

**DECLARATION AND AGREEMENT
TO MODIFY, AMEND AND RESTATE
RESTRICTIONS, COVENANTS AND CONDITIONS**

LINDALE PARK, SECTION 5

This Declaration and Agreement to Modify, Amend and Restate Restrictions, Covenants and Conditions (this “**Declaration**”) shall modify, amend and restate the restrictions, covenants and conditions applicable to Lindale Park Section 5, Harris County, Texas, as provided below:

Subdivision Affected: LINDALE PARK, Section 5, an addition in the City of Houston, Harris County, Texas, according to the map or plat thereof recorded in Volume 998, Page 724 of the Deed Records of Harris County, Texas.

Restrictions Modified: Restrictions filed of record on April 11, 1980, under Clerk’s File No. G496445 of the Official Public Records of Harris County, Texas.

Procedure to Modify Restrictions: Not less than 66% of the Owners of the Lots/Building Sites in the Subdivision which are subject to the Restrictions may amend the Restrictions by written instrument recorded in the Official Public Records of Harris County, Texas, if the instrument is executed and filed prior to April 11, 2010, in order to be effective when such amendment is recorded.

Purpose of Modification: To establish such restrictions, covenants and conditions as are necessary and desirable to keep the Subdivision attractive for the enjoyment of residents and for the protection of property and property values.

Texas Property Code: This Declaration is made pursuant to the provisions of the Restrictions, not the provisions of the Texas Property Code.

The Restrictions are hereby RATIFIED, CONFIRMED AND READOPTED as a part of this Declaration, provided that the Restrictions are modified, amended and restated in their entirety as set forth below. Each of the undersigned Owners hereby declares and agrees with each of the other Owners of real property restricted herein that all of the Restrictions, as modified, amended and restated herein, shall be and are hereby imposed and shall be effective upon all of such real property as original restrictions commencing on the date this Declaration is recorded in the Official Public Records of Harris County, Texas, in the same manner and to the same extent as though the Restrictions were set out in full herein and signed by each of the undersigned Owners, subject to the provisions contained herein which shall modify, amend and restate the Restrictions in their entirety.

ARTICLE 1 – Definitions

- 1.1 “**Architectural Review Committee**” – a committee of three (3) members, all of whom shall be appointed by the Board and serve for terms determined by the Board. At least two (2) of the members of the Architectural Review Committee must be members of the Association. The Board may remove a member at any time, with or without cause. In the event that the Board shall fail to appoint an Architectural Review Committee, then the Board shall act as the Architectural Review Committee.
- 1.2 “**Architectural Guidelines**” – the document proposed by the Architectural Review Committee and approved by the Board, which shall provide an outline of minimum acceptable standards for proposed Improvements. The Architectural Review Committee may from time to time promulgate, supplement, or amend the Architectural Guidelines.
- 1.3 “**Association**” – Lindale Park Civic Club, a Texas nonprofit corporation, its successors and assigns.
- 1.4 “**Accessory Structure**” – a Structure whose use is ancillary to a House, including, but not limited to, a storage building, greenhouse and/or gazebo, but not including a Garage or Garage Apartment.
- 1.5 “**Board**” – the Board of Directors of the Association.
- 1.6 “**Building Site**” – any Lot or combination of portions of Lots used or proposed to be used for a single-family residential home.
- 1.7 “**Carport**” – a fully or partially open-sided structure that covers an Improved Driveway for the purpose of covered parking.
- 1.8 “**Commercial Vehicle**” – any Vehicle other than a Non-Commercial Vehicle, as defined below.
- 1.9 “**Common Area**” – all real property owned or leased, if any, by the Association for the common use, enjoyment and/or benefit of the Owners.
- 1.10 “**Effective Date**” – the date this Declaration is recorded in the Official Public Records of Harris County, Texas.
- 1.11 “**Family**” – any of the following: (i) an individual, (ii) 2 or more persons related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship or (iii) up to three (3) unrelated adult persons, living as a single housekeeping unit in a House or a Garage Apartment.
- 1.12 “**Front Property Line**” – for interior Lots, the boundary line of a Lot with the Street. For corner lots, the boundary line of the Lot with the street that has the shorter length.
- 1.13 “**Garage**” – a fully enclosed structure for storage of Vehicles.

- 1.14 “**Garage Apartment**” – A Structure with one or more rooms with separate kitchen and bathroom facilities, constituting a dwelling unit, located within the same Building Site and under the same ownership as a particular House.
- 1.15 “**Grandfathering**” – the right of Lots, Structures and uses non-conforming with these Restrictions as of the Effective Date to continue in existence, until removal, destruction or demolition, subject to Article 8, below.
- 1.16 “**Home Occupation**” – a low profile commercial activity meeting the conditions of Section 2.4 below.
- 1.17 “**House**” – a single-family detached residential structure, excluding a Garage Apartment.
- 1.18 “**Improved Driveway**” – a hard surfaced area connecting a street and a driveway, Garage, or other improved parking area located behind the front setback line, the surface of which is made of concrete, rock, stone or gravel, in compliance with City of Houston Building Code. Improved Driveways may include a circular drive that connects two streets or provides a circular connection with one street.
- 1.19 “**Improvement**” and/or “**Improvements**” – Any improvement, building, structure, fixture or fence, any transportable structure placed on a Lot, whether or not affixed to the land, and any addition to or modification of an existing building, structure, fixture or fence beyond normal maintenance and repair.
- 1.20 “**Inoperative Vehicle**” – a vehicle which (i) lacks either a current license plate and/or current motor vehicle inspection certificate; and/or (ii) is stored, wrecked or dismantled to any degree and (iii) is located in public view for at least thirty (30) days out of any sixty (60) consecutive day period.
- 1.21 “**Interior Lot Line**” – the boundary line of a Lot, which boundary line connects a Front Property Line and a Rear Lot Line, but which does not abut a street.
- 1.22 “**Lot**” and/or “**Lots**” – Each of the lots shown on the Plat.
- 1.23 “**Lot Grade**” – the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the Structure and a line five (5) feet from the Structure.
- 1.24 “**Non-Commercial Vehicle**” – passenger vehicle, truck, van, camper or recreational vehicle of $\frac{3}{4}$ ton capacity or less, recreational boat, motorcycle, or lawn maintenance equipment.
- 1.25 “**Owner(s)**” – the record title owner(s) of any fee simple interest in a Lot.
- 1.26 “**Plat**” – the map or plat of Lindale Park, Section 5, recorded in Volume 998, Page 724 of the Deed Records of Harris County, Texas, and any replat thereof.
- 1.27 “**Rear Lot Line**” – the boundary line of a Lot parallel to the Front Property Line.

