) days after delivery to the Owner of such denial or notice, as applicable. The Board will, no later than the date of the second regularly scheduled Board meeting after the Board receives the Owner's written appeal, hear the Owner's appeal and decide whether or not to approve the proposed Improvement or modification or addition to an existing Improvement on the Lot or whether or not noncompliance exists. The Board also has the authority to overrule a decision by the Architectural Control Committee to deny approval of a proposed Improvement on its own initiative (i.e., whether or not the Owner appeals the decision of the Architectural Control Committee); provided, however, the Board does not have the authority to approve an Improvement in violation of the provisions of this Declaration. The reasonable, good faith decision of the Board will be conclusive and binding on all persons. During the pendency of an appeal to the Board, the decision of the Architectural Control Committee will remain in effect; there will be no deemed approval of Plans as the result of the failure of the Board to act on an appeal within any particular period of time.

SECTION 3.12. NO IMPLIED WAIVER OR ESTOPPEL. No action or failure to act by the Architectural Control Committee or by the Board of Directors will constitute a waiver or estoppel with respect to future action by the Architectural Control Committee or the Board of Directors, with respect to an Improvement on a Lot. Specifically, the approval by the Architectural Control Committee of an Improvement on a Lot will not be deemed a waiver of any right or an estoppel against withholding approval or consent for a similar Improvement on another Lot or similar Plans, proposals, or other materials submitted with respect to any other Improvement on a Lot.

SECTION 3.13. NO POWER TO GRANT VARIANCES. Neither the Architectural Control Committee nor the Board of Directors has the power to grant variances from compliance with any of the provisions of this Declaration.

SECTION 3.14. NONLIABILITY FOR ARCHITECTURAL CONTROL COMMITTEE ACTION. None of the members of the Architectural Control Committee, the Association or any member of the Board of Directors will be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Architectural Control Committee, except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, including the Plans for a proposed Improvement, the Architectural Control Committee will not inspect, guarantee or warrant (a) the workmanship of the Improvement, including, without limitation, its design, construction, safety, whether structural or otherwise, conformance with building codes or other governmental laws or regulations, or whether the Improvement is suitable or fit for its intended purpose,

or (b) the suitability of the surface or subsurface conditions of the Lot for the construction of any such Improvement on such Lot.

SECTION 3.15. CONSTRUCTION PERIOD EXCEPTION. During the course of actual construction of an Improvement on a Lot, and provided construction is proceeding with due diligence, the Architectural Control Committee may temporarily suspend certain provisions of Article II of this Declaration as to the Lot upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that during the course of any such construction, nothing will be done that will result in a violation of any of the provisions of this Declaration upon completion of construction or that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Subdivision. Any such suspension must be given in writing to the Owner of the Lot on which the construction is occurring.

ARTICLE IV

Management and Operation of Subdivision

SECTION 4.1. MANAGEMENT BY ASSOCIATION. The affairs of the Subdivision will be administered by the Association. The Association has all rights, powers, and authorities existing under the Texas Business Organizations Code and the Texas Property Code, as the same may be amended from time to time, and its Articles of Incorporation and Bylaws and this Declaration including, but not limited to, the right, power and obligation to provide for the management, administration, and operation of the Subdivision. The Board of Directors will manage the business and affairs of the Association. The Association, acting through the Board, is entitled, among other things, to: enforce this Declaration; own, operate, and control the Common Area and the Common Area Improvements and any other Association property; enter into such contracts and agreements concerning the Subdivision as the Board deems reasonably necessary or appropriate to maintain and operate the Subdivision in accordance with the provisions of this Declaration, including without limitation, the right to grant utility and other easements for uses the Board will deem appropriate; and the right to enter into agreements with adjoining or nearby land owners or governmental entities on matters of maintenance, trash pick-up, repair, administration, patrol services, traffic, operation of recreational facilities, or other matters of mutual interest.

SECTION 4.2. MEMBERSHIP IN ASSOCIATION. Each Owner of a Lot, whether one or more persons or entities, will, upon and by virtue of becoming such Owner, automatically become and will remain a Member of the Association until such ownership ceases for any reason, at which time such Owner's membership in the Association will automatically cease. Membership in the Association will be appurtenant to and will automatically follow the ownership of each Lot and may not be separated from such ownership.

