

RESTRICTIONS, CONDITIONS AND COVENANTS
OF
BRIARWOOD SUBDIVISION

THE STATE OF TEXAS)

) KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF AUSTIN)

THAT BRIARWOOD PROPERTY OWNERS ASSOCIATION, a Texas Nonprofit Corporation created on the 18th day of May, A.D" 1978, with its offices and principal place of business in Bellville, Austin County, Texas, is the administrative body for all that certain real property situated in Austin County, Texas, known as Briarwood Subdivision (hereinafter referred to as the "Subdivision"), according to the Plat of said Subdivision, filed for record in the Office of the County Clerk of Austin County, Texas, on April 14, 1980 and recorded in Volume 1, Page 45, of the Plat Records of Austin County, Texas.

The Association was created to maintain and enforce a uniform plan for the improvement, development, and sale of all of the lots and reserves in the Subdivision, for the benefit of the present and future owners of the lots and reserves within said Subdivision, and for the protection of property values in the Subdivision, and, to that purpose, said Association hereby adopts, establishes, and imposes the following declarations, reservations, protective covenants, limitations, conditions, and easements to apply uniformly to the use, improvements, occupancy, and conveyances of all lots (or reserves as the case may be) in the Subdivision; and each Contract or Deed which may be hereafter executed with regard to any of the lots (or reserves) in the Subdivision shall conclusively be held to have been executed, delivered, and accepted subject to the following provisions (regardless of whether or not the same are set out in full or by reference in said Contract or Deed).

RESTRICTIONS, CONDITIONS, AND COVENANTS
APPLICABLE TO ALL LOTS IN
THE BRIARWOOD SUBDIVISION
(HEREIN AFTER CALLED THE "LOTS")

I.

- 1.01 Except as hereinafter provided, all lots shall be used for single-family residential purposes only and for no other purposes.
- 1.02 No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become any annoyance or nuisance to the neighborhood or the Subdivision. No person shall discharge a gun, pistol or firearm, air-rifle, air-pistol, or bow and arrow; activated by whatever means including gun powder, compressed air or gas, or spring or cannon cracker or torpedo as the same are defined by the laws of the State of Texas and no person shall discharge firecrackers on, over, or across any lot, street, or easement within the Subdivision.
- 1.03 No manufacturing or commercial or professional enterprise or enterprises of any kind for profit shall be maintained upon or in connection with any lot, nor shall said lot in any way be used for other than strictly residential purposes.
- The owner of a lot may engage in professional home occupations that do not detract from the residential character of the lot and/or the neighborhood and which do not depend upon visits from the public.
- 1.04 No cows, horses, sheep, goats, hogs, chickens, ducks, rabbits, or any other animals or fowls or poultry, except household pets, shall be kept, staked, pastured, or permitted on any lot in the Subdivision, but in no event shall any person keep household pets for commercial purposes. No savage or dangerous dogs or other animals shall be kept on any lot in the Subdivision.
- No owner shall ever keep or maintain more than three (3) dogs and three (3) cats on any of the property covered by the restrictions. Dogs and cats shall be any dog or cat over four months old. Any dog or cat less than four months old shall not be covered hereby so long as the owners of the property shall be the owner of the mother animal of such dogs or cats.
- 1.05 No part of the Subdivision or any lot therein shall be used for the dumping of rubbish, trash or other waste. All trash, garbage, and other wastes shall be kept in sanitary containers and shall be disposed of at regular intervals consistent with good housekeeping. All household and yard tools and equipment shall be kept out of sight in enclosed storage areas except when in use. All containers or other equipment for the storage or disposal of trash and/or wastes shall be kept clean and in good repair.
- 1.06 No use of any lot shall be made for any purpose that would result in the pollution of the waters above, below, or adjacent to the surface of the Subdivision.
- 1.07 No excavation for stone, gravel, or earth shall be made thereon except in connection with the erection of improvements.
- 1.08 No sign of any kind shall be displayed to the public view on any lot, except one sign containing a surface area of not more than six (6) square feet advertising the property for sale, or signs used by a builder to advertise the property during the construction and sale of a residence; or one

small sign displaying the owner's name and address. No sign of any nature shall be permitted on any lot except with the written consent of the Association.