- 1.28 **“Real Property Records”** - the Official Public Records of Real Property of Harris County, Texas (or successor records).
- 1.29 **“Restrictions”** – The restrictive covenants filed of record on April 11, 1980, under Clerk’s File No. G496445 of the Official Public Records of Harris County, Texas.
- 1.30 **“Side Street Line”** – the boundary line of a Lot which is adjacent to a street, but which is not the Front Property Line.
- 1.31 **“Street”** – a publicly dedicated right-of-way as shown on the Plat.
- 1.32 **“Structure”** – any House, Improvement, building, or Garage Apartment, including an Accessory Structure and fence.
- 1.33 **“Subdivision”** – all real property located within Lindale Park, Section 5, according to the recorded Plat thereof.
- 1.34 **“Vehicle”** – any motor vehicle, truck, van, trailer, tractor, recreational vehicle (RV), camper, boat, motorcycle or other mode of motorized transportation.

ARTICLE 2 – Residential Character Use Restrictions

- 2.1 **Single Family Residential.** All Lots and Building Sites shall be used exclusively for single-family detached residential purposes, including no more than one House and one Garage Apartment. Without limiting the generality of the foregoing, multi-family use and/or occupancy, assisted living centers and/or facilities, group homes (other than those which are exempted herefrom by State or Federal Laws), commercial, industrial, fraternity, sorority, club, and rooming houses are prohibited. Institutional uses are prohibited, whether conducted on a for profit basis or not.
- 2.2 **No Lot Division.** No originally platted Lot may be further subdivided or reduced in size; provided, however, that a Lot or Building Site may be eliminated if it is divided between and combined with adjacent Lots. Multiple Lots may be used as a single Building Site. No Lot line shall be altered until the plot plan showing the nature and location of the altered Lot lines has been approved in writing by the Architectural Review Committee.
- 2.3 **Renting.** Improvements may be leased or rented for residential purposes only; provided, however, that no Owner shall be permitted to lease a Lot for hotel or transient purposes, which for purposes of this Section is defined as a period of less than six (6) months. Every lease shall be in writing. The Owner making such lease shall not be relieved from any obligation to comply with the provisions of this Declaration.
- 2.4 **Home Occupation.** Commercial activities which are incidental to the primary use of a Lot for residential purposes are allowed to be conducted under the following conditions:
- 2.4.1 No employees shall gather and/or conduct business on the property;
- 2.4.2 No signs shall be visible on any property;

- 2.4.3 No visible storage or display of commercial products;
- 2.4.4 All commercial activities are conducted inside a Structure, fully concealed from public view;
- 2.4.5 No material disruption, interference, nor increase in traffic or parking;
- 2.4.6 No sound or smell shall exist, or be caused to exist, outside the Structure; and
- 2.4.7 Existence of the Home Occupation shall not be apparent from outside the Structure.

For the purposes of this Section, an average of five (5) vehicles per day stopping at the Lot over any five (5) day period (whether customers, business guests, or deliveries) shall be deemed to be an unacceptable increase in traffic. An average of five (5) vehicles per day parking on any Street near the Lot by persons visiting the Lot in any consecutive five (5) day period shall be deemed to be an unacceptable interference with parking. The Board may issue rules and/or regulations further determining, clarifying and interpreting these conditions.

The Home Occupation restrictions apply to all non-residential activities, whether or not for profit.

- 2.5 **Garage Sales.** No garage sale, moving sale, rummage sale or similar activity may be conducted on a Lot or Building Site more than twice during each calendar year or as otherwise provided by current City Ordinances, whichever is less frequent. No sale may commence earlier than 7:00 a.m., extend past 6:00 p.m., or continue more than two (2) consecutive days. Garage sale signs are allowed for one day preceding the sale and the day of the garage sale, and must be immediately removed following conclusion of such sale.
- 2.6 **Animals.** No animals or birds, other than generally recognized house or yard pets, shall be maintained on any Lot or Building Site and then only if they are kept thereon solely as domestic pets and not for commercial purposes. Not more than three (3) permitted animals or birds, in the aggregate, shall be maintained on any Lot at any given time. 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 any animal or bird shall be maintained so as to be visible from any Street in the Subdivision or a neighboring Lot without the written consent of the Architectural Review Committee. The Board shall have the authority to determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal or bird is a generally recognized house or yard pet, or a nuisance.
- 2.7 **Garbage.** Garbage, trash, and waste shall be kept in closed sanitary containers and kept from public view, to the extent possible, except to make the same available for collection. Garbage, trash, waste and recycling materials may not be placed on the Street prior to 6:00 p.m. of the date preceding scheduled pickup by the appropriate service provider. Sanitary containers and recycling bins must be removed from the Street the same day the materials are collected. All building materials, wood piles, yard equipment, sanitary

containers, recycling bins, and the like, shall be maintained in a clean and neat condition, and kept out of view to the extent possible.