SECTION 4.3. VOTING OF MEMBERS. Each Member has one (1) vote per Lot owned by such Member. In the event a Lot is owned by more than one (1) Member of the Association, such Members must exercise their right to vote in such manner as they may among themselves determine, but in no event will more than one (1) vote be cast for each Lot. Such Owners must appoint one (1) of them as the Member who will be entitled to exercise the vote of that Lot at any meeting of the Association. Such designation must be in writing to the Board and is revocable at any time by actual written notice to the Board. The Board is entitled to rely on any such designation until written notice revoking such designation is received by the Board. In the event that a Lot is owned by more than one Member of the Association and no single Member is designated to vote on behalf of the Members having an ownership interest in such Lot, the single Member exercising the vote for such Lot will be deemed to have been designated as the Member entitled to exercise the vote for that Lot. All Members of the Association may attend meetings of the Association and may exercise their vote at such meetings either in person or by proxy.

SECTION 4.4. PROFESSIONAL MANAGEMENT. The Board of Directors has the authority to retain, hire, employ, or contract with such professional management companies or personnel as the Board deems appropriate to perform the day to day functions of the Association and to provide for the administration and operation of the Subdivision as provided for herein and as provided for in the Bylaws.

SECTION 4.5. BOARD ACTIONS IN GOOD FAITH. Any action, inaction, or omission by the Board of Directors made or taken in good faith will not subject the Board or any individual member of the Board to any liability to the Association, its Members or any other party.

SECTION 4.6. IMPLIED RIGHTS; BOARD AUTHORITY. The Association may exercise any right or privilege given to it expressly by the provisions of this Declaration or its Articles of Incorporation or Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board of Directors without a vote of the membership except where any provision in this Declaration, the Articles of Incorporation, the Bylaws or applicable law specifically requires a vote of the membership. The Board may institute, defend, settle or intervene on behalf of the Association in litigation, administrative proceedings, binding or non-binding arbitration or mediation in matters pertaining to (a) Common Areas or other areas in which the Association has or assumes responsibility pursuant to the provisions of this Declaration, (b) enforcement of this Declaration, the Bylaws, the Rules and Regulations and the Architectural Guidelines or (c) any other civil claim or action. However, no provision in this Declaration or the Articles of Incorporation or Bylaws will be construed to create any independent legal duty to institute litigation on behalf of or in the name of the Association.

SECTION 4.7. STANDARD OF CONDUCT. The Board of Directors, the officers of the Association, and the Association have the duty to represent the interests of the Owners in a fair and just manner. Any act or thing done by any Director, officer or committee member taken in furtherance of the purposes of the Association, and accomplished in conformity with the Declaration, Articles of Incorporation, Bylaws and the laws of the State of Texas will be reviewed under the standard of the Business Judgment Rule as established by the common law of Texas, and such act or thing will not be a breach of duty on the part of the Director, officer or committee member if taken or done within the exercise of their discretion and judgment. The Business Judgment Rule means that a court will not substitute its judgment for that of the Director, officer or committee member. A court will not re-examine the decisions made by a Director, officer or committee member by determining the reasonableness of the decision as long as the decision is made in good faith and in what the Director, officer, or committee member believed to be in the best interest of the Association.

ARTICLE V

Maintenance Charge, Fees and Special Assessments

SECTION 5.1. ANNUAL MAINTENANCE CHARGE AND LIENS. Each Lot in the Subdivision is subject to an Annual Maintenance Charge in an amount to be determined annually by the Board of Directors. Each such unpaid Annual Maintenance Charge, together with interest at the rate of 10% per annum, late charges, costs and reasonable attorney's fees for collection, constitutes a separate charge and a valid continuing lien for the benefit of the Association upon the Lot which the Annual Maintenance Charge is made and the Improvements thereon and superior title to each such Lot is hereby reserved in and to the Association. In addition, each Annual Maintenance Charge, together with interest, late charges, costs and reasonable attorney's fees, is the personal obligation of the Owner at the time the Annual Maintenance Charge and/or related charges became due, notwithstanding any subsequent transfer of title to such Lot, including transfer pursuant to a foreclosure sale. The Board has the right to adopt procedures for the purpose of determining the amount of the Annual Maintenance Charge and its billing and collection, provided that such procedures are not inconsistent with the provisions of this Declaration. In addition, the lien created by this Section 5.1 for the benefit of the Association will secure the payment of Special Assessments and the payment of all other sums secured by such lien in accordance with the

provisions of this Declaration. All of the liens created pursuant to this Declaration in favor of the Association are enforceable in accordance with Article IX of this Declaration.

