

~~Restrictions Applying to  
Garden Oaks~~

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
GARDEN OAKS, Section Three

STATE OF TEXAS     §)  
                          §)  
COUNTY OF HARRIS §)

This Amended and Restated Declaration of Covenants, Conditions and  
~~WHEREAS, GARDEN OAKS CO., a Texas Corporation, is the owner of the following~~  
~~described tract of land out of the S.W. Allen Survey in Harris County, Texas,~~  
~~particularly described by metes and bounds as follows;~~

~~Beginning at the Northwest corner of Garden Oaks, Section Two, as recorded in~~  
~~the map records of Harris County, Texas, same being the Southwest corner of the~~  
~~Whitman Tract;~~

~~Thence North 2 deg. 5 min. west along the east line of said Whitman Tract, 828.35~~  
~~ft. to a concrete monument in the South line of the J.J. Sweeney Estate tract;~~

~~Thence South 89 deg. 48 min. 4 sec. west along the South line of said J.J.~~  
~~Sweeney Estate Tract 1455.84 ft.;~~

~~Thence South 0 deg. 11 min. 56 sec. east 160.79 feet;~~

~~Thence on a curve to the right from the last described course as a tangent with~~  
~~a radius of 5030 ft. and a central angle of 11 deg. 23 min. 26 sec. a distance~~  
~~of 999.98 ft.~~

~~Thence South 11 deg. 11 min. 30 sec. west tangent to the last described curve~~  
~~389.68 feet;~~

~~Thence on a curve to the left from the last described course as a tangent with a~~  
~~radius of 4160 feet and a central angle of 11 deg. 43 min. 1 sec. a distance of~~  
~~850.72 feet;~~

~~Thence South 0 deg. 31 min. 31 sec. East tangent to the last described curve~~  
~~79.36 feet to the North line of the W.P. Morton Survey;~~

~~Thence North 89 deg. 28 min. 29 sec. East with the North line of said W.P.~~  
~~Morton Survey 1817.50 feet to the West line of Garden Oaks~~Restrictions for  
Garden Oaks, Section Three ("Amended and Restated Declaration") is approved and  
facilitated pursuant to the authority of the bankruptcy court and further  
approved by the affirmative vote of Owners in Garden Oaks, Section Three to  
become effective upon recording in the Official Real Property Records of Harris  
County, Texas.

W I T N E S S E T H

WHEREAS, Garden Oaks, Section Three is a subdivision~~Two;~~

~~Thence North 2 deg. 54 min. 50 sec. west along the west line of said Section two 1624.27 feet to the point of beginning;~~

~~And containing 91.668 acres of land more or less, and being situated in the S.W. Allen Survey, Harris County, Texas according to the 7~~

~~and said company has subdivided and platted said property as shown by the map or plat recorded under of Garden Oaks, Section three, filed in Volume 15, Page 71, of the Map Records of Harris County, Texas and is encumbered by the Restrictions Applying to Garden Oaks Section Three recorded under Film Code No. 088-52-1409 in the Official Public Records of Harris County, Texas ("Restrictions"); and~~

WHEREAS, the Restrictions were amended pursuant to Chapter 204 of the Texas Property Code by that Petition to Amend Restrictions to Create a Property Owners Association and Certificate of Compliance with Texas Property Code, Chapter 204 Garden Oaks, Section Three recorded under File No. V842579 on June 03, 2002 in the Official Public Records of Harris County, Texas ("Amendment"); and

WHEREAS, the Amendment created a mandatory Transfer Assessment payable to the Garden Oaks Maintenance Organization, Inc., a Texas nonprofit corporation (the "Organization"), being a mandatory association; and

WHEREAS, the Organization filed for Chapter 11 bankruptcy protection under Case No. 18-60018 in order to reorganize the Organization; and

WHEREAS, the bankruptcy court approved the Organization's plan by order dated \_\_\_\_\_; and

WHEREAS, the bankruptcy court has the authority to approve and facilitate the adoption of this Amended and Restated Declaration upon obtaining the affirmative vote of the Owners in Garden Oaks, Section Three in accordance with bankruptcy rules, which will become effective upon recording in the Official Real Property Records of Harris County, Texas; and

WHEREAS, the Owners in Garden Oaks, Section Three desire to supersede, amend, restate, and wholly replace the Restrictions and Amendment for Garden Oaks, Section Three in their entirety and replace them with this Amended and Restated Declaration; and

WHEREAS, the Owners of Garden Oaks, Section Three desire to protect and maintain the park-like character by careful and thoughtful planning, including protective restrictions, which include architectural review of plans, a maintenance fund, and many other beneficial restrictions, based on its original environment, natural beauty, permanent improvements, comfort, drainage, and parks and playgrounds; and

