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AMENDED, RESTATED AND CONSOLIDATED RESTRICTIONS FOR  
FROSTWOOD, SECTIONS ONE (1), TWO (2), AND THREE (3), AND COLONY WEST

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*Bonny R. Keegan*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

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**AMENDED, RESTATED AND CONSOLIDATED RESTRICTIONS  
FOR FROSTWOOD, SECTIONS ONE (1), TWO (2), AND THREE (3),  
AND COLONY WEST**

---

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF HARRIS       §

WHEREAS, Frostwood Corp., as developer, caused that certain untitled instrument (the "Original Restrictions for Frostwood, Section 1") to be recorded on February 10, 1960 in Volume 3933, Page 63, et seq. of the Deed Records of Harris County, Texas, which instrument imposed various covenants, conditions and restrictions upon the following real property:

Frostwood, Section I, a subdivision in Harris County, Texas  
according to the map or plat thereof recorded in Volume 66, Page  
42, of the Map Records of Harris County, Texas



and,

WHEREAS, the Original Restrictions for Frostwood, Section 1, were amended by that certain instrument entitled "Amendment to Restrictions Applicable to Frostwood Section 1" recorded on May 3, 1960 in Volume 4010, Page 414, et seq. of the Deed Records of Harris County, Texas; and

WHEREAS, the Original Restrictions for Frostwood Section 1 were further amended by that certain instrument entitled "First Amendment to Protective Covenants for Frostwood Section I" recorded in the Real Property Records of Harris County, Texas on December 31, 1986 under Clerk's File No. K901118; and

WHEREAS, Frostwood Development Corporation, as developer, caused that certain untitled instrument (the "Original Restrictions for Frostwood Section 2") to be recorded on June 22, 1961 in Volume 4406, Page 309, et seq. of the Deed Records of Harris County, Texas, which instrument imposed various covenants, conditions and restrictions upon the following real property:

Frostwood, Section II, a subdivision in Harris County, Texas  
according to the map or plat thereof recorded in Volume 77, Page  
52, of the Map Records of Harris County, Texas

and,

WHEREAS, the Original Restrictions for Frostwood Section 2 were amended by that certain instrument entitled "First Amendment to Protective Covenants for Frostwood, Section II" recorded in the Real Property Records of Harris County, Texas on December 31, 1986 under Clerk's File No. K901117; and

WHEREAS, Frostwood, Inc. of Houston, as developer, caused that certain untitled instrument (the "Original Restrictions for Frostwood Section 3") to be recorded on July 12, 1962 in Volume 4796, Page 83, et seq. of the Deed Records of Harris County, Texas, which instrument imposed various covenants, conditions and restrictions upon the following real property:

Frostwood, Section III, a subdivision in Harris County, Texas  
according to the map or plat thereof recorded in Volume 90, Page  
17, of the Map Records of Harris County, Texas

20100491251

and,

WHEREAS, the Original Restrictions for Frostwood Section 3 were amended by that certain instrument entitled "First Amendment to Protective Covenants for Frostwood Section III" recorded in the Real Property Records of Harris County, Texas on December 31, 1986 under Clerk's File No. K901115; and

WHEREAS, Dremar Corporation, as developer, caused that certain untitled instrument (the "Original Restrictions for Colony West") to be recorded on March 8, 1963 in Volume 5044, Page 88, et seq. of the Deed Records of Harris County, Texas, which instrument imposed various covenants, conditions and restrictions upon the following real property:

Colony West, a subdivision in Harris County, Texas according to the map or plat thereof recorded in Volume 94, Page 21, of the Map Records of Harris County, Texas

and,

WHEREAS, the Original Restrictions for Colony West were amended by that certain instrument entitled "First Amendment to Protective Covenants for Colony West" recorded in the Real Property Records of Harris County, Texas on December 31, 1986 under Clerk's File No. K901116; and

WHEREAS, the Original Restrictions for Frostwood Section 1, as amended, the Original Restrictions for Frostwood Section 2, as amended, the Original Restrictions for Frostwood Section 3, as amended, and the Original Restrictions for Colony West, as amended, were restated, replaced and superseded, in their entireties, by that certain instrument entitled "Modification of Restrictive Covenants for Frostwood Subdivision" recorded in the Official Public Records of Real Property of Harris County, Texas on November 25, 1998 under Clerk's File No. T403706; and

WHEREAS, the Modification of Restrictive Covenants for Frostwood Subdivision also consolidated the restrictive covenants applicable to Frostwood, Sections I, II and III, and Colony West, so that the properties within the four (4) subdivisions are subject to covenants, conditions and restrictions set forth in a single document (such Subdivision being collectively referred to herein as "Frostwood") ; and

WHEREAS, the Modification of Restrictive Covenants for Frostwood Subdivision provides that the provisions thereof may be amended in accordance with the provisions of Chapter 204 of the Texas Property Code; and

WHEREAS, Frostwood Community Improvement Association (the "Association"), a property owners' association as defined in Chapter 204 of the Texas Property Code, having jurisdiction over all sections of Frostwood, approved and circulated this amendment for the purpose of amending the Modification of Restrictive Covenants for Frostwood Subdivision in the manner provided in Sections 204.005 and 204.008 of the Texas Property Code; and

WHEREAS, the undersigned, being the Owners of at least seventy-five percent (75%) of the real property within all sections of Frostwood, have agreed to amend the Modification of Restrictive Covenants for Frostwood Subdivision in the manner set forth herein;

NOW, THEREFORE, the undersigned, being the Owners of not less than seventy-five percent (75%) of the real property within all sections of Frostwood, hereby restate and amend the covenants, conditions and restrictions for Frostwood, Sections I, II and III, and Colony West, to be governed by the covenants, conditions and restrictions set forth in this instrument. When effective,

this instrument supersedes the Modification of Restrictive Covenants for Frostwood Subdivision and, to the extent applicable, the Original Restrictions for Frostwood Section 1, as previously amended, the Original Restrictions for Frostwood Section 2, as previously amended, the Original Restrictions for Frostwood Section 3, as previously amended, and the Original Restrictions for Colony West, as previously amended, and the previously recorded Architectural Control Guidelines and Architectural Standards for Frostwood;

The provisions of this instrument shall become effective upon recording. If a circumstance, condition or improvement ("Condition") exists as of the date this instrument is recorded and the Condition is in violation of the provisions of both the Modification of Restrictive Covenants for Frostwood Subdivision and this instrument, the Condition is required to be corrected to comply with the provisions of this instrument. If a Condition exists as of the date this instrument is recorded and the condition is not in violation of the provisions of the Modification of Restrictive Covenants for Frostwood Subdivision but it is in violation of the provisions of this instrument, the Condition shall not be required to comply with the provisions of this instrument. However, if a Condition that does not comply with this instrument as of the date of recording is voluntarily or involuntarily removed, or discontinued after the date this instrument is recorded, such Condition shall not be renewed or replaced in a manner inconsistent with the provisions of this instrument. The Association or any Owner of a Lot in the Subdivision shall have the right to proceed with or initiate action against any person who is in violation of the provisions of the Modification of Restrictive Covenants for Frostwood Subdivision so long as the Condition constituting a violation of the Modification of Restrictive Covenants for Frostwood Subdivision also violates the provisions of this instrument.

## **ARTICLE I**

### **Definitions**

As used in these Amended, Restated and Consolidated Restrictions, the terms set forth below shall have the following meanings:

**A. Amended, Restated and Consolidated Restrictions** - The covenants, conditions and restrictions applicable to Frostwood, Sections I, II and III, and Colony West, as set forth in this instrument.

**B. Annual Maintenance Charge** - The annual assessment made and levied by the Association against each Owner and his Lot in accordance with the provisions of this instrument.

**C. Architectural Control Committee** - The Architectural Control Committee established and empowered in accordance with Article IV of this instrument.

**D. Association** - Frostwood Community Improvement Association, a Texas non-profit corporation, its successors and assigns.

**E. Baseline Elevation** - The Baseline Elevation of all interior Lots (Lots other than corner Lots) shall be determined by averaging the measured elevation of the two points where the front building line crosses the property lines of the adjacent Lots. The Baseline Elevation of a corner Lot shall be determined by averaging the measured elevation of three points: (i) the point where the front building line crosses the property line of the adjacent Lot, (ii) the rear most corner of the common property line of the corner Lot and the adjacent interior Lot, and (iii) the point where the front building line and side building line meet. A Baseline Elevation shall be determined by a surveyor duly licensed in the State of Texas and submitted with the Plans for a proposed Residential Dwelling or other Improvement that will have a foundation. If a survey with the Baseline Elevation determination is not submitted with such Plans, the application for such Residential Dwelling or other Improvement shall be deemed denied without further action of the Architectural Control Committee.

**F. Board or Board of Directors** - The Board of Directors of the Association, as provided in the Bylaws of the Association.

**G. Builder** - A person or entity who either purchases a Lot within the Subdivision for the purpose of constructing a Residential Dwelling thereon or is engaged by the Owner of a Lot to construct either a new Residential Dwelling on the Lot or a major addition to the existing Residential Dwelling on the Lot (as defined in Section 4.3).

**H. Common Area** - Any real property and Improvements thereon owned or maintained by the Association for the common use and benefit of the Owners.

**I. Improvement** - A Residential Dwelling, building, structure (whether or not affixed to the land), walkway, driveway, fence, wall, exterior lighting or grading and an exterior addition to or modification of a Residential Dwelling, building, structure, walkway, driveway, fence, wall or exterior lighting, other than minor additions or modifications made in the course of routine maintenance and/or repair.

**J. Lot or Lots** - Each of the Lots shown on the Plats for the Subdivision.

**K. Maintenance Fund** - Any accumulation of the Annual Maintenance Charges collected by the Association in accordance with the provisions of this instrument and interest, penalties and other sums and revenues collected by the Association pursuant to the provisions of the instrument.

**L. Member or Members** - All Lot Owners who are members of the Association as provided in Article II hereof.

**M. Member in Good Standing** - A Member who (a) is not delinquent in the payment of any Annual Maintenance Charge or Special Assessment levied by the Association against his Lot, or any interest, late charges, costs or reasonable attorney's fees added to such assessment under the provisions of these Amended, Restated and Consolidated Restrictions or as provided by law, (b) does not have a condition of his Lot which violates any provision of these Amended, Restated and Consolidated Restrictions or the Architectural Control Guidelines which has progressed to the stage of a certified demand for compliance by the Association, or beyond, and which remains unresolved as of the date of determination of the Member's standing, and (c) has not failed to comply with all terms of a judgment obtained against him by the Association, including the payment of all sums due to the Association by virtue of such judgment. A Member who is not in good standing is not entitled to vote at any meeting of the Members of the Association. No formal action by the Board of Directors to suspend the voting rights of a Member who is not in good standing is required.

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

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

**P. Plans** - The final construction plans and specifications (including a related site plan) of a Residential Dwelling or other Improvement to be erected, placed, constructed, maintained or altered on a Lot, or, if construction plans and specifications are not deemed to be necessary for a particular type of project, whatever alternative information for the project is deemed to be necessary or appropriate by the Architectural Control Committee.

**Q. Plat or Plats** - The plat for Frostwood, Section I, recorded in Volume 66, Page 42, of the Map Records of Harris County, Texas; the plat for Frostwood, Section II, recorded in Volume 77, Page 52, of the Map Records of Harris County, Texas; the plat for Frostwood, Section III, recorded in Volume 90, Page 17, of the Map Records of Harris County, Texas; the plat for Colony



West, recorded in Volume 94, Page 21, of the Map Records of Harris County, Texas; and any replat thereof.

**R. Residential Dwelling** - The single family residence constructed or to be constructed on a Lot.

**S. Special Assessment** - A Special Assessment levied by the Association against each Owner and his Lot as provided in Article III, Section 3.5, of this instrument.

**T. Subdivision** - All of Frostwood, Sections I, II and III, and Colony West, as shown on the Plats.

## **ARTICLE II**

### **Management of the Subdivision**

**Section 2.1. Management by Association.** The affairs of the Subdivision shall be administered by the Association. The Association shall have the right, power and obligation to provide for the management, administration, and operation of the Subdivision as provided for in its Articles of Incorporation and Bylaws and as provided in these Amended, Restated and Consolidated Restrictions. The Association shall be entitled to enter into such contracts and agreements concerning the Subdivision as necessary or appropriate to maintain and operate the Subdivision including, without limitation, the right to enter into agreements on matters of maintenance, trash pick-up, patrol services, and the operation and maintenance of Common Area.

**Section 2.2. Membership in Association.** Each Owner of a Lot, whether one or more persons or entities, shall upon and by virtue of becoming such Owner, automatically become and shall remain a Member of the Association until his ownership ceases for any reason, at which time his membership in the Association shall 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.

**Section 2.3. Voting of Members.** Each Member shall be entitled to one (1) vote per Lot owned on each matter submitted to a vote of the Members. No Owner shall be entitled to vote at a meeting of the Association until such Owner has presented evidence of ownership of a Lot in the Subdivision to the Secretary of the Association. In the event that ownership interests in a Lot are owned by more than one Member of the Association, such Members shall exercise their right to vote in such manner as they may among themselves determine, but in no event shall more than one (1) vote be cast for each Lot. Such Members shall appoint one of them as the Member who shall be entitled to exercise the vote of that Lot at a meeting of the Association. Such designation shall be made in writing to the Board of Directors and shall be revocable at any time by actual written notice to the Board. The Board shall be entitled to rely on any such designation until written notice revoking such designation is received by the Board. In the event that a Lot is owned by more than one Member of the Association, and no single Member is designated to vote on behalf of the Members having an ownership interest in such Lot, then the Member exercising the vote for the Lot shall be deemed to be designated to vote on behalf of the Members having an ownership interest in the Lot. All Members of the Association may attend meetings of the Association and all Members in Good Standing may exercise their vote at such meetings either in person or proxy. A person who occupies a Residential Dwelling on a Lot in the Subdivision but is not an Owner may attend meetings of the Association but shall not be entitled to serve on the Board of Directors in any capacity or on the Architectural Control Committee. Fractional votes and split votes shall not be permitted. Cumulative voting shall not be permitted.

