

**SECOND AMENDMENT TO RESTRICTIONS**

**STATE OF TEXAS**

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§  
§

**KNOW ALL PERSONS BY THESE PERSONS:**

**COUNTY OF HARRIS**

**RECITALS**

**WHEREAS**, that certain tract of land of 35.836 acres, being 2.554 acres out of the J.D. Owens Survey and 33.382 acres out of Lot 7 of a Re-Subdivision of the South End of the W.J. Brown Survey in Houston. Harris County, has been heretofore platted and subdivided and is now known as Braesmont Addition, Section One and more particularly described in the Restrictions (defined herein) (the “Subdivision”); and

**WHEREAS**, on August 23, 1954, certain reservations, restrictions, covenants and easements applying to the Subdivision were filed for record in the Office of the County Clerk of Harris County, Texas, under File No. 1304646 and in Volume 2813, Page 344, *et.seq.* (as previously supplemented and amended from time to time, the “Restrictions”); and

**WHEREAS**, Section 1 of the Restrictions provides that the Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 1983, at which time said covenants shall be automatically extended for successive periods of ten (10) years and may be amended by an instrument signed by the majority of the then owners of the lots in the Subdivision being recorded, agreeing to change said covenants in whole or in part; and

**WHEREAS**, a majority of the owners of the lots in the Subdivision did approve and agree to amend the Restrictions as set forth herein;

**NOW THEREFORE**, Kay Swint, the President of Braesmont Civic Club does hereby certify that the owners whose signatures appear on the Acknowledgment and Agreement of Second Amendment to Restrictions attached hereto are the signatures of at least a majority of the owners of the lots in the Subdivision and that those owners did agree to amend, and did amend, the Restrictions as set forth below, which amendment shall run with the land and shall be applied uniformly along with the other terms and provisions of the Restrictions, which remain in place except as amended herein, or as may be previously amended. Further, such owners did agree that the amendments to the Restrictions set forth herein are contingent upon, and will not become valid and enforceable unless and until the amendments to the Restrictions set forth herein have been approved by the Board of Directors of the Braesmont Civic Club (the “Civic Club Board”), in its sole discretion, and a written acknowledgement signed by the President of the Braesmont Civic Club as to the approval by the Civic Club Board has been filed for record in the Office of the County Clerk of Harris County, Texas.

**(16) Management and Operation of Properties.**

Section 1. Management by Association.

(a) Generally. The affairs of the properties described herein (the “Properties”) shall be administered and managed by a property owners’ association which will be a Texas non-profit corporation (the “Association”) already created or to be created by or at the direction of the Board of Directors of the Braesmont Civic Club (the “Civic Club Board”). The Association shall have the rights, powers and obligations

as provided for in the Certificate of Formation (herein so called) and Bylaws (herein so called) for the Association which have been or will be created and promulgated by the Civic Club Board. The principal purposes of the Association are the collection, expenditure, and management of the Assessments (herein defined) and enforcement of the restrictions contained herein.

(b) Additional Powers of the Association. The Association, acting through its Board of Directors ("Board"), shall be entitled to enter into such contracts and agreements concerning the Properties as the Board deems reasonably necessary or appropriate to maintain and operate the Properties in accordance with the terms and provisions contained herein, including without limitation, the right to enter into agreements with adjoining or nearby land owners or governmental entities on matters of administration, patrols, traffic, or other matters of mutual interest.

(c) Implied Rights. The Association may exercise any other right or privilege given to it expressly by statute, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 2. Board. The business and affairs of the Association shall be managed by and the decisions and actions of the Association shall be made or taken by the Board, unless otherwise reserved to the members of the Association ("Members") by law or the terms of the Certificate of Formation or the Bylaws.

Section 3. Membership in Association. Each natural person, corporation, partnership, trustee, or any other legal entity who holds the record title to any lot ("Lot") within the Properties shall be considered an owner ("Owner"). Any mortgagee or other party holding an interest merely as security for the performance of an obligation will not be considered an Owner. All Owners automatically become and shall remain a Member of the Association until ownership of the Lot for such Owner ceases for any reason, at which time the membership in the Association shall also automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each Lot and may not be separated from such ownership. Each Owner is required to provide and maintain at all times with the Association, or its designated management agent, current information regarding such Owner's address, phone number and email address and the name, address, phone number and email of the occupant or property manager, if any, of each Lot owned.