- 1.09 The owners or occupants of all lots of the Subdivision shall at all times keep all weeds and grass thereupon cut in a sanitary, healthful, and attractive manner, and shall in no event use any lot for storage of material and equipment except for normal residential requirements. No weeds and grass shall be allowed to grow above an average height of nine (9) inches. Such owners or occupants shall not permit the accumulation of garbage, trash, or rubbish of any kind thereon. In the event of default on the part of the owner or occupant of any lot in the Subdivision in observing the above stated requirements, or any of them, agents of the Association may, without becoming liable to the owner or occupant, in trespass or otherwise, enter upon such lot, cut or cause to be cut, such weeds and grass, and remove or cause to be removed such garbage, trash, rubbish, etc. so as to place said lot in a neat, attractive, healthful, and sanitary condition, and may bill either the owner or occupant of such lot for the cost of such work. The owner or occupant as the same may be, agrees by the purchase or occupation of any lot in the Subdivision to pay such bill or statement immediately upon receipt thereof. The Association shall have a lien and charge against any lot for any such monies so advanced, and the failure to observe these covenants shall constitute a breach of any Contract for the purchase of a lot within the Subdivision.
- 1.10 No lot in the Subdivision shall be subdivided or a portion thereof conveyed except as between respective owners of full lots contiguous thereto; and any such attempt to otherwise subdivide ownership of a lot shall be absolutely void. No dwelling or residence shall be erected upon any parcel less than one (1) full lot as shown on the plat of the Subdivision. No dwelling or residence other than single family dwellings or residences shall be erected upon any lot or lots except in Reserves C, D, E and G of Section One, in which multifamily dwellings or residences may be erected. Nothing herein shall prohibit the construction of a single residence on two (2) or more contiguous lots, in which case such lots shall be considered as one (1) lot for building purposes and maintenance fund assessment. (As amended in 1990)
- 1.11 All recreational facilities in the Subdivision shall be for the use and benefit of the property owners and their families and guests only and are to be used by them at their own risk. However, the Association may enter into agreements with other persons owning property in the Subdivision for the use of the pool and other recreational facilities. The Association assumes no liability for theft, loss, damage, or injury to anyone.

II.

BUILDING RESTRICTIONS

- 2.01 All structures and improvements placed upon any lot shall be constructed of new materials (except for architectural items not affecting the structural integrity of the improvements to be made, used for decorative effect, and approved by the Architectural Control Committee). All improvements made a part of a lot shall be erected and constructed on said lot. No prefabricated structure may be placed upon a lot and used as a residence or a garage.

No mobile home or trailer as those terms are used in their broadest sense may be placed at any time upon said lots.

No metal dwellings, carports, or buildings (except for storage buildings) may be placed upon or made a part of any lot.

No sheet metal or metal panels shall be used in any outbuildings unless such sheet metal panels shall have factory applied paint or be factory anodized. Any metal outbuilding, storage building,

or tool house not built by a commercial manufacturer shall be of a design, appearance, quality and materials comparable to those built by commercial manufacturers. Metal or fiberglass carports are expressly prohibited. Carports of any kind, unless expressly approved in writing by the Architectural Control Committee, are prohibited.

- 2.02 No improvements shall be placed on any lot until the building plans, specifications, and plot plans showing the location of such improvements on the lot have been approved in writing by the Architectural Control Committee. Likewise, the alteration of any existing improvements which materially affects or changes the exterior design thereof may not be made until the plans for such alterations have been approved in writing by the Architectural Control Committee. In this respect the Architectural Control Committee shall be in the exercise of its sole and absolute discretion; and, its decision shall be final and conclusive. If the Architectural Control Committee fails to approve or disapprove any plans, specifications and/or plot plans within thirty (30) days after the same have been received by the said Committee, it will be presumed that the same shall have been approved.