SECTION 5.2. DUE DATE; DELINQUENCY; INTEREST; LATE CHARGE. The Annual Maintenance Charge must be paid to the Association annually, without demand, in advance on or before January 1 each year. The Annual Maintenance Charge will be delinquent on February 1 and interest at the rate of 10% per annum will accrue on any Annual Maintenance Charge remaining unpaid as of February 1 of the year from that date until the date fully paid.

SECTION 5.3. ADJUSTMENT OF ANNUAL MAINTENANCE CHARGE. The Annual Maintenance Charge may be adjusted by the Board of Directors from year to year, by an amount not to exceed ten percent (10%) of the Annual Maintenance Charge for the preceding assessment year. The Annual Maintenance Charge may be adjusted by an amount in excess of ten percent (10%) of the Annual Maintenance Charge for the preceding assessment year by a vote in favor of such adjustment by the Owners representing not less than a majority (50% + 1) of the Lots then subject to the provisions of this Declaration. The vote on a proposed adjustment in excess of ten percent (10%) may be obtained in writing by a written ballot signed by the required number of Owners without the necessity of a meeting. In the event there are multiple Owners of a Lot, the written approval of a proposed adjustment in excess of ten percent (10%) may be reflected by the signature of a single co-Owner.

SECTION 5.4. EFFECTIVE DATE OF ADJUSTMENT. In the event the Annual Maintenance Charge is adjusted, the effective date of such adjustment will be January 1 of the year following the year in which the adjustment is approved by the Board of Directors.

SECTION 5.5. FAILURE TO PAY ANNUAL MAINTENANCE FEE. An Owner who is delinquent in the payment of an Annual Maintenance Charge and/or related charges will be subject to suspension of certain rights as set forth in Section 9.9.C of this Declaration.

SECTION 5.6. FEES FOR USE OF ASSOCIATION PROPERTY; FEES FOR SERVICES.

A. **USER FEES.** The Board of Directors has the authority to assess user and guest fees for the use of the swimming pool, tennis courts, clubhouse, playground and playground pavilion, or any other property owned by the Association.

B. **SERVICE FEES.** The Board has the authority to assess fees and charges for any services that are performed by the Association, such charges not to exceed the reasonable cost to the Association of providing such services.

C. **TRANSFER FEES; RESALECERTIFICATES.** The Board has the authority to establish and change from time to time, if deemed appropriate, a fee sufficient to cover the expense associated with providing information in connection with the sale of a Lot in the Subdivision and changing the ownership records of the Association. Such transfer fee will be paid to Association at its principal office upon each transfer of title to a Lot by the purchaser of the Lot, unless otherwise agreed between the seller and purchaser of such Lot. The Association also has the authority to establish and change from time to time, if deemed appropriate, a fee sufficient to cover the expense associated with providing a Resale Certificate in connection with the sale of a Lot. The fee for a Resale Certificate will be paid to the Association at its principal office and will be in addition to, not in lieu of, the transfer fee.

D. **AMOUNT OF FEES.** In determining the amount of such fees and charges, the Board has the authority to make reasonable classifications and to charge different fees and charges; provided, however, that all such fees and charges must be uniform within such classification.

SECTION 5.7. USE OF FUNDS BY ASSOCIATION. The Association will use the funds collected from the Owners so far as they may be sufficient, in the judgment of its Board of Directors,

toward the payment of maintenance of streets, sidewalks, paths, parks, parkways, esplanades, vacant Lots; for such public service as may be necessary; for providing fire, police, or patrol services; for street lighting, fogging, insect control, and caring for and watering transplanted trees on vacant Lots; for garbage and trash pickup; for maintenance and operation of the Common Area Improvements, including lifeguards and assistants; for enforcement of this Declaration; and doing any other things necessary or desirable, in the opinion of the Board of Directors, to maintain or improve the Subdivision or that which is considered of benefit to the Owners or residents of the Subdivision. The use of the Annual Maintenance Charges for any of these purposes is permissive and not mandatory and the decisions of the Board will be final, so long as made in good faith.