**Section 2.4. Meetings of the Members.** Annual and special meetings of the Members of the Association shall be held at such place and time and on such dates as shall be specified or provided in the Bylaws.

**Section 2.5. Professional Management.** The Board shall have the authority to retain, hire, employ or contract with such professional management companies or personnel as the Board deems appropriate to perform the day to day functions of the Association and to provide for the management, administration and operation of the Subdivision as provided for in these Amended, Restated and Consolidated Restrictions and in the Bylaws.

**Section 2.6. Board Actions in Good Faith.** To the maximum extent allowed by law, no action, inaction or omission by the Board made or taken in good faith shall subject the Board or any individual member of the Board to any liability to the Association, its Members or any other party. The Association shall at all times maintain directors' and officers' liability insurance for the benefit of its officers, directors, and committee members.

**Section 2.7. Implied Rights; Board Authority.** The Association may exercise any right or privilege given to it expressly by the provisions of these Amended, Restated and Consolidated Restrictions or its Articles of Incorporation or Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board of Directors without a vote of the membership except where any provision in these Amended, Restated and Consolidated Restrictions, the Articles of Incorporation, the Bylaws or applicable law specifically requires a vote of the membership.

The Board may institute, defend, settle or intervene on behalf of the Association in litigation, administrative proceedings, binding or non-binding arbitration, or mediation in matters pertaining to (a) Common Area or other areas in which the Association has or assumes responsibility pursuant to the provisions of these Amended, Restated and Consolidated Restrictions, (b) enforcement of the provisions of these Amended, Restated and Consolidated Restrictions or the Architectural Control Guidelines or (c) any other civil claim or action. However, no provision in these Amended, Restated and Consolidated Restrictions or the Articles of Incorporation or Bylaws shall be construed to create any independent legal duty to institute litigation on behalf of or in the name of the Association.

**Section 2.8. Standard of Conduct.** The Board of Directors, the officers of the Association, and the Association shall have the duty to represent the interests of the Owners in a fair and just manner. Any act or thing done by any Director, officer or committee member taken in furtherance of the purposes of the Association, and accomplished in conformity with these Amended, Restated and Consolidated Restrictions, the Articles of Incorporation, the Bylaws and the laws of the State of Texas, shall be reviewed under the standard of the Business Judgment Rule as established by the common law of Texas, and such act or thing shall not be a breach of duty on the part of the Director, officer or committee member if taken or done within the exercise of their reasonable discretion and judgment. The Business Judgment Rule means that a court shall not substitute its judgment for that of the Director, officer or committee member. A court shall not re-examine the decisions made by a Director, officer or committee member by determining the reasonableness of the decision as long as the decision is made in good faith and in what the Director, officer, or committee member believed to be in the best interest of the Association.

### **ARTICLE III**

#### **Maintenance Fund and Annual Maintenance Charges**

**Section 3.1. Maintenance Fund.** All Annual Maintenance Charges collected by the Association and all interest, penalties, assessments and other sums and revenues collected by the Association constitute the Maintenance Fund. The Maintenance Fund shall be held, managed, invested and expended by the Board, at its discretion, for the benefit of the Subdivision and the Owners of the Lots in the Subdivision. The Board shall, by way of illustration and not by way of

limitation, expend the Maintenance Fund for the administration, management, and operation of the Subdivision; for the maintenance, repair and improvement of the Common Area; for the maintenance of any easements granted to the Association; for the enforcement of the provisions of these Amended, Restated and Consolidated Restrictions by action at law or in equity, or otherwise, and the payment of court costs as well as reasonable and necessary legal fees; and for all other purposes that are, in the reasonable, good faith judgment of the Board, desirable in order to maintain the character and value of the Subdivision and the Lots therein. The Board and its individual members shall not be liable to any person as a result of actions taken by the Board with respect to the Maintenance Fund, except for willful neglect or intentional wrongdoings.

**Section 3.2. Covenants for Annual Maintenance Charges and Assessments.** Each and every Lot in the Subdivision is hereby severally subjected to and impressed with an Annual Maintenance Charge in an amount to be determined annually by the Board (subject to the provisions of these Amended, Restated and Consolidated Restrictions) which Annual Maintenance Charge shall run with the land. Each Owner of a Lot, by accepting a deed to such Lot, whether or not it shall be so expressed in the deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the Annual Maintenance Charges levied against his Lot and/or assessed against him by virtue of his ownership thereof, as the same shall become due and payable. The Annual Maintenance Charges herein provided for shall be a charge and a continuing lien upon each Lot, together with all Improvements thereon, as hereinafter more particularly stated. Each Annual Maintenance Charge, together with interest at the rate of ten percent (10%) per annum, or the maximum non-usurious rate, whichever is less, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such Annual Maintenance Charge accrued, but no Owner shall be personally liable for the payment of any Annual Maintenance Charge made or becoming due and payable after his ownership ceases. No Owner shall be exempt or excused from paying any Annual Maintenance Charge by waiver of the use or enjoyment of the Common Area, or any part thereof, or by abandonment of his Lot or his interest herein.

**Section 3.3. Maximum Annual Maintenance Charge.** The Annual Maintenance Charge levied by the Association shall be used to fund the annual operating budget of the Association. The Association shall expend funds to provide the various services, supplies and activities required to promote the recreation, health and welfare of the residents in the Subdivision. The Annual Maintenance Charge for each Lot shall be derived as follows:

$$\text{Annual Maintenance Charge (\$)} = \frac{\text{Mil Rate (mils per square foot)} \times \text{Lot Area (square feet)}}{1000}$$

The Mil Rate charged to all Lots shall be uniform. The mil rate is determined each year by the Board as the amount required to generate the revenue to fund the Association budget for the upcoming year, subject to the provisions of this Section.

Commencing January 1 of the year next following the year in which these Amended, Restated and Consolidated Restrictions are recorded, the mil rate used to determine the Annual Maintenance Charge for each Lot shall be 21. From and after January 1 of the year next following the year in which these Amended, Restated and Consolidated Restrictions become effective, the mil rate used to determine the Annual Maintenance Charge for each Lot may be increased, subject to the maximum mil rate then in effect, if approved by a majority of the Members present and voting at a meeting called and held for that purpose in accordance with Section 3.6.

Commencing January 1 of the year next following the year in which these Amended, Restated and Consolidated Restrictions are recorded, the maximum mil rate shall be 35. From

and after January 1 of the year next following the year in which these Amended, Restated and Consolidated Restrictions become effective, the maximum mil rate may be increased if approved by a majority of the Members present and voting at a meeting duly called and held for that purpose; provided that, for the purpose of a meeting called to consider an increase in the maximum mil rate, the quorum requirement shall be thirty percent (30%) of the votes entitled to be cast as of the date of the meeting. Notice of the meeting shall be provided to all Members in accordance with the provisions of Section 3.6. If the maximum mil rate is increased above 35, or thereafter increased above a greater maximum mil rate previously approved by the Members in accordance with this Section, the Association shall be required to record a notice of the new maximum mil rate in the Official Public Records of Real Property of Harris County, Texas within thirty (30) days of the date of the meeting at which the increase in the maximum mil rate is approved.

For the purpose of calculating the Annual Maintenance Charge payable for a Lot, the number of square feet within the Lot shall be based upon the records of the Harris County Appraisal District.

**Section 3.4. Date of Commencement and Determination of Annual Maintenance Charge.** The Annual Maintenance Charge on each Lot shall be due on January 1 of each year, commencing in the year next following the year in which these Amended, Restated and Consolidated Restrictions are recorded. On or before the 30<sup>th</sup> day of November in each year, the Board of Directors of the Association shall determine the amount of the mil rate to be applicable in the next calendar year. Written notice of the mil rate and the resulting Annual Maintenance Charge due on each Lot shall be sent to the Owner of the Lot. Provided that, the failure to determine the amount of the mil rate to be applicable in the next calendar year or to send written notice of the mil rate and resulting Annual Maintenance Charge to all Owners shall not affect the authority of the Association to levy Annual Maintenance Charges or to increase the mil rate as provided herein.

**Section 3.5. Special Assessments.** The Association may levy at any time a Special Assessment for the purpose of defraying, in whole or in part, an extraordinary expenditure for an emergency deemed by the Board of Directors, in its reasonable, good faith judgment, to be of significant importance to the Subdivision (a "Special Assessment"); provided that, a Special Assessment shall require notice in the accordance with Section 3.6. The quorum requirement for a meeting called to consider a Special Assessment shall be fifty percent (50%) of the votes entitled to be cast as of the date of the meeting. A proposed Special Assessment shall require the approval of not less than a majority of the Owners present and voting at the meeting at which a quorum is present. A Special Assessment shall be payable in the manner determined by the Board unless payment terms are voted upon and approved by the Owners at the meeting called to consider the Special Assessment. Payment of a Special Assessment shall be (a) subject to interest, late charges, costs and attorney's fees if not timely paid, (b) secured by the continuing lien established in this Article in the same manner that Annual Maintenance Charges are secured, and (c) enforced in the manner specified herein for the payment of the Annual Maintenance Charge.

**Section 3.6. Notice, Quorum and Approval Requirements for Particular Action.** The quorum requirement for a meeting of the Members called for the purpose of considering either a proposal to increase the Annual Maintenance Charge (not in excess of the maximum mil rate then in effect) as provided in Section 3.3, shall be not less than one-tenth (1/10<sup>th</sup>) of the votes entitled to be cast as of the date of the meeting. Written notice of a meeting called for such purpose shall be mailed or delivered to each Owner at the Owner's last known mailing address according to the records of the Association not less than ten (10) days or more than fifty (50) days prior to the date of the meeting. If a quorum is not established at a meeting called for such purpose, the meeting may be adjourned and reconvened not later than sixty (60) days after the original meeting date. A proposal to increase the Annual Maintenance Charge shall require the approval of not less than a

majority of the Owners present, in person or by proxy, and voting at a meeting called in accordance with this Section at which a quorum is present.

**Section 3.7. Enforcement of Annual Maintenance Charge.** The Annual Maintenance Charge assessed against each Lot shall be due and payable, in advance, on the first (1<sup>st</sup>) day of January of each year. An Annual Maintenance Charge which is not paid and received by the Association by the thirty-first (31<sup>st</sup>) day of January of the applicable year shall be deemed to be delinquent, and, without notice, shall bear interest at the rate of ten percent (10%) per annum or the maximum, non-usurious rate, whichever is less, from the date originally due until paid. Further, the Board of Directors of the Association shall have the authority to impose a monthly late charge on any delinquent Annual Maintenance Charge. The monthly late charge, if imposed, shall be in addition to interest. To secure the payment of the Annual Maintenance Charge, Special Assessments and any other sums due hereunder (including, without limitation, interest, costs, late charges, and attorney's fees), there is hereby created a continuing lien upon and against each Lot and all Improvements thereon for the benefit of the Association, and superior title to each Lot is hereby reserved in and to the Association, subject to the provisions of Section 3.8, below. The collection of Annual Maintenance Charges and other sums due hereunder may, in addition to any other applicable method at law or in equity, be enforced by suit for a money judgment and, in the event of such a suit, the expense incurred in collecting such delinquent amounts, including interest, costs and attorney's fees, shall be chargeable to and be a personal obligation of the defaulting Owner. Notice of the lien referred to herein may (but shall not be required to) be given by recording an affidavit in the Official Public Records of Real Property of Harris County, Texas duly executed, and acknowledged by an authorized representative of the Association, setting forth the amount owed, the name of the Owner or Owners of the affected Lot according to the books and records of the Association, and the legal description of such Lot. Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his ownership of such Lot and hereby vests in the Association the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Annual Maintenance Charge and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial foreclosure.

**Section 3.8. Subordination of Lien.** The lien described in Section 3.7 shall be deemed subordinate to any Mortgage for the purchase of the Lot and any renewal extension, rearrangement or refinancing of such purchase money Mortgage.

**Section 3.9. Notice of Sums Owed.** Upon the written request of an Owner, the Association shall provide to such Owner a written statement setting forth the then current total of all Annual Maintenance Charges, Special Assessments, and other sums, if any, owing by such Owner with respect to his Lot. In addition to such Owner, the written statement from the Association so advising the Owner may be addressed to and be for the benefit of a prospective lender or purchaser of the Lot, as same may be identified by said Owner to the Association in the written request for such information. The Association shall be entitled to charge the Owner a reasonable fee for such statement.

**Section 3.10. Sale of a Lot.** In the event of a sale of a Lot, whether by foreclosure sale or otherwise, the person or entity who owned the Lot prior to the sale shall remain liable for the payment of all Annual Maintenance Charges, Special Assessments, or other sums, if any, which accrued prior to the date of transfer of title. In the event of a foreclosure of a Mortgage on a Lot that is superior to the lien described in Section 3.7, the purchaser at the foreclosure sale shall not be responsible for Annual Maintenance Charges, Special Assessments, or other sums, if any, which accrued on the Lot prior to the date of the sale, but the purchaser and his/its successors shall be responsible for Annual Maintenance Charges, Special Assessments, and other sums, if any, becoming due and owing with respect to the Lot after the date of foreclosure.

