

**AMENDED RESTRICTIONS AND PROTECTIVE COVENANTS
CHEROKEE ADDITION
CITY OF HOUSTON, TEXAS**

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

WHEREAS, Cherokee Addition is a residential subdivision in the City of Houston, Harris County, Texas according to the map or plat thereof recorded in Volume 538, Page 442, of the Deed Records of Harris County, Texas and the revised map or plat recorded in Volume 655, Page 298, of the Deed Records of Harris County, Texas (the "**Subdivision**"); and

WHEREAS, covenants and restrictions were imposed upon all of the land comprising the Subdivision by that certain instrument entitled "Revocation of Restrictions" recorded on December 31, 1959 in Volume 3895, Page 425, et seq. of the Deed Records of Harris County, Texas; and

WHEREAS, the covenants and restrictions imposed upon the Subdivision by the Revocation of Restrictions were incorporated into a declaration and extended by that certain instrument entitled "Declaration and Agreement Extending Restrictions in Cherokee Addition" recorded in the Official Public Records of Real Property of Harris County, Texas on December 20, 1983 under Clerk's File No. J288515; and

WHEREAS, the covenants and restrictions applicable to the Subdivision were further extended by that certain instrument entitled "Declaration and Agreement Extending Restrictions in Cherokee Addition" recorded in the Official Public Records of Harris County, Texas on December 17, 1993 under Clerk's File No. P608865; and

WHEREAS, the covenants and restrictions applicable to the Subdivision were further extended by that certain instrument entitled "Declaration and Agreement Extending Restrictions in Cherokee Addition" recorded in the Official Public Records of Harris County, Texas on December 18, 2003 under Clerk's File No. X271098; and

WHEREAS, the covenants and restrictions applicable to the Subdivision were added to and modified for the sole purpose of creating and operating a property owners' association with mandatory membership and specifying the voting rights of each owner by that certain instrument entitled "Certification of Petition Committee for Cherokee Addition - Petition to Add to or Modify the Restrictions for Cherokee Addition" recorded in the Official Public Records of Real Property of Harris County, Texas on April 27, 2007 under Clerk's File No. 20070255201; and

WHEREAS, to protect the quality of life, property values and the established residential character within the Subdivision, the undersigned Property Owners, each of whom owns record title to property within the Subdivision, and being the owners of at least seventy-five percent (75%) of the real property within the Subdivision, desire to amend the existing covenants, conditions and restrictions to restrict the use and development of all of the property within the

Subdivision to insure that it will continue to be a high-quality restricted residential district of single-family Residential Dwellings; and

WHEREAS, Cherokee Civic Club (the "**Association**"), a non-profit corporation, incorporated under the laws of the State of Texas, effective on November 7, 1989, established as a property owners' association as defined in Chapter 204 of the Texas Property Code, having jurisdiction over the Subdivision, has approved and circulated this amendment for the purpose of amending the existing covenants, conditions and restrictions in the manner provided in Sections 204.005 and 204.008 of the Texas Property Code; and

WHEREAS, the Association has notified all record owners of real property within the Subdivision in writing of the proposal of these Restrictions in accordance with the requirements of Section 204.005 of the Texas Property Code;

NOW, THEREFORE, in order to modify and amend the existing covenants, conditions and restrictions, the undersigned Property Owners, being the owners of at least seventy-five percent (75%) of the real property within the Subdivision, hereby adopt the following covenants, conditions and restrictions (these "**Restrictions**") to be applicable to their respective Homesites and, to the fullest extent permitted by law, the Subdivision, all in accordance with the provisions of the Texas Property Code, as amended.

(1) Definitions:

As used herein, the terms set forth below shall have the following meanings:

- (A) "**Architectural Committee**" has the meaning given to it in Section (19)(B)(v).
- (B) "**Association**" has the meaning given to it in the Recitals.
- (C) "**Beneficiaries**" has the meaning given to it in Section (2).
- (D) "**Blockface**" means one side of a street, from one street intersection to an adjacent street intersection.
- (E) "**Board of Directors**" means the Board of Directors of the Association.
- (F) "**Cherokee Handbook**" has the meaning given to it in Section (16)(D).
- (G) "**Effective Date**" means the date this document is filed for record in the Official Public Records of Real Property of Harris County, Texas, having been properly executed by the requisite owners of real property in the Subdivision.
- (H) "**Front Building Line**" has the meaning given to it in Section (18)(A).
- (I) "**Homesite**" means, as the case may be, a Platted Lot, Platted Lots, a portion of a Platted Lot or Platted Lots or any combination of the above that are contiguous and on which a single Residential Dwelling is existing as of the Effective Date, or

upon which a Residential Dwelling is permitted by these Restrictions to be built thereafter.

- (J) **"Parking Structure"** means any structure that provides covered parking for one or more automobiles, whether or not enclosed and whether or not constituting a part of another structure. For example, and without limitation, any garage, carport, porte cochere, garage apartment, living space with parking area below, or similar structure is a Parking Structure.
- (K) **"Platted Lot"** means a lot as identified on the original plat of the Subdivision or the revised plat of the Subdivision as set forth in the Recitals (and, as to any additional real property bound by these Restrictions, any Homesite as identified in the original plat thereof filed in the office of the County Clerk, Harris County, Texas).
- (L) **"Political Signs"** has the meaning given to it in Section (9)(C).
- (M) **"Property Owner"** means an owner of real property within the Subdivision (and any additional real property bound by these Restrictions), including without limitation any heirs, devisees, executors, successors and assigns of such owner, and any person that, at any time, in question, is a successive owner of real property within the Subdivision.
- (N) **"Residential Dwelling"** means the primary house, and porches, porte cochères, steps, other projections and every other permanent part of the building.
- (O) **"Restrictions"** has the meaning given to it in the Recitals.
- (P) **"Side Building Line"** has the meaning given to it in Section (18)(B).
- (Q) **"Subdivision"** and **"Cherokee"** have the meanings given to them in the Recitals, but shall include any additional real property hereafter made subject to these Restrictions.

(2) Beneficiaries and Enforcement:

These Restrictions shall constitute covenants running with the land, binding on all Property Owners, and shall inure to the benefit of each and all of the Property Owners of real property located in the Subdivision and to each purchaser of land in the Subdivision and their heirs, devisees, administrators, executors, successors and assigns, and to the Association (the **"Beneficiaries"**). Any one of said Beneficiaries, or the Association, shall have the right to enforce these Restrictions by the prosecution of any proceedings in court or in equity against any person, firm or corporation violating or attempting to violate the same, to require remediation of any such violation or enjoin the attempted or continued violation, and shall also be entitled to any damages, attorney's fees, interest and other remedies available at law or in equity for any such violations; provided that, no person or corporation shall be liable for breach of these Restrictions except in respect to

breaches occurring or committed during its, his or their ownership of the property involved in such breach.

(3) Grandfather Clause and Pre-existing Variances:

Each Property Owner, as well as the Association, hereby acknowledges and agrees that, anything contained herein to the contrary notwithstanding:

- (A) It is not the intention of the Association or the Property Owners and these Restrictions shall not be construed to require any Property Owner to change, alter, remove or relocate any existing structure or other improvement of any kind located within the Subdivision on the Effective Date as a result of these Restrictions becoming effective; but that all existing structures and other improvements and each Homesite existing on the Effective Date shall be grandfathered and shall not be required to be changed in any manner at any time;
- (B) Any circumstances and conditions existing as of the Effective Date with respect to any Homesite that are not in compliance with these Restrictions are hereby approved;
- (C) All existing structures or other improvements located within the Subdivision as of the Effective Date, and any repair or interior renovation thereof following the Effective Date that does not alter the form, exterior building materials, finishes or colors, dimensions or location of such existing structures or other improvements, are permitted by these Restrictions and will not be, at any time, considered in violation of any provisions contained herein; and
- (D) All structures or other improvements contemplated by plans that have been approved by the Association (including by the Board of Directors or the Architectural Committee) prior to the Effective Date may be constructed and completed after the Effective Date in accordance with such plans (or any revisions thereto that may be so approved by the Association after the Effective Date) and shall thereafter be grandfathered and treated for all purposes as if such structures or other improvements had existed on the Effective Date.