SECTION 5.8. SUBORDINATION OF CHARGES BY ASSOCIATION. In order to encourage the granting of first Mortgage liens on property within the Subdivision, before the Association may proceed to enforce its prior lien, granted and reserved under this Declaration, upon any property on which there is outstanding a valid first Mortgage lien, it will be necessary that a sixty (60) day notice be sent to the nearest office of such first Mortgage lien holder by certified mail, return receipt requested, of such intent, which notice may be a statement of the charges delinquent, together with the notation "final sixty (60) day notification to proceed to collect Maintenance Fund lien."

SECTION 5.9. SPECIAL ASSESSMENTS. If the Board of Directors at any time, or from time to time, determines in its reasonable, good faith judgment that the Annual Maintenance Charges assessed for any period (including those comprising the Maintenance Fund) will be insufficient to defray the cost, in whole or in part, of an expenditure for an emergency deemed by the Board to be of significant importance to the Subdivision, then the Board has the authority to levy, in addition to the Annual Maintenance Charge, a Special Assessment, known as an "Emergency Special Assessment", as it deems necessary to provide for such expenditure. No Emergency Special Assessment will be effective until the same is approved by an affirmative vote of by two thirds (2/3) of the members at a special meeting called and held in accordance with the Association Bylaws for such purpose. If the Board of Directors at any time, or from time to time, determines in its reasonable, good faith judgment that the Annual Maintenance Charges assessed for any period will be insufficient to defray the cost to construct, reconstruct, repair or replace capital improvements in or associated with the Common Area or which are the responsibility of the Association, then the Board has the authority to levy, in addition to the Annual Maintenance Charge, a Special Assessment, known as a "Capital Special Assessment", as it deems necessary to provide for such capital improvements. No Capital Special Assessment will be effective until approved by a vote in favor of the Capital Special Assessment by the Owners representing not less than a majority (50% + 1) of the Lots then subject to the provisions of this Declaration. The vote on the Capital Special Assessment may be obtained in writing by a written ballot signed by the required number of Owners without the necessity of a meeting. In the event there are multiple Owners of a Lot, the written approval of a Capital Special Assessment may be reflected by the signature of a single co-Owner. Any Special Assessment will be payable in the manner determined by the Board.

SECTION 5.10. INDEBTEDNESS. Under no circumstances will any real property owned by the Association be mortgaged or pledged as collateral for a loan or otherwise encumbered by a lien.

SECTION 5.11. NOTICE OF SUMS OWING. Upon the request of an Owner, the Association will provide to such Owner a written statement setting forth the then current total of all Annual Maintenance Charges, Special Assessments, and other sums, if any, owed by such Owner with respect to such Owner's Lot or Lots. In addition to such Owner, the written statement from the Association so advising the Owner may also be addressed to and be for the benefit of a prospective lender or purchaser of the Lot, as the same may be identified by said Owner to the Association in the written request for such information. The Association will be entitled to charge the Owner a reasonable fee for such statement.

ARTICLE VI
Insurance; Security; Common Area

SECTION 6.1. INSURANCE. The Board of Directors has the authority to determine whether or not to obtain insurance for the Association and, if insurance is obtained, the amounts thereof. In the event that insurance is obtained, the premiums for such insurance will be an expense of the Association which will be paid out of the Annual Maintenance Charges.

SECTION 6.2. SECURITY. THE ASSOCIATION AND ITS DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, AND ATTORNEYS WILL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. THE ASSOCIATION AND ITS DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, AND ATTORNEYS WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR THE INEFFECTIVENESS OF ANY PATROL SERVICES UNDERTAKEN. OWNERS, LESSEES AND OCCUPANTS OF ALL LOTS, ON BEHALF OF THEMSELVES, AND THEIR GUESTS AND INVITEES, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, AND ATTORNEYS DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES, OR OTHER SECURITY SYSTEMS (IF ANY ARE PRESENT) WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. OWNERS, LESSEES, AND OCCUPANTS OF LOTS ON BEHALF OF THEMSELVES, AND THEIR GUESTS AND INVITEES, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION AND ITS DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, AND ATTORNEYS ARE NOT AN INSURER AND THAT EACH OWNER, LESSEE AND OCCUPANT OF ANY LOT AND ON BEHALF OF THEMSELVES AND THEIR GUESTS AND INVITEES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO RESIDENTIAL DWELLINGS AND TO THE CONTENTS OF THEIR RESIDENTIAL DWELLING AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION AND ITS DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, AND ATTORNEYS HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER OR LESSEE ON BEHALF OF THEMSELVES AND THEIR GUESTS OR INVITEES RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