NOW THEREFORE, the Owners in Garden Oaks, Section Three, hereby amend, alter, and change the Restrictions and Amendment for Garden Oaks, Section Three by replacing them in their entirety with this Amended and Restated Declaration which shall include the following reservations, restrictions and covenants, and Garden Oaks, Section Three shall be improved, sold, used and enjoyed in accordance with, including the conditions, covenants, easements, reservations, and restrictions hereinafter set forth, all of which are hereby adopted for, and placed upon Garden Oaks, Section Three and shall run with

Garden Oaks, Section Three and be binding on all parties, now and at any time hereinafter, having or claiming any right, title or interest in Garden Oaks, Section Three or any part thereof, their heirs, executors, administrators, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired, and shall inure to the benefit of each owner of any part of Garden Oaks, Section Three to wit:

#### ARTICLE I. DEFINITIONS

(a) "Architectural Review Committee" or "ARC" shall mean the architectural review committee established by the Organization to review plans submitted to the Organization for architectural review.

(b) "Attic" means the space between the ceiling beams of the top story and the Roof rafters. An Attic whether finished or unfinished is not a story.

(c) "Board" shall mean the Board of Directors of the Organization.

~~"Now, Therefore, Know All Men By These Presents;~~

~~That Garden Oaks Co. does hereby dedicate the streets, avenues, drives and parkways for use by the public as such, reserving the right to itself, its successors and assigns, to at any time use the same for the installation, maintenance, repairs, and renewal of any and all public utilities, and agrees that the land shown to be subdivided according to said plat is held, and shall hereafter be conveyed, subject to covenants, conditions, stipulations, easements, and restrictions as hereinafter set forth.~~

#### Definitions:

~~The word "Street" as used herein shall include any street, drive, boulevard, road, lane, avenue, or place as shown on the recorded plat as a thoroughfare.~~

~~A "Corner Lot" is one that abuts on more than one street. Any lot, except a corner, is deemed to front on the street upon which it abuts. A corner lot shall be deemed to front on the street on which it has its smaller dimension, or if dimensions on more than one street are approximately the same, Organization-  
the Company reserves the right to designate which street the lot shall face.~~

(d) ~~Restrictions~~ "Dwelling" means a main residential structure constructed on a Lot intended for single-family residential purposes.

(e) "Garage" means a building or part of a building used to house motor vehicles.

(f) "Irregular Shaped Lot" means any Lot with a frontage width which differs by greater than thirty-five percent (35%) from the rear width of the Lot. The Board shall have the discretion to determine whether any other Lot can be considered an Irregular Shaped Lot.

(g) "Lot" means a parcel of property within the Plat of the subdivision recorded in the real property records of Harris County, Texas, and encumbered by this Amended and Restated Declaration, and restricted to single-family residential purposes. For purposes of this Amended and Restated Declaration, a

Lot may consist of a platted Lot, less than a platted Lot, more than a platted Lot, or portions of two or more platted Lots.

(h) "Organization" shall mean and refer to the Garden Oaks Maintenance Organization, Inc.

(i) "Outbuilding" shall mean and refer to structures such as (by way of example and not limitation) storage buildings, sheds, greenhouses, gazebos and other Roofed Structures.

(j) "Owner" means an owner of any portion of the Subdivision. Persons or entities holding title only as a lienholder shall not be an Owner for purposes of this Amended and Restated Declaration.

(k) "Roof" means a non-porous cover for a structure such as (by way of example and not limitation) Lexan barriers or shingles but not a shade trellis, ivy or other open or porous material that may also be used as a cover.

(l) "Short Lot" means a Lot whose depth is less than 125 feet.

(m) "Street" as used herein shall include any street, drive, boulevard, road, lane, avenue, or place as shown on the recorded plat as a thoroughfare.

(n) "Structure" means any building (including a Dwelling) or improvement, placed, maintained or constructed on a Lot, whether or not affixed to the land, and any addition to, or modification of any existing building or improvement.

(o) "Subdivision" means Garden Oaks, Section Three.

## **ARTICLE II. RESTRICTIONS**

(a) Except as herein noted, no Lots shall be used for anything other than single-family residential purposes. As used herein, the term "single-family residential purposes" refers to the architectural design of a Dwelling and is deemed to specifically prohibit, without limitation, the use of a Lot for a duplex, apartment (excluding Garage apartments with ARC plan approval), multi-family Dwelling, or for any multi-family use, or for any business, professional or other commercial activity of any type, unless such business, professional or commercial activity is unobtrusive and merely incidental to the primary use of the Lot and the Dwelling for residential purposes.