- 2.8 **Landscaping.** The landscaping on each Lot or Building Site shall be maintained in a neat and attractive condition at all times, with grass mowed and weeds removed on a regular basis. The Owner is responsible for maintaining the Street curbs and gutters adjacent to their Lot or Building Site free of leaves, trash and litter.
- 2.9 **Fencing.** Fences constructed after the Effective Date shall first have approval of the Architectural Review Committee and shall conform to all applicable set-backs.
- 2.10 **Nuisance.** Unsafe, illegal, or offensive nuisance activities inconsistent with a residential neighborhood are prohibited. The Board or its designated committee may determine what constitutes a nuisance, and may issue additional rules and regulations consistent with this Section and with the City of Houston Code of Ordinances.
- 2.11 **Vehicle Parking and Storage.** Vehicles must be parked on a Street, an Improved Driveway, beneath a Carport, or in a Garage. No Vehicle shall be parked in a yard, nor on any grass surfaces whatsoever. All inoperable Vehicles shall be parked in an enclosed Garage with the Garage door closed or behind an opaque fence and gate (each at least 6 feet in height), with the gate closed. Commercial Vehicles may be temporarily parked on a Street, an Improved Driveway or in a Carport, for not more than 3 consecutive days, nor five (5) days (in total), during any sixty (60) day period.
- 2.12 **Required Parking Spaces.** All Lots and Building Sites shall provide space for the parking of at least two (2) vehicles on site.
- 2.13 **Exterior Maintenance.** The exterior of any Structure (specifically including roof, doors, windows, screens, awnings, shutters, Carports and exterior surfaces) must be maintained in good condition and repair, adequately, uniformly, and completely painted or otherwise finished (without substantial peeling of the finish) and present a first class residential appearance. Fences shall be maintained in an erect, safe condition, such that they effectively enclose and screen the fenced portion of the Lot. The Board or its designated committee may determine when a Structure requires repair and a reasonable deadline for the Owner to conclude that repair, and may issue additional rules and regulations to compliment this Section.
- 2.14 **Temporary Buildings.** Mobile homes, manufactured houses, and temporary buildings are prohibited. Moveable storage structures are allowed behind the House in the rear yard of a Lot, provided they do not exceed eight feet (8') in height, do not exceed 100 square feet in floor space, are located at least five (5) feet from all Lot lines, and are not used for living space.
- 2.15 **Sound Devices; Excessive Noise.** The Subdivision is intended to be a quiet, peaceful environment. No exterior speaker, horn, whistle, bell or other sound device shall be located, placed or used upon any Lot or improvement thereon. The foregoing shall not apply to fire or security devices used exclusively for such purpose; provided, such devices must be installed such as not to be visible from any Street and otherwise in as

inconspicuous a manner as possible. No stereo, television, speaker, horn, whistle, bell or other sound device shall be operated within, and no other sound emitting activity (such as practice of a band, excessively loud social gatherings and similar activities) shall be conducted within a House, Garage or other Structure which is audible outside the Lot lines of the applicable House, Garage or other Structure, or which is otherwise an annoyance or nuisance to any other residents in the Subdivision as determined in the sole opinion of the Board. Noise levels shall conform, at a minimum, to the standards set forth in the City of Houston noise and sound level regulations, as the same may be amended or supplemented from time to time.

- 2.16 **Firearms and Fireworks Prohibited.** The use of firearms in the Subdivision is strictly prohibited. The term “firearms” includes without limitation “B-B” guns, pellet guns, airsoft guns, paintball guns and small or large firearms of all types. Fireworks of any type are strictly prohibited at any place within the Subdivision.

ARTICLE 3 – Restrictions On Improvements

- 3.1 **Approval of Improvements Required.** In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Subdivision, to establish and preserve a harmonious design for the Subdivision and to protect and promote the value of the Subdivision, the Lots, and the Houses, no Improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot, Building Site or House by any Owner, which affect the exterior appearance of any Lot, Building Site or House unless plans and specifications therefor have been submitted to and approved by the Architectural Review Committee in accordance with the terms and provisions of this Article. Without limiting the foregoing, the construction and installation of any dwellings, sidewalks, driveways, parking lots, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, guest or servant's quarters, Garages or any other outbuildings shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any Houses or Improvements, unless the plans and specifications for the same have been submitted to and approved by the Architectural Review Committee in accordance with the terms and provisions of this Article.
- 3.2 **Design Review Submittal Requirements & Process.** Prior to the commencement of any Improvements on any Lot or Building Site, the Owner thereof shall submit to the Architectural Review Committee two (2) complete sets of the construction documents in form and scope sufficient to meet City of Houston Building Permit application requirements and such other plans, specifications, or other information or documentation as may be required by the Architectural Guidelines. Any material revisions, modifications or changes in any plans and specifications previously approved by the Architectural Review Committee must be approved by the Architectural Review Committee prior to the commencement of construction of such revisions, modifications, or changes.