(4) Term: Amendment:

These Restrictions shall run with the land and shall be binding on all Property Owners and the Homesites and Platted Lots of all Property Owners and all persons claiming under said Property Owners (and on the owners of any additional real property bound by these Restrictions and on such additional real property) until December 31, 2030, after which time said Restrictions shall be automatically extended for successive periods of ten (10) years each. These Restrictions may be amended by an instrument approved in writing by Property Owners (as of the date of recording the amendment document) representing not less than seventy-five percent (75%) of the Homesites in the Subdivision. Each written approval must be dated but the signature of a Property Owner approving the amendment need not be acknowledged; provided that, a certificate signed and acknowledged by an

officer of the Association must be attached to the amendment document verifying that Property Owners of the requisite number of Homesites in the Subdivision have approved the amendment and that such written approvals were obtained within the time period specified in this paragraph. In the event there are multiple owners of a Homesite, the approval may be reflected by the signature of a single co-owner. For an amendment document to be valid, the approvals of owners (as of the date of recording) of the requisite number of Homesites must be obtained within one (1) year of the date of the first written approval obtained. Further, no amendment shall be effective until the amendment document, to which the certificate of an officer of the Association and the written approvals of the Property Owners are attached, is recorded in the Official Public Records of Real Property of Harris County, Texas. Provided, however, that no provision of these Restrictions that is expressly applicable to less than all of the Homesites bound by these Restrictions may be altered, rescinded or modified by an instrument so filed unless it is signed by Property Owners representing at least seventy-five percent (75%) of the Homesites to which such provision is expressly applicable.

(5) Granting of Variances:

With respect to any Homesite, the Association shall have the authority to grant variances from the provisions of these Restrictions and any other architectural restrictions based upon circumstances such as topography, natural obstructions, aesthetics or other relevant considerations, including but not limited to the location of the Homesite, traffic issues, noise and security; provided, however, the Association shall have no authority to grant a variance from the provisions of these Restrictions relating to the use of a Homesite or the use of any Residential Dwelling or other improvement on a Homesite. Each variance must be approved by a majority vote of the Board of Directors and the terms and conditions of the variance, as well as a statement of the reason(s) for its issuance, must be set forth in a letter or other document executed by an authorized officer, director or agent of the Association. No variance shall operate to waive any provision of these Restrictions for any purpose except as to the particular property, the particular provision and the particular instance made the subject of the variance.

(6) Land Use and Building Type:

- (A) Each Homesite and the Residential Dwelling and other improvements on the Homesite shall be used together for single-family residential purposes only. The term "residential purposes" as used herein means that the Homesite and the Residential Dwelling and other improvements on the Homesite shall be used by a single family as its dwelling place and residence and the term shall be deemed to prohibit, without limitation, the use of any Homesite for a duplex apartment, a duplex house, an apartment house, a boarding house, a hotel, a Parking Structure apartment used for rental or for any multi-family use or for any business, professional, religious, charitable or commercial activity of any type, unless the business, professional, religious, charitable or commercial activity is unobtrusive and merely incidental to the primary use of the Homesite and the Residential Dwelling and other improvements on the Homesite for single-family residential purposes. As used herein, the term "unobtrusive" means, without limitation, that

there is no business, professional, religious, charitable or commercial symbol, structure, logo, icon, flag or sign displayed on the Homesite, there are no related audio or visual displays (by any means) anywhere on the Homesite or on any vehicle parked on or at the Homesite, there are no clients or customers who go to the Homesite for any business, professional, religious, charitable or commercial related purpose of the Homesite owner on a regular basis, and the conduct of the business, professional, religious, charitable or commercial activity is not otherwise apparent by reason of noise, odor, vehicle and/or pedestrian traffic, or the like.

- (B) No garage apartment or outbuilding on a Homesite shall be used for residential purposes or as living quarters, except by persons regularly working on the Homesite on behalf of the family occupying the Residential Dwelling on the Homesite, or by one or more members of the family occupying the Residential Dwelling on that Homesite, or their relatives, or by a temporary guest. Under no circumstances may any garage apartment, outbuilding or quarters for domestic workers, guests or family members be leased or rented.

(7) Animals:

No livestock, fowl, reptile or exotic animal of any kind may be staked, pastured, cooped, caged or penned in the Subdivision other than generally recognized household pets. A reasonable number of recognized house or yard pets are permitted for each Homesite. No permitted pet is allowed to roam in the Subdivision make an unusual amount of noise or odor or otherwise become an annoyance or nuisance to surrounding residents. Owners of permitted pets are required to clean up any defecation of or garbage scattered by such pet within the Subdivision within a reasonable time. The Association, acting reasonably and in good faith, shall have the sole discretion to determine (i) whether an animal is a generally recognized house or yard pet, (ii) whether such animal is an annoyance or nuisance to surrounding residents, and (iii) whether the number of recognized house or yard pets on a Homesite is reasonable. In determining whether an animal is a generally recognized house or yard pet, the Association shall consider only what is a generally recognized house or yard pet in Harris County, Texas.

(8) Lawns:

Grass, weeds and vegetation on each Homesite shall be kept mowed and trimmed at regular intervals so as to maintain the same in a neat and attractive manner. In the event that a Property Owner fails to maintain his/her Homesite in a neat and attractive condition and in accordance with the standards of the Subdivision, the Association may, at its option, after not less than seven (7) days written notice to the Property Owner, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs, and plants and any refuse, trash, inoperable vehicles, or discarded unsightly items removed from the property, and such Property Owner shall pay for the cost of such work.

Commercial lawn maintenance work and landscaping work that produces noise (such as work involving the use of motorized equipment) is permitted on any day that it is not a Sunday or a holiday, but not before 8:00 a.m. or after 5:00 p.m. For purposes hereof, a "holiday" means a holiday recognized as such by the City of Houston. Lawn maintenance work and landscaping work that does not create noise (such as work not involving the use of motorized equipment) is permitted at any time.

(9) Signs:

Except as permitted herein or as required to be permitted by Texas or federal laws, no signs, billboards, posters, or advertising devices of any character shall be displayed on a Homesite or anywhere in the Subdivision without the written consent of the Association, and such permission, if granted, shall be revocable at any time. Exceptions are as follows:

- (A) Signs indicating that a Residential Dwelling is protected by a guard or security service, if such signs are reasonable in number, size, character and location in the reasonable, good faith opinion of the Association;
- (B) Signs notifying Property Owners relating to meetings or activities of or sponsored by the Association, or signs placed by the Association and approved markers indicating that a property is listed on a registry of historic places; and
- (C) ***'Political Signs'*** are defined as signs relating to a candidate or ballot item or advertising a political candidate or ballot item for an election, for which a vote may be cast in Precinct 222 of Harris County, Texas, or any succeeding voting district that contains any portion of the Subdivision. Political Signs are permitted only to the extent required to be permitted by Texas or federal laws from time to time in effect and as approved by the Association. Summaries of then current guidelines regarding Political Signs may be published by the Association in the Cherokee Handbook.
- (D) "For Sale Signs" are defined as signs relating to the sale of Homesites. For Sale Signs are permitted, provided that a For Sale Sign must be ground-mounted and shall not exceed three (3) feet in width nor two (2) feet in height.
- (E) The Association may remove any signs, billboards, posters, paintings or advertising devices of any character in violation of these Restrictions or displayed in violation of these Restrictions, without liability for trespassing, conversion or damages to the removed item, and the cost to remove the same shall be paid by the Property Owner on whose property such signs, billboards, posters, paintings or advertising devices are located or who is responsible for placing such signs, billboards, posters, paintings or advertising devices of any character.