Section 4. Voting and Membership Limitations. The Association shall have one (1) class of Members-Class "A". Class "A" Members shall be all Owners. Each Class "A" Member shall be entitled to one (1) vote for each Lot owned by such Member in the Properties; provided, however, when more than one (1) person holds an interest in any Lot, all such persons shall be Members, and the single vote for such Lot shall be exercised by them as they among themselves determine but in no event shall more than one (1) vote be cast with regard to any Lot owned by a Class "A" Member. The vote by one (1) Owner of a Lot owned by multiple Owners shall be presumed to be the vote for all such Owners of the Lot.

Section 5. Compensation of Board. No person serving on the Board shall be entitled to compensation for services performed; however, (a) any member of the Board may be reimbursed for his actual expenses incurred in the performance of his duties, and (b) the Board may employ one or more architects, engineers, land planners, management companies, accountants, bookkeepers, collection agencies, attorneys or other consultants to assist the Board in carrying out its duties hereunder, and the Association shall pay such consultants for services rendered to the Board, such payment to be made out of the Assessments (herein defined).

Section 6. Power of Enforcement. The Association shall have the power to enforce the provisions herein and shall take such action as the Board deems necessary or desirable to cause compliance by each Member and each Member's family, guests, tenants or invitees.

Section 7. Annexation. Additional real property may be unilaterally annexed into the jurisdiction of the Association from time to time by the Board, without the approval of the Members of the Association. Annexation of additional property shall become effective on the date an Annexation Agreement is signed and acknowledged by an officer of the Board, and is filed for record in the Office of the County Clerk of Harris County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property within the jurisdiction of the Association shall describe the property being annexed. The funds resulting from any assessment levied against any property hereinafter annexed into the jurisdiction of the Association may be combined and comingled with the funds collected from the Owners of Lots within the Properties and may be used for the benefit of all property within the jurisdiction of the Association.

**(17) Covenants for Assessments.**

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual Assessments (herein so called);
- (b) Special Assessments (herein so called); and
- (c) Patrol Assessments (herein so called).

The Annual, Special, and Patrol Assessments (collectively the "Assessments"), together with interest, costs and reasonable attorney's fees, shall also be a charge on the Lot and shall be a continuing lien upon the Properties against which the Assessments are made. Each such Assessment, together with the interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessments fell due and shall not be affected by any change in the ownership thereof.

Section 2. Annual Assessments.

(a) Generally. Each Lot in the Properties is hereby subjected to an Annual Assessment. The Annual Assessment will be due and payable by the Owner or Owners of each Lot within the Properties to the Association in advance on or before January 1 of each year. The rate at which each Lot will be assessed will be determined annually and may be adjusted from year to year by the Association, as hereinafter provided, or as the needs for the Properties may, in the judgment of the Board, require. The Annual Assessment shall be assessed on a uniform per Lot basis.

(b) Uses. The Association may use the Annual Assessments for any purpose provided herein, including by way of clarification and not limitation, at its sole option, any or all of the following: payment of all legal and other expenses incurred in connection with the enforcement of all charges, Assessments, covenants, restrictions and conditions affecting the Properties, payment of all reasonable and necessary expenses in connection with the collection and administration of the Assessments, employing patrol service companies for the Properties, and doing other things necessary or desirable and which the Board considers of general benefit to the Owners or occupants of the Properties. It is understood that the judgment of the Board in the expenditure of the Assessment shall be final and conclusive so long as said judgment is exercised in good faith. Nothing herein shall constitute a representation or obligation that any of the above will, in fact, be provided by the Association.

(c) Rendition and Notice. Annual Assessments shall be due and payable in advance on or before January 1 of each year. The Board may fix the Annual Assessment at an amount not in excess of the maximum, and shall fix the amount of the Annual Assessment against each Lot by December 1 preceding the Annual

Assessment period. The Annual Assessment period shall begin on January 1 of each year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto at the address of each Lot or at such other address provided to the Association in writing from the Owner. Notwithstanding the foregoing, after this Second Amendment to Restrictions becomes effective, the Board may fix the amount of the Annual Assessment for such initial calendar year at an amount not in excess of the maximum and shall establish a date that such amount is due and payable. However, the Annual Assessment shall be prorated during the first calendar year that this Second Amendment to Restrictions is effective based upon the number of month's remaining in such calendar year. For example, if after this Second Amendment to Restrictions becomes effective, the Board assesses an Annual Assessment for the initial calendar year at \$50.00 beginning April 1, 2018, the initial prorated Annual Assessment shall be \$37.50 for the calendar year 2018 (\$50.00 divided by 12 months times 9 months [April-December]).