The Architectural Review Committee shall, in its sole discretion, determine within forty-

five (45) days from receipt of all materials required above whether the plans, specifications, and other data submitted by the Owner for approval are acceptable and in conformity with this Declaration and the Architectural Guidelines. One copy of all plans, specifications and related data so submitted to the Architectural Review Committee shall be retained in the records of the Architectural Review Committee and a written response together with the other copy of the plans, specifications and related data shall be returned to the Owner submitting the same, marked “approved”, “approved as noted” or “disapproved”. Failure of the Architectural Review Committee to respond within the forty-five (45) day time period shall be deemed an approval; however, no such deemed approval shall operate to permit any Owner to construct or maintain any Improvement that violates any provision of this Declaration or the Architectural Guidelines. The approval or lack of approval of the Architectural Review Committee shall not be deemed to constitute any warranty or representation by such Committee including without limitation, any warranty or representation to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations.

- 3.3 **Architectural Review Committee Powers.** The Architectural Review Committee shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of these Restrictions, including purely aesthetic considerations, failure to comply with any of the provisions of these Restrictions or the Architectural Guidelines, objection on the ground of incompatibility of any such proposed Improvement with the scheme of development for the Subdivision, objection to the location of any proposed Improvements on any such Lot or Building Site, objection to the color scheme, finish, color(s), proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgment of the Architectural Review Committee, would render the proposed Improvement inharmonious with the Subdivision. The Architectural Review Committee shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Building Site shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements.

Approval of plans and specifications by the Architectural Review Committee for Improvements to one particular Lot or Building Site shall not be deemed an approval or otherwise obligate the Architectural Review Committee to approve similar features or elements for the Improvements for any other Lot or Building Site.

- 3.4 **Commencement and Completion of Improvements.** After approval of any proposed Improvement on a Lot, Building Site or House, the approved Improvement shall be prosecuted diligently and continuously and shall be completed within the period approved by the Architectural Review Committee and in strict conformity with the approved plans. Owners, builders and their subcontractors shall keep the construction site and surrounding area and the adjoining street(s) clean during the progress of construction. All construction debris, trash and rubbish shall be properly disposed of at least weekly during construction. Construction on a Building Site is permitted only between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.

Promptly upon completion of the Improvement(s), the Owner shall deliver a notice of completion (“Notice of Completion”) to the Architectural Review Committee. The address of the Architectural Review Committee shall be at the principal office of the Association.

- 3.5 **Architectural Review Committee Inspection.** The Architectural Review Committee shall have thirty (30) days from the receipt of the Notice of Completion to inspect any Improvement. Should the Architectural Review Committee find any Improvement on a Building Site that has been constructed or undertaken without obtaining the approval of the Architectural Review Committee, or which varies from the plans submitted and approved by the Architectural Review Committee, the Architectural Review Committee shall notify the applicant in writing of the noncompliance (“Notice of Non-Compliance”).

The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the applicant to take such action as may be necessary to remedy the noncompliance. If the applicant does not comply with the Notice of Noncompliance within the period specified by the Architectural Review Committee, the Association may, acting through the Board, at its option but with no obligation to do so, (a) record a Notice of Noncompliance against the real property on which the noncompliance exists in the Official Public Records of Real Property of Harris County, Texas; (b) remove the non-complying Improvement on the Building Site; (c) otherwise remedy the noncompliance (including, if applicable, completion of the Improvement in question); and/or (d) refer the matter to legal counsel. The permissive (but not mandatory) right of the Association to remedy or remove any noncompliance (it being understood that no Owner may require the Board to take such action) shall be in addition to all other rights and remedies that the Association may have at law, in equity, under this Declaration, or otherwise. Any expenses incurred by the Association as a result of the applicant’s noncompliance shall be charged to the applicant.

- 3.6 **Appeal.** The Owner may appeal any written decision made by the Architectural Review Committee to the Board within twenty (20) days of receipt of such decision. The Board shall hear the appeal within a reasonable time, not to exceed thirty (30) days from its receipt of the request for appeal, and decide within fifteen (15) days thereafter whether or not to overrule the decision made by the Architectural Review Committee. The Board shall have the authority to overrule any decision made by the Architectural Review Committee on its own initiative (i.e., whether or not the Owner appeals the decision to the Board). The decision of the Board shall be final and binding with respect to the subject matter of the appeal.

- 3.7 **Variations.** The Architectural Review Committee may authorize and/or approve variations from compliance with any provisions of the Architectural Guidelines. Such variations shall be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Review Committee. The granting of a variance shall not operate to waive any of the provisions of these Restrictions for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of any variance affect the jurisdiction of the Architectural Review Committee other than with respect to the subject matter of the

variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned.