(b) No trade or business may be conducted in or from any Dwelling, Structure or Lot except such use where (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling, Structure or Lot; (ii) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Subdivision; (iii) the business activity does not involve visitation to the Dwelling, Structure or Lot by clients, customers, workers, employees, suppliers or other business invitees or door-to-door solicitation of residents of the Subdivision; and (iv) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined in the sound discretion of the Board. The uses set out in this section shall be referred to singularly or collectively as an "Incidental Business Use." At no time may an Incidental Business Use cause

increased parking or traffic within the Subdivision such that egress or ingress is impeded. Any increased parking or traffic within the Subdivision as a result of an Incidental Business Use that impedes egress or ingress shall be deemed to be a deed restriction violation. Examples of expressly prohibited uses include, but are not limited to, a bed and breakfast, boarding house, vacation rental daily/weekly rentals of the entire Dwelling, Structure or Lot or portions of the Dwelling, Structure or Lot a day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor, or barber shop or other similar facility. No lease or rental of a Dwelling, Structure, or Lot shall be for less than thirty (30) consecutive and guaranteed days.

(c) Except as herein noted,

~~For the purpose of creating and carrying out a uniform plan for the improvement and sale of property in said Addition as a restricted subdivision, the following restrictions upon the use of said property are hereby established and adopted subject to the provisions hereof, and shall be made a part of each and every contract and deed executed by or on behalf of Garden Oaks Co., by appropriate reference to this dedication and same shall be considered a part of each contract and deed as though fully incorporated therein. And these restrictions as hereinafter set forth shall be and are hereby imposed upon each lot or parcel of land in said Addition as shown by said plat and as referred to herein, and same shall constitute covenants running with the land and shall be binding upon, and shall inure to the benefit of Garden Oaks Co., and its successors, and all subsequent purchasers of said property, and each such purchaser by virtue of accepting a contract or deed covering said property shall be subject to and bound by such restrictions, covenants, and conditions and for the terms of this instrument as hereinafter set forth.~~

#### RACIAL RESTRICTIONS

~~None of the lots shown on said plat shall be conveyed, leased, given to, or placed in the care of, and no building erected thereon shall be used, owned or occupied by any person other than of the Caucasian Race. This prohibition however, is not intended to include the occupancy or use by persons other than of the Caucasian Race while employed as servants on the premises. The word "person" as used herein, shall include a corporation or association, any of the stockholders of which are not of the Caucasian Race.~~

#### Use of Land

~~(a) Except as herein noted, no lots shall be used for anything other than residential purposes.~~

~~(b) No signs, billboards, posters, or advertising devices of any character shall be erected in this Subdivision on this property without the written consent of the Organization Company, and such consent shall be revocable at any time. The Board has the authority to adopt a policy or guidelines regarding signs The right is reserved by the Company to construct and maintain such signs, billboards, or advertising devices, as is customary in connection with the general sale of property in this subdivision.~~

#### ARTICLE III. ARCHITECTURAL RESTRICTIONS

~~(c) No Dwelling, Outbuilding swine shall be kept on said premises.~~

~~(d) No spirituous, vinous, or malt or medicated bitters capable of producing intoxication shall ever be sold, or offered for sale, on said premises, or any part thereof, nor shall said premises or any part thereof be used for illegal or immoral purposes.~~

#### ~~Architectural Restrictions~~

~~No~~ improvements of any character shall be erected or modified, or the erection thereof begun, or changes made in the exterior ~~design~~ thereof after ~~original~~ construction, on any lot, Dwelling, or Outbuilding ~~homesite~~ in Garden Oaks, Section Three, until plans and specifications have been submitted to and approved in writing by the Architectural Review Committee of the Organization. ~~Garden Oaks Co.~~ Such submission approval is to include exterior design, ~~survey~~ the type of material to be used and site plan ~~the colors to be applied on the exterior of the structure~~, and such approval by the Organization Company is to be based on the following general requirements, stipulations and restrictions, together with any other requirements, stipulations, and restrictions that the Organization Company may deem advisable. ~~to include~~ in the event the ARC fails to approve such plans and specifications within thirty (30) days after receipt thereof, they shall be deemed to be disapproved. ~~deed conveying said property;~~

(a) No Dwelling ~~residence~~ shall be erected on any ~~a~~ lot or homesite of less frontage than seventy-five (75) feet and no Lot shall be subdivided to be less than nine thousand (9,000) square feet. No Lot shall be subdivided to create a Lot with frontage of less than seventy-five (75) feet. No Lot shall be subdivided in a manner which will result in an Irregular Shaped Lot or Short Lot.

(b) All lots in the Subdivision ~~tract~~ shall be known and described as single-family residential lots, and all Lots ~~no structure~~ shall have ~~be erected on any residential building plot other than~~ one (1) detached single -family dwelling not to exceed two stories plus an Attic and forty-two (42) feet above natural grade plane in height, as measured from the center of the fronting street to the highest ridgeline. The height limitation provided herein shall include any portion of the natural grade plane that is built up or the area, whether consisting of livable or non-livable space, underneath the Dwelling if it is raised above the natural grade plane. A detached Garage may not be converted to livable space without ARC plan approval. All permissible Dwellings and Outbuildings, including the Garage, on a Lot, shall be erected and maintained in compliance with all height and setback limitations provided herein. ~~and a one or two car garage.~~

(c) No Dwelling ~~structure~~ shall be moved onto any lot without ARC plan approval.