(d) Maximum Annual Assessments.

1. Without Vote of Members. The maximum Annual Assessment during the first calendar year that this Second Amendment to Restrictions is effective shall be in the amount of \$50.00 per Lot. Beginning with Annual Assessment for the calendar year thereafter, the maximum Annual Assessment may be increased once a year by the Board, by an amount not to exceed ten percent (10%) over the prior year's Annual Assessment.
2. With Vote of Members. The Annual Assessment may be increased above that allowed by Section 2(d)(1) above, if, and only if, the increase is approved by the affirmative vote of more than fifty percent (50%) of the total eligible votes of the Association present, in person or by proxy, at a meeting duly called for that purpose. Voting may also be handled by any manner allowed by law.

(e) Recordation of Increase of Annual Assessment. Upon the increase of the maximum Annual Assessment pursuant to the provisions of Section 2(d)(2) above, the Association shall cause to be recorded in the Office of the County Clerk of Harris County, Texas, a sworn affidavit of the President of the Association which shall certify, among other items that may be appropriate, the total number of eligible votes as of the date of the voting, the quorum required, the number of votes represented, the number of votes voting "for" and "against" the levy, the amount of the increased Annual Assessment so authorized, and the date by which the increased Annual Assessment must be paid to avoid being delinquent. The increase in the maximum Annual Assessment so approved shall become effective on the date specified in the document evidencing such approval, and shall be filed for record in the Office of the County Clerk of Harris County, Texas.

Section 3. Special Assessments. In addition to the Annual Assessments, the Board may, upon the affirmative vote of two-thirds (2/3) of the total eligible votes of the Association present, in person or by proxy, at a meeting duly called for this purpose, levy a Special Assessment for the purpose of defraying, in whole or in part, any deficit created by an excess of expenditures of the Association over receipts for the previous year, or any anticipated extraordinary expenditure. Upon the levying of any Special Assessment pursuant to the provisions of this Section, the Association shall cause to be recorded in the Office of the County Clerk of Harris County, Texas, a sworn affidavit of the President of the Association which shall certify, among other items that may be appropriate, the total number of eligible votes of the Association as of the date of the voting, the quorum required, the number of votes voting "For" and "Against" the Special Assessment, the amount of the Special Assessment authorized, and the date by which the Special Assessment must be paid in order to avoid being delinquent.

Section 4. Patrol Assessments.

(a) Generally. Each Lot in the Properties is hereby subjected to a Patrol Assessment. The Patrol Assessment will be due and payable by the Owner or Owners of each Lot within the Properties to the

Association in advance on or before January 1 of each year. The rate at which each Lot will be assessed will be determined annually and may be adjusted from year to year by the Association, as hereinafter provided, or as the needs for the Properties may, in the judgment of the Board, require. The Patrol Assessment shall be assessed on a uniform per Lot basis.

(b) Uses. The Association may use the Patrol Assessments for retaining and employing patrol service companies for the Properties, including but not limited to Harris County Constables. It is understood that the judgment of the Board in the expenditure of the Patrol Assessment shall be final and conclusive so long as said judgment is exercised in good faith. Nothing herein shall constitute a representation or obligation that any of the above will, in fact, be provided by the Association.

(c) Rendition and Notice. Patrol Assessments shall be due and payable in advance on or before January 1 of each year. The Board may fix the Patrol Assessment at an amount not in excess of the maximum, and shall fix the amount of the Patrol Assessment against each Lot by December 1 preceding the Patrol Assessment period. The Patrol Assessment period shall begin on January 1 of each year. Written notice of the Patrol Assessment shall be sent to every Owner subject thereto at the address of each Lot or at such other address provided to the Association in writing from the Owner. Notwithstanding the foregoing, after this Second Amendment to Restrictions becomes effective, the Board may fix the amount of the Patrol Assessment for such initial calendar year at an amount not in excess of the maximum and shall establish a date that such amount is due and payable. However, the Patrol Assessment shall be prorated during the first calendar year that this Second Amendment to Restrictions is effective based upon the number of month's remaining in such calendar year. For example, if after this Second Amendment to Restrictions becomes effective, the Board assesses a Patrol Assessment for the initial calendar year at \$250.00 beginning April 1, 2018, the initial prorated Patrol Assessment shall be \$187.50 for the calendar year 2018 (\$250.00 divided by 12 months times 9 months [April – December]).

(d) Maximum Patrol Assessment.