- 3.8 **Construction Period Exception.** During the course of actual construction of any permitted Structure or Improvement on a Lot, and provided construction is proceeding with due diligence, the Architectural Review Committee may temporarily suspend the provisions of Article 3 contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that during the course of any such construction, nothing shall be done that will result in a violation of any of the provisions of this Declaration upon completion of construction or that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Subdivision.
- 3.9 **Estoppel Certificates.** The Board, within ten (10) days following its receipt of a written request for subdivision information according to Section 207.003 of the Texas Property Code, shall furnish a resale certificate with respect to (i) the approval or disapproval of any Improvement on a Lot, (ii) the "grandfather" status of any aspect of a Lot or House, (iii) whether any Improvement on a Lot was made in compliance with this Declaration, and (iv) such other information required to be furnished under said Section 207.003, as the same may be amended or supplemented from time to time. Any person, without actual notice of any falsity or inaccuracy of such a resale certificate, shall be entitled to rely on such resale certificate with respect to all matters set forth therein.
- 3.10 **Non-liability for Architectural Review Committee Action.** None of the members of the Architectural Review Committee, the Association or any member of the Board 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 Review Committee, except to the extent caused by the gross negligence, willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Architectural Review Committee shall not inspect, guarantee or warrant the workmanship of the Improvement, including its design, construction, safety, whether structural or otherwise, conformance with building codes, or other governmental laws or regulations or whether the Improvement is suitable or fit for its intended purpose. Furthermore, none of the members of the Architectural Review Committee, or any member of the Board shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association, or for a tort of another of such individuals, whether such other individuals were acting on behalf of the Association, the Architectural Review Committee, the Board, or otherwise. Finally, neither the Association, the Board, the Architectural Review Committee, or their officers, agents, members, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements, or portion thereof, or for failure to repair or maintain the same.
- 3.11 **Upkeep During Construction.** After approval of any proposed Improvement on a Lot, the proposed Improvement shall be prosecuted diligently and continuously and shall be completed within the time frame approved by the Architectural Review Committee and in strict conformity with the description of the proposed Improvement

in the materials submitted to the Architectural Review Committee. No building materials shall be placed upon a Lot until the Owner is ready to commence construction. In no event shall any used construction material be buried on or beneath any Lot or House. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any street. All construction vehicles must be parked on the Lot or in areas designated by the Architectural Review Committee.

- 3.12 **Subsurface Conditions.** The approval of plans and specifications by the Architectural Review Committee for any House or other Improvement on a Lot shall not be construed in any respect as a representation or warranty by the Architectural Review Committee to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot for the construction of any contemplated Improvements thereon.
- 3.13 **No Compensation of Architectural Review Committee Members.** The members of the Architectural Review Committee shall not be entitled to any compensation, but are entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder as the Board from time to time may authorize or approve.
- 3.14 **Architectural Guidelines.** The Architectural Review Committee from time to time may promulgate, supplement or amend the Architectural Guidelines for the Subdivision, subject to Board approval, which provide an outline of minimum acceptable standards for proposed Improvements; provided, however, that such outline will serve as a minimum guideline only and the Architectural Review Committee may impose other requirements in connection with its review of any proposed Improvements. If the Architectural Guidelines for the Subdivision impose requirements that are more stringent than the provisions of this Declaration, the provisions of the Architectural Guidelines for the Subdivision shall control.

ARTICLE 4 – Dimensions and Setbacks

- 4.1 **Number of Structures.** No more than one (1) House, one (1) Garage, one (1) Garage Apartment, and two (2) Accessory Structures are permitted on any Lot or Building Site.
- 4.2 **Height.**
- 4.2.1 A House exceeding thirty-six (36) feet in height is prohibited, except for a fireplace chimney, which may be higher as required by applicable building codes.
- 4.2.2 A detached Garage, including a Garage Apartment, exceeding thirty-two (32) feet in height is prohibited.
- 4.2.3 Height shall be determined from Lot Grade, and shall be measured to the highest part of the roof or other structural element.
- 4.2.4 A fence exceeding eight (8) feet in height in rear or side setbacks is prohibited. A fence exceeding four (4) feet in height in front yards is prohibited.
- 4.3 **Setbacks.** No Structure, except a fence, may exist within the following setbacks:
- 4.3.1 Twenty (20) feet from the Front Property Line or as noted on the recorded Plat, whichever is greater.
- 4.3.2 Ten (10) feet from the Side Street Line.
- 4.3.3 Five (5) feet from an Interior Lot Line, except a detached Garage may be three (3) feet from an Interior Lot Line where no easement exists.
- 4.3.4 Five (5) feet from a Rear Lot Line, except a detached Garage may be three (3) feet from a Rear Lot Line where no easement exists.
- 4.4 **Permitted Protrusions in the Setbacks.** The following are permitted protrusions into setback areas:
- 4.4.1 Roof overhangs, bay windows, architectural features each not exceeding two (2) feet located anywhere inside a setback;
- 4.4.2 Air conditioning compressors, into interior side setbacks only;
- 4.4.3 Basketball goals;
- 4.4.4 Decks, porches, or patios not exceeding twelve (12) inches in height are allowed in side and rear setbacks without limit. In front setbacks, decks, porches, or patios shall be no closer than twenty (20) feet from Front Property Line;
- 4.4.5 Window air conditioners, in interior side or rear setbacks only;

- 4.4.6 Chimneys, not exceeding two (2) feet in depth and eight (8) feet in width; and
- 4.4.7 Portable play yard equipment, in interior side or rear setbacks only.
- 4.5 **Garages.** Carports, porte-cocheres or Garages are permitted but not required, except with respect to inoperable Vehicles per Section 2.11 above.
- 4.6 **Minimum Building Site.** The minimum size for a Building Site is five thousand three hundred (5,300) square feet, with fifty (50) feet minimum width at the Front Street Line.