SECTION 6.3. USE OF COMMON AREA. The Association and its directors, officers, managers, employees, agents, and attorneys will not in any way be considered an insurer or guarantor of the safety of any person using the Common Area or Common Area Improvements. Owners, lessees and occupants of all Lots, on behalf of themselves, and their guests and invitees, agree to use the Common Area and the Common Area Improvements at their own risk and to assume all risks for injury to themselves, members of their family, and guests and invitees, relating to the use of the Common Area and the Common Area Improvements. Owners, lessees and occupants of all Lots, on behalf of themselves, and their guests and invitees, acknowledge that the Association and its directors, officers, managers, employees, agents, and attorneys will not be liable for any loss or damage by reason of failure to provide lifeguards at the Subdivision swimming pool or the ineffectiveness of any lifeguards employed by any

contractor engaged by the Association, and further acknowledge that the Association and its directors, officers, managers, employees, agents, and attorneys do not represent or warrant that any lifeguard services will be provided or that any lifeguard services provided will in all cases prevent injury to all persons using the swimming pool.

ARTICLE VII
Fire or Casualty: Rebuilding

SECTION 7.1. FIRE, CASUALTY, REBUILDING. Owners are bound and obligated through the purchase of a Lot in the Subdivision, to maintain the Lot and all Improvements on such Lot in a neat and habitable manner in accordance with the provisions of this Declaration. In the event of fire or other casualty causing damage or destruction to a Lot or any Improvements on such Lot, the Owner will have one hundred twenty (120) days after the date such fire or casualty occurs to begin repairing or demolishing the portion of the Improvement destroyed by said fire or casualty in accordance with the Plans presented to and approved in writing by the Architectural Control Committee. Once timely commenced, such work must be diligently pursued to the completion so that the damaged Improvement will not remain in a partly finished condition any longer than reasonably necessary for such completion. However, in the event the damage to the Lot and Improvements is not covered by insurance, or the Owner's claim is not approved by the Owner's insurance company, the Owner may apply for a "hardship" exception to the requirements of this Section to the Board of Directors within one hundred twenty (120) days after the date of such damage. The Board of Directors must rule on the Owner's application for a "hardship" exception within thirty (30) days after the date of its receipt. The granting of a "hardship" exception in a particular case will in no event be deemed a waiver of the right to enforce this restriction thereafter. In the event the Owner or occupant fails to commence the repairs or demolition of the damaged portion of the Lot and/or Improvement or to diligently pursue to completion the same as required under this Section 7.1, the Association may, at its option, without liability to the Owner or occupant trespass or otherwise enter upon said Lot and cause the damaged portion of the Lot and/or the Improvement to be repaired or demolished and may charge the Owner or occupant of such Lot for the cost of the work, plus fifty percent (50%) for overhead and supervision, plus interest at the rate set forth in Section 5.2 of this Declaration. Payment of such cost and charges will be secured by the lien created for the benefit of the Association in Article V of this Declaration and will be enforceable the same manner provided in Article IX of this Declaration.

ARTICLE VIII
Amendment; Duration; Effective Date; Existing Violations

SECTION 8.1. AMENDMENT. Except as otherwise provided by applicable law, the provisions of this Declaration may be amended at any time by a written instrument (a) signed by all members of the then Board of Directors certifying that the Owners of not less than a majority (50% + 1) of the Lots then subject to the provisions of this Declaration have voted in favor of such amendment setting forth the amendments and (b) duly filed for record in the Official Public Records of Real Property of Harris County, Texas. In the event there are multiple Owners of a Lot, the written approval of an amendment to this Declaration may be reflected by the signature of a single co-Owner. Any legal challenge to the validity of an amendment to this Declaration must be initiated by filing a suit not later than one (1) year after the date the amendment document is filed for record in the Official Public Records of Real Property of Harris County, Texas.