**Section 3.11. Transfer Fee/Resale Certificates.** The Board of Directors of the Association shall establish and change from time to time, if deemed appropriate, a fee sufficient to cover the expense associated with providing information in connection with the sale of a Lot in the Subdivision and changing the ownership records of the Association ("Transfer Fee"). A Transfer Fee shall be paid to the Association or the managing agent of the Association, if agreed to by the Association, upon each transfer of title to a Lot. The Transfer Fee shall be paid by the purchaser of the Lot, unless otherwise agreed by the seller and purchaser of the Lot. The Association shall also have the authority to establish and change from time to time, if deemed appropriate, a reasonable fee sufficient to cover the expense associated with providing a resale certificate in connection with the sale of a Lot per Chapter 207 of the Texas Property Code ("Resale Certificate"). The fee for a Resale Certificate shall be paid to the Association or the managing agent of the Association, if agreed to by the Association. The fee for a Resale Certificate shall be in addition to, not in lieu of, the Transfer Fee.

#### **ARTICLE IV** **Architectural Approval**

**Section 4.1. Architectural Control Committee.** The Architectural Control Committee shall consist of not less than five (5) members, all of whom shall be appointed by the Board. Members of the Architectural Control Committee must at all times be Members in Good Standing of the Association. Members of the Architectural Control Committee may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

**Section 4.2. Approval of Improvements Required.** In order to preserve the architectural and aesthetic appearance and the Subdivision, to establish and preserve a harmonious design for the Subdivision, and to protect and promote the value of the Lots, no Improvement of any nature which affects the exterior appearance of a Lot or the Residential Dwelling or other Improvement on a Lot shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on a Lot by an Owner, unless Plans therefor have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of this Article. Without limiting the foregoing, the construction or installation of a Residential Dwelling, driveway, swimming pool, wall, fence, exterior lighting, garage, or any other building or structure shall not be undertaken, nor shall any exterior addition to or change or alteration be made (excluding minor modifications made in the course of routine maintenance and/or repair) to a Residential Dwelling or other Improvement, unless the Plans for the same have been submitted to and approved by the Architectural Control Committee in accordance with the provisions of this Article. This Section shall be applicable to painting or staining the exterior surface of a Residential Dwelling or other Improvement. The provisions of this Section shall also be applicable to the demolition of a Residential Dwelling on a Lot. Accordingly, no Lot shall be razed without first submitting Plans to the Architectural Control Committee and receiving its written approval. The Plans for the demolition of a Residential Dwelling must include drainage plans to prevent siltation of storm sewers and dirt or mud in the street.

The Architectural Control Committee is hereby authorized and empowered to approve Plans for the construction of a Residential Dwelling or other Improvement on a Lot. Prior to the commencement of a Residential Dwelling or other Improvement on a Lot, the Owner thereof shall submit to the Architectural Control Committee Plans and related data for each proposed Improvement, which shall include, as required by the Architectural Control Committee, the following:

- (i) Two (2) copies of an accurately drawn and dimensioned site development plan (using a 1/4" – 1'0" scale) indicating the location of any and all Improvements, including, specifically, the Residential Dwelling to be constructed on said Lot, the location of all driveways, walkways, decks, patios and other Improvements and the relationship of the same to applicable setbacks and utility easements.
- (ii) Two (2) copies of written specifications and, if requested by the Architectural Control Committee, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Residential Dwelling or other Improvement on the Lot, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of the Residential Dwelling or other Improvement, the color of paint or stain or color impregnation to be used on all doors, shutters, trim work, eaves and dormers on the exterior of such Residential Dwelling or other Improvement, and all window types.
- (iii) In the event of a new Residential Dwelling to be constructed on a Lot, an addition to an existing Residential Dwelling that increases the footprint of the Residential Dwelling, or an Improvement that has a foundation, a drainage plan which indicates how storm water will drain to a street. A Lot must drain within itself and not onto an adjacent Lot. The failure to submit a drainage plan with the Plans for a new Residential Dwelling to be constructed on a Lot, an addition to an existing Residential Dwelling that increases the footprint of the Residential Dwelling, or an Improvement that has a foundation shall result in the disapproval of the Plans.
- (iv) A written statement of the estimated date of commencement of construction, if the proposed Improvement is approved, and the estimated date of completion.
- (v) The name, address and telephone number of the Builder, once the Builder has entered into a contract with the Owner.

The Architectural Control Committee shall have the authority to require Plans to be submitted electronically in addition to regular copies. The Architectural Control Committee shall, in its sole discretion, determine whether the Plans and other data submitted by an Owner for approval are acceptable. One copy of the Plans and related data so submitted to the Architectural Control Committee shall be retained as records of the Association and the other copy shall be returned to the Owner submitting the same either marked "approved", "approved as noted" or "disapproved" or with an accompanying letter which identifies the Plans and indicates approval or disapproval by the Architectural Control Committee.

The Architectural Control Committee shall have the right to disapprove any Plans upon any ground which is consistent with the objectives and purposes of these Amended, Restated and Consolidated Restrictions and/or the Architectural Control Guidelines, including purely aesthetic considerations; failure to comply with any of the provisions of these Amended, Restated and Consolidated Restrictions; failure to provide requested information; objection to exterior design, appearance or materials; objection on the ground of incompatibility of any such proposed Improvement with the general plan and scheme for the Subdivision; objection to the location of any proposed Improvement; objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of the Residential Dwelling or other Improvement; failure to include an adequate drainage plan to assure that storm water does not drain onto an adjacent Lot; or any other matter, which in the reasonable, good faith judgment of the Architectural Control Committee would render the proposed Residential Dwelling or other Improvement inharmonious or incompatible with the general plan and scheme for the Subdivision. The Architectural Control Committee shall have the right to approve submitted Plans with conditions or stipulations by which

the Owner of such Lot shall be obligated to comply and must be incorporated into the Plans for such Residential Dwelling or other Improvement. Approval of Plans by the Architectural Control Committee for Improvements on a particular Lot shall not be deemed an approval or otherwise obligate the Architectural Control Committee to approve similar Plans for proposed Improvements for another Lot. The Architectural Control Committee, with prior approval of the Board, shall have the right to engage an architect, engineer or other third party professional to assist in the review of Plans for a proposed Residential Dwelling or other Improvement as to compliance with the provisions of these Amended, Restated and Consolidated Restrictions and the Architectural Control Guidelines and to engage an architect, engineer or other third-party professional to inspect a Residential Dwelling or other Improvement during construction or after substantial completion to confirm compliance with the approved Plans, these Amended, Restated and Consolidated Restrictions and the Architectural Control Guidelines. If deemed appropriate and directed by the Board, the Architectural Control Committee shall engage an architect, engineer or other third party professional to review Plans and/or inspect a Residential Dwelling or other Improvement.

Any revision, modification or change in Plans previously approved by the Architectural Control Committee must be approved by the Architectural Control Committee in the same manner specified above.

If construction of a Residential Dwelling or other Improvement has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing related construction work) within ninety (90) days of approval by the Architectural Control Committee of the Plans for such Residential Dwelling or other Improvement (or such longer period approved in writing by the Architectural Control Committee), then no construction may be commenced (or continued) on such Lot and the Owner of such Lot shall be required to resubmit all Plans for any Residential Dwelling or other Improvement to be constructed on the Lot to the Architectural Control Committee for approval in the same manner specified above.

**Section 4.3. Submission Fee.** The Board of Directors of the Association shall have the authority to establish and adjust from time to time, if deemed appropriate, a reasonable fee to cover the expense of engaging an architect or architectural firm or other professional to review Plans and related data for a new Residential Dwelling to be constructed on a Lot and for a major addition to an existing Residential Dwelling on a Lot (as defined below) and to monitor or periodically inspect construction (the "Submission Fee"). Recognizing that the scope of a review for a new Residential Dwelling and a major addition may vary, the Submission Fee need not be uniform; rather, the Board of Directors of the Association shall have the authority to establish different Submission Fees for new Residential Dwellings and major additions. Provided that, a Submission Fee shall only be charged for the review of Plans for a new Residential Dwelling or a major addition to an existing Residential Dwelling and the inspection of construction of a new Residential Dwelling or major addition to an existing Residential Dwelling. The amount of a Submission Fee charged to an Owner shall be reasonable and shall not exceed the costs actually incurred by the Association for the services of the consulting architect or other professional in connection with the review of that Owner's Plans. This paragraph shall not be construed to authorize the Board of Directors of the Association to charge a Submission Fee for any other types of Improvements requiring Architectural Control Committee approval or to charge a Submission Fee that is greater than the actual costs incurred for the services of a consulting architect or other professional. For purposes of these Amended, Restated and Consolidated Restrictions, an addition to an existing Residential Dwelling on a Lot is deemed to be a major addition if the foundation area of the Residential Dwelling (i.e., the footprint) is enlarged or, if the foundation area of the Residential Dwelling is not enlarged, if the Architectural Control Committee, acting reasonably and in good faith, determines that the addition to the existing Residential Dwelling on the Lot is a major addition (such as, by way of example and not in limitation, the addition of a second story living area).



The Architectural Control Committee may recommend to the Board of Directors that the Association engage an architect or architectural firm or other professional to review Plans for a particular project. However, the determination of whether it is necessary for the Association to engage an architect or architectural firm or other professional to review Plans shall be made by the Board of Directors.

**Section 4.4. Construction Deposit.** In the event of a new Residential Dwelling to be constructed on a Lot or a major addition to an existing Residential Dwelling on a Lot (as defined in Section 4.3), the Association shall have the authority, as a condition for the approval of the Plans for the Residential Dwelling or major addition, to require the Builder to submit a deposit to the Association (the "Construction Deposit") to assure the completion of construction in accordance with the approved Plans and compliance with the provisions of these Amended, Restated and Consolidated Restrictions and the Architectural Control Guidelines. The Construction Deposit may be submitted by the Owner of the Lot, on behalf of the Builder, if the Builder does not own the Lot; however, in that event, both the Owner and the Builder shall be required to execute any Construction Deposit Agreement then in use by the Association. The amount of the Construction Deposit, the conditions for refund, the basis for forfeiture of all or some portion of the Construction Deposit, and related matters shall be set forth in the Architectural Control Guidelines. The Construction Deposit procedure shall be fairly and reasonably administered by the Board of Directors of the Association, it being the intent of the Construction Deposit procedure to assure compliance with the approved Plans and the requirements relating to construction activities, not to unduly burden or penalize Builders. Notwithstanding the submission of a Construction Deposit, both the Builder and the Owner of the Lot shall have the responsibility to assure compliance with the approved Plans, these Amended, Restated and Consolidated Restrictions and the Architectural Control Guidelines.

**Section 4.5. Address of Committee.** The address of the Architectural Control Committee shall be at the office of the Association's management company.

**Section 4.6. Architectural Control Guidelines.** The Architectural Control Committee, with the approval of the Board, may promulgate, supplement or amend Architectural Control Guidelines for the purpose of outlining minimum acceptable standards for proposed Improvements; provided, however, that such outline will serve as a minimum guideline only and the Architectural Control Committee may impose other requirements in connection with its review of any proposed Improvements. If the recorded Architectural Control Guidelines impose requirements that are more stringent than the provisions of these Amended, Restated and Consolidated Restrictions, the provisions of the recorded Architectural Control Guidelines shall control, it being the intent that the Architectural Control Guidelines shall supplement these Amended, Restated and Consolidated Restrictions with regard to matters within the discretionary authority of the Architectural Control Committee.

The Architectural Control Guidelines may also list or identify various types of repairs that are not deemed to be modifications or additions to an existing Residential Dwelling or other Improvement and, therefore, do not require prior approval by the Architectural Control Committee.

**Section 4.7. Failure of Committee to Act on Plans.** Except as otherwise provided in these Amended, Restated and Consolidated Restrictions, request for approval of a proposed Improvement on a Lot shall be deemed to be approved by the Architectural Control Committee unless written disapproval is transmitted to the Owner by the Architectural Control Committee within thirty (30) days after the date of actual receipt of the request by the Chairman of the Architectural Control Committee. Provided that, a request for approval of a proposed Improvement on a Lot shall not be considered to be received unless and until all documents and information required in this Article have been received by the Architectural Control Committee. Provided

further that, if the Architectural Control Committee requests additional information or material samples from an applicant in a written communication or e-mail within the specified thirty (30) day period, the applicant's request shall be deemed to be disapproved, whether or not so stated in the written communication or e-mail, and a new thirty (30) day review period shall not commence until the date of actual receipt of the requested information by the Architectural Control Committee. A request for additional information or material samples submitted via an e-mail is required to be confirmed by a written communication sent not later than ten (10) days after the date of the e-mail unless the applicant replies within such period and acknowledges receipt of the e-mail. Notwithstanding the written approval of the Architectural Control Committee of Plans for a proposed Improvement, an Owner shall not construct or maintain an Improvement on a Lot that violates an express provision of these Amended, Restated and Consolidated Restrictions or the Architectural Control Guidelines, the Architectural Control Committee and the Association at all times retaining the right to object to an Improvement on a Lot that violates an express provision of these Amended, Restated and Consolidated Restrictions or the Architectural Control Guidelines. An applicant shall have the right to appeal an adverse decision of the Architectural Control Committee to the Board of Directors. The Board of Directors shall have the authority to adopt procedures for appeals of decisions of the Architectural Control Committee. In the event of an appeal, the decision of the Architectural Control Committee shall remain in effect during the pendency of the appeal; there shall be no deemed approval of an application as a result of the Board's failure to act on an appeal within thirty (30) days. The decision of the Board of Directors shall be conclusive and binding on all parties.