ARTICLE 5 – Management and Operation of the Subdivision

- 5.1 **Civic Club Association.** The Association has been created to administer the affairs of the Subdivision, enforce this Declaration, collect assessments and disburse funds, acquire, improve and maintain the Common Area; to exercise all of the powers and duties set forth in Chapter 204 of the Texas Property Code, the Bylaws of the Association and this Declaration; to have and exercise all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Act of the State of Texas (or successor statute) may now or hereafter exercise; to do any and all other things reasonable and necessary to implement or accomplish the purposes set forth in the Bylaws of the Association and this Declaration; and, in general, to act on behalf of the Owners as a community association.
- 5.2 **Board of Directors.** The affairs of the Association shall be managed by the Board. The Board shall be constituted as set forth in the Bylaws of the Association. The Board and members of the Architectural Review Committee shall receive no compensation but may be reimbursed for reasonable out-of-pocket expenses actually incurred in performance of their duties hereunder.
- 5.3 **Enforcement.** The provisions of this Declaration shall run with 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 this Declaration or any rules and regulations adopted by the Association or the Architectural Review Committee pursuant to any authority conferred by either of them by this Declaration and to collect reimbursement of actual attorney's fees and other reasonable costs actually incurred by it relating to violations of this Declaration. Such fines, fees and costs may be added to the Owner's assessment account and collected at the discretion of the Board.
- 5.4 **Remedies.** In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of the provisions of this Declaration, 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. Upon the violation of any of the provisions of this Declaration by any Owner, in addition to all other rights and

remedies available to it at law, in equity or otherwise, the Association, acting through the Board, shall have the right to suspend the right of such Owner to vote in any regular or special meeting of the members of the Association during the period of the violation.

- 5.5 **Liability of the Board.** To the maximum extent allowed by law, the Association shall indemnify, defend and hold harmless the Board and Architectural Review Committee members from liability relating to actions taken in good faith and in their official capacity for the Association, it being expressly understood and acknowledged that the Owners intend that no director or Architectural Review Committee member shall have personal liability for any action taken in good faith in their capacity as a member of the Board or Architectural Review Committee, except for acts of gross negligence or willful misconduct. The Association shall, if reasonably available, purchase director's and officer's liability insurance for the benefit of the Board and Architectural Review Committee members.
- 5.6 **Membership and Voting.** Each Owner, whether one or more persons or entities, of a Lot or Building Site shall, upon and by virtue of becoming such Owner, automatically become and shall remain a member of the Association until his or her ownership ceases for any reason, at which time such 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. Each Lot or Building Site shall have one (1) vote on all matters of the Association coming to a vote of the general membership. Multiple Lots (or portions thereof) used for one Building Site shall be consolidated and possess only one (1) vote. A unanimous decision of the Owner(s) of an interest in a Lot or Building Site shall be required in order to cast the vote for that Lot or Building Site, unless the Owners are legally married, in which event either Owner may cast the vote, provided no written objection has been received by the Board from the other Owner. Failure to pay assessments when due on a Lot or Building Site (automatically) forfeits an Owner's right to vote until fully paid. Votes may be cast by written proxy, the original of which shall be delivered to the Board prior to the meeting at which the vote will be cast. Proxies may not be effective for any period exceeding 180 days and must be signed, dated, and registered with the Board. Owners may be represented by an attorney-in-fact pursuant to a Durable Power of Attorney satisfying the requirements of Texas law and provided that a copy of the Durable Power of Attorney is provided to the Board, together with a written statement by the attorney-in-fact that the Durable Power of Attorney is valid and continuing without revocation and providing a current address, phone number and contact person in order to contact the Owner. In the event of a change of ownership, the new Owner(s) must provide the Board the following documents: (i) copy of the recorded deed, and (ii) mailing information and telephone number(s) for the Owner(s) as a condition precedent to the new Owner(s) having a right to vote.
- 5.7 **Powers of Association.** The Association possesses all powers of a nonprofit corporation chartered in the State of Texas and may enter into such contracts and agreements and retain professionals as the Board deems necessary, consistent with this Declaration and in the best interest of the Subdivision. The Association is a property owners' association as

defined within the Texas Property Code, and does possess all powers and duties set forth therein.

- 5.8 **Bylaws.** The Board may adopt and amend such Bylaws as recommended by the Board to implement the powers of the Association, and of the Board, to provide procedures for implementation of the provisions of this Declaration to provide voting procedures for meetings of the Association, to establish officers for the Association including president, vice president, secretary and treasurer and, in general, to address such matters as are typically addressed in the Bylaws of a property owners' association.
- 5.9 **Common Area.** All Owners shall have an equal right to access and use of the Common Areas, if any, so long as the Owners have paid all assessments and are not in violation of any provision within this Declaration.

ARTICLE 6 – Assessments

- 6.1 **Annual Assessment.** The Owner of each Lot or Building Site is obligated to pay an annual assessment to the Association, in order that adequate funds are available for expenses incurred by the Association and to fund such reserves as are deemed necessary by the Board, which annual assessment shall run with the land. Each Owner of a Lot, by accepting a deed to any such Lot, whether or not it shall be so expressed in such 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 charges and assessments against his Lot and/or assessed against him by virtue of his ownership thereof, as the same shall become due and payable, without demand. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Subdivision and for the improvement and maintenance of Common Area, if any; payment of all reasonable and necessary expenses in connection with the collection and administration of the annual assessment and/or special assessment; enforcement of the provisions of this Declaration; and doing any other thing necessary or desirable in the opinion of the Association to keep the Subdivision neat and in good order, which is considered of general benefit to the Subdivision. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.
- 6.2 **Amount of Annual Assessment.** The initial annual assessment shall be \$25 per Lot or Building Site. Notwithstanding anything herein to the contrary, where Lots or portions of Lots have been combined into one Building Site, a single assessment is due. The annual assessment may be changed by the Board from year to year; provided that the amount of the annual assessment shall not be increased by more than 15% per year, without the affirmative vote of a majority of the Owners in attendance, in person or by proxy, at a meeting of the Association called for the purpose of authorizing the increase in the annual assessment at which a quorum is present. The amount of annual assessment shall be determined by the Board not later than March 1st, shall be due and payable by the Owners on May 1st, and shall be considered delinquent if not paid by May 31st of each year. Assessments shall be uniform for all Building Sites. Written notice of the annual

assessment shall be sent to every Owner subject thereto. The date(s) for such notification shall be established by the Board.