(10) Yard Items:

- (A) Except as expressly permitted by Section (10)(B) or as otherwise provided herein or as otherwise approved in writing by the Association according to the

procedures and standards set forth herein, the following "restricted items" may not be permanently installed or permanently placed on any Homesite, between the adjacent street and the Front Building Line (or the adjacent street and the Side Street Building Line, in the case of corner Homesite), visible from the street:

- (i) Any play fort; play house; free house; play structure or similar item of any kind (other than a movable plastic play fort, play house or other movable play structure); bench; swing set; slide; trampoline; skateboard ramp; tire swing; rope, chain or other swing; table; swimming pool or hot tub; other play equipment; or similar item of any nature placed.
- (ii) Sculpture, artwork or fountains to be installed on a Homesite nearer to the front property line than the Front Building Line or, if a corner Homesite, nearer to the side property line adjacent to a side street than the applicable Side Street Building Line, are permitted, only if the sculpture, artwork or fountain is not visible from a street adjacent to the Homesite. Sculpture, artwork or fountains located on a Homesite behind the Front Building

Line (and the Side Street Building Line, in the case of a corner Homesite), are permitted whether or not the sculpture and artwork is visible from a street adjacent to the Homesite.

- (iii) Any permanently installed restricted item described in this Section (10) that is located in the front or side yard of a Homesite visible from an adjacent street or in the rear yard of a Homesite nearer to the property line than the applicable building line as of the Effective Date, and which complies with the Restrictions applicable to the Homesite prior to the Effective Date, is not required to be removed; provided that, if such restricted item is voluntarily removed by the Property Owner or occupant of the Homesite for any reason or becomes detached as the result of normal wear and tear or damage, such restricted item may not be replaced without compliance with these Restrictions.
- (iv) In the event of a dispute over whether a restricted item is a permanently installed restricted item, the Association shall have the authority to make the determination and its reasonable, good faith determination shall be conclusive and binding.

(B) Notwithstanding the provisions of this Section (10) to the contrary, any Property Owner may at any time, erect, install or place on a Homesite in any area in which restricted items would otherwise be prohibited by the provisions in this Section (10):

- (i) one (1) single seat child's rope, chain or other swing (excluding a tire swing);

- (ii) one (1) small sculpture, artwork or fountain, not to exceed six (6) feet in any dimension;
- (iii) one (1) bench or bench swing, provided that the color(s) of the bench or swing and any rope, chain or other suspension material are compatible with the exterior color(s) of the Residential Dwelling on the Homesite; and
- (iv) one flagpole of a reasonable height and location. The Association shall have the authority to determine whether the height and location of a flagpole is reasonable relative to the size of the Homesite and the Residential Dwelling.

(11) Mechanical Equipment:

- (A) Except as otherwise provided herein, any exterior heating, ventilating and air-conditioning compressor unit, swimming pool equipment, mosquito or insect control device, generator, water filter or softener or other mechanical equipment that is installed or replaced after the Effective Date must provide sound attenuation that reduces the noise generated by the equipment to not more than the limit provided by any applicable City of Houston ordinance, measured from the nearest point at which a structure may be constructed (without variance) on the Homesite adjacent to the side or rear property line of the Homesite on which such heating, ventilating and air-conditioning compressor unit, swimming pool equipment, mosquito or insect control device, generator, water filter or softener or other mechanical equipment is to be installed or replaced. Except as otherwise provided in this paragraph, all exterior heating, ventilating and air-conditioning compressor units, swimming pool equipment, mosquito or insect control device, generator, water filter or softener or other mechanical equipment installed or replaced after the Effective Date must be located at ground level (or at the lowest elevation consistent with any applicable flood control regulations) and must be screened from view from other Homesites, and from any street adjacent to the Homesite, by landscaping or approved fencing.
- (B) Except as otherwise provided herein, no window or wall air-conditioning units are permitted in any Residential Dwelling, Parking Structure, outbuilding or other improvement, if such air-conditioning unit is visible from any street. If, as of the Effective Date, a window or wall air-conditioning unit exists in a Residential Dwelling, Parking Structure, outbuilding or other improvement, the Property Owner of the Homesite on which the window or wall air-conditioning unit exists shall not be required to remove the window or wall air-conditioning unit. Further, in the event the window or wall air-conditioning unit requires replacement, the unit may be replaced with a new window or wall air-conditioning unit if, and only if: (i) the replacement unit is substantially similar to the previously existing unit in terms of size and capacity; (ii) the replacement unit is installed in the same location as the previously existing unit, unless the Association agrees in writing to

allow the replacement unit to be relocated; and (iii) the replacement unit meets the sound requirements herein for all exterior air conditioning equipment.

(12) Vehicles:

- (A) No mobile home or trailer, motor home, horse trailer, vehicle transport trailer, bus, recreational vehicle, boat, jet ski or trailer of any kind shall be stored on any Homesite visible from any street adjoining such Homesite or visible from any adjacent Homesite at ground level. A mobile home or trailer, motor home, horse trailer, vehicle transport trailer, bus, recreational vehicle, boat, jet ski or trailer is stored on a Homesite if it is parked on the street in front of such Homesite or on the Homesite and visible from a street adjoining such Homesite or visible at ground level from any adjacent Homesite for more than forty-eight (48) consecutive hours or if it is parked on the street in front of such Homesite or on the Homesite visible from an adjoining street or visible at ground level from any adjacent Homesite for any length of time during a day for more than five (5) days in any calendar month.
- (B) No vehicle owned, leased or otherwise in the possession of a person residing on a Homesite shall be parked, kept or stored in the street in front of the Homesite or, if a corner Homesite, in the side street adjacent to the Homesite, except on a temporary basis (which means that the vehicle is used on a day-to-day basis outside the Subdivision). Further, a vehicle may be parked in the street on a temporary basis only if such vehicle is operable and has all requisite licenses and permits. This paragraph does not apply to a construction vehicle parked on a Homesite or in the street in front of a Homesite on a regular basis during the period in which construction work on the Homesite is being performed. No inoperable vehicle shall be parked, kept or stored on a Homesite if visible from another Homesite or from any street in the Subdivision. For purposes of this paragraph, a vehicle shall be deemed to be inoperable if: (i) it does not display all current and necessary licenses and permits; (ii) it does not have fully inflated tires; (iii) it is on a jack, blocks or the like; or (iv) it is otherwise incapable of being legally operated on a public street or right-of-way. No motorcycle, dirt bike, four-wheeler, golf cart or the like shall be parked on any unpaved portion of a Homesite or kept or stored on a Homesite if visible from another Homesite or from any street in the Subdivision except a four-wheeler, golf cart or the like used in conjunction with the maintenance of a Homesite and then only during the period that maintenance work is being performed. No commercial vehicle shall be parked, kept or stored in a location visible from a street adjoining a Homesite, except a vehicle operated by a third-party service provider and then only during the period that services are being provided on the Homesite. For purposes of this paragraph, a vehicle shall be deemed to be a commercial vehicle if it has more than two axles, if it has been adapted or modified for any business or commercial use, or if it displays any type of business or commercial sign, symbol, icon or logo. No pick-up truck or sports utility vehicle which has been substantially modified shall be parked or kept on a Homesite visible from any adjacent street or any adjacent Homesite at ground level for a period in excess of forty-eight (48)

consecutive hours. For purposes hereof, a pick-up truck or sports utility vehicle has been substantially modified if the height of the vehicle exceeds the height of the vehicle as originally manufactured by more than twelve (12) inches or the exterior of the vehicle is equipped with apparatus for recreational or other use (such as, by way of example and not in limitation, apparatus for hunting) and the apparatus is readily visible.