(d) No trailer, ~~basement, tent, shack, garage, barn~~ or other temporary outbuilding erected or moved on to ~~in~~ the Lot ~~tract~~ shall at any time be used as habitable space ~~a residence~~, nor shall any residence of a temporary character be permitted.

No trailer, trailer house, or movable structure of any kind or type or temporary building shall be erected or maintained on any lot except during actual construction of the Dwelling ~~home~~ being erected thereon, and then such trailer house or temporary building must be on the lot on which construction is in progress and not on adjoining lots, streets, or easements, and at completion of construction, the temporary building must be removed immediately.

~~(e)~~ (e) No garage apartment may be used for rental purposes for a period of less than thirty (30) guaranteed and consecutive days. ~~All living quarters on property other than in main building to be for bona fide servants only.~~

(f) All Dwellings ~~improvements~~ shall be constructed on the lot so as to front the street upon which such lot faces.

(g) Where corner lots are of equal or nearly equal dimensions on two streets, or they are irregular shaped lots, the Organization ~~Company~~ reserves the right to designate the direction in which such improvements shall face, and such decision shall be made with the thought in mind of the best general appearance to that immediate section. If a Corner Lot is subdivided resulting in a Lot with a rear setback which is adjacent to the side setback of the adjacent Lot, the resulting rear setback shall maintain the dimensions of the original side setback.

~~(h) Except Dwellings on corner lots shall have a presentable frontage on all streets on which the particular corner lot fronts.~~

~~(i) No residence shall be constructed on any lot or building site in the Subdivision of less actual value than twenty seven hundred fifty (\$2,750.00) dollars. These restrictions as herein noted, to the value of improvements are based upon labor and material costs as of January 1, 1939, and all future value of improvements is to be given consideration based upon comparative costs of labor and material at the time of construction, using the basic value hereinabove given.~~

~~(j)~~ The building lines of any Dwelling ~~residence~~ to be erected on any lot shall be as follows: ~~+~~

1. The front building line shall not be nearer than fifty (50) feet to the front property line, including the gallery, terrace or porch, but exclusive of steps used to access the ground floor.

2. The rear building line shall not be nearer than the rear easement.

3. No fence, wall, nor any pergola or other detached Structure shall be erected or maintained on any part of any Lot forward of the front building line of said Lot except that the Organization may grant a variance for Lots along the boundary of the Subdivision as to Lot lines shared with non-Subdivision property.

4. No detached Garage, barn, or other Outbuilding of any kind shall be erected on any Lot nearer than one hundred (100) feet to the front property line, unless it is in the rear of the Dwelling and in compliance with the setbacks described in subsection (5).

5. The side building lines shall not be nearer than fifteen (15) feet to either side property line in the area from the front building line (50-foot line) to the Outbuilding build line (100-foot line); or nearer than ten (10) feet to either side property line in the area from the Outbuilding build line (100-foot line) to the rear building line.

6. The right is reserved by the Organization to change these restrictions in the case of unusual or Irregular Shaped Lots, Short Lots, or Lots unusual in

size, where same is considered desirable for the advantage and best appearance of the immediate community.

On all lots in block thirty-two (32), the Dwelling~~residence~~ to be erected shall not be nearer than fifty (50) feet to the front property line of each lot nor nearer than fifteen (15) feet to either side property line of each lot;

On all lots in block thirty-three (33), the Dwelling~~residence~~ to be erected shall be as follows:

On Lots one (1), two (2), three (3), and four (4), the Dwelling~~residence~~ shall not be nearer than fifty (50) feet to the front property line, nor nearer than fifteen (15) feet to either side property line;

On lot five (5), the Dwelling~~residence~~ to be erected shall not be nearer than seventy-five (75) feet to the front property line, nor nearer than fifty (50) feet to the West side property, line nor nearer than fifteen (15) feet to the East side property line;

On lot six (6), the Dwelling~~residence~~ to be erected shall not be nearer than seventy-five (75) feet to the front property line, nor nearer than fifteen (15) feet to either side property line;

On all lots in blocks thirty-four (34) thirty-five (35), thirty-six (36) thirty-seven (37), thirty-eight (38) and thirty-nine (39) except lots twenty-one (21) twenty-two (22) and twenty-three (23) in block thirty-six (36) and lots sixteen (16) to twenty-five (25), in block thirty-nine (39) the Dwelling~~residence~~ to be erected shall not be nearer than fifty (50) feet to the front property line of each lot nor nearer than fifteen (15) feet to either side property line;

On lots twenty-one (21) twenty-two (22), and twenty-three (23) in block thirty-six (36) the Dwelling~~residence~~ to be erected shall not be nearer than fifteen (15) feet to the front property line of each lot nor nearer than fifteen (15) feet to either side property line, of each lot;

On lots sixteen (16) to twenty-five (25),<sup>+</sup> inclusive, in block thirty-nine (39) the Dwelling~~residence~~ to be erected shall not be nearer than seventy-five (75) feet to the front property line nor nearer than fifteen (15) feet to either side property line;

On all lots in block forty (40) the Dwelling~~residence~~ to be erected shall not be nearer than seventy-five (75) feet to the front property line nor nearer than fifteen (15) feet to either side property line.