- 6.3 **Special Assessments.** In addition to the annual assessment authorized above, if the Board at any time, or from time to time, determines that the annual assessments for any period are insufficient to provide for the continued operation of the Subdivision or any other purposes contemplated by this Declaration, then the Board shall have the authority to levy such special assessments as it shall deem necessary to provide for such continued maintenance and operation. A special assessment must be approved by a majority of the Owners attending a meeting of the Association called for the purpose of approving such special assessment at which a quorum is present. The amount, purpose, and due date of the special assessment shall be set forth in the notice of the Association meeting that will be held for the purpose of voting on the special assessment. Any such special assessment shall be payable in the manner determined by the Board and the payment thereof may be enforced in the manner herein specified for the payment of the annual assessments.

Any special assessment that is more than four (4) times the annual assessment in any one year must be approved by the Owners of at least seventy-five percent (75%) of the total votes of the members who are voting by written ballot, or petition in lieu of the foregoing approval, at a meeting of the Association duly called for this purpose at which a quorum is present. The written ballot, or petition, shall be hand delivered or mailed to all Owners at their last known address (per Association records) with an explanation of the amount, purpose and due date(s) of such special assessment.

- 6.4 **Due Date.** Annual assessments shall be due and payable on or before May 1 of each successive calendar year. Special assessments shall be due as determined by the Board or as set forth in the resolution of the Owners approving the special assessment.
- 6.5 **Personal Liability for Assessments.** All annual and special assessments are the personal obligation of each Owner (jointly and severally, if more than one) at the time the assessment is due. Any annual assessment which is not paid and received by the Association by the thirty-first (31st) day of each May thereafter shall be deemed to be delinquent, and, without notice, shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate of interest allowed by law, which ever is less, from the date originally due until paid. The Association intends to comply with applicable usury laws. In the event the interest, contracted for, charged or received exceeds the maximum legal rate, the excess interest shall be refunded, spread and/or applied to principal to the maximum extent allowed by applicable law in order to avoid usury. Further, the Board shall have the authority to impose a reasonable monthly late charge on any delinquent annual or special assessment. The monthly late charge, if imposed, shall be in addition to interest. Each Owner is also personally liable for all costs, including attorneys' fees, in collecting past due assessments.
- 6.6 **Notice of Sums Owning.** Upon the written request of an Owner, the Association shall provide to such Owner a written statement setting out the then current total of all maintenance charges, special assessments, late charges, interest, costs, attorneys' fees and other sums, if any, owing by such Owner with respect to his or her Lot or

Building Site. In addition to such Owner, the written statement from the Association so advising the Owner may also be addressed to and be for the benefit of a prospective lender or purchaser of the Lot, as 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.

- 6.7 **Foreclosure of Mortgage.** In the event of a foreclosure of a mortgage on a Lot or Building Site, the purchaser at the foreclosure sale shall not be responsible for annual assessments, special assessments, or other sums, if any, which accrued and were payable to the Association by the prior Owner of the Lot or Building Site, but said purchaser and its successors shall be responsible for annual assessments, special assessments, and other sums, if any, becoming due and owing to the Association with respect to said Lot or Building Site after the date of foreclosure.

ARTICLE 7 – Term, Renewal, and Modification

- 7.1 **Term.** The provisions of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the Effective Date, and shall automatically renew for successive ten (10) year periods, unless amended in accordance with the terms and provisions of this Declaration.
- 7.2 **Termination.** The provisions of this Declaration may be terminated only by an instrument in writing signed and acknowledged by the Owners of at least ninety percent (90%) of the total number of votes of the membership of the Association, in accordance with Section 5.6 above, said Owners voting in favor of the termination of the Restrictions. The termination shall be effective when the appropriate document is filed in the Real Property Records.
- 7.3 **Amendment.** The provisions of this Declaration may be amended only by an instrument in writing signed and acknowledged by the Secretary of the Association certifying that the Owners of at least a majority of the total number of votes of the membership of the Association, in accordance with Section 5.6 above, have voted in favor of such amendment, setting forth the amendments, and duly recorded in the Real Property Records.

ARTICLE 8 – Transition Provisions

- 8.1 **Grandfathering / Non-conformity.** Any Lot, Building Site, Structure, Improvement or use of a Lot or Building Site in violation of these Restrictions as of the Effective Date of the Restrictions shall be considered “nonconforming.” Nonconforming Lots, Building Sites, Structures, Improvements or uses of a Lot or Building Site shall not however include any Lot, Building Site, Structure, Improvement or use of a Lot or Building Site which violated the Restrictions as they existed prior to the Effective Date, or any applicable laws, ordinances, or regulations on the Effective Date. Nonconformities are grandfathered and may continue in existence following the adoption of these Restrictions.

Nonconformities may be maintained, repaired, or cosmetically remodeled, but may not be structurally enhanced, expanded, or reconstructed after a casualty loss where more than

fifty percent (50%) of the nonconformity is destroyed. A nonconformity loses its allowable (grandfathered) status at such time as the Lot, Building Site, Structure, Improvement or use of a Lot or Building Site comes into compliance with the provisions of this Declaration and thereafter, the nonconformity may not resume.