**Section 4.8. Initiation of Work After Approval.** After approval of a proposed Improvement on a Lot, work on the proposed Improvement shall be pursued diligently and continuously and shall be completed within the time frame established for completion pursuant to the provisions of these Amended, Restated and Consolidated Restrictions and in strict conformity with the description of the proposed Improvement in the Plans submitted to and approved by the Architectural Control Committee. However, at least thirty (30) days prior to the commencement of construction of a new Residential Dwelling on a Lot or a major addition to an existing Residential Dwelling on a Lot (as defined in Section 4.3), the Owner of the Lot shall provide written notice of the date on which construction is projected to commence to the Owner of each adjacent Lot, the Owner of the Lot immediately across the street, and the Owners of the Lots on each side of the Lot immediately across the street. A copy of such written notice is also required to be provided to the Architectural Control Committee. An Owner and the Owner's Builder or contractor shall keep the job site and all surrounding areas clean during the progress of construction. In no event shall any construction material be buried in a Lot or beneath a Residential Dwelling or other Improvement. No Owner, Builder or contractor shall allow dirt, mud, gravel, construction debris or similar items to collect or remain on the sidewalk on the Lot or on a street in the Subdivision; no dirt, mud, gravel, construction debris or similar items shall be allowed to migrate into a storm sewer.

**Section 4.9. Inspection of Work.** The Architectural Control Committee or its duly authorized representative shall have the right, but not the obligation, to inspect an Improvement on a Lot before or after completion, provided that, in the event of an occupied Residential Dwelling, the right of inspection shall not be exercised without reasonable notice to the Owner of the Lot and, if applicable, the Builder.

**Section 4.10. No Implied Waiver or Estoppel.** No action or failure to act by the Architectural Control Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Architectural Control Committee or the Board of Directors. Specifically, the approval by the Architectural Control Committee or the Board of Directors of an Improvement on a Lot shall not be deemed a waiver of any right or an estoppel against withholding approval of Plans for a similar Improvement proposed to be constructed on another Lot.

**Section 4.11. Power to Grant Variances.** Upon the receipt of a written request from an Owner and the recommendation of the Architectural Control Committee, the Board of Directors may authorize variances from compliance with any of the provisions of Article V of these Amended, Restated and Consolidated Restrictions when deemed appropriate on the basis of equity, consistency or compliance with the overall purposes and intent of these Amended, Restated and Consolidated Restrictions. Provided that, a variance shall not be granted due to (a) economic hardship, (b) inability to obtain financing, or (c) inability to comply with applicable governmental regulations or to obtain approval from a governmental entity. Provided further that (a) a variance relating to height or a setback shall not deviate from the requirement by a distance greater than twelve (12) inches and (b) the width of a driveway shall not deviate from the maximum by a distance greater than twelve (12) inches. Approval of a variance requires the approval of a majority of all of the Directors present at the meeting at which the variance is considered. An approved variance must be evidenced in writing and shall become effective only when signed by an authorized officer of the Association certifying that the variance was approved by not less than majority of all the Directors present at the meeting at which the variance was considered. If a variance is granted, no violation of the provisions of these Amended, Restated and Consolidated Restrictions shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, a variance shall not (a) operate to waive any of the provisions of these Amended, Restated and Consolidated Restrictions or the Architectural Control Guidelines for any purpose except as to the particular Lot and the particular provision covered by the variance, (b) affect the jurisdiction of the Architectural Control Committee other than with respect to the subject matter of the variance, or (c) affect in any way the Owner's obligation to comply with all applicable governmental laws and regulations.

**Section 4.12. Compensation of Architectural Control Committee Members.** The members of the Architectural Control Committee shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties as the Board from time to time may authorize or approve, but they shall not otherwise be compensated by the Association.

**Section 4.13. Estoppel Certificates.** The Board of Directors, upon the reasonable request of an interested party and after confirming any necessary facts with the Architectural Control Committee, shall furnish a certificate with respect to the approval or disapproval of an Improvement on a Lot or with respect to whether an Improvement on a Lot was constructed in compliance with the provisions of these Amended, Restated and Consolidated Restrictions and the Architectural Control Guidelines. Any person, without actual notice of the falsity or inaccuracy of such a certificate, shall be entitled to rely on such certificate with respect to all matters set forth therein. The Association shall have the authority to charge a reasonable fee for the issuance of such a certificate, as determined by the Board of Directors.

**Section 4.14. Nonliability for Architectural Control Committee Action.** None of the members of the Architectural Control Committee, the Association or any of the Association's officers or 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 Control Committee, except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing a matter, the Architectural Control Committee shall not inspect, guarantee or warrant the workmanship of the Improvement, including its design, construction, safety (whether structural or otherwise), compliance with building codes or other governmental laws or regulations, or whether the Improvement is suitable or fit for its intended purpose.

**Section 4.15. Razing.** As provided in Section 4.2, the Residential Dwelling and other Improvements on a Lot shall not be razed without first submitting Plans, together with drainage plans, to the Architectural Control Committee and receiving its written approval. All landscaping

which remains on a Lot after the Residential Dwelling and other Improvements have been razed must be properly maintained; in addition, the Lot must be regularly mowed and trimmed. If ninety (90) days elapse from the date the demolition work on the Lot is completed and construction of a new Residential Dwelling on the Lot has not commenced, the Owner of the Lot shall be required to submit to the Architectural Control Committee a written statement of the intended disposition of the Lot with an estimated timetable.

## **ARTICLE V**

### **Architectural Restrictions**

#### **Section 5.1. Size, Height, Location, Configuration, Consolidation and Exterior Materials**

A. Minimum Allowable Area of Interior Living Space. The minimum allowable area of interior living space in a Residential Dwelling on a Lot in Frostwood, Sections I, II and III, shall be two thousand (2,000) square feet. The minimum allowable area of interior living space in a Residential Dwelling on a Lot in Colony West shall be two thousand three hundred (2,300) square feet. For purposes hereof, a two-story Residential Dwelling is a Residential Dwelling with a second floor living area. "Interior living space" does not include steps, porches, exterior balconies and garages.

B. Height Limitations. No Residential Dwelling shall have more than two (2) stories of interior living space above the Baseline Elevation. No Residential Dwelling (or addition to a Residential Dwelling) shall exceed a height of thirty-five (35) feet above Baseline Elevation.

No detached garage on a Lot shall exceed a height of thirty (30) feet above Baseline Elevation.

A chimney shall not extend more than five (5) feet above the ridge line of the roof of the appurtenant Residential Dwelling, unless otherwise required by the municipality having jurisdiction.

C. Setbacks.

- (i) **Front Setback:** No portion of a Residential Dwelling, building or structure (excluding eaves) on any Lot that is not a cul-de-sac Lot shall be located nearer to the front property line of the Lot than the front setback shown on the Plat or twenty-five (25) feet, whichever is greater. No portion of a Residential Dwelling, building or structure (excluding eaves) on a cul-de-sac Lot shall be located nearer to the front property line of the Lot than the front setback shown on the Plat.
- (ii) **Side Setbacks:** No portion of a Residential Dwelling, building or structure (excluding eaves) shall be located nearer than five (5) feet to a side property except in the case of a corner Lot in which event no portion of the Residential Dwelling, building or structure (excluding eaves) shall be located nearer than ten (10) feet to the side property line adjacent to the side street. Provided that, with the exception of Lots adjacent to Benignus, no portion of the first floor of a two (2) story Residential Dwelling constructed on a Lot after the effective date of these Amended, Restated and Consolidated Restrictions shall be located nearer to a side property line than five (5) feet and no portion of the second floor of a two (2) story Residential Dwelling constructed on a Lot after the effective date of these Amended, Restated and Consolidated Restrictions shall be located nearer to a side property line than ten (10) feet. The first and second stories of a two (2) story Residential Dwelling constructed or altered on a Lot adjacent to Benignus after the effective date of these Amended, Restated and Consolidated Restrictions may be located no nearer than five (5) feet to the side property line adjacent to Benignus.

- (iii) Rear Setbacks: Except as otherwise provided in this C(iii) or C(iv), no portion of a Residential Dwelling, building or structure (excluding eaves) shall be located nearer to the rear property line of a Lot than five (5) feet. Provided that, if the rear property line of a Lot is adjacent to another Lot in the Subdivision or a residential Lot in an adjacent subdivision, no portion of the first story of a Residential Dwelling (excluding eaves) constructed or altered on a Lot after the effective date of these Amended, Restated and Consolidated Restrictions shall be located nearer to the rear property line of the Lot than twenty (20) feet and no portion of the second story of a two (2) story Residential Dwelling (excluding eaves) constructed or altered after the effective date of these Amended, Restated and Consolidated Restriction shall be located nearer to the rear property line of the Lot than twenty-five (25) feet; if the rear property line of a Lot is not adjacent to another Lot in the Subdivision or a residential Lot in an adjacent subdivision, the five (5) foot rear setback shall be applicable.
- (iv) Garages: The setbacks set forth in C (i), C (ii), and C (iii), above, are applicable to garages with the following exceptions:
- (a) A one-story detached garage that is located no nearer to the front property line of a Lot than sixty-five (65) feet may be located no nearer to a side property line not adjacent to a side street than three (3) feet and no nearer to the rear property line than three (3) feet.
- (b) A one-story attached garage may be located no nearer to a side property line or the rear property line than five (5) feet.
- (c) An attached or detached garage on a Lot may face the street in front of the Lot, provided that an attached or detached garage must be located at the rear of the Residential Dwelling and no portion of an attached or detached garage shall be nearer to the front elevation of the Residential Dwelling on the Lot than forty (40) feet, measured from the nearest point of the garage and the front corner of the Residential Dwelling that is nearest to the garage or nearer to the front property line of the Lot than sixty-five (65) feet, whichever distance from the front property line of the Lot is greater.

Notwithstanding the provisions of this paragraph:

1. With respect to a (2) story attached garage constructed on a Lot after the effective date of these Amended, Restated and Consolidated Restrictions, no portion of the first floor of the attached garage shall be located nearer to a side or rear property line than five (5) feet and no portion of the second floor of the attached garage shall be located nearer to a side or rear property line than ten (10) feet. The provisions of C(iv)(a) shall be applicable to a two-story detached garage constructed on a Lot after the effective date of these Amended, Restated and Consolidated Restrictions.
  2. If, after the effective date of these Amended, Restated and Consolidated Restrictions, a second story living area is added to an attached or detached garage that existed on a Lot as of the effective date of these Amended, Restated and Consolidated Restrictions, the setbacks applicable to the first floor of the garage shall also be applicable to the second story addition to the garage.
- (v) For purposes of Section 5.1C, a two (2) story Residential Dwelling is a residential dwelling with a second floor living area. Also, as used herein, an attached garage means a garage that has at least one (1) wall, or portion thereof, in common with the Residential Dwelling on the Lot. An eave shall not extend beyond the wall by

more than three (3) feet. See Section 5.2M for requirements and limitations on windows in the second story living area of a two (2) story garage.

D. Configuration. The Residential Dwelling on a Lot shall face the street in front of the Lot; provided that, the Residential Dwelling on a corner Lot shall face the street on which the Lot has the smallest frontage. A driveway shall be located on the west side of a Lot unless otherwise approved in writing by the Architectural Control Committee; provided that, the driveway on a Lot adjacent to Gessner Drive may be located on the side of the Lot adjacent to Gessner Drive and the driveway on a Lot adjacent to Frostwood must be located on the side of the Lot adjacent to Frostwood. The garage on a Lot adjacent to Plantation must be located on the side of the Lot adjacent to Plantation.

E. Lot Area and Width. No Residential Dwelling shall be constructed on a Lot which has an area or a width at the front property line less than the following:

<u>Subdivision</u>	<u>Minimum Lot Area</u>	<u>Minimum Width at Front Property Line</u>
Frostwood, Section I	8,400 s.f.	70 feet
Frost wood, Section II	10,000 s.f.	80 feet
Frostwood, Section III	9,478 s.f.	80 feet
Colony West	9,000 s.f.	80 feet

No Lot shall be subdivided if either of the resulting parcels do not have the minimum lot area and the minimum width at the front property line set forth above.

F. Consolidation of Lots. The Owner of one or more adjoining Lots may consolidate such Lots into one (1) building site, with the privilege of constructing a Residential Dwelling on the resulting site, in which event setback lines shall be measured from the resulting side property lines rather than from the side property lines indicated on the Plat. Provided that, the Owner of the Lots to be consolidated must comply with any replatting requirements imposed by any governmental entity having jurisdiction. Upon the consolidation of one or more adjoining Lots, and the substantial completion of a Residential Dwelling thereon, the consolidated building site shall be considered a single Lot for purpose of membership in the Association, voting rights and assessments.

G. Exterior Materials. The front exterior wall area of a Residential Dwelling on a Lot and each side exterior wall area of a Residential Dwelling on a Lot must be comprised of not less than fifty-one percent (51%) brick, stone or stucco, unless an alternative type of exterior building material is approved in writing by the Architectural Control Committee prior to the commencement of construction; provided that, stucco known as EFIS or synthetic stucco is not permitted on any Residential Dwelling within the Subdivision and cinder blocks, cement blocks and the like are not permitted as an exterior building material on a Residential Dwelling or other Improvement. The only permitted stucco is the traditionally applied stucco. For purposes of this paragraph, the exterior wall area shall include exterior wall area above the first floor but shall exclude windows and door openings. Hardi plank and any similar product is permitted as an exterior material but not for the purpose of complying with the fifty-one percent (51%) first floor exterior wall cover set forth above. All brick, stone, stucco and other exterior building materials must be approved in writing by the Architectural Control Committee. Brick or stone on the exterior of a Residential Dwelling or other Improvement shall not be painted without the prior written approval of the Architectural Control Committee.