(i) All Dwellings~~residences~~ to be erected facing Azalea Street must be of two-story type and attractive in design.

~~(j) (k) No fence, wall, hedge, nor any pergola or other detached structure for ornamental purposes shall be erected, grown or maintained on any part of any lot forward of the front building line of said lot without the consent of the Company.~~

~~(1) No radio aerial wires shall be maintained on any portion of any lot forward of the front building line of said lot.~~

~~(m) No garage, barn, servant's house or other outbuilding of any kind shall be erected on any lot nearer than one hundred (100) feet to the front property line, nor nearer than ten (10) feet to either side property line, nor nearer than the easement of the rear or side property line of said lot.~~

~~This does not apply to garage and servant's quarters when attached to main residence but any servant's quarters attached to main residence must be in rear of same. No outside toilets will be permitted.~~

~~No outbuildings shall exceed in height, or number of stories (not including Attics), beyond the highest ridgeline, the dwelling to which they are appurtenant, without the written consent of the Company. Every outbuilding except a greenhouse shall correspond in style and architecture to the dwelling to which it is appurtenant.~~

~~The right is reserved by the Company to change these restrictions in the case of unusual or irregular shaped lots where same is required for the best appearance of the immediate community.~~

~~(k)(n) No building of frame construction on the exterior of any kind or character shall be erected on any lot unless same at the time of construction shall receive at least two coats of paint, and no such building shall have a wood shingle roof unless same is painted or stained an attractive color.~~

~~(o) No building material of any kind or character shall be placed or stored upon the Lot property until the owner is ready to commence construction improvements, and then such material shall be placed within the property lines of the lot or parcel of land upon which the improvements are to be erected, and shall not be placed in the street or between the pavement and property line.~~

~~(l)(p) No stumps, trees, underbrush or any refuse of any kind nor scrap material from the improvements being erected on any lot shall be placed on any adjoining lots, streets, or easements. All such material, if not disposed of immediately, must remain on the Lot property on which construction work is in progress, and at the completion of such improvements, such materials must be immediately removed from the property.~~

(m) Any property on which a condition exists on the date this Amended and Restated Declaration is recorded in the Official Public Records of Harris County, Texas that is a violation of this Amended and Restated Declaration shall be grandfathered until and unless the condition on the property is replaced. Repairing the condition shall not require compliance so long as it simply restores the violation to the condition as it existed on the effective date of this Amended and Restated Declaration. The repair shall not enhance or extend any portion of the violation. The Board shall use sound discretion to determine whether any such repair is to such a degree which requires compliance with this Amended and Restated Declaration.

#### ARTICLE IV. VARIANCES

The Board, or its duly authorized representative, may authorize variances from compliance with any of the architectural provisions of this Amended and Restated Declaration, unless specifically prohibited, including restrictions upon height, size, placement of Structures, or similar restrictions, when circumstances such as topography, natural obstruction, hardship, aesthetic, or

environmental considerations may require. The Board, or its duly authorized representative, shall conduct a hearing with the Lot Owner seeking such variance and any Lot Owners adjacent or contiguous to such Lot, in order to consider any objections, concerns or comments regarding such variance, except that the decision to grant a variance is to be determined solely by the Board. Such variances must be evidenced in writing, must be approved by at least eighty percent (80%) of the Board, and shall become effective upon execution. The variance must be signed by a member of the Board and recorded in the Official Public Records of Harris County, Texas. If such variances are granted, no violation of the covenants, conditions, or restrictions contained in this Amended and Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Amended and Restated Declaration for any purpose except as to the particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all applicable governmental laws and regulations.

No granting of a variance shall be relied on by an Owner, or any other person or entity (whether privy or party to the subject variance or not), as a precedent in requesting or assuming variance as to any other matter of potential or actual enforcement of any provision of this Amended and Restated Declaration. Action of the Board in granting or denying a variance is a decision based expressly on one unique set of circumstances and need not be duplicated for any other request by any party or the same party for any reason whatsoever.

#### **ARTICLE V. TERM AND MODIFICATION OF RESTRICTIONS**

(a) The provisions of this Amended and Restated Declaration will remain in full force and effect until January 1, 2038, and are extended automatically for successive ten (10) year periods; provided, however that the provisions of this Amended and Restated Declaration may be terminated on January 1, 2038, or on the commencement of any successive ten (10) year period by filing for record in the Official Public Records of Real Property of Harris County, Texas, an instrument in writing signed by Owners representing not less than eighty percent (80%) of the Lots in the Subdivision.