If construction of the improvements for which the plans, specifications, and/or plot plan have been submitted is not commenced within three (3) months of the date of the approval by the Architectural Control Committee, the approval and the authority coincident thereto shall become null and void unless the Architectural Control Committee shall grant a specific extension in writing.

- 2.03 Each dwelling, once commenced, must be "dried in" within six (6) months from the date of commencement thereof. By the term "dried in" is meant that the exterior must have the appearance of being a complete house, including all necessary windows, doors, roof, paint, and trim. If any such residence is not "dried in" within the prescribed time period, the owner of the same by the acceptance of a deed of said lot, gives the Architectural Control Committee or its representatives or agent the right and authority to enter upon the lot upon which such structure is situated and to disassemble such structure and store the building materials on the premises or elsewhere at the discretion of the Architectural Control Committee, until the owner of said lot or its assigns, had demonstrated to the Architectural Control Committee the ability to complete said dwelling within a prescribed time not to exceed ninety (90) days. The owner of any such lot, and its assigns, agrees, by acceptance of a deed to such lot, that the Architectural Control Committee or its agent or representatives shall not be liable in trespass or otherwise in entering upon said lot and dismembering any such dwelling. In the event the lot owner and/or its assigns, by acceptance of a deed to said lot, grants to the Association the right to purchase said lot, and all improvements thereon, for a total purchase price of \$6,000.00. This right shall take priority over any and all liens hereinafter created for improvements made upon said lot.

- 2.04 No house may be constructed or covered with tar paper, metal, or any other material other than that customarily used for the erection of houses in the price range contemplated by and set forth in these restrictive covenants. All dwellings shall have a minimum of one thousand five hundred (1,500) square feet of living area, not counting the stoops, porches, screened-in patios, verandas, or like areas.

- 2.05 No part of any building shall be located on any lot nearer than twenty (20) feet to any street. No part of any building shall be located nearer than ten (10) feet to any interior lot line or five (5) feet with detached garage or a garage attached only by a breeze-way, except that in the event of common ownership of more than one (1) lot in the construction of one (1) dwelling on more than one (1) lot, the combined area owned shall be considered as one (1) lot for this purpose. The building set back lines may be relaxed by a decision of the Architectural Control Committee, if the above-described distances are not feasible, considering the terrain and/or dimensions of the lot.