## **Section 5.2. Buildings and Other Improvements.**

A. Types of Buildings. No building shall be erected, altered, placed or permitted to remain on a Lot other than (i) one detached, single family dwelling not to exceed the height limitations set forth in Section 5.1, paragraph B, together with an attached or detached garage for not less than two (2) nor more than three (3) vehicles, (ii) one (1) permitted accessory building, and (iii) one (1) permitted play structure, all of which are subject to the prior written approval by the Architectural Control Committee.

B. Garages and Porte Cocheres. Each Lot on which there exists a Residential Dwelling is required to have an attached or detached garage capable of housing or sheltering not less than two (2) vehicles. If, at the time Plans for a Residential Dwelling to be constructed on a Lot are submitted to the Architectural Control Committee for approval, a detached garage for not less than two (2) vehicles does not exist on the Lot, Plans for the Residential Dwelling must include an attached or detached garage for not less than two (2) vehicles to be constructed in conjunction with the construction of the Residential Dwelling; if a detached garage for not less than two (2) vehicles exists on the Lot at the time Plans for a Residential Dwelling to be constructed on a Lot are submitted to the Architectural Control Committee for approval (i.e., the detached garage was not razed at the time the previously existing Residential Dwelling was razed or is not to be razed at the time the existing Residential Dwelling is razed), an attached or detached garage is not required to be constructed in conjunction with the construction of the Residential Dwelling so long as the existing garage remains and continues to be used for housing or sheltering vehicles. No garage, porte cochere or carport shall be constructed on a Lot without the prior written approval of the Architectural Control Committee. The materials used in the construction of a carport must be identical or substantially similar, as determined by the Architectural Control Committee, to the exterior materials used in the construction of the Residential Dwelling on the Lot; in no event shall aluminum materials be used in the construction of a carport. For purposes of this paragraph, a porte cochere is a covered but otherwise open shelter for a vehicle which extends from, and is an integral part of, the Residential Dwelling from the standpoint of both appearance and construction. A porte cochere is required to be located on a Lot within all applicable building setbacks. A porte cochere shall not exceed twenty (20) feet in height measured from Baseline Elevation. No living space above a porte cochere is permitted. The exterior of a porte cochere shall not consist of metal, aluminum or wrought iron. A covered breezeway connecting the Residential Dwelling to a detached garage is permitted. Each garage on a Lot is required to be capable of being used for housing vehicles used or kept by the persons who reside on the Lot. A garage shall not be converted to living area if the result is that there no longer exists a garage on the Lot capable of housing or sheltering not less than two (2) vehicles.

C. Temporary Structures. Except as otherwise provided in Section 5.3 relating to construction activities, no building or structure of a temporary character, trailer (with or without wheels and whether or not attached to a foundation), mobile home (with or without wheels and whether or not attached to a foundation), modular or prefabricated home, tent, shack, barn or other building, other than the permanent Residential Dwelling, an attached or detached garage, one (1) accessory building approved in writing by the Architectural Control Committee, and one (1) permitted play structure approved in writing by the Architectural Control Committee, shall be placed on a Lot, either temporarily or permanently, and no residence house, garage or other structure appurtenant thereto shall be moved onto a Lot from another location. This paragraph shall not be construed to prohibit the short-term use of a temporary structure in the rear yard of a Lot in conjunction with a family activity, such as, by way of example and not in limitation, a canopy for an outdoor function or the temporary placement of a moving or storage container on a Lot; provided that, no moving or storage container shall be permitted on a Lot more than eighteen (18) days in any given calendar year.

No permitted accessory building shall exceed ten (10) feet in height, measured from the ground to the highest point of the accessory building, or have a ground floor area that exceeds one hundred (100) square feet. An accessory building must be located in the rear yard of the Lot and within the applicable building setbacks.

One (1) free-standing play structure is permitted on a Lot with the prior written approval of the Architectural Control Committee; provided that, in no event shall a permitted play structure exceed twelve (12) feet in height, measured from the ground to the highest point of the play structure and in no event shall a platform of a play structure extend above the ground by more than five (5) feet. The canopy on a play structure, if any, shall be a solid color approved by the Architectural Control Committee; a multi-colored canopy is not permitted. A play structure on a Lot must be located within the rear yard of the Lot and in accordance with the applicable side and rear building setbacks. Provided that, the Architectural Control Committee shall have the authority to require a play structure to be located farther from the rear property line or a side property line than the applicable building setback to minimize the visibility of the play structure and noise. The provisions of this paragraph shall not be applicable to a sandbox or plastic play equipment that does not exceed five (5) feet in height.

A tree house is not permitted on a Lot.

D. Air Conditioners. No window, roof or wall type air conditioner that is visible from a street in the Subdivision or a neighboring Lot at ground level shall be used, placed or maintained on or in a Residential Dwelling, garage or other Improvement.

E. Antennas. No exterior antenna, aerial, satellite dish, or other apparatus for receiving television, radio, satellite or other signals of any kind or related guy wires, poles, posts or equipment shall be placed, allowed or maintained on a Lot or Residential Dwelling if visible from the street in front of the Lot unless it is not possible to receive an adequate signal from a location that is not visible from the street in front of the Lot. In the event that an adequate signal can only be received from a location that is visible from a street in the Subdivision, the visible location of the antenna must be approved by the Architectural Control Committee prior to installation. The Architectural Control Committee may require an antenna to be screened in whatever manner is deemed appropriate so long as the screening does not substantially interfere with reception. No satellite dish antenna which is larger than one (1) meter in diameter is permitted under any circumstances. A mast for an antenna shall not extend above the center ridge of the roofline of a Residential Dwelling unless otherwise permitted by the Act (as defined below). Provided that, in no event shall a mast for an antenna that exceeds the height of twelve (12) feet above the center ridge of the roofline of a Residential Dwelling be installed without the prior written approval of the Architectural Control Committee; an antenna may be prohibited if the antenna cannot be safely installed on a mast that extends more than twelve (12) feet above the center ridge of the roofline of the Residential Dwelling. No exterior antenna, aerial, satellite dish, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed or maintained on any Lot or Residential Dwelling. The provisions of this paragraph are intended to be consistent with the Telecommunications Act of 1996 (the "Act") and FCC regulations promulgated under the Act, as same presently exist or may hereafter be amended; the provisions of this paragraph shall be construed to be as restrictive as possible without violating the provisions of the Act or applicable FCC regulations.

F. Swimming Pools and Other Water Amenities. No swimming pool, outdoor hot tub, reflecting pond, sauna, whirlpool, lap pool or other water amenity shall be constructed, installed, and maintained on a Lot without the prior written approval of Architectural Control Committee. No waterfall or similar type of water amenity or feature on a Lot shall extend more than six (6) feet above grade. A permanent, above-ground swimming pool is not permitted on a Lot. Pool pumps,



filters and similar pool equipment shall be located in the rear yard of the Lot, unless otherwise approved in writing by the Architectural Control Committee. Further, pool pumps, filters and similar pool equipment are required to be screened from view from the street in front of the Lot and, in the case of a corner Lot, the side street, and from an adjacent Lot at ground level.

G. Driveways and Sidewalks. All driveways and sidewalks on a Lot which are visible from a street in the Subdivision shall be constructed of concrete and paved with concrete, natural stone or unit masonry. Asphalt paving is prohibited. All driveways and sidewalks which are visible from a street in the Subdivision shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited. No driveway or sidewalk shall be painted or stained without the prior written approval of the Architectural Control Committee. Driveways shall not exceed twenty (20) feet in width except as required for garage or porte cochere access or as otherwise permitted in writing by the Architectural Control Committee. No driveway shall have a width less than ten (10) feet; provided that, the maximum width of a driveway at the street shall be twelve (12) feet, except a driveway adjacent to a side street which may be as wide as the opening(s) of the door(s) of the garage facing the side street. A circular driveway is permitted on a Lot on Old Oaks, the 12300 block of Boheme Drive, and the 12300 block of Rip Van Winkle, but only with the prior written approval of the Architectural Control Committee. A circular driveway on any other Lot is prohibited. A parking pad on a Lot is prohibited. All driveways and sidewalks on a Lot shall be properly maintained and repaired by the Owner of the Lot (free of substantial oil stains and grass and/or weeds in the expansion joints). The Board of Directors shall have the authority to determine whether a driveway or sidewalk on a Lot is being maintained in a reasonable manner and in accordance with the standards of the Subdivision and its reasonable, good faith determination shall be conclusive and binding on all parties.

A street sidewalk parallel to the curb in front of a Lot and parallel to the curb of a side street on a corner Lot is required on each Lot in the Subdivision. If the required street sidewalk does not exist on a Lot on which a Residential Dwelling is constructed after the effective date of these Amended, Restated and Consolidated Restrictions, or if the street sidewalk is removed or substantially damaged during the construction of a Residential Dwelling or other Improvement on a Lot, a new street sidewalk shall be constructed on the Lot prior to substantial completion of the Residential Dwelling or other Improvement. The street sidewalk shall be constructed of concrete and it shall be four (4) feet in width. The edge of the sidewalk nearest to the Residential Dwelling shall be no farther than nine (9) feet from the edge of the curb; the area between the curb and the edge of the sidewalk nearest to the curb shall be sodded with grass. A street sidewalk shall be maintained by the Owner of the Lot on which the street sidewalk is located; if the street sidewalk is within the public right-of-way, the Owner of the Lot adjacent to the right-of-way shall be obligated to maintain the street sidewalk. The Board of Directors of the Association shall have the authority to determine whether a street sidewalk is being maintained in a reasonable manner and in accordance with the standards of the Subdivision and its reasonable, good faith determination shall be conclusive and binding on all parties.

H. Driveway Gates. A driveway gate requires the prior written approval of the Architectural Control Committee as to design, height, color and location. A driveway gate is required to be wrought iron or ornamental iron and equipped with an electric operator. A driveway gate shall not be located nearer to the front property line of a Lot than the front corner of the Residential Dwelling nearest to the driveway.

I. Fences.

- (i) General Requirements: A fence or wall to be constructed on a Lot requires the prior written approval of the Architectural Control Committee. No fence or wall shall be located nearer to the front property line of a Lot than the front of the Residential

Dwelling. No fence or wall shall be located nearer to the side street adjacent to a corner Lot than the side building setback. No hedge or pergola that serves as a fence or wall shall be allowed to grow more than the permitted height for a fence at that location; all of the provisions in this Section relating to the existence and location of a fence or wall shall be applicable to a hedge or pergola that serves as a fence or wall. Provided that, a hedge or pergola that is adjacent to a fence (i.e., a hedge or pergola that does not serve as a fence) may extend above the height of the fence. In no event shall any fence or portion thereof be constructed of chain link or wire. A fence or wall located on or immediately adjacent to the property line of a Lot shall be not less than seven (7) feet or more than eight (8) feet in height, measured from the surface of the ground to the highest point of the fence. A fence or wall within the interior of a Lot (i.e., not located on or immediately adjacent to a property line) must be a height that is less than eight (8) feet or less than the height of the fence located on or immediately adjacent to the nearest property line [if the perimeter fence is not eight (8) feet in height]. Fences are generally required to be wood fences; wrought iron or other fence materials may be permitted as determined by the Architectural Control Committee. Each fence or wall that is adjacent to or faces a street shall have a finished side facing the street; in the case of a wood fence, this provision prohibits all posts, rails and other supports from being visible from the street. A fence along or parallel to a driveway shall have the finished side facing the driveway. If pickets are placed on both sides of the rails, the fence may have a top board but the top board must have a width equal to the distance from the outer edge of the picket on one side of the fence to the outer edge of the picket of the other side of the fence. No fence on a Lot shall be painted or stained without first submitting the proposed paint color or stain to the Architectural Control Committee and receiving its written approval.

- (ii) Lots adjacent to Gessner: The following requirements are applicable to Lots adjacent to Gessner. A fence adjacent or parallel to Gessner is required to have a twelve (12) inch rot board at the bottom with seven (7) foot pickets above the rot board and a topper, as specified herein, meaning that the fence shall have a height of eight (8) feet measured from the ground to the bottom of the topper board. Unless both sides of the fence have pickets, all pickets are required to be on the side of the fence facing Gessner (so that rails are not visible from the street). If the pickets are only on the side of the fence facing Gessner, the topper board shall be two (2) inches by six (6) inches. If both sides of the fence have pickets, the topper board shall be two (2) inches by eight (8) inches.
- (iii) Lots Adjacent to Benignus. The following requirements are applicable to Lots adjacent to Benignus, unless otherwise approved in writing by the Architectural Control Committee to allow for drainage of surface water. A fence adjacent or parallel to Benignus is required to have a twelve (12) inch rot board at the bottom with seven (7) foot pickets above the rot board and a topper, as specified herein, meaning that the fence shall have a height of eight (8) feet measured from the ground to the bottom of the topper board unless otherwise approved in writing by the Architectural Control Committee to allow for proper drainage of surface water. Unless both sides of the fence have pickets, all pickets are required to be on the side of the fence facing Benignus (so that rails are not visible from the street). If the pickets are only on the side of the fence facing Benignus, the topper board shall be two (2) inches by six (6) inches. If both sides of the fence have pickets, the topper board shall be two (2) inches by eight (8) inches.
- (iv) Lots adjacent to Memorial Drive: (a) Subject to the written approval of the Architectural Control Committee, the existing brick wall on a Lot adjacent to

Memorial Drive may be extended to a height of seven (7) feet by the installation of a cedar top. The construction of the extension shall be by attaching a treated 2 x 4 or 2 x 6 to the top of the brick wall and installing cedar pickets with a finished side facing Memorial Drive. The cedar top shall have a finished top rail that matches the cedar pickets.