(b) Approval by the Owners of a majority (fifty percent (50%) plus one (1)) of the Lots shall be required to amend or modify this Amended and Restated Declaration. Upon approval of the Owners, as set out above of said amended declaration (as evidenced by the President's or Vice-President's signature certifying such approval) the amended declaration shall be recorded in the Official Public Records of Harris County, Texas, whereupon to the extent of any conflict with this Amended and Restated Declaration and any amendment thereto, the amendment shall control. For purposes of this Section, the approval of multiple Owners of a Lot may be reflected by the signature of any one Owner of such Lot.

Notwithstanding anything contained herein to the contrary, the Organization shall be entitled to use any combination of the following methods to obtain approval of the Owners for an amendment to this Amended and Restated Declaration:

- i. by written ballot, or electronic ballot as same may be established by the Board, that states the substance of the amendment and specifies the date by which a written or

electronic ballot must be received to be counted;

- ii. at a meeting of the Members of the Organization, if written notice of the meeting stating the purpose of the meeting is delivered to the Owners of the Lots; such notice may be hand-delivered to the Owners, sent via regular mail to the Owner's last known mailing address, as reflected in the Organization's records, or via email to the Owner's email address as reflected in the Organization's records;
- iii. by door-to-door circulation of a petition by the Organization or a person authorized by the Organization; and/or by any other method permitted under this Amended and Restated Declaration or applicable law.

#### ARTICLE VI. RIGHT TO ENFORCE

##### The Duration of Restrictions

~~All of the restrictions and covenants herein set forth shall continue and be binding upon the Company and upon its successors and assigns for a period of twenty five (25) years from the date this instrument is filed for record in the office of the County Clerk of Harris County, Texas, and shall automatically be extended thereafter for successive periods of fifteen (15) years; provided, however, that the owners of the legal title to the lots as shown by the records of Harris County, having more than fifty per cent of the front footage of the lots shown on plat of record may release all of the lots hereby restricted from any one or more of said restrictions and covenants, and may release any lot or building site shown on said plat from any restriction or covenant created by deed from the Company at the end of the first twenty five (25) year period or at the end of any fifteen (15) year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for record in the manner then required for the recording of land instruments, at least two (2) years prior to the expiration of the first twenty five (25) year period, or at least two (2) years before the expiration of any fifteen (15) year period thereafter.~~

##### Right to Enforce

~~The~~ restrictions herein set forth shall be binding upon the Organization~~Company~~, its successors and assigns, and all parties claiming by, through or under it or them, and all subsequent owners of property in said Subdivision, each of whom shall be obligated and bound to observe such restrictions, covenants and conditions, provided, however, that no such person or corporation shall be liable except in respect to breaches committed during its, his or their ownership of said property. The violation of any such restriction, covenant or condition shall not operate to invalidate any mortgage, deed of trust, or other lien acquired and held in good faith against said property, or any part thereof, but such liens may be enforced as against any and all property covered thereby, subject nevertheless to the restrictions, covenants, and conditions herein mentioned. The Organization~~Garden Oaks Co.~~ shall have the right to enforce observance and performance of such restrictions, covenants, and conditions, and in order to prevent a breach, or to enforce the observance or performance of same, shall have the right in addition to all other legal remedies, to an injunction either prohibitive or mandatory. The owner of any lot or lots affected shall have the

right either to prevent a breach of any such restriction, covenant, or condition or to enforce performance of same.

## ARTICLE VII. ASSESSMENTS

### (a) Creation of Assessments

The Owners of any Lot, by virtue of ownership of property within the Subdivision, covenant and agree to pay to the Organization an annual assessment ("Assessment") and any applicable late fees, interest and costs as more particularly set forth in this Amended and Restated Declaration.

Each such Assessment, together with attorney's fees, late fees, interest and costs, shall be the personal obligation of the person or entity who was the Owner of the land at the time when the Assessment became due. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Organization or Board to take some action or perform some function required to be taken or performed by the Organization or the Board under this Amended and Restated Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Organization. The obligation to pay Assessments is a separate covenant on the part of each Owner of a Lot.

### (b) Annual Assessments

i. Purpose. Assessments levied by the Organization shall be used for any legal purpose for the benefit of the Subdivision as determined by the Board and, in particular, may, by way of example and not limitation or obligation, include operational expenses of the Organization, enforcement of deed restrictions, payment of insurance premiums, costs of collection and litigation, administrative expenses, beautification, providing security, and any other services as may be in the Subdivision's and Owners' interest and all buildings, services, improvements and facilities deemed necessary or desirable by the Board in connection with the administration, management, control or operation of the Subdivision. The Board may, in its sound discretion, give one or more of the purposes set forth herein preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Board in good faith shall be binding and conclusive on all Owners.