1. Without Vote of Members. The maximum Patrol Assessment during the first calendar year that this Second Amendment to Restrictions is effective shall be in the amount of \$250.00 per Lot. Beginning with Patrol Assessment for the calendar year thereafter, the maximum Patrol Assessment may be increased once a year by the Board, by an amount not to exceed ten percent (10%) over the prior year's Patrol Assessment.
2. With Vote of Members. The Patrol Assessment may be increased above that allowed by Section 4(d)(1) above, if, and only if, the increase is approved by the affirmative vote of more than fifty percent (50%) of the total eligible votes of the Association present, in person or by proxy, at a meeting duly called for that purpose. Voting may also be handled by any manner allowed by law.

(e) Recordation of Increase of Patrol Assessment. Upon the increase of the maximum Patrol Assessment pursuant to the provisions of Section 4(d)(2) above, the Association shall cause to be recorded in the Office of the County Clerk of Harris County, Texas, a sworn affidavit of the President of the Association which shall certify, among other items that may be appropriate, the total number of eligible votes as of the date of the voting, the quorum required, the number of votes represented, the number of votes voting "for" and "against" the levy, the amount of the increased Patrol Assessment so authorized, and the date by which the increased Patrol Assessment must be paid to avoid being delinquent. The increase in the maximum Patrol Assessment so approved shall become effective on the date specified in the document evidencing such approval, and shall be filed for record in the Office of the County Clerk of Harris County, Texas.

Section 5. Estoppel/Resale Certificates. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association or its agent setting forth whether the

Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6. Effect of Nonpayment of Assessments. Any Annual Assessment (excluding any initial year prorated Annual Assessment) or Patrol Assessment (excluding any initial year prorated Patrol Assessment) which is not paid on or before March 31 of the year for which such Annual Assessment or Special Assessment pertains and any Special Assessment, any initial year prorated Annual Assessment and any initial year prorated Patrol Assessment which is not paid on or before ninety (90) days after the date that it is due and payable shall be delinquent and shall be subject to the following:

(a) interest at the rate of ten percent (10%) per annum from the due date or the maximum rate of interest allowed by law, if less than ten percent (10%), and all costs of collection, including reasonable attorney's fees; and

(b) an action at law against the Owner personally obligated to pay the same, and/or foreclosure on the lien herein retained against the Lot. Interest, costs of court, and reasonable attorneys' fees (when placed with an attorney for collection, whether with or without suit) incurred in any such action shall be added to the amount of such Assessment or charge.

Section 7. Contractual Lien.

(a) Generally. Assessments (together with interest and reasonable attorney's fees if it becomes necessary for the Association to enforce collection of any amount in respect of any Lot), shall be a charge on each Lot and shall be secured by a continuing lien upon each Lot against which such Assessment is made until paid. In such regards, a vendor's lien shall be and is hereby reserved upon each Lot and any portion thereof, which lien shall be enforceable through appropriate judicial proceedings by the Association to enforce the personal obligation of the Owner to foreclosure upon the vendor's lien, or both.

(b) Notice of Lien. Additional notice of the lien created by this Section may be effected by recording in the Real Property Records of Harris County, Texas, an affidavit, duly executed, sworn to and acknowledged by an officer 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.

Section 8. No Offsets. The Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, (a) any claim that the Association or the Board is not properly exercising its duties and powers under these Restrictions, (b) any claim by the Owner of abandonment of his or her Lot, or (c) any claim by the Owner of inconvenience or discomfort arising from any action taken to comply with any law or any determination of the Board or for any other reason.

Section 9. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to any first lien purchase money mortgages (and refinancing of same) relating to the Lots or liens relating to construction upon the Lots; provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or a foreclosure by trustee's sale under a deed of trust. Sale or transfer of any Lot shall not affect the lien of the Assessment; however, the sale or transfer of any Lot pursuant to the foreclosure of a first lien purchase money mortgage (and any refinancing of same) or any proceeding in lieu thereof, shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for the Assessments thereafter becoming due or from the lien thereof. A

selling Owner of a Lot shall not be relieved of personal liability for any Assessments accruing on such Lot prior to the date of sale or transfer.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

BRAESMONT CIVIC CLUB

By: \_\_\_\_\_  
Kay Swint, President

THE STATE OF TEXAS     §  
  
  §  
  
COUNTY OF HARRIS     §

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by Kay Swint, the President of Braesmont Civic Club, on behalf of said entity.

\_\_\_\_\_  
Notary Public in and for the State of Texas