SECTION 8.2. DURATION. This Declaration, as the same is amended from time to time, is to run with the land and will be binding on all parties and all persons claiming under it and will remain in full force and effect until December 31, 2020 after which time this Declaration will be extended automatically for successive ten (10) year periods. Notwithstanding the foregoing, this Declaration (a) may be amended at any time as provided in Section 8.1 of this Declaration and (b) may be terminated effective as of the last day of the initial term or the last day of any successive term by recording prior to

the last day of such term in the Official Public Records of Real Property of Harris County, Texas, an instrument in writing signed by the Owners of not less than seventy-five percent (75%) of the Lots then subject to this Declaration agreeing to terminate this Declaration.

SECTION 8.3. EFFECTIVE DATE, EXISTING VIOLATIONS. This Declaration will become effective upon the Effective Date. Any Improvement existing on any Lot in the Subdivision on the Effective Date of this Declaration that was lawfully constructed or altered in conformance with the restrictions in effect for such Lot at the time of any such construction or alteration, but is not in conformance with the provisions in this Declaration, will not be deemed to be in violation of this Declaration; provided, however, that any such Improvement must be maintained in conformance with the provision of this Declaration. In addition, any such Improvement will not be enlarged, expanded, or extended or renewed or replaced in such a manner inconsistent with this Declaration. This Section 8.3 does not apply to any existing Improvement that was required to be approved by the Architectural Control Committee per the prior restrictions, but was not so approved, or to any Improvement that was expressly disapproved by the Architectural Control Committee. Notwithstanding the foregoing, this Section 8.3 will not be construed to affect the right of the Association or a Lot Owner to proceed with or initiate action against any person who is in violation of the provisions of the prior restrictions after the Effective Date of this Declaration so long as the acts or circumstances constituting a violation of the prior restrictions also violate the provisions of this Declaration.

ARTICLE IX

Miscellaneous

SECTION 9.1. SEVERABILITY. In the event of the invalidity or partial invalidity or partial unenforceability of any provision in this Declaration, the remainder of the Declaration will remain in full force and effect.

SECTION 9.2. NUMBER AND GENDER. Pronouns, whenever used herein, and of whatever gender, include natural persons and corporations, entities and associations of every kind and character, all genders, and the singular will include the plural, and vice versa, whenever and as often as may be appropriate.

SECTION 9.3. ARTICLES AND SECTIONS. The cover page, table of contents, and the article and section headings in this Declaration are for convenience of reference and do not affect the construction or interpretation of this Declaration. Unless the context requires otherwise, references to articles and sections are references to articles and sections of this Declaration.

SECTION 9.4. INTERPRETATION. This Declaration will be liberally construed to effectuate the purposes set forth herein.

SECTION 9.5. RIGHT TO INSPECT. During reasonable hours and upon reasonable notice, any member of the Architectural Control Committee, any member of the Board of Directors or any authorized representative of any of them, will have the right to enter upon and inspect a Lot, and the exterior of the Improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons will not be deemed guilty of trespass by reason of such entry.

SECTION 9.6. DELAY IN ENFORCEMENT. No delay in enforcing the provisions of this Declaration with respect to any breach or violation of this Declaration will impair, damage or waive the right of any party entitled to enforce this Declaration to obtain relief against or recover for the continued or repetitive breach or violation of this Declaration or any similar breach or violation of this Declaration at any later time.

SECTION 9.7. LIMITATION OF LIABILITY. Notwithstanding anything provided herein to the contrary, neither the Architectural Control Committee, the Association, the Board of Directors nor their agents, employees, representatives, members, officers or directors will have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by an Owner on account of: (a) any defects in any Plans submitted, reviewed, or approved in accordance with the provisions of Article III of this Declaration, (b) any defects, structural or otherwise, in any work done according to such Plans, (c) the failure to approve or the disapproval of any Plans or other data submitted by an Owner for approval pursuant to the provisions of Article III, (d) the construction or performance of any work related to such Plans, (e) bodily injuries (including death) to any Owner, occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or occupant, or other damage to a Residential Dwelling, Improvement or the personal property of any Owner, occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in a Residential Dwelling or other Improvement or the Plans thereof or any past, present or future soil and/or subsurface conditions, known or unknown and (f) any other loss, claim, damage, liability or expense, including court costs and attorney's fees suffered, paid or incurred by an Owner arising out of or in connection with the use and occupancy of a Lot, Residential Dwelling, or other Improvement situated thereon. None of the members of the Architectural Control Committee or the Board of Directors will be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another of such individuals, whether such other individuals were acting on behalf of the Association, the Architectural Control Committee, the Board, or otherwise. Neither the Association, the Board, the Architectural Control Committee, nor their officers, agents, employees, representatives, members, officers or directors will be liable for any incidental or consequential damages for failure to inspect any premises, Improvements, or portion thereof, or for failure to repair or maintain the same.