ii. Creation. Payment of the Assessment shall be the obligation of each Owner, subject to the provisions below, and shall be binding and enforceable as provided in this Amended and Restated Declaration.

iii. Rate. The initial Assessment established by the Organization shall not exceed EIGHTY DOLLARS AND NO/100 (\$80.00) per Lot. An Owner who formally re-plats two or more Lots into one Lot with the approval of the City of Houston Planning and Development Department shall owe one Assessment. Similarly, an Owner who subdivides a Lot shall pay one Assessment per Lot created by the subdivision of the Lot.

iv. Commencement. The initial Assessment for a Lot shall commence as soon as practical but in no event later than January 1, 2020. Assessments shall be due in advance on January 1<sup>st</sup> for the coming year and shall be delinquent if not paid in full as of January 31<sup>st</sup> of each year.

v. Proration. An Owner's initial Assessment shall be made for the balance of the calendar year as determined on a pro-rata basis and shall become due and payable on the commencement date described above. The Assessment for any year after the first year shall be due and payable on the first day of January. Any Owner who purchases a Lot or Lots after the first day of January in any year shall be personally responsible for a pro-rated Assessment amount for that year.

vi. Levying of the Assessment. The Board shall determine the sufficiency or insufficiency of the then-current Assessment to reasonably meet the expenses for providing services and capital improvements in the Subdivision and may, at its sole discretion and without a vote by the Members, increase the Assessment in an amount up to three percent (3%) annually. The Assessment may only be increased by more than three percent (3%) annually if such increase is approved by Owners of a majority of the Lots present, in person or by proxy, electronic ballot, or absentee ballot, at a meeting called for said purpose at which a quorum is present in person or by proxy, electronic ballot, or absentee ballot. The Assessment shall not be adjusted more than once in a calendar year nor shall any increase be construed to take effect retroactively, unless otherwise approved by Owners of a majority of the Lots subject to such Assessments present in person or by proxy, electronic ballot or absentee ballot at a meeting called for said purpose at which a quorum is present in person or by proxy, electronic ballot, or absentee ballot.

vii. Over-65 Exemption. Any Owner who is sixty-five (65) years old or older on the date this Amended and Restated Declaration is recorded in the Official Real Property Records of Harris County, Texas and has also received an over-65 homestead exemption on the Lot owned by the Owner in the Subdivision from the Harris County Appraisal District may apply to be exempted from payment of the Assessment for so long as the Owner continues to own the Lot ("Over-65 Exemption"). This Over-65 Exemption shall not apply to: (1) any current Owners who become sixty-five (65) years old during the ownership of their Lot after the date this Amended and Restated Declaration is recorded in the Official Real Property Records of Harris County, Texas; and (2) any new Owners who purchase a Lot in the Subdivision who are or may become sixty-five (65) years old or older after the date this Amended and Restated Declaration is recorded in the Official Real Property Records of Harris County, Texas. An Owner must apply for and receive approval in writing from the Organization for the Over-65 Exemption.

\_\_\_\_\_  
(c) Enforcement

The Organization may bring an action in law against the Owner personally obligated to pay the Assessment, late fees, interest, and costs, including attorneys' fees, incurred by the Organization in collecting same and obtain a personal judgment against the Owner. No lien is created herein to secure the payment of the Assessment.

**ARTICLE VIII. EASEMENTS**

Mineral Reservation

~~There is expressly reserved to the Company, only, and unto its successors and assigns, one thirty second (1/32nd) of the oil, gas, and other mineral~~

~~produced and saved from the property embraced in said Subdivision, payment for which shall be made as a perpetual royalty interest, free of all cost and expense. The Company, its successors or assigns, shall never be required to join in the execution of any oil, gas, or mineral lease covering said property and shall not be entitled to participate in any bonuses or rentals provided for in any such lease. The purchaser, his heirs, legal representatives, or assigns shall have the exclusive right to lease said land for oil, gas, and mineral development, provided that any such lease hereafter executed shall nevertheless be subject to the royalty interest herein reserved. However, the reservation of mineral interest, referred to herein is hereby made subordinate and inferior to any mortgage or lien hereafter created which is made by any governmental agency or insured by or through the Federal Housing Administration, and any renewal, rearrangement or extension thereof, and any foreclosure of said liens will operate to cancel and revoke the reservation of said mineral interest.~~

#### ~~Maintenance Fund:~~

~~— A sum equivalent to forty cents (40c) per lineal foot based upon the front-footage of each lot shall be added to the sales price of each lot when sold, and when collected from purchasers either out of the cash consideration, or as a part of the deferred purchase consideration, shall be set aside as a maintenance fund and held by Garden Oaks Co. and used for the purpose hereinafter provided. An accounting of such funds shall be made during January of each year for the preceding year, commencing in January, 1940; and a statement of receipts and disbursements of this fund shall be posted in the office of the Company or upon some prominent location upon the property in said Subdivision. In case such deferred payments are made in installments, the Company shall set aside a proportionate part of all installment payments received for the payment of any lot, on a pro rata basis of the cost of the lot and the amount of the maintenance fund included in the sales price of same.~~