- 2.06 No structure shall be occupied or used for residential or storage purposes (other than for storage of building materials to be used in the construction and completion of improvements) until the exterior thereof shall have been fully completed in accordance with the approved plans and specifications.
- 2.07 No tent, shack, camper or other outbuilding or structure of a temporary character shall, at any time, ever be used as a residence, temporary or permanent, nor shall any structure of a temporary character ever be used in any way or moved onto or permitted to remain on any lot except during the construction of permanent structures.
- 2.08 No fence, wall, or hedge shall be located nearer any front street line than thirty (30) feet or nearer any side street line than twenty-five (25) feet. No fence or wall having a height greater than seven (7) feet shall be constructed or permitted to remain in the Subdivision. All fencing materials used in the design of the fence shall be approved by the Architectural Control Committee prior to the erection thereof.
- 2.09 Both prior to and after the occupancy of a dwelling on any lot, the owner shall provide appropriate space for off-street parking for all of his vehicles. All boats, camping trailers, motor homes, and similar vehicles shall be stored in an enclosed area and shall not be visible when stored from any front or side street or any adjacent lot. A lot purchaser may leave his boats, trailers, motor homes, and similar vehicles in his driveway for a period of time not to exceed 2 days out of any one-week period for the purpose of cleaning and maintenance.
- 2.10 An easement is expressly reserved in, on, over, under, and through those portions of the lots as shown on the Subdivision map for the purposes of installing, repairing, and maintaining electric power, water, sewage, gas, telephone, and similar utility facilities and services. There is also reserved and dedicated hereby for the use of any public utility company an unobstructed aerial easement five (5) feet wide from a plane twenty (20) feet above the ground upward, located adjacent to and above all dedicated utility easements as shown on the map of the Subdivision. The easements reserved and dedicated under the terms and provisions hereof and under the terms and provisions of the Subdivision plat shall be for the general benefit of the Subdivision as herein defined and shall also inure to the benefit and may be used by any public utility company entering into and upon said property for the purposes aforesaid, without the necessity of any further grant of such easement rights to such utility companies. Fences, walls and shrubbery hedges shall be permitted on such easements except for those easements being used for underground electric and/or telephone systems, provided:
- a. That such fences, walls, and hedges do not interfere in any way with the use of such easements by any public or private utilities then utilizing or thereafter designed to utilize the same,
 - b. That the right of the owners of such fences, walls, and hedges shall at all times be and remain subordinate and inferior in every way to the right of the public utilities; and
 - c. That such public utilities at any time may, without liability of any kind to the owner or owners thereof, remove any such fence, wall, or hedge where the removal of the same is incidental to or necessary for the performance of public utility operations. No buildings or structures of any character shall be erected or allowed to remain on any utility easement.

All utilities in the Subdivision shall be underground with the exception of metering devices and pump stations that may be necessary to the use of the premises.

Underground electric services shall be available to all lots in the Subdivision and the owner of each lot shall, at his own costs, furnish, install, own, and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering on customer structures to the point of attachment at the company's installed transformers or energized secondary junction boxes, said point of attachment to be made available by the electric company at a point designed by the electric company at the property line of each lot. The electric company furnishing service shall make the necessary electrical connections at said point of attachment and at the meter. In addition, the owner of each lot shall, at his own costs, furnish, install, own, and maintain, a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of the electric company furnishing service to the residence constructed on such owner's lot. For so long as such underground service is maintained, the electric service to each lot shall be uniform and exclusively of the type known as URD 120-240 volt, 3 wire, 60 cycle, alternating current.

No individual sewage disposal system shall be permitted on any lot and all sewage must be disposed of in lines provided by the City of Bellville.

- 2.11 All dwellings and other structures shall be kept and maintained in good repair and must be painted, treated, or cared for when necessary to preserve their attractiveness.

III.

THE ASSOCIATION AND THE MAINTENANCE FUND

- 3.01 The purposes of the Briarwood Property Owners Association is to promote the civic interests of persons owning or occupying lots in the Subdivision, to promote the safety and health of such persons, and to promote the cleanliness, beautification, and protection of the property of the Subdivision.
- 3.02 To accomplish its purposes, the Association shall have the right to make rules and regulations to govern the use of all public areas in the Subdivision. It shall also have the right to make assessments against the lots in the Subdivision for the maintenance of such public areas. The Association shall expressly have the right to:
- a. Collect and expend, in the interest of the Subdivision as a whole, the maintenance fund herein created.
 - b. Enforce these covenants and restrictions by appropriate proceedings (but this power shall not be exclusive and may also be exercised by any lot owner in the Subdivision).
 - c. Enforce any lien imposed on any part of the Subdivision by reason of the violation of any of these covenants or restrictions, or reason of failure to pay the maintenance charge herein provided, and to execute a release of such land upon performance.
 - d. Approve or reject plans and specifications for improvements to be erected in the Subdivision. All plans and specifications for improvements must be submitted to the Architectural Control Committee for approval prior to the commencement of the Construction of any such improvement. If the Committee fails to act within thirty (30) days after submission to it of plans and specifications, construction in accordance with these restrictions may begin.
- 3.03 Each lot owner shall be a member of the Association by virtue of his ownership. Each member shall have rights and privileges, in connection with the Association, as may from time to time be specified in its Articles of Incorporation and Bylaws.