SECTION 9.8. ENFORCEABILITY. This Declaration will run with the Property and will be binding upon and inure to the benefit of and be enforceable, in law or at equity, against any violator or attempted violator of this Declaration, by the Association, each Owner and occupant of a Lot in the Subdivision, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. In addition, the Association or any Owner or occupant of a Lot in the Subdivision has the right to enforce the terms of the Judgment (insofar as the terms of such Judgment are not inconsistent with the provisions of this Declaration). In case of a conflict between the terms of such Judgment (including, without limitation, Exhibit "C" to such Judgment) and the provisions of this Declaration, the provisions of this Declaration will control.

SECTION 9.9. REMEDIES. Upon a violation of the provisions of Declaration, the Rules and Regulations adopted by the Association, or the Architectural Guidelines, the Association will be entitled to seek enforcement by any of the following remedies:

A. **CURE.** After giving notice and an opportunity to be heard, the Association will have the right of entry to remove or abate such violation, without committing a trespass, and the expense incurred, plus fifty percent (50%) for overhead and supervision, plus interest at a rate set forth in Section 5.2 of this Declaration will be a "charge back" to the Lot of the violator until paid.

B. **LEGAL PROCEEDINGS.** The Association and each Owner or occupant of a Lot within the Subdivision, or any portion thereof, is entitled to institute and prosecute any proceeding at law or in equity to abate, preempt or enjoin any such violation or attempted violation or to recover monetary damages caused by such violation or attempted violation.

C. **SUSPENSION OF RIGHTS.** In addition to all other rights and remedies available to it at law, in equity or otherwise, the Association, acting through the Board of Directors, will have the right to suspend the right of such Owner to use the Common Area or any other property owned by the

Association, after giving such Owner notice and an opportunity to be heard in the manner provided by applicable law.

D. ENFORCEMENT COST OF A LIEN. The (i) charge backs (including costs and expenses to cure, abate or remove violations, interest charges and overhead) imposed by the Association, (ii) the actual attorney fees and other costs, and expenses incurred by the Association to enforce this Declaration and, (iii) in the event the Association brings suit to enforce this Declaration, any actual costs, expenses, and attorney fees the Association is allowed to recover as a result of such suit will be a charge against the Owner and the Lot of the violator. Such charges and expenses will be added to the Owner's assessment account and collected in the manner provided in Article V of this Declaration and will constitute a lien retained against such Lot with the same force and effect as the lien for the Annual Maintenance Charge until paid.

SECTION 9.10. LIEN ENFORCEMENT. The collection of the Annual Maintenance Charge, Special Assessment, and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and in the event of such suit, the expense incurred in collecting such delinquent amounts, including interest, costs and attorney's fees will be chargeable to and be a personal obligation of the defaulting Owner. Notice of the lien may, but will not be required to, be given by recording in the Official Public Records of Real Property of Harris County, Texas, an affidavit, duly executed, and acknowledged by an authorized representative of the Association, setting forth the amount owed, the name of the Owner or Owners of the affected Lot according to the books and records of the Association, and the legal description of such Lot. Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Association the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Annual Maintenance Charge, any Special Assessment, and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens under applicable law or in equity.

IN WITNESS WHEREOF, the undersigned members of the Board of Directors have executed this Declaration on the date set opposite each name, to become effective upon the Effective Date.

**REPLACEMENT CONSENT FORM
FOR
AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRIARGROVE PARK, SECTIONS I THROUGH VI**

I (we) the undersigned hereby approve the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briargrove Park, Sections I through VI.

Lot _____, Block _____, Briargrove Park, Section _____

Street Address

Printed Name of Owner

Printed Name of Owner

Signature

Signature

The State of Texas

County of Harris

This instrument was acknowledged before me on the ____ day of _____, 2009, by and

_____ and _____.

Notary Public in and for the State of Texas

My commission expires: _____

Return to:

Briargrove Park Property Owners, Inc.
2301 Seagler Road
Houston, Texas 77042

(713) 782-6761 telephone

(713) 783-5203 facsimile