General Provisions

- 8.2 **Attorneys' Fees.** The Association and/or Owners shall recover all reasonable attorneys' fees and court costs incurred in enforcing any provisions of this Declaration.
- 8.3 **Binding Effect.** The Restrictions are binding upon and are to the benefit of the Owners and their heirs, executors, representatives, successors, and assigns, where permitted.
- 8.4 **Choice of Law.** The Restrictions are subject to and governed by the laws of the State of Texas.
- 8.5 **Construction.** The Restrictions shall be liberally construed to achieve the intent of the Owners. Any rule of construction to strictly construe restrictive covenants or to construe restrictive covenants in favor of the free use of land shall not apply hereto.
- 8.6 **Mortgagees.** No violation of the Restrictions shall invalidate nor adversely affect the lien of any mortgagee made in good faith and for value. Any lien imposed for nonpayment of charges or assessments pursuant to the authority granted in this Declaration, if any, shall be automatically subordinate to any lien of record when such lien for nonpayment of charges or assessments arose.
- 8.7 **Multiple Signature Pages.** This Declaration contains multiple signature pages and will be executed in multiple originals without all signatures on any one original. Separate signature pages may be attached to the copy of this Declaration recorded in order to eliminate unnecessary costs of filing multiple copies of this Declaration. All signature pages need not be recorded and a statement that the requisite approvals have been received signed by an officer of the Association is prima facie evidence of that fact.
- 8.8 **Non-waiver.** No waiver, express or implied, of any violation of any provision of this Declaration shall preclude the subsequent enforcement of such provision as to that or similar violations. No member of the Board, Architectural Review Committee or Owner has the authority to waive, modify, or terminate any provision of this Declaration.
- 8.9 **Notices.** Any notice to an Owner may be provided by (i) certified mail, return receipt requested, addressed to the Owner(s) at the Lot and shall be effective when deposited in the United States mail, postage prepaid, or (ii) hand-delivered (by courier service or otherwise) to the Lot, and shall be effective upon delivery if an occupied House exists on the Lot or Building Site (without regard to whether any person is in the home when delivery is made).
- 8.10 **Severability.** The invalidity, abandonment or waiver of any one of the provisions of this Declaration shall not affect or impair the other provisions of this Declaration which shall remain in full force and effect. Any invalid, abandoned, or waived provision of this

Declaration shall be judicially reformed to be valid, enforceable, and to effectuate the intentions of the Owners.

- 8.11 **Time.** Time is of the essence in the compliance with obligations in this Declaration. A deadline falling on a Saturday, Sunday or holiday recognized by the State of Texas is extended to the next following weekday that is not a holiday.

Reference Only

LINDALE PARK CIVIC CLUB, A TEXAS NONPROFIT CORPORATION, CERTIFIES THAT THIS DECLARATION HAS BEEN APPROVED IN ACCORDANCE WITH THE RESTRICTIONS FOR THE PURPOSES OF MODIFYING THE RESTRICTIONS AND EXECUTES THIS DECLARATION TO FACILITATE ITS RECORDING IN THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS.

Executed the _____ day of _____, 2010.

By: _____
Wayne H. Fowkes, President
Lindale Park Civic Club

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on _____, 2010, by Wayne H. Fowkes, President of Lindale Park Civic Club, a Texas nonprofit corporation, on behalf of said corporation and in the capacity therein stated.

Notary Public, State of Texas

ATTEST: _____
_____, Secretary
Lindale Park Civic Club

**AFTER RECORDING
PLEASE RETURN TO:**

Wilson, Cribbs & Goren, P.C.
Attn: Mr. Anthony L. Marré
2500 Fannin St.
Houston, Texas 77002

SIGNATURE PAGE
**DECLARATION AND AGREEMENT
TO MODIFY, AMEND AND RESTATE
RESTRICTIONS, COVENANTS AND CONDITIONS**

The undersigned certify that they hold record title to the real property described below, located in LINDALE PARK, Section 5 according to the map or plat thereof recorded in Volume 998, Page 724 of the Deed Records of Harris County, Texas (the “**Subdivision**”).

LEGAL DESCRIPTION AND STREET ADDRESS OF THE PROPERTY:

Lot _____, Block _____, Lindale Park, Section 5.

[Street address] _____, Houston, Texas, 77009.

The undersigned has received, read, and understands the attached Declaration and Agreement to Modify, Amend and Restate Restrictions, Covenants and Conditions (the “**Declaration**”) and executes this document as evidenced by their signature(s) below of our **acceptance, approval and adoption** of the restrictive covenants, conditions and agreements set forth in the Declaration.

The undersigned acknowledges that the Declaration provides for the creation of restrictive covenants applicable to property within the Subdivision. The restrictive covenants specifically provide, among other things, for residential character limitations, use restrictions, restrictions on improvements, setbacks, driveway limitations, construction requirements, provisions for management and operation of the Subdivision, mandatory regular and special maintenance assessments, a forty year term for the restrictions, provisions for automatic renewal and modification of the restrictions, transition procedures (including grandfathering of existing conditions which shall become non-conforming under said restrictions) and other general provisions.

The Association is authorized to record a copy of the Declaration with an acknowledgement by an officer of the Association to the effect that the undersigned has approved said Declaration, whether or not this signature page is attached as an exhibit thereto.

This Signature Page must be received by Tuesday, April 6, 2010 at the address below to ensure that the Declaration can be recorded prior to 5:00 PM Friday April 9, 2010.

Signature:

Printed Name: _____

Signature:

Printed Name: _____

Please return by April 6, 2010 to:
Lindale Park Civic Club
218 Joyce Street
Houston, Texas 77009