(13) Paving, Walkways and Driveways:

Architectural or construction plans illustrating the location of all paving, walkways and driveways proposed to be constructed in the front yard of a Homesite and, if a corner Homesite, the side yard of the Homesite adjacent to the street, must be submitted to the Board of Directors with a copy to the Architectural Committee (if then so established), and approved in writing by the Association prior to installation or construction. The plans must include the dimensions of each walkway and driveway, the type and color of materials to be used in construction, and a plan for protection of significant trees (defined below) in the vicinity of the proposed paving. The Association shall have the authority to disapprove (i) a proposed driveway that crosses the front (street) property line of the Homesite at more than one location or that is greater than twelve (12) feet wide where it crosses the front (street) property line of the Homesite, and (ii) a project involving a proposed walkway or driveway if the Association determines (x) that the design or type or color of materials proposed to be used in the construction of the walkway or driveway is not compatible with the predominant types of walkways and driveways in the Subdivision, or (y) that the walkway or driveway is not compatible with the buildings, Parking Structure and/or appurtenant improvements constructed or to be constructed on the Homesite, or (z) that the proposed project does not protect nearby significant trees. No walkway or driveway that exists on a Homesite as of the Effective Date is required to be removed or modified. If any new paving, walkways and driveways are constructed but are not in substantial compliance with the plans as submitted, the Association may remove or modify such paving, walkways and driveways to substantially comply with the drawing as submitted. If an owner of a walkway or driveway that existed prior to the Effective Date desires to repair or replace such walkway or driveway, the walkway or driveway may be repaired or replaced so long as the walkway or driveway, as repaired or replaced, is substantially similar to the previously existing walkway or driveway in terms of design and type and color of materials and the location of the walkway or driveway is not changed, unless permission of the Association is granted to make changes. In considering the approval of proposed new construction, repairs to or replacement of existing walkways or driveways, the Association shall consider the effect that such construction will have on the health and longevity of any significant trees that are near to the construction area.

(14) Tree Protection:

The residents of the Subdivision, at their own expense and efforts, have planted, nurtured and maintained rows of oak trees on the esplanades and on the city easements, resulting in a canopy of oaks that contributes in large part to the quality of life and to the property value of Homesites. It is an objective of these Restrictions to enhance the value of the

Subdivision by preserving the trees within the Subdivision as much as is reasonably possible. To assist in fulfilling this objective, all architectural or construction plans required to be submitted by these Restrictions to the Board of Directors and Architectural Committee for the construction of a new Residential Dwelling on a Homesite or an addition to an existing Residential Dwelling or other improvement on a Homesite must identify all significant trees to be removed from the Homesite or from the city easement between the sidewalk and the curb ("street trees"). If a "significant tree", defined as a living tree having a caliper of six (6) inches or more (measured twelve (12) inches above grade), and which is located nearer to the front property line than the Front Building Line or, if a corner Homesite, nearer to the side property line adjacent to the side street than the applicable Side Street Building Line, is removed from a Homesite in conjunction with the construction of a new Residential Dwelling or any addition to an existing Residential Dwelling or other improvement on a Homesite, the Association may, in its discretion, require the owner of the Homesite to replace the tree with a hardwood tree or other type of tree approved by it in writing. A replacement tree must have a caliper of at least six (6) inches measured twelve (12) inches above grade and otherwise be proportionate in height and size given its type. No street tree may be removed by any person unless a permit is first obtained from the City of Houston authorizing such removal, in which case the removed tree shall be replaced by an oak tree approved by the Association prior to planting.

(15) Architectural Review Standards:

Compatibility of style in the preservation and restoration of existing buildings and for construction of new Residential Dwellings in the Subdivision is of utmost importance to maintain the historical character of said area and the surrounding subdivisions. The Subdivision has a significant historical presence in the City of Houston. Much of the historical presence has to do with its original scheme of development and the architectural styles of existing Residential Dwellings. By virtue of these Restrictions, the Property Owners in the Subdivision acknowledge that the Association is charged with the responsibility of preserving the historical integrity of the Subdivision and the continuity of architectural styles of Residential Dwellings and other improvements proposed to be constructed on Homesites. After the Effective Date, in addition to the other rights vested by these Restrictions in the Association relating to the approval of plans, the architectural style, exterior building materials, finishes and colors, and scale of any proposed Residential Dwelling, Parking Structure or other appurtenant improvements to be constructed or changed (including, without limitation, any addition to, or change of existing exterior building materials, finishes or colors of, any then existing Residential Dwelling, Parking Structure or other appurtenant improvements) on a Homesite must be set forth in written plans submitted to and approved by the Association prior to the commencement of construction. The Property Owner shall submit to the Board of Directors, with copy to the Architectural Committee (if then so established), a site plan and building plans for any proposed Residential Dwelling, Parking Structure or other appurtenant improvements which clearly indicate the location and illustrate the front, side and rear elevations, and the exterior dimensions and exterior building materials, finishes and colors, of all buildings and appurtenant improvements. The Association shall have the authority to disapprove any such proposed Residential Dwelling, Parking Structure

and/or appurtenant improvement if the Association determines that the architectural style, exterior building materials, finishes and colors, or scale would not be compatible with the provisions contained herein or with the predominant architectural styles, exterior building materials, finishes and colors, and scale of Residential Dwellings, Parking Structures and appurtenant improvements in the Subdivision. Any new Residential Dwelling, Parking Structure or other appurtenant improvement that is determined by the Association to be of the same style and scale as the Residential Dwelling, Parking Structure or other appurtenant improvement it would replace on a particular Homesite shall be deemed to be compatible with the predominant architectural style and scale of the Subdivision. The Property Owners do not envision homogenization of the Subdivision, but the protection of the Subdivision from over-scaled, incongruous and stylistically incompatible structures that would diminish the value of the historic and stylistic character of the Subdivision.

(16) Building and Construction Restrictions:

- (A) Residential Dwellings constructed shall have a minimum cost which, as shall be subject to determination by the Association acting through the Board of Directors, will result in a structure maintaining the quality and character of the Subdivision. When proposed building plans have been submitted for approval and accepted as complete by the Association, a decision shall be rendered by the Association in writing within thirty (30) days thereafter. If a decision is not rendered by the Association in writing within thirty (30) days of the date that plans have been submitted for approval and accepted as complete by the Association, the plans shall be deemed to be approved by the Association. If plans are disapproved by the Association, the prospective builder shall be entitled to have a special meeting before the Board of Directors called by the President of the Board of Directors to discuss the proposed building plan and the reason(s) for disapproval.
- (B) No Residential Dwelling containing less than eighteen hundred (1800) square feet of living area [exclusive of open porches, breezeways, garages (whether attached to or detached from the Residential Dwelling), servant quarters (unless an integral part of the Residential Dwelling), galleries, and porte cocheres)] shall be erected or constructed upon any Homesite. The exterior of the Residential Dwelling shall be a minimum of sixty per cent (60%) brick or masonry. For purposes of this paragraph, stucco shall be considered to be a masonry material. In no event shall a pre-built or existing house or permanent structure be moved upon any Homesite.
- (C) Any changes to approved building plans must be submitted to the Board of Directors, with a copy to the Architectural Committee (if then so established), and approved by the Association before construction may begin or continue. The time allowed for a decision by the Association shall run from the date that such changes to the building plans are received by the Association.
- (D) Before any Property Owner begins a repair, remodeling, maintenance or any other type of construction project, such Property Owner shall cause all of its contractors, subcontractors, agents and workmen to protect street trees, esplanades, esplanade trees, esplanade sprinkler systems, curbs and street paving,