(b) Subject to the written approval of the Architectural Control Committee, the existing brick wall on a Lot adjacent to Memorial Drive may be removed and replaced with a double brick wall. The new brick on the outside (i.e., visible from Memorial Drive) must match the existing brick as closely as possible. A new wood fence or fence constructed with materials other than brick is not permitted on Memorial Drive. The style of the wall must match the existing style of the wall on Memorial Drive. The applicant shall submit an engineered design signed by a licensed engineer, which design, when approved by the Architectural Control Committee, shall be followed in all respects. Upon completion, a licensed engineer shall certify that such wall has been constructed in accordance with the design submitted to and approved by the Architectural Control Committee. In approving a wall on Memorial Drive, the Architectural Control Committee shall take into consideration the height or extended height of adjacent walls/fences with the objective being to maintain uniformity. If a wall/fence on Memorial Drive is removed, it must be replaced with a brick wall that is eight (8) feet in height; further, the wall must match or be substantially compatible (as determined by the Architectural Control Committee) with the adjoining brick walls as to design, construction, and material. The Architectural Control Committee shall have authority to determine the type of brick and architectural design of a replacement brick fence/wall.

Ownership of a wall or fence erected on a Lot shall pass with title to such Lot and it shall be the Lot Owner's responsibility to maintain such wall or fence. If a fence is located on the property line separating two (2) Lots, the Owners of the two (2) Lots shall have equal responsibility to maintain, repair and/or replace the fence. In the event the Owner or occupant of any Lot fails to maintain a wall or fence on the Lot in a reasonable manner as required by this Section and such failure continues after ten (10) days written notice from the Association, the Association may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause the wall or fence to be repaired or maintained and do every other thing necessary to secure compliance with these Amended, Restated and Consolidated Restrictions, and may charge the Owner of such Lot for the cost of such work. The Board of Directors shall have the exclusive authority to determine whether an Owner is maintaining a fence or wall on his Lot in a reasonable manner and in accordance with the standards of the Subdivision and the Board of Directors' reasonable, good faith determination shall be conclusive and binding on all parties. The Owner agrees by the purchase of such Lot to pay such charge, plus fifty percent (50%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such charges shall be secured by the lien created in Article III of these Amended, Restated and Consolidated Restrictions. Interest thereon at the rate of ten percent (10%) per annum or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31<sup>st</sup>) day after a written invoice is delivered to the Owner.

J. Exterior Lighting. All exterior lighting on a Lot other than porch lights, breezeway lights and standard types of patio lights must be approved in writing by the Architectural Control Committee as to type, location and illumination. No exterior lighting shall be directed toward another Lot or unreasonably illuminate beyond the boundaries of the Lot on which the lighting fixture is situated. Low voltage landscape lighting is permitted; provided that the lighting is white or amber. The Architectural Control Committee shall have the authority to determine whether exterior lighting is directed toward another Lot or unreasonably illuminates beyond the boundaries of a Lot

and its reasonable, good faith determination shall be conclusive and binding. A gas or electric post light shall not exceed eight (8) feet in height, measured from the surface of the ground to the highest point of the post light. The design, color and location of a post light require the written approval of the Architectural Control Committee prior to installation.

K. Roofs and Roofing Materials. Roofing materials shall be architectural asphalt composition shingles, fiberglass composition shingles, slate, metal or tile with a life of twenty-five (25) years or better. The roofing material proposed to be used on a Residential Dwelling or other Improvement on a Lot must be approved in writing by the Architectural Control Committee as to type, quality, color and compatibility prior to the commencement of construction. No solar or other energy collection panel, equipment or device shall be installed or maintained on a Lot or Residential Dwelling or other Improvement, including, without limitation, the roof of a Residential Dwelling, if visible from a street in the Subdivision. No plumbing or heating vents, stacks and other projections of any nature shall be placed on the roof on the front of a Residential Dwelling unless otherwise approved in writing by the Architectural Control Committee. All such vents, stacks and other projections from the roof of a Residential Dwelling shall blend or be painted to blend with the color of the roofing material and, to the extent practicable, not be visible from a street in the Subdivision.

L. Burglar Bars. Burglar bars are not permitted on the exterior of a window or door in a Residential Dwelling, garage or other Improvement on a Lot if visible from the street in front of the Lot. Provided that, this provision shall not be construed to require the removal of any exterior burglar bars installed prior to the effective date of these Amended, Restated and Consolidated Restrictions.

M. Windows and Window Treatments. No clear glass window in the second story living area above a garage is permitted in the wall along or parallel to the rear property line of the Lot unless otherwise approved by the Architectural Control Committee. No clear glass window in the second story living area above a garage is permitted in the wall that is closest to the side property line unless no portion of the window is nearer to the finished floor of the room in which it is located than six (6) feet, measured from the base of the window sill. No window other than a non-opening window with translucent glass is permitted in the second story wall of a Residential Dwelling that is located ten (10) feet or less from a side property line unless no portion of the window is nearer to the finished floor of the room in which it is located than six (6) feet, measured from the base of the window sill. No other type of opening in a second story wall of a Residential Dwelling that is located ten (10) feet or less from a side property line that is designed to provide light to the interior of the Residential Dwelling is permitted other than permanent translucent glass blocks. The provisions in this paragraph shall not be applicable to a window in the second story wall of a Residential Dwelling that is adjacent to Benignus, Gessner, Frostwood and Plantation.

An awning is not permitted on or over a window or door of a Residential Dwelling or other Improvement if it is visible from the street in front of the Lot or, in the case of a corner Lot, the side street. Reflective material shall not be installed on or in a window or used for a sunscreen, blind or shade unless approved in writing by the Architectural Control Committee. Foil in a window that is visible from a street adjacent to the Lot is prohibited.

N. Utility Meters and HVAC Equipment. All electrical, gas, telephone and cable television meters installed after the effective date of these Amended, Restated and Consolidated Restrictions shall be located, to the extent possible, at the side or rear of the Residential Dwelling, out of view. All exterior heating, ventilating and air-conditioning compressor units and equipment installed on a Lot in conjunction with the construction of a new Residential Dwelling on the Lot requires the approval of the Architectural Control Committee. A replacement air-conditioning compressor unit or similar equipment that is to be installed in the same location as the equipment being replaced

does not require the approval of the Architectural Control Committee; however, replacement equipment that is to be installed in a different location requires the prior written approval of the Architectural Control Committee. If there is more than one (1) air-conditioning compressor unit at the side of a Residential Dwelling, the units must be screened from view from the street in front of the Lot in a manner approved by the Architectural Control Committee.

O. Patio Covers. A patio cover shall not be constructed on a Lot until Plans for the patio cover have been submitted to and approved in writing by the Architectural Control Committee. The materials used in the construction of a patio cover must be substantially similar to and compatible with the exterior materials used in the construction of the appurtenant Residential Dwelling, as determined by the Architectural Control Committee. For purposes of this paragraph, a patio cover is deemed to be any type of roof structure above an area adjacent to a Residential Dwelling or garage that is not part of the roof of the Residential Dwelling or garage (i.e., not an eave of the roof of a Residential Dwelling or garage).

P. Landscaping. The front of each Lot shall be sodded with grass. The side yards of a Lot shall be sodded with grass or, if approved in writing by the Architectural Control Committee, ground cover. No hedge or shrubbery planting shall obstruct or interfere with traffic sight-lines for streets within the Subdivision. The determination of whether any such obstruction exists shall be made by the Architectural Control Committee and its reasonable, good faith determination shall be conclusive and binding on all parties. Rock or similar hardscape may be incorporated into the landscaping if approved in writing by the Architectural Control Committee; provided that, a solid rock yard or similar type of hardscape is not permitted in the front yard of a Lot or in the side yard of a Lot if visible from the street in front of the Lot at ground level or, if a corner Lot, the side street adjacent to the Lot at ground level. No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, artificial plants, rock gardens, rock walls, free-standing bird houses or other fixtures and accessories [except one (1) bench, as hereafter set forth in this paragraph] shall be placed or installed in the front or side yards of a Lot. No more than one (1) bench is allowed in the landscape area in the front yard of a Lot; provided that the style and color of the bench must be compatible with the scheme of the Subdivision, as determined by the Architectural Control Committee, and the bench must be approved in writing by the Architectural Control Committee as to type, location, size and color prior to installation. No rope swing, bench swing or other type of swing is permitted in the front yard of a Lot or in a side yard of a Lot if visible from the street in front of the Lot or, in the case of a corner Lot, the side street adjacent to the Lot. No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of a Lot or in the rear yard of a Lot if visible from a street in the Subdivision. No Owner shall allow the grass on his Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground. Landscape beds in the front and side yards of a Lot do not require Architectural Control Committee approval but the Architectural Control Committee shall have the authority to determine whether the landscaping in the front and/or side yards of a Lot is excessive and whether the plant life on a Lot is compatible with the plant life commonly used in the Subdivision.

A Lot on which a new Residential Dwelling is constructed after the effective date of these Amended, Restated and Consolidated Restrictions is required to have not less than two (2) trees in the front yard of the Lot with a caliper of not less than four (4) inches, measured twelve (12) inches above the surface of the ground. If an additional tree is (or additional trees are) required to be planted to comply with this provision, each tree must be a hardwood tree (such as an Oak, Elm or Red Maple). The location of each new tree shall be designated on the Plans for the Residential Dwelling. If a replacement tree dies, it must be replaced with a new hardwood tree within a reasonable period of time.

Q. Seasonal Decorations. Seasonal or holiday decorations may be displayed on a Lot or Residential Dwelling or other Improvement on a Lot only for a reasonable period of time before and

after the holiday to which the holiday decorations relate. In the event of a dispute, the reasonable, good faith decision of the Board of Directors concerning a reasonable period of time before and after a holiday shall be conclusive and binding on all parties.

### **Section 5.3. Construction Activities.**

A. Demolition of Existing Residential Dwelling. If an existing Residential Dwelling on a Lot is to be razed, the Lot must be completely enclosed by a chain link fence during the demolition period with skirting to prevent debris from being windblown onto another Lot or into a street except as necessary for the operation of machinery or equipment. Once demolition work is commenced, it must be diligently pursued to completion. In every event, the demolition of an existing Residential Dwelling and related Improvements on a Lot shall be completed within fourteen (14) days from the date the demolition work commences, unless the Architectural Control Committee extends that period in writing. The demolition of a Residential Dwelling and related Improvements on a Lot requires the removal of the slab of the Residential Dwelling and the slabs of all other Improvements, unless the slab is to be used for a new Residential Dwelling or other Improvement to be constructed on the Lot and Plans for the new construction depicting the use of an existing slab have been previously submitted to and approved by the Architectural Control Committee. From the date that the demolition work is completed until the date that the construction of a new Residential Dwelling on the Lot commences, the Lot must be regularly mowed and edged and otherwise maintained in a reasonably neat and attractive condition. If a swimming pool exists on the Lot, and the swimming pool is also to be demolished, all components of the swimming pool (equipment, coping, gunite, decking, plumbing and electrical) must be removed and the area of the swimming pool must be filled. The removal of the swimming pool must be initiated as the first step in the process of razing the existing Improvements on the Lot. If the swimming pool is not to be demolished, the swimming pool must be fully enclosed by a chain link fence not less than six (6) feet in height until such time that the area of the Lot in which the swimming pool is located is otherwise enclosed and rendered inaccessible.

B. Storage of Materials. Without the prior written consent of the Architectural Control Committee, no building materials of any kind or character shall be placed or stored on a Lot more than fifteen (15) days before the construction of a Residential Dwelling or other Improvement is commenced. All materials permitted to be placed on a Lot shall be placed within the property lines of the Lot. Upon the completion of the construction, any unused materials shall promptly be removed from the Lot.

C. Prosecution of Work After Construction Commences. After the commencement of construction of a Residential Dwelling or Improvement on a Lot, the work thereon shall be prosecuted diligently, to the end that the Residential Dwelling or Improvement shall not remain in a partially finished condition any longer than reasonably necessary for completion thereof. In any event, substantial completion of a Residential Dwelling on a Lot must be achieved within two hundred seventy (270) days of the date of commencement of construction of the Residential Dwelling, unless a longer period is approved in writing by the Architectural Control Committee; substantial completion of any other Improvement must be achieved within one hundred eighty (180) days of the date of commencement of construction of the Improvement, unless a longer period is approved in writing by the Architectural Control Committee. For purposes hereof, construction of a Residential Dwelling or other Improvement shall be deemed to have commenced on the date that any equipment or building materials relating to such construction is moved onto the Lot. Also for purposes hereof, a Residential Dwelling shall be deemed to be substantially completed on the date an occupancy permit is issued by any governmental authority having jurisdiction or, if no such occupancy permit is required, the date the Residential Dwelling is ready to be occupied; any other Improvement shall be deemed to be substantially completed on the date the Improvement is capable of being used for its intended purpose.

D. Vehicle Parking/Obstructions. Construction vehicles must be parked on the Lot on which construction is taking place or in the street; provided that, if parked in the street, each vehicle must be parked on the side of the street on which the construction is taking place to allow for emergency vehicle access. Parking on both sides of a street is prohibited. Each vehicle must be parked as close to the curb as possible to maximize the width of the flow-through lane. Under no circumstances shall a vehicle be parked on another Lot or in a manner that impedes or prevents access to another Lot. No vehicle, equipment, construction materials or other objects shall obstruct the sidewalk on any Lot, including the sidewalk on which construction is taking place.

E. Debris. All construction debris and other trash must be placed in proper containers and removed from the Lot as reasonably necessary. No trash may be left exposed that could be windblown onto adjacent Lots. Streets must be kept clean of mud, excess concrete (including spillage from concrete trucks) and other materials generated from construction. Plastic skirting around the Lot is required until substantial completion of the Residential Dwelling or major addition or renovation (as defined in Section 4.3) to prevent debris from being windblown onto another Lot or into a street. If any debris is windblown onto another Lot or into a street, or if mud migrates onto an adjacent Lot or into a street, the Builder shall be obligated to promptly remove the debris and/or mud.