- 3.04 No sale, transfer, lease, or other disposition of any lot shall be consummated unless and until the purchaser or transferee has applied for and is approved as a member of the Association, and such approval has been certified on the proposed deed or other instrument of transfer. This restriction shall not apply, however, to a lending institution which may bid on any lot at a foreclosure sale, nor shall it apply upon the death of an owner to a transfer by will or intestacy pursuant to the laws of the State of Texas. Membership in the Association shall be conditioned upon observance of the rules and regulations established by it for the benefit and general welfare of its members, and conditioned upon payment when due of any dues, fees, charges, or assessments.
- 3.05 The Association shall have the right to enforce any and all of the protective covenants contained herein, and pursuant thereto has the right to contract for the performing of services which will remedy the breach of any covenant herein and assess the cost of said services against the particular lot owner involved. Each instrument of conveyance of any lot in the Subdivision shall make reference to these restrictions and shall contain a Vendor's Lien in favor of the Association securing the performance of these restrictions.
- 3.06 Except as noted in Article 1, Section 1.10 above, each vacant lot and each dwelling in the subdivision, is subject to an annual maintenance charge. This maintenance charge is to be known as the "maintenance funds" and shall be paid annually in advance on the 15th day of October of each year and payable to the Briarwood Property Owners Association at its office in Bellville, Texas, or such other place as it shall designate in writing and said charge and lien are hereby, assigned to the said Briarwood Property Owners Association. The maintenance charge for the year of purchase shall be prorated as of the date of the purchase. The annual maintenance charge may be adjusted from year to year by the Briarwood Property Owners Association, at a meeting called for that purpose whereby a majority of lot owners and purchasers present at that meeting, or those voting by proxy or ballot delivered or mailed to the Association office by U.S. Mail, such majority constituting a quorum. For purposes of this section the term "dwelling" includes without limitation a single family residence, a townhouse unit, a condominium unit, a duplex unit, an apartment unit and/or any like structure in which people reside. *(As amended in 1990.)*

Funds arising from the charge shall be applied, so far as sufficient, toward the payment of maintenance expenses incurred for any or all of the following purposes: enforcing compliance with these restrictions, improving and maintaining the public areas and doing other things necessary or desirable in the opinion of the Association to keep the property and the common facilities operating, maintained and in neat and good order, or any thing which it considers of general benefit to the owners or occupants of the addition, it being understood that the good faith judgment of said Association in the expenditure of such funds shall be final.

By acceptance of deed or execution of contract for deed, each purchaser agrees and consents to such maintenance charge, and acknowledges the lien for enforcement or collection thereof. Said lien shall be deemed subordinate to the liens of any bank, insurance company, or savings and loan association which lends money for the purchase of any property in the Subdivision and/or for the construction and/or permanent financing of improvements on such property, and shall also be subject to the lien for taxes.

IV.

THE ARCHITECTURAL CONTROL COMMITTEE

- 4.01 The association shall establish an Architectural Control Committee and shall provide for the filling of any vacancy thereon. The Committee shall adopt rules governing the conduct of its business.

- 4.02 The Committee shall approve in advance any construction proposed for any lot in the Subdivision. The Committee shall determine whether the same meets the specific requirements of these protective covenants. In addition, and without limitations, except as otherwise herein provided, the Committee shall have the right to approve the type and size of the proposed structure, the quality of materials and workmanship, the harmony of the external design in relation to existing structures, and the location with respect to the topography of the property.
- 4.03 The Committee shall have the power in specific cases where, owing to special conditions, enforcement of one or more of these protective covenants will result in hardship to the lot owner, to make special exception thereto, and may substitute other conditions therefore, so that the spirit of these protective covenants will be preserved.

V.