alley structures, alley paving, trees or other ornamental vegetation growing near streets, alleys, sidewalks, driveways, drainage structures and street lights during the period of construction. Such Property Owner will be responsible for all damage to the items named in this paragraph occurring during the construction period on public or private areas adjacent to the Property Owner's property, on the alley serving the Property Owner's property and on the esplanade across the street from the Property Owner's property. It will not be necessary for the Association to prove that any such damage resulted from the Property Owner's contractors. Any damage occurring during the construction period will be presumed to have been caused as a result of the construction and the Property Owner will have the burden of proof that such Property Owner or his contractor was not responsible for the damage. The esplanade across from the Homesite must be protected with an appropriate temporary construction fence and esplanade space shall not be used for any purpose related to private construction, with the exception of construction as necessary for the provision of any necessary private water, gas or electric line connections. Any damage done to the curb, electric lines, water lines, gas lines, irrigation system, or street or alley paving in connection with such construction must be restored to its original condition, or, if applicable, to City of Houston standards at the Property Owner's expense. Any excavations in streets or alleys must be filled with appropriate material such as cement stabilized shell and paving must match the surrounding material both as to composition, strength, color and thickness. Trimming, cutting limbs from, or removal of any trees, bushes or other vegetation growing into an alley on property not owned by the Property Owner for construction access in an alley may not be undertaken without the prior written consent of the Association. Failure to obtain written consent of the Association prior to cutting such vegetation will subject the Property Owner to liability for damages for the destroyed vegetation and restoration thereof.

- (E) The Association may from time to time cause a written document to be prepared, containing the current architectural standards and construction guidelines as well as explanation and interpretation thereof (the "*Cherokee Handbook*"). When available, the Cherokee Handbook may be distributed to each Property Owner, and be made available to the Property Owners who request the same from the Secretary of the Association. The Cherokee Handbook will serve to help provide guidance to all Property Owners regarding the implementation and interpretation of applicable architectural standards and construction guidelines contained in these Restrictions. If there is any conflict between these Restrictions and the Cherokee Handbook, the provisions of these Restrictions shall control.
- (F) Any construction on a Homesite, in addition to the other requirements addressed in these Restrictions, shall be undertaken in accordance with the following:
 - (i) No outdoor construction producing noise, including staging activities, is permitted before 7 a.m. Central Time or after 6 p.m. Central Time for the days Monday through Saturday (other than holidays); no outdoor construction producing noise is permitted at any time on Sundays or

holidays without the prior written consent of the Association. For purposes hereof, "holiday" means any holiday recognized as such by the City of Houston.

- (ii) No construction office, dumpster, portable toilet or trailer shall be located nearer to the front property line of any Homesite than the front building setback.
- (iii) Other than as required by City ordinances or other applicable laws, no signage is permitted on a construction office, dumpster, portable toilet, trailer or any other part of a Homesite if in relation to a construction project.
- (iv) A construction office, dumpster, portable toilet or trailer must be removed from the Homesite within thirty (30) days of the date of substantial completion of the Residential Dwelling or other improvement for which the construction office, dumpster, portable toilet or trailer was moved onto the Homesite.
- (v) For purposes hereof, the date of substantial completion of a Residential Dwelling or other improvement shall be deemed to be the earlier of either (i) the date substantial completion of the Residential Dwelling or other improvement is achieved as defined by the American Institute of Architects or (ii) the date such Residential Dwelling or improvement is capable of being used for its intended purpose.
- (vi) For purposes hereof, construction of a Residential Dwelling or other improvement is deemed to commence on the date that any clearing of existing improvements, removal of all or parts of walls or roofs of existing improvements, or excavation on the Homesite occurs or any construction equipment and/or materials are moved onto or delivered to the Homesite, whichever is earlier.
- (vii) One (1) portable toilet is permitted on a Homesite during the construction of a Residential Dwelling or other improvement on a Homesite. The portable toilet must be located as far from the front property line of the Homesite as possible and must be regularly serviced. The portable toilet must be screened from view in a reasonable manner determined to be appropriate by the Association. A portable toilet shall not be moved onto a Homesite more than seven (7) days prior to the date that construction commences.
- (viii) During the construction of a Residential Dwelling or other improvement on a Homesite, the Property Owner of such Homesite shall place, or cause such Property Owner's contractor to place, at least one trash receptacle on the Homesite. All trash and debris shall be placed in the receptacle by the Property Owner or his contractor, so that trash and debris is not scattered

on the Homesite or onto a street or another Homesite and is not visible from a street adjoining the Homesite. No trash or debris may be discarded into storm sewers. The Property Owner of such Homesite and such Property Owner's contractor are also required to regularly empty and maintain the trash receptacle and to assure that trash and debris never rise above the rim of the trash receptacle and that trash and debris is not allowed to be windblown onto other Homesites or in the street. The trash receptacle shall be located on the Homesite at the least visible location that still enables the trash receptacle to be regularly emptied. No concrete, chemical or paint washing is permitted into storm sewers or in tree root zones.

- (ix) The Property Owner shall direct that (i) all deliveries related to construction activities on the Property Owner's Homesite shall be made in the smallest vehicle(s) possible, (ii) construction activities shall utilize as few parking spaces on the streets as reasonably necessary to conduct construction activities and (iii) all contractors and subcontractors shall not enter upon and/or use the real and personal property (including without limitation water and electricity) of other Property Owners. Property Owners are responsible for assuring that their contractors and all subcontractors comply with the requirements of this Section (16).

- (G) The construction of a Residential Dwelling shall be deemed to have commenced when clearing of the area on which the foundation of the Residential Dwelling is to be located begins or any equipment or construction trailer is moved onto the Homesite, whichever is first to occur; likewise, if an improvement other than a Residential Dwelling requires a foundation, the construction of the improvement shall be deemed to have commenced when clearing of the area on which the foundation of the improvement is to be located begins or any equipment or construction trailer is moved onto the Homesite, whichever is first to occur. If an improvement other than a Residential Dwelling does not require a foundation, the construction of the improvement shall be deemed to have commenced when any work on the Homesite in furtherance of the construction of the improvement begins or any equipment or construction trailer is moved onto the Homesite, whichever is first to occur. The construction of a Residential Dwelling or other improvement on a Homesite shall be substantially completed within eighteen (18) months of the date that construction is commenced; provided that, if requested in writing and supported by a reasonable explanation for the delay, the Property Owner shall be entitled to a six (6) month extension of the period to achieve substantial completion of the Residential Dwelling or other improvement. After the eighteen (18) month period [or the twenty-four (24) month period if a six (6) month extension is requested in writing and supported by a reasonable explanation for the delay], the period required for substantial completion of the Residential Dwelling or other improvement may be extended only if achieving substantial completion within such period is rendered impossible or would result in a hardship due to a strike, fire, national emergency, critical materials shortage, or other event beyond the control of the Property Owner and/or the Property

Owner's contractor. The Board of Directors, acting reasonably and in good faith, shall have the authority to determine whether a delay in achieving substantial completion of a Residential Dwelling or other improvement is rendered impossible or would result in a hardship as the result of an event beyond the control of the Property Owner and/or the Property Owner's contractor and its determination shall be binding on all parties. In the event that the Board of Directors determines that substantial completion of a Residential Dwelling or other improvement within eighteen (18) months of the date that construction is commenced [or twenty-four (24) months if a six (6) month extension is requested in writing and supported by a reasonable explanation of the delay] is rendered impossible or would result in a hardship as the result of an event beyond the control of the Property Owner and/or the Property Owner's contractor, the Board of Directors shall also have the authority to determine the length of time by which the eighteen (18) month period [or twenty-four (24) month period, whichever is applicable] for achieving substantial completion of the Residential Dwelling or other improvement shall be extended. For purposes hereof, "substantial completion" of a Residential Dwelling is the date on which a Certificate of Occupancy is issued by the City of Houston and all construction materials and equipment have been removed from the Homesite; and, "substantial completion" of an improvement other than a Residential Dwelling is the date on which a Certificate of Occupancy is issued by the City of Houston, if a Certificate of Occupancy is required, and all construction materials and equipment have been removed from the Homesite or, if a Certificate of Occupancy is not required, the date on which the improvement is capable of being used for its intended purpose and all construction materials and equipment have been removed from the Homesite. If the construction of a Residential Dwelling or other improvement on a Homesite was commenced more than twenty-four (24) months before the Effective Date of this document and, as of the Effective Date of this document, the Residential Dwelling or other improvement is not substantially completed, the eighteen (18) month period to achieve substantial completion of the Residential Dwelling or other improvement shall be deemed to have been extended six (6) months, as provided herein.