F. Temporary Construction Buildings. No construction office or trailer is permitted on a Lot.

One (1) dumpster is permitted on a Lot only during the period of construction of a new Residential Dwelling or a major addition or renovation (as defined in Section 4.3), and then only with the prior written approval of the Architectural Control Committee. A dumpster must be located on a Lot within the front building setback applicable to the Residential Dwelling, unless otherwise approved in writing by the Architectural Control Committee. A dumpster shall not be placed on a Lot until demolition or construction work commences and it shall be removed from the Lot as soon as practicable, but in no event later than the date of substantial completion of the new Residential Dwelling or other major addition or renovation, unless otherwise requested by the Builder and agreed to by the Architectural Control Committee but then only until a date specified by the Architectural Control Committee.

One (1) port-a-can is permitted on a Lot only during the period of construction of a new Residential Dwelling or a major addition or renovation, but only with the prior written approval of the Architectural Control Committee. A port-a-can must be located within the building setbacks applicable to the first story of a Residential Dwelling, (in particular, behind the front building line) unless otherwise approved in writing by the Architectural Control Committee. A port-a-can must be screened from view by fencing or otherwise in a manner determined by the Architectural Control Committee, acting reasonably and in good faith, to be appropriate. A port-a-can shall not be moved onto a Lot more than seven (7) days prior to the date that construction of the new Residential Dwelling or major addition or renovation commences; the port-a-can must be removed from the Lot as soon as practicable, but in no event later than the date of substantial completion of the new Residential Dwelling or major addition or renovation. The dates of commencement of construction and substantial completion of a new Residential Dwelling or major addition or renovation shall be determined in accordance with Section 5.3C of these Amended, Restated and Consolidated Restrictions.

G. Hours of Construction.

- (i) Weekdays, excluding holidays: Construction work is permitted only between 7:00 a.m. and either dusk or 7:00 p.m., whichever is earlier.

- (ii) Saturdays and holidays: Construction work is permitted only between 8:00 a.m. and 6:00 p.m.
- (iii) Sundays: Outside construction work is not permitted. Interior work that does not involve the use of motorized equipment or otherwise create noise (such as painting) is permitted only between 9:00 a.m. and 6:00 p.m.
- (iv) Deliveries and staging activities: The delivery of equipment and materials is permitted only on weekdays, Saturdays and holidays during the hours permitted for construction work. Staging activities are considered to be construction work and, therefore, are permitted only on weekdays, Saturdays and holidays during the hours permitted for construction work.

H. Protection of Trees. Trees on a Lot, as well as trees on any adjacent Lot that may be affected by construction work, must be protected from damage by the erection of a temporary fence or other appropriate barricade around the drip line of each tree. In particular, the Builder is required to eliminate or reduce the risk of compaction of soil within the critical root zone of a tree, suffocating roots by adding soil or fill, damaging trunks or limbs with equipment, contaminating roots with fuels or solvents, and otherwise damaging roots.

I. Audio Equipment. A radio or other type of audio equipment operated on a Lot during construction, repair or remodeling activities must be located within the Residential Dwelling, garage or other structure enclosed by walls. A Builder and its subcontractors and workmen are not permitted to play radios or any other type of audio equipment either outside the Residential Dwelling, garage or other enclosed structure or at a volume that may be heard by a person on an adjacent Lot. Outdoor speakers for use by the Owner or occupant of the Residential Dwelling on a Lot are permitted but the volume must at all times comply with City of Houston ordinances relating to noise. In addition, the use of outdoor speakers shall not be or become an unreasonable annoyance to surrounding residents because of either the volume or the times of use.

J. Compliance with Construction Requirements. Builders are obligated to strictly comply with all provisions of these Amended, Restated and Consolidated Restrictions. In the event that a Builder fails to comply with the provisions of these Amended, Restated and Consolidated Restrictions and does not correct the violation within ten (10) days of the date of receipt of written notice of the violation from the Association (or such longer period that may, in the discretion of the Board of Directors, be stipulated in the notice, or that may be required by law), the Association shall have the authority to impose a fine against the Builder and the Lot in question, if owned by the Builder, in the amount \$100.00 each day that the violation continues to exist after the period specified in the notice to correct the violation. Payment of such fines shall be the personal obligation of the Builder; provided that, payment of such fines shall also be secured by the lien referred to and established in Article III of these Amended, Restated and Consolidated Restrictions against the Lot on which the violation exists, if the Lot is owned by the Builder. Fines shall be in addition to, not in lieu of, forfeitures of all or some portion of a Construction Deposit per Section 4.4.

## **ARTICLE VI**

### **Use Restrictions; Maintenance of Lots and Buildings**

#### **Section 6.1. Use Restrictions.**

A. Single Family Residential Use. Each Lot and the Residential Dwelling and other Improvements on a Lot shall be used for single family residential purposes only. As used herein, the term "single family residential purposes" means that the Lot and the Residential Dwelling on the Lot 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 a Lot for a duplex apartment, a garage apartment or any other apartment or for any multi-family use or for any business, professional, religious or commercial activity of any type, unless such business, professional, religious or commercial activity is unobtrusive and merely incidental to the primary use of the Lot and the Residential Dwelling and other Improvements for residential purposes. As used herein, the term "unobtrusive" means, without limitation, that there is no business, professional, religious or commercial related sign, logo or symbol displayed on the Lot; there is no business, professional, religious or commercial related sign, logo or symbol displayed on a vehicle on the Lot; there are no clients, customers, employees or the like who go to the Lot for any business, professional, religious or commercial related purpose on a regular basis; and the conduct of the business, professional, religious or commercial activity is not otherwise apparent by reason of noise, odor, vehicle and/or pedestrian traffic and the like. Occasional in-home tutoring, piano lessons and the like shall not be deemed to violate this provision.

No Residential Dwelling shall be occupied by more persons than the number of bedrooms in the Residential Dwelling (as originally designed) multiplied by two (2); provided that, this restriction shall not be applicable to the immediate members of a single family. For purposes of this Section, the immediate members of a single family shall only include the husband, wife and their children, the parent of the husband and wife, and one (1) domestic worker, caregiver or nanny residing on the Lot providing services on behalf of the Owners or occupants of the Residential Dwelling on the Lot. Provided that, upon written request setting forth relevant circumstances and the written approval of the Board of Directors, two (2) caregivers may be permitted to reside on a Lot; in such event, both caregivers shall be deemed to be immediate members of the family occupying the Residential Dwelling on the Lot.

B. Garage and Similar Sales. Not more than one (1) garage sale, moving sale, rummage sale, estate sale or similar activity ("Sale") may be conducted on a Lot in any calendar year. No Sale shall commence earlier than 8:00 a.m. or end later than 6:00 p.m. No Sale shall continue for more than two (2) consecutive days. No Sale is permitted on a Sunday. Only one Sale may be conducted on any particular block in the Subdivision in a seven (7) day period. Written notice of the intent to conduct a Sale, together with the proposed dates, times, duration and location of the Sale, must be submitted to the Chairperson of the Garage Sale Committee or, if (but only if) there is no Garage Sale Committee, the Board of Directors, at least ten (10) days prior to the date of the proposed Sale. The first notice of a Sale submitted to the Chairperson of the Garage Sale Committee (or Board, if applicable) for a block for a particular week shall be approved by the Chairperson of the Garage Sale Committee (or Board, if applicable), subject to compliance with the provisions of this paragraph. No personal property may be delivered to a Lot from another location outside the Subdivision for the purpose of selling the property on the Lot, the intent being to allow a Sale only for the purpose of selling personal property owned by the Owner of the Lot on which the Sale is conducted and personal property of other Frostwood residents participating in the Sale.

C. Leasing. The Residential Dwelling on a Lot may be leased but only in its entirety and for single family residential purposes. No room in a Residential Dwelling shall be leased to a person who is not a member of the family occupying the Residential Dwelling. No Owner shall be permitted to lease his Lot for hotel or transient purposes which, for purposes hereof, is defined as a period of less than six (6) months and then only to the same family during the entire term of the lease. No Residential Dwelling on a Lot shall be leased to an entity for corporate lodging or any other type of temporary or rotating lodging for employees or clients [i.e., for a period less than six (6) months]. Each lease shall provide that the lessee shall be bound by and subject to all the obligations under these Amended, Restated and Consolidated Restrictions and a failure to comply with the provisions of these Amended, Restated and Consolidated Restrictions shall be a default

under the lease. The Owner making such lease shall not be relieved from any obligation to comply with the provisions of these Amended, Restated and Consolidated Restrictions.

D. Vehicle Parking. No Owner, lessee, or occupant of a Lot, including all persons who reside with such Owner, lessee or occupant on the Lot, shall park, keep or store any vehicle on a Lot which is visible from a street in the Subdivision or a neighboring Lot at ground level other than a passenger vehicle or pick-up truck and then only if the vehicle is regularly used, which, for purposes of this paragraph, means that the vehicle is used outside the Subdivision at least once every eight (8) days; provided that, upon request, the Board of Directors may allow a vehicle to be parked on the driveway of a Lot for a longer period, as deemed appropriate by the Board, due to unusual circumstances, such as by way of example and not in limitation, the Owner of the Lot being on vacation or a business trip, or a visit by a relative or guest. For purposes of these Amended, Restated and Consolidated Restrictions, the term "passenger vehicle" is limited to a vehicle which displays a passenger vehicle license plate issued by the State of Texas or which, if displaying a license plate issued by another state, would be eligible to obtain a passenger vehicle license plate from the State of Texas, and a sport utility vehicle used as a family vehicle (whether or not the sport utility vehicle displays a passenger or truck vehicle license plate); the term "pick-up truck" is limited to a one (1) ton capacity pick-up truck which has not been adapted or modified for commercial use. No vehicle of any kind shall be parked on an unpaved portion of a Lot.

No inoperable vehicle shall be parked, kept or stored on a Lot if visible from a street in the Subdivision or a neighboring Lot. For purposes of this Section, a vehicle shall be deemed to be inoperable if (a) it does not display all current and necessary licenses and permits, (b) it does not have fully inflated tires, (c) it is on a jack, blocks or the like, or d) it is otherwise incapable of being legally operated on a public street or right-of-way.

E. Other Vehicles. No, utility trailer, , boat or the like shall be parked, kept or stored on a street in the Subdivision or on any portion of a Lot if visible from a street in the Subdivision or a neighboring Lot at ground level. No mobile home trailer or recreational vehicle shall be parked, kept or stored on a street in the Subdivision or on any portion of a Lot if visible from a street in the Subdivision or a neighboring Lot at ground level for more than three (3) consecutive days or more than ten (10) days in any calendar month. A mobile home trailer, utility trailer, recreational vehicle, boat or the like may be parked in the garage on a Lot or in some other structure approved by the Architectural Control Committee, but only if fully concealed from view from the street in front of the Lot and, in the case of a corner Lot, the side street.

F. Vehicle Repairs and Sales. No passenger vehicle, pick-up truck, mobile home trailer, utility trailer, recreational vehicle, boat or other vehicle of any kind shall be constructed, reconstructed, or repaired on a Lot if visible from a street in the Subdivision or a neighboring Lot at ground level. A vehicle parked on a Lot or in the street adjacent to a Lot may display one (1) "for sale" sign or notice if the owner of the vehicle also owns the Lot on which the vehicle is parked or, in the event the vehicle is parked in the street, the adjacent Lot; otherwise, a "for sale" sign or notice on a vehicle is prohibited.

G. Nuisances. No Lot or Residential Dwelling or other Improvement on a Lot shall have any conspicuous infestation of pests, rodents, insects or other vermin or accumulation of trash, debris or other waste which the Board of Directors, acting reasonably and in good faith, determines to be offensive to surrounding residents or hazardous to the health or well-being of surrounding residents. No condition or activity shall be permitted on a Lot which the Board of Directors, acting reasonably and in good faith, determines to be offensive to surrounding residents by reason of noise, odor, dust, fumes or the like. No nuisance shall be permitted to exist or operate on a Lot. For purposes hereof, a nuisance shall be an activity or condition on a Lot which is reasonably considered by the Board of Directors to be offensive or an annoyance to surrounding residents of

ordinary sensibilities and/or which is reasonably determined to reduce the desirability of either the Lot on which the activity or condition exists or an adjacent Lot. Gasoline engine-powered lawn equipment may be operated on a Lot only between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and between 8:00 a.m. and 8:00 p.m. on Saturdays, Sundays and holidays; the operation of the gasoline engine-powered lawn equipment on a Lot at any other time is deemed to be a nuisance to surrounding neighbors.

H. Trash; Trash Containers. Garbage and trash and garbage and trash containers shall be reasonably screened from view maintained on a Lot so as to be visible from a street in the Subdivision except to make the same available for collection and then only the shortest time reasonably necessary to effect such collection. In no event shall garbage or trash or garbage or trash containers be regularly kept nearer to the street in front of the Lot than the front wall of the Residential Dwelling or in the case of a corner Lot, nearer to the side street than the wall of the Residential Dwelling or garage adjacent to the side street. Garbage and trash shall not be placed at the curb for collection earlier than 6:00 p.m. of the day immediately preceding the day of scheduled collection. Trash containers shall be removed from the curb as soon as possible after trash collection, but in no event later than 6:00 p.m. of the trash pick-up day. Garbage and trash made available for collection shall be placed in tied trash bags or covered containers, or as otherwise provided in any trash disposal contract entered into by the Association.