SPECIAL PROVISIONS

- 5.01 No growing trees 6" or more in diameter measured at a point 12" from the ground may be cut from any lot without the prior written approval of the Architectural Control Committee, except only for such trees that may be removed where necessary to the construction of improvements on the lot. However, prior to the removal of such trees, the lot owner shall notify the Architectural Control Committee of the trees to be removed.
- 5.02 No shrub or tree planting which obstructs sight lines at elevations between 2 and 6 feet above the roadway shall be planted or permitted to remain on any corner lot within the triangular area formed by the curb lines of such intersecting streets and a line connecting such curb lines at points 25 feet from their intersection, or, in the case of a rounded corner, from the intersection of the curb lines as extended. The same sight line limitation shall apply to any lot within 10 feet of the intersection of a street curb line and the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than 6 feet above the ground level.
- 5.03 No truck, bus, or similar vehicle shall be left parked in the street in front of any lot except for construction and repair equipment while a residence or residences is/are being built or repaired in the immediate vicinity except for periods of two days in any one-week period, and no truck, bus, boat, or motor home shall be parked on the driveway or any portion of the lot in such manner as to be visible from the street. (Pick-up trucks, no larger than 3/4 ton, belonging to residents will be considered equivalent to a car.)

Guests of a lot owner may park on the street in front of his lot for a reasonable period of time.

VI.

GENERAL PROVISIONS

- 6.01 These protective covenants shall constitute covenants running with the land and shall be binding on and inure to the benefit of the owners, and all persons including the Association, and all other persons claiming by, through or under them, until January 2000, after which time they shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the Association and by a majority of the lot owners in the Subdivision has been recorded, agreeing to a change therein in whole or part.
- 6.02 The protective covenants may be amended at any time after January 1, 1985, by an instrument signed by the Association, together with a majority of the lot owners in the Subdivision.

- 6.03 These protective covenants may be enforced by the Board of Directors representing the Association or by the Owner of any lot in the Subdivision either by proceedings for injunction or to recover damages for breach thereof or both. When additional lots are platted, the owners of lots in the Subdivision shall have standing to enforce the protective covenants. Likewise, the property owners in such additional lots shall have standing to enforce the restrictions, covenants and conditions as herein contained. However, only the Association may file suit to collect any of the assessments or sums mentioned in Section III above or to enforce the foreclosure of any lien herein granted. Any suit hereunder shall be filed in any court of competent jurisdiction with venue to be in Austin County, Texas.
- 6.04 Anyone who has executed a contract to purchase any lot in the Subdivision shall be deemed for all purposes hereunder to be the owner of such lot if they have under such contract the right to possession of such lot, whether or not such right is conditional or limited.
- 6.05 If any provision or portion of these protective covenants shall be declared invalid by judgment, court order, or otherwise, it shall not affect or invalidate any other provisions or portion thereof. Failure to enforce any one or more provisions hereof shall not constitute a waiver thereof or invalidate such provision or provisions.

IN WITNESS WHEREOF, said corporation has used its corporate name to be affixed hereto and this instrument to be executed by Johnny Dobecka, President of the Association, which officer is duly authorized to so execute by a Resolution of the Board of Directors of said corporation.

WITNESS THE EXECUTION HEREON, on this 29th day of November, A.D., 1997.

BRIARWOOD PROPERTY
OWNERS ASSOCIATION

BY: _____
Johnny Dobecka
President

2.04 (Amended 4/28/07)

No house shall be constructed or covered with tar paper or any other material than that customarily used for the erection of houses in the subdivision, the intent being that all repairs to existing structures and new construction shall be equal to or superior to the existing improvements in the subdivision set forth in these restrictive covenants. All dwellings not in areas designated for apartments, town homes, and/or patio homes shall have a minimum of one thousand five hundred (1,500) square feet of living area, not counting the stoops, porches, screened-in patios, verandas, or like areas.