As used herein, the date on which the period to substantially complete construction of a Residential Dwelling or other improvement on a Homesite expires, or, if an extension is granted by the Board of Directors based upon an event beyond the control of the Property Owner or the Property Owner's contractor, the later date designated by the Board, is the "Completion Date." In the event that the construction of a Residential Dwelling or other improvement is not substantially completed by the Completion Date, the Property Owner shall pay to the Association a monthly extension fee ("Extension Fee") until the construction of the Residential Dwelling or other improvement is substantially completed. Each Extension Fee is due in advance, on the first day of each month, and shall be delinquent if not received by the Association by the fifteenth day of the month. Extension Fees shall constitute an individual assessment which, if not timely paid, shall accrue late charges and interest and shall be collected in the manner provided in Section (19) of these Restrictions. Written notice of the commencement of the Extension Fee shall be provided to the Property Owner by

certified mail, return receipt requested at the last known mailing address of the Property Owner according to the records of the Association. The written notice shall include a statement of the Association's determination of the date that construction of the Residential Dwelling or other improvement commenced, the initial amount of the Extension Fee, a schedule of the increases in the Extension Fee, and a statement that the Property Owner shall have the right to request a hearing before the Board of Directors of the Association to dispute the Association's determination of the date that construction of the Residential Dwelling or other improvement commenced. A request for a hearing must be made by the Property Owner in writing within thirty (30) days of the date of receipt of the Association's notice. The hearing will be held within thirty (30) days of the date of receipt of the Property Owner's written request, unless otherwise agreed upon by the Property Owner and the Board of Directors of the Association. No Extension Fees shall be imposed against a Property Owner or the Property Owner's Homesite prior to the expiration of the thirty (30) day period in which the Property Owner is entitled to request a hearing or, if a hearing is requested, prior to the conclusion of the hearing.

The Extension Fee applicable during the six (6) month period immediately following the Completion Date is \$250.00 per month. Commencing in the seventh (7th) month after the Completion Date and continuing through the twelfth (12th) month after the Completion Date, the Extension Fee is \$750.00 per month. Commencing in the thirteenth (13th) month after the Completion Date and continuing through the eighteenth (18th) month after the Completion Date, the Extension Fee is \$1,750.00 per month. For the nineteenth (19th) month after the Completion Date, the Extension Fee is \$2,000.00; each month thereafter the Extension Fee shall increase by \$250.00 until the Residential Dwelling or other improvement is substantially completed.

(17) Fences, Walls and Gates:

- (A) Prior to erecting a fence, wall or gate on a Homesite, the owner of the Homesite shall submit to the Board of Directors, with a copy to the Architectural Committee (if then so established), a request for approval of the proposed fence, wall or gate with information regarding the location, height and design of the fence, wall or gate and the type and color of the materials to be used in the construction of the fence, wall or gate. Construction of such proposed fence, wall or gate shall not commence until the owner of the Homesite has received the Association's written approval of the fence, wall or gate. The Association shall have the authority to approve the proposed fence, wall or gate if it complies with applicable setbacks, height restrictions or any other applicable provisions in the Restrictions relating to fences, walls or gates and if it is reasonably determined by the Association that the proposed fence, wall or gate is compatible with the overall design of Residential Dwelling and related improvements in the Subdivision.
- (B) Except as otherwise expressly permitted in the Restrictions, no fence or wall shall, without variance, be located nearer to the front property line of a Homesite than

the Front Building Line of the Residential Dwelling on the Homesite. On corner Homesites, no fence or wall may be erected nearer than two (2) feet to the property line adjacent to the side street. A retaining wall no more than two (2) feet tall shall be permitted forward of the Front Building Line, with approval of the Association.

- (C) No fence, wall or gate shall be more than nine (9) feet in height.
- (D) No fence, wall or gate shall be constructed with materials that are not compatible with the materials commonly used for fences, walls or gates in Subdivision. Fence and wall materials shall be generally limited to wood, iron, stone and brick or a similar masonry material, unless a variance is granted for other materials. Cinder blocks and similar masonry units may be used in the construction of a fence or wall, provided that, if cinder blocks and similar masonry units are visible from a street or another Homesite, a finish material must be applied to the cinder blocks or similar masonry units to conceal their existence. The type and color of the finish material must be approved by the Association prior to application. Gates shall be generally limited to wood and/or iron, unless a variance is granted for other materials. Each fence, wall or gate that is adjacent to a street is required to have a finished side facing the street; in the case of wood fences, this paragraph prohibits all rails or other supports from being visible from a street.
- (E) No fence, wall or gate shall be constructed with barbed wire, razor wire, or any type of electric fence and no barbed wire, razor wire or electric fence shall be attached to any fence, wall, hedge or gate. An "electric fence" is a barrier that uses painful or even lethal electric shocks to deter animals or people from crossing a boundary. This paragraph does not prohibit the installation of an "invisible" fence that controls pets through underground electrical wiring.

(18) Building Line, Lot Size, Height and Similar Restrictions:

- (A) **"Front Building Line"** is defined as the minimum distance from the front (street) property line to the permitted location of the Residential Dwelling applicable to a Homesite, depending on its location. Under this definition, no new Residential Dwelling, and no addition to a Residential Dwelling, shall be located on a Homesite nearer to the front (street) property line than the nearer of:
 - (i) on any Homesite, the Residential Dwelling on such Homesite as it existed on the Effective Date, or
 - (ii) on a Homesite fronting on Cherokee Street, thirty-five (35) feet from the front (street) property line, or
 - (iii) on a Homesite fronting on Mandell Boulevard, thirty (30) feet from the front (street) property line.

The provisions of Section (18)(A)(i) shall be construed so as to prevent construction of a major elevation or façade of a new Residential Dwelling or addition to a Residential Dwelling nearer to a front property line than a major front elevation or façade of the Residential Dwelling as it existed on the Effective Date.

The provisions of Section (18)(A)(iii) shall be construed so as to prevent construction of a major elevation or façade of a new Residential Dwelling or addition to a Residential Dwelling nearer to a front property line than a major front elevation or facade of an immediately adjacent Residential Dwelling as it existed on the Effective Date.

In connection with construction of a new Residential Dwelling or addition to a Residential Dwelling, the provisions of Sections (18)(A) shall be construed so as to permit construction of new porches, steps or other projections nearer to the front (street) property line than the relevant major front elevation or façade provided that such porches, steps or other projections are determined by the Association to be appropriate in scale and nonobtrusive.

In addition to any other applicable provisions of these Restrictions: (x) any Parking Structure that is not an integral part of the Residential Dwelling shall be constructed at the rear of the Homesite, as approved by the Association; and (y) any Parking Structure that is an integral part of the Residential Dwelling shall be constructed at the rear of the Residential Dwelling, as approved by the Association.

(B) ***"Side Building Line"*** is defined as the minimum distance from the side property line to the permitted location of the Residential Dwelling or Parking Structure applicable to a Homesite, depending on its location. Under this definition, no new Residential Dwelling or Parking Structure, and no addition to a Residential Dwelling or Parking Structure, shall be located on a Homesite nearer to either side property line than the nearer of:

- (i) as to a Residential Dwelling or addition to a Residential Dwelling of a building site of 105 feet or more in width, fifteen (15) feet from either side property line of such Homesite, or
- (ii) as to a Residential Dwelling or addition to a Residential Dwelling of a building site less than 105 feet in width, ten (10) feet from either side property line of such Homesite.