I. Clothes Drying. No outside clothesline or other outside facilities for drying or airing clothes shall be erected, placed or maintained on a Lot if visible from a street in the Subdivision or a neighboring Lot at ground level. No clothes shall be dried or aired outside if visible from a street in the Subdivision or a neighboring Lot at ground level.

J. Animals. No animals or birds, other than a reasonable number of generally recognized house or yard pets, shall be maintained on a Lot and then only if they are kept thereon solely as domestic pets and not for commercial purposes. No exotic animal or breed of animal that is commonly recognized to be inherently aggressive or vicious toward other animals and/or humans is permitted in the Subdivision. No unleashed dog is permitted on a street in the Subdivision. A dog must be kept either in the Residential Dwelling or other Improvement on the Lot or in a yard fully enclosed by a fence. An "invisible" fence that controls dogs through underground electrical wiring is an acceptable form of maintaining a dog in the yard of a Lot. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of an animal or bird shall be maintained so as to be visible from a street in the Subdivision or a neighboring Lot at ground level. The Board shall have the authority to determine whether, for the purposes hereof, a particular animal or bird is a generally recognized house or yard pet, an exotic animal, an inherently aggressive or vicious animal, or a nuisance, or whether the number of animals or birds kept on a Lot is reasonable, and its reasonable, good faith determination shall be conclusive and binding on all parties.

K. Signs. No sign shall be erected or maintained on a Lot except:

- i. Street signs and such other signs as may be required by law;
- ii. During demolition of the Residential Dwelling and other Improvements on a Lot, and throughout the time of construction of a new Residential Dwelling on a Lot, a sign providing the name of the Builder and an emergency telephone number if required by the recorded Architectural Control Guidelines; but then only as specified in the Architectural Control Guidelines with regard to size, location, permitted content and the like;

- iii. One (1) sign advertising the sale or lease of the Lot not larger than six (6) square feet and not extending more than four (4) feet above the ground; the sign must include the wording "For Sale" or "For Lease";
- iv. Ground-mounted political signs as permitted by law; provided that, only one (1) sign for each candidate or ballot item shall be displayed on a Lot earlier than the 90<sup>th</sup> day before the date of the election to which the sign relates or longer than the 10<sup>th</sup> day after the election date; and
- v. Home security signs, school spirit signs, and garage sale signs, but only in strict accordance with any recorded Architectural Control Guidelines governing such signs.

The Association shall have the authority to go upon a Lot and remove a sign displayed on the Lot in violation of this paragraph without liability in trespass or otherwise.

L. Oil and Gas Operations. No derrick or other structure designed for the drilling of oil or gas will be placed or maintained on a Lot, and no oil drilling, oil or gas development, oil refining, quarrying, or mining, of any kind will be permitted, pursued, or maintained on a Lot.

## **Section 6.2. Maintenance.**

A. Repair of Buildings. No Residential Dwelling or other Improvement on a Lot shall be permitted to fall into disrepair, and each Residential Dwelling or other Improvement on a Lot shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner of the Lot at the Owner's sole cost and expense. The Board of Directors shall have the exclusive authority to determine whether an Owner is maintaining the exterior of the Residential Dwelling and other Improvements on the Lot in a reasonable manner and in accordance with the standards of the Subdivision and the Board of Director's reasonable, good faith determination shall be conclusive and binding on all parties. In the event the Owner of a Lot fails to keep the exterior of the Residential Dwelling or other Improvement on the Lot in good condition and repair, and such failure continues after not less than thirty (30) days written notice from the Association, the Association may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon the Lot and repair and/or paint the exterior of the Residential Dwelling or other Improvement on the Lot and otherwise cause the Residential Dwelling or other Improvement on the Lot to be placed in good condition and repair, and do every other thing necessary to secure compliance with these Amended, Restated and Consolidated Restrictions. The Association shall charge the Owner of the Lot for the cost of such work. The Owner agrees by the purchase of such Lot to pay such charges, plus fifty percent (50%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such charges shall be secured by the lien created in Article III of these Amended, Restated and Consolidated Restrictions. Interest thereon at the rate of ten percent (10%) per annum or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31<sup>st</sup>) day after a written invoice is delivered to the Owner. An Owner may appeal the determination that the exterior of the Residential Dwelling and/or other Improvement is not being maintained in a reasonable manner and in accordance with the standards of the Subdivision if a written request is submitted to the Board of Directors within thirty (30) days of the date of Owner's receipt of written notice from the Association. The written request for an appeal shall include a statement of the reason(s) for the failure to perform the required maintenance and/or repair work.

B. Lot Maintenance. The Owner or occupant of a Lot shall at all times keep all landscaping (including, without limitation, the grass, landscape beds, shrubs and trees) maintained in a sanitary, healthful and attractive manner. An Owner shall not burn any leaves, trash, debris or the like on a Lot. The Board of Directors shall have the exclusive authority to determine whether

an Owner is maintaining his Lot in a reasonable manner and in accordance with the standards of the Subdivision and the Board of Directors' reasonable, good faith determination shall be conclusive and binding on all parties. In the event the Owner or occupant of any Lot fails to maintain the Lot in a reasonable manner as required by this paragraph and such failure continues after not less than ten (10) days written notice from the Association, the Association may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause the Lot to be mowed, edged and cleaned, cause the landscaping beds to be weeded and cleaned, cause shrubs and trees to be trimmed or pruned, and do every other thing necessary to secure compliance with the provisions of these Amended, Restated and Consolidated Restrictions. The Association shall charge the Owner of the Lot for the cost of such work. The Owner agrees by the purchase of such Lot to pay such charges, plus fifty percent (50%) of such costs for overhead and supervision, immediately upon receipt of the corresponding statement. Payment of such charges shall be secured by the lien created in Article III of these Amended, Restated and Consolidated Restrictions. Interest thereon at the rate of ten percent (10%) per annum or the maximum non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31<sup>st</sup>) day after a written invoice is delivered to the Owner.

## **ARTICLE VII**

### **Fire or Casualty; Rebuilding**

In the event of a fire or other casualty causing damage or destruction to the Residential Dwelling or other Improvement on a Lot, the Owner of such damaged or destroyed Residential Dwelling or Improvement shall, within one hundred eighty (180) days after such fire or casualty (or such longer period if agreed to in writing by the Board of Directors), contract to repair or reconstruct the damaged portion of Residential Dwelling or Improvement and shall cause the Residential Dwelling or Improvement to be fully repaired or reconstructed in accordance with the original Plans therefor, or in accordance with new Plans presented to and approved by the Architectural Control Committee, and shall promptly commence repairing or reconstructing such Residential Dwelling or Improvement, to the end that the Residential Dwelling or Improvement shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. Alternatively, such damaged or destroyed Residential Dwelling or Improvements shall be razed and the Lot restored as nearly as possible to its original condition within one hundred eighty (180) days of its damage or destruction (or such longer period if agreed to in writing by the Board of Directors). In the event that the repair and reconstruction of the Residential Dwelling or Improvement has not been commenced within one hundred eighty (180) days after such fire or casualty (or such longer period if agreed to in writing by the Board of Directors), and the damaged or destroyed Residential Dwelling or Improvement has not been razed and the Lot restored to its original condition, the Association and/or any contractor engaged by the Association, shall upon thirty (30) days written notice to the Owner at the Owner's last known mailing address according to the records of the Association, have the authority but not the obligation to enter upon the Lot, raze the Residential Dwelling or Improvement and restore the Lot as nearly as possible to its original condition. Any costs incurred by the Association to raze the Residential Dwelling or Improvement and to restore the Lot to its original condition, plus fifty percent (50%) of such costs for overhead and supervision, shall be charged to the Owner's assessment account, secured by the lien created in Article III of these Amended, Restated and Consolidated Restrictions. Interest thereon at the rate of ten percent (10%) per annum or the maximum, non-usurious rate, whichever is less, shall begin to accrue on such sum on the thirty-first (31<sup>st</sup>) day after a written invoice is delivered to the Owner.

## **ARTICLE VIII**

### **Duration and Amendment**

**Section 8.1. Duration.** The provisions of these Amended, Restated and Consolidated Restrictions shall remain in full force and effect until January 1, 2030, and shall be extended

automatically for successive ten (10) year periods; provided, however, that these Amended, Restated and Consolidated Restrictions may be terminated on January 1, 2030, or as of the end of a successive ten (10) year term by filing for record in the Official Public Records of Real Property of Harris County, Texas prior to the effective date of termination, an instrument in writing signed by Owners representing not less than seventy-five percent (75%) of the Lots in the Subdivision agreeing to terminate these Amended, Restated and Consolidated Restrictions.

**Section 8.2. Amendment.** These Amended, Restated and Consolidated Restrictions may be amended by an instrument approved in writing by Owners (as of the date of recording the amendment document) representing not less than two-thirds (2/3) of the Lots in the Subdivision. Each written approval must be dated but the signature of an 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 Owners of the requisite number of Lots 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 Lot, 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 Lots 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 Owners are attached, is recorded in the Official Public Records of Real Property of Harris County, Texas.

## **ARTICLE IX**

### **Miscellaneous**

**Section 9.1. Severability.** In the event of the invalidity or partial invalidity or partial unenforceability of any provision in these Amended, Restated and Consolidated Restrictions, the remainder of these Amended, Restated and Consolidated Restrictions shall remain in full force and effect.

**Section 9.2. Number and Gender.** Pronouns, whenever used herein, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind and character, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

**Section 9.3. Articles and Sections.** Article and section headings in these Amended, Restated and Consolidated Restrictions are for convenience of reference and shall not affect the construction or interpretation of these Amended, Restated and Consolidated Restrictions. Unless the context otherwise requires, references herein to articles and sections are to articles and sections of these Amended, Restated and Consolidated Restrictions.

**Section 9.4. Delay in Enforcement.** No delay in enforcing the provisions of these Amended, Restated and Consolidated Restrictions with respect to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recovery for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time.

**Section 9.5. Limitation of Liability** Notwithstanding anything provided in these Amended, Restated and Consolidated Restrictions to the contrary, neither the Architectural Control Committee nor the Association, or its officers or Directors, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any Plans submitted, reviewed, or approved in accordance with the provisions of Article IV above, (b) any defects, structural or otherwise, in any work done according

to such Plans, (c) the failure to approve or the disapproval of any Plans or other data submitted by an Owner for approval pursuant to the provisions of Article IV or (d) the construction or performance of any work related to such Plans.

**Section 9.6. Enforceability.** The provisions of these Amended, Restated and Consolidated Restrictions shall run with all of the Lots in the Subdivision and shall be binding upon and inure to the benefit of and be enforceable by the Association, each Owner and occupant of a Lot in the Subdivision, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. If notice and an opportunity to be heard are given, the Association shall be entitled to impose reasonable fines for violations of the provisions of these Amended, Restated and Consolidated Restrictions or the Architectural Control Guidelines and to collect reimbursement of actual attorney's fees and other reasonable costs incurred by it relating to violations of the provisions of these Amended, Restated and Consolidated Restrictions and/or the Architectural Control Guidelines. Such fines, fees and costs may be added to the Owner's assessment account and collected in the manner provided in Article III of these Amended, Restated and Consolidated Restrictions. In the event any one or more persons, firms, corporation or other entities shall violate or attempt to violate any of the provisions of these Amended, Restated and Consolidated Restrictions, the Association, each Owner or occupant of a Lot within the Subdivision, or any portion thereof, may institute and prosecute any proceeding at law or in equity to abate, preempt or enjoin any such violation or attempted violation or to recover monetary damages caused by such violation or attempted violation.

**Section 9.7. Interpretation.** The provisions of these Amended, Restated and Consolidated Restrictions shall be liberally construed to give effect to their purposes and intent.

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

Return to:

Rick S. Butler   DD  
Butler | Hailey  
8901 Gaylord Drive, Suite 100  
Houston, Texas 77024-3042

**CERTIFICATE**

THE STATE OF TEXAS

§

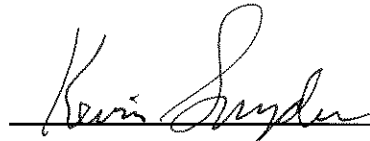
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COUNTY OF HARRIS

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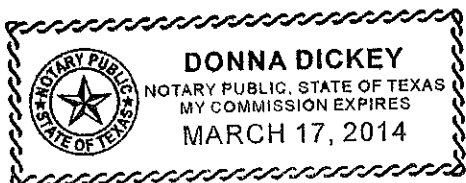
BEFORE ME, the undersigned authority, on this day personally appeared Kevin Snyder, President of Frostwood Community Improvement Association, known to me to be the person whose name is subscribed below, who, upon oath, did depose and state as follows:

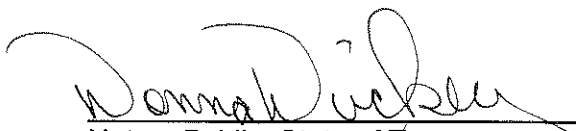
My name is Kevin Snyder. I am the President of Frostwood Community Improvement Association (the "Association"). I am over the age of twenty-one (21) years, I have never been convicted of a crime and I am fully competent to make this affidavit. Attached hereto are ballots executed by the owners of properties in Frostwood, Sections One (1), Two (2) and Three (3), and Colony West, collectively referred to as "Frostwood", a residential subdivision in Harris County, Texas. I certify that the attached ballots represent the written agreement of the owners of not less than seventy-five percent (75%) of the real property in all sections of Frostwood to amend the restrictive covenants for all sections of Frostwood. This certification is based upon the ownership records of the Association.

  
Kevin Snyder, President of  
Frostwood Community Improvement  
Association

(403)  
10R

Given under my hand and seal of office this 11<sup>th</sup> day of November, 2010.



  
Notary Public, State of Texas