The provisions of Section (18)(B) shall be construed so as to prevent construction of a major side elevation or façade of a new Residential Dwelling or addition to a Residential Dwelling nearer to a side property line than the applicable Side Building Line.

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In connection with construction of a new Residential Dwelling or addition to a Residential Dwelling, the provisions of Section (18)(B) shall be construed so as to permit construction of new porches, steps or other projections nearer to the side property line than the relevant major side elevation or façade provided that such porches, steps or other projections are determined by the Association to be appropriate in scale and nonobtrusive.

- (C) No Residential Dwelling, Parking Structure or other outbuilding, and no addition to a Residential Dwelling, Parking Structure or other outbuilding, may be constructed anywhere that contains more than two and one-half stories. A one-half story is defined as a room height above the eaves of and contained within the volume of the main roof of a Residential Dwelling such that the Residential Dwelling has a two (2) story vertical façade. The one-half story may have windows, sometimes referred to as "dormers".
- (D) After the Effective Date, no new Residential Dwelling, Parking Structure or other outbuilding, and no addition to a Residential Dwelling, Parking Structure or other outbuilding that exceeds a height of thirty-five (35) feet above natural grade (exclusive of any chimney) shall be constructed on any Homesite in the Subdivision.
- (E) Notwithstanding any provisions to the contrary contained herein, any Residential Dwelling, driveway, Parking Structure, outbuilding, improvement or appurtenance existing on the Effective Date or constructed after the Effective Date in accordance with plans that had been approved as of the Effective Date (and any revisions to such plans thereafter approved) by the Association (i) may remain, and (ii) may be reconstructed, rebuilt or repaired in its existing form and on its existing location as of the Effective Date provided that plans for any such reconstruction or rebuilding are first submitted to and approved by the Association.
- (F) Only one (1) Residential Dwelling shall be located at any time on any one (1) Homesite.
- (G) The Property Owner of adjoining Platted Lots or parts of Platted Lots may consolidate such tracts into one (1) building site tract, with the right to construct one Residential Dwelling on the resulting consolidated building site tract, provided that, after the Effective Date, no such action will be permitted if it would result in the creation of any Homesite with a street frontage of less than having a width of less than 70 feet measured at the front building line on Cherokee Street or 105 feet measured at the front building line on Mandell Boulevard or if it would cause any violation of the Side Building Line provisions of these Restrictions. [For purposes of this Section (18)(G), the Side Building Lines of a resulting replatted lot or Homesite shall be measured from the resulting side property lines of such replatted lot or Homesite rather than from the side property lines of any original applicable Platted Lot or Homesite.] The owner of the tracts

to be consolidated must also comply with any replatting requirements imposed by the City of Houston.

- (H) If, after the Effective Date, a new Residential Dwelling is to be constructed, then the requirements of this Section (18)(H) shall apply in addition to all other applicable requirements of these Restrictions. The new Residential Dwelling must face the street of the Homesite address as it existed on the Effective Date. The new Residential Dwelling, or another Parking Structure on the Homesite, must provide a Parking Structure for not less than two (2) automobiles. Such Parking Structure shall be located as specified in (x) the last sentence of Section (18)(A) and (y) Section (18)(B) or Section (18)(C), as applicable.
- (I) If, after the Effective Date, an addition to an existing Residential Dwelling or any other structure is to be constructed that is not a new Residential Dwelling, and upon completion of such addition the Homesite would not contain a Parking Structure for at least two (2) automobiles, then the requirements of this Section (18)(G) shall apply in addition to all other applicable requirements of these Restrictions. The Property Owner proposing to construct such addition shall be required to provide, and to submit for approval by the Association plans for, parking spaces on the Homesite for not less than two (2) automobiles, any of which spaces may be in a Parking Structure or uncovered.

If any parking space required by this Section (18)(I) is provided in a Parking Structure, such Parking Structure shall be located as specified in (x) the last sentence of Section (18)(A) and (y) Section (18)(B) or Section (18)(C), as applicable. If any parking space required by this Section (18)(I) is uncovered (i.e., is not provided in a Parking Structure), it shall be located at the rear of the Homesite, as approved by the Association, and no setback from the side property line of the Homesite shall be required.

- (J) If, after the Effective Date, an existing Parking Structure is to be converted into living space or other use, or is to be demolished and not replaced, and upon completion of such conversion or demolition the Homesite will not contain a Parking Structure for at least two (2) automobiles, then the requirements of this Section (18)(J) shall apply in addition to all other applicable requirements of these Restrictions. The Property Owner proposing to convert or demolish such existing Parking Structure shall be required to provide, and to submit for approval by the Association plans for, parking spaces on the Homesite for not less than two (2) automobiles, any of which spaces may be in a Parking Structure or uncovered.

If any parking space required by this Section (18)(J) is provided in a Parking Structure, such Parking Structure shall be located as specified in (x) the last sentence of Section (18)(A) and (y) Section (18)(B) or Section (18)(C), as applicable. If any parking space required by this Section (18)(J) is uncovered (i.e., is not provided in a Parking Structure), it shall be located at the rear of the Homesite, as approved by the Association, and no setback from the side property line of the Homesite shall be required as to that parking space.

- (K) The Association shall have the authority to determine compliance or noncompliance with these Restrictions of any Residential Dwelling, Parking Structure, addition or other improvement constructed or to be constructed on a Homesite, including without limitation any and all: determinations with respect to the direction in which it shall face; determinations with respect to compliance with any Front Building Line, Side Street Building Line or Side Building Line restrictions; determinations with respect to compliance with any provisions set forth in the original deed to the Homesite, if applicable; determinations with respect to whether a proposed project would constitute construction of a new Residential Dwelling as contemplated by Section (18)(H) or construction of an addition to an existing Residential Dwelling as contemplated by Section (18)(I); determinations with respect to whether a Parking Structure would be an integral part of a Residential Dwelling; determinations with respect to whether a Parking Structure would be converted or demolished as contemplated in Section (18)(J); and determinations with respect to the applicability of, and compliance or noncompliance with, any and all provisions set forth in these Restrictions.

(19) The Association:

- (A) Unless a vote of the Property Owners is expressly required with respect to any specific act hereunder, all actions and approvals required or allowed to be taken or granted by the Association herein shall be taken or granted by the Board of Directors; provided, however, that the Board of Directors' power to take or grant actions or approvals with respect to architectural control in the Subdivision (but only with respect to architectural control) may be delegated by the Board of Directors to, and exercised by, the Architectural Committee or any other committee duly appointed by the Board of Directors. Actions and approvals taken or granted by the Board of Directors or by the Architectural Committee or other committee shall constitute authorized actions and approvals of the Association hereunder. Any and all actions or approvals required or allowed to be taken or granted under these Restrictions by the Association or by the Board of Directors or Architectural Committee or any other committee (including without limitation any and all decisions, interpretations, exercises or non-exercises of authority or discretion, grants or non-grants of waivers or variances, and approvals or nonapprovals of plans) shall be taken or granted reasonably and in good faith and, if so taken or granted reasonably and in good faith shall be binding upon all Property Owners, and on all persons claiming by, through or under any Property Owner, and as to all real property within the Subdivision.
- (B) The Association shall function as the representative of all Property Owners to maintain the continued high-quality residential character and property values of the Subdivision by giving its attention to the matters herein set out as proper functions of such association, and shall be authorized to:
- (i) Collect and expend, for the benefit of the Subdivision as a whole (and any additional real property bound by these Restrictions), a regular assessment from each Property Owner in the amount of two hundred fifty United

States Dollars (\$250.00) per year, together with appropriate interest and late charges as determined by the Board of Directors on any unpaid amount. Mandell Property Owners will also be assessed for esplanade maintenance in the amount of one hundred fifty United States Dollars per year.

- (ii) Collect and expend from time to time, for the benefit of the Subdivision as a whole, special assessments, together with appropriate interest and late charges on any unpaid amount as determined by the Board of Directors, from all Property Owners, each in an aggregate amount and apportioned on a per- Homesite, per-acre or other basis, as proposed by the Board of Directors and approved by majority vote of the Property Owners, for:
 - (a) defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, repair or replacement of a capital improvement owned, maintained or operated by the Association, including the necessary fixtures and personal property related to common areas;
 - (b) maintenance and improvement of common areas (meaning, by way of example and not in limitation, esplanades within the Subdivision and other areas maintained by the Association, whether or not owned by the Association), including fixtures and personal property related thereto or trees and other plantings thereon; or
 - (c) other purposes intended to maintain the continued high quality residential character and property values of the Subdivision.
- (iii) Collect and expend from time to time, for the benefit of the Subdivision as a whole, as provided in Section (16)(G) of these Restrictions, together with appropriate interest and late charges on any unpaid amount as determined by the Board of Directors.
- (iv) Enforce these Restrictions by appropriate proceedings, with the assistance of municipal authorities, and if necessary, to hire attorneys to enforce these Restrictions if, in the opinion of the Board of Directors, such attorney services are required.
- (v) Enforce or release any lien imposed on any part of the Subdivision by reason of a violation of any of these Restrictions, or by reason of failure to pay any regular or special assessments herein provided.
- (vi) Approve or reject plans and specifications for improvements to be erected in the Subdivision as herein provided, with the authority to delegate such function to an Architectural Committee (the '*Architectural Committee*') designated by the Board of Directors, and with the further authority to determine the number of members of the Architectural Committee and its

membership, whose members are not required to be members of the Board of Directors.

- (vii) Employ from time to time, an architect or architects for advice concerning approval of improvements to be constructed in Subdivision if in the opinion of the Board of Directors, such architectural services are required.
 - (viii) None of the members of the Architectural Committee, the Association or any member of the Board of Directors shall 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 Committee, except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not inspect, guarantee or warrant the workmanship of the Improvement, including its design, construction, safety, whether structural or otherwise, conformance with building codes, or other governmental laws regulations or whether the Improvement is suitable or fit for its intended purpose. Furthermore, none of the members of the Architectural Committee, or any member of the Board of Directors shall be personally liable for debts contracted for or otherwise. Finally, neither the Association, the Board, the Architectural Committee, or their officers, agents, members, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements, or portion thereof, or failure to repair or maintain the same.
- (C) All funds held by the Association shall be held by said Association for the benefit of the Association, the Subdivision, and the Property Owners, and such sums may be expended by the Association for any purposes, which in its judgment will be most effective in maintaining the continued high quality residential character and the property values of the Subdivision including, but not limited to, architectural approval, employing policemen, watchmen or security services, caring for vacant Homesites and trees thereon, maintaining and improving the esplanades and trees thereon, control of mosquitoes and other insects, removing storm damage from streets and public areas, trash collection and any other purposes which the Association considers will reasonably benefit the Property Owners.
- (D) To secure the payment of the regular and special assessments levied against each Property Owner, together with appropriate interest or late charges on any unpaid amount as determined by the Board of Directors, a continuing lien is hereby created against each Homesite for the benefit of the Association, which lien shall be enforceable through appropriate proceedings at law by the Association; provided, however, that each such lien shall be secondary, and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the owner of any Homesite to secure the payment of moneys advanced or to be advanced on account of the purchase price and/or the improvement of any such Homesite. It is further provided that as a condition precedent to any proceeding to enforce such lien upon which there is an outstanding valid and subsisting first

mortgage lien, the Association or its successor or assign shall give the holder of such first mortgage lien written notice of such proposed action, mailed at least sixty (60) days prior to the commencement of the proceedings to enforce such lien to such first mortgage holder by prepaid United States mail, including a statement of the delinquent regular and special assessments, interest or late charges on any unpaid amount, upon which proposed action is based.

(20) Deed Restrictions Enforcement; Attorney Fees:

- (A) Violations of the provisions of these Restrictions shall give the Association, or any authorized parties acting on its behalf, the right to enter upon property where such violation exists, without liability for trespass, and summarily correct, abate or remove such violating condition at the expense of the offending Property Owner.
- (B) The Association shall have authority to seek recovery of any attorney fees and expenses incurred in an action based on a breach of these Restrictions. If the Association is the prevailing party in an action based on a breach of these Restrictions, the Property Owner who the Association asserted breached these Restrictions shall pay the Association's reasonable attorney fees, determined by the Court under Section 5.006 of the Texas Property Code, in addition to its costs and claims.

(21) Non-Waiver Clause:

Any failure to enforce these Restrictions against any violation shall not be deemed to be a waiver of any restriction, covenant and condition or a waiver of the right to enforce any provision of these Restrictions against any other violation which may occur at any time.

(22) Restatement of Restrictions:

Upon execution by the Property Owners and filing in the Official Public Records of Real Property of Harris County, Texas, these Restrictions shall amend and restate, in their entirety, any and all prior instruments purporting to impose restrictions or protective covenants on the Subdivision.

(23) Savings Clause:

Invalidation by a judgment or decree of any court of competent jurisdiction or by any other means of any of the conditions, restrictions, assessments, liens, easements, charges or covenants established hereby or by any recorded document (which shall be construed together) shall not affect any other condition, restriction, assessment, lien, easement, charge or covenant which has been so established, all of which remaining conditions, restrictions, assessments, liens, easements, charges and covenants shall be and remain in full force and effect pursuant to the terms hereof.

(24) Headings:

Headings in preceding provisions of these Restrictions are for convenience only and shall not affect any of such provisions nor these Restrictions.

EXECUTED on the dates set forth in the acknowledgments below and the attached Ballots, to be effective upon recording in the Official Public Records of Real Property of Harris County, Texas.

CHEROKEE CIVIC CLUB

(37)
102

Date: 8/2/11

By: [Signature]
Jeremy Erasmus, President

Date: 08/02/11

By: [Signature]
Cheryl Verlander, Secretary

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

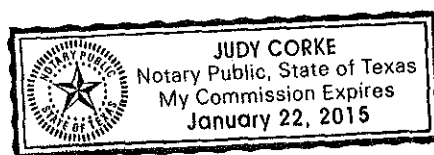
Stan Starnant
COUNTY CLERK
HARRIS COUNTY, TEXAS

2011 AUG - 4 PM 3:30

FILED

BEFORE ME, the undersigned notary public, on this day personally appeared Jeremy Erasmus, President of Cherokee Civic Club, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and in the capacity therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 2ND day of August, 2011, to certify which witness my hand and official seal.

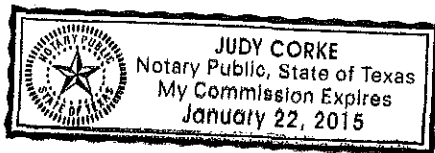


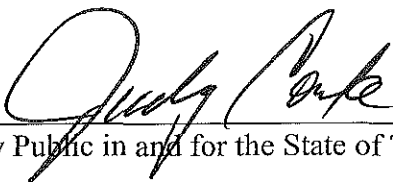
[Signature]
Notary Public in and for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned notary public, on this day personally appeared Cheryl Verlander, Secretary, of Cherokee Civic Club, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and in the capacity therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 2nd day of August, 2011, to certify which witness my hand and official seal.





Notary Public in and for the State of Texas

Return to:
Butler & Halley, P.C.
8901 Gaylord, Suite 100
Houston, Texas 77024