~~— The maintenance fund so created shall be used for the purpose of maintaining streets, utilities, or for the installation of same, and for such other general purposes as are considered in the interest of and for the general welfare of the property owners of said subdivision as a whole. The maintenance fund may be used for such purposes in the discretion of the Company commencing January 1, 1940.~~

~~— The Company reserves the right to transfer said fund and the administration thereof, if and when it so desires, to three (3) individuals who shall be resident property owners in said Subdivision, such persons to constitute a Board of Trustees representing all of the owners of property in said subdivision in the administration of the maintenance fund. The trustees so appointed shall continue to act as such, subject to removal by the Company for any act considered by it adequate, and it shall in such event have the right to appoint successor trustees for the administration of said fund. If at any time the owners of fifty one per cent (51%) of the lots in said Subdivision (one lot or homesite constituting one ownership) shall become dissatisfied with the management of this trust, they shall have the right to remove any trustee and appoint a substitute trustee, by appropriate petition bearing the signatures of the property owners so acting. The petition shall describe the property owned by each petitioner (this meaning when property is owned by man or wife that either may sign but not both. The petition shall be presented to the Board of Trustees then in office, and if such trustee or trustees, whose removal is desired, does not resign and turn over to the remaining trustees any funds in his possession, upon such request, the petitioners making such request shall have the right to resort to appropriate legal action.~~

~~—The Company also reserves the right to designate and authorize the Board of Trustees, so appointed to administer the maintenance fund as above set forth, to perform all the duties imposed upon it under the heading of "Architectural Restrictions" herein, and upon making such designation in writing the Company shall be released from any and all the duties so imposed upon it. Such right may be exercised by the Company at any time it considers it to the best interest of the Subdivision to do so.~~

~~—For the general benefit of Garden Oaks, Section Three and Garden Oaks, Section Two, and Garden Oaks, Section One, and any other sections of Garden Oaks, developed in the future, the Company or the Board of Trustees that may be created are hereby given the right to consolidate the maintenance fund collected or accrued, with all maintenance funds of other sections, provided such consolidated funds would more effectively operate and maintain all sections more economically than if in separate units.~~

#### Easements

—It is agreed that all sales of lots and dedication of streets in said subdivision shall be subject to easements over and across such portions of each lot, as hereinafter designated, as may be deemed appropriate or necessary for the purpose of installing, using, repairing and maintaining public utilities, water, sewer lines, electric lighting, and telephone poles, pipe lines, and drainage ditches or structures and/or any equipment necessary for the performance of any public or quasi-public utility service and function, with the right of access thereto for the purpose of further construction, maintenance and repairs. Such right of access to include the right, without liability on the part of any one or all of the owners or operators of such utilities, to remove any or all obstructions on said easement right-of-way caused by trees, brush, shrubs, either on or ~~over hanging~~ overhanging such right-of-way, as in their opinion may interfere with the installation or operation of their circuits, lines, pipes, or drainage ditches or structures. Such easements shall be for the general benefit of the Subdivision and the property owners thereof and are hereby reserved and created in favor of any and all utility companies entering into and upon said property for the purposes aforesaid, with the permission of the Organization, its successors or assigns, and shall extend to only the following portions of said Subdivision:†

In block thirty-two (32) no ground easements have been reserved because of the fact that a ten (10) foot easement has been reserved on the property immediately adjoining on the East, however, a five (5) foot aerial easement has been reserved on the East line of Lots one (1), two (2), and three (3).

In block thirty-three (33) there is an easement five (5) feet in width off the rear of each lot; an easement five (5) feet in width off the North Side of lot four (4); an easement three (3) feet in width off the East Side of Lot Five (5), for a distance of twenty (20) feet from the rear property line toward the front property line; an easement three (3) feet in width off the West side of lot six (6) for a distance of twenty (20) feet from the rear property line toward the front property line. There is also a five (5) foot aerial easement off the East side of lot one (1), and a five (5) foot aerial easement off the East side of lot six (6).

In block thirty-four (34) a tract of land twenty (20) feet in width has been dedicated in the rear of all lots in this block; and the right is reserved for all utilities to be installed in a five (5) foot strip on the North side of this

dedicated tract of land; there is an easement five (5) feet in width off the West side of lot eight (8); an easement five (5) feet in width off the East side of lot nine (9). There is further retained a five (5) foot aerial easement off the rear of all lots; there is a five (5) foot aerial off the East side of lot one (1).

In block thirty-five (35) there is an easement five (5) feet in width off the rear of each lot; an easement five (5) in width off the West side of lot eight (8); an easement five (5) feet in width off the East side of lot nine (9); an easement five (5) feet in width off the East side of lot thirty-nine (39); an easement five (5) feet in width off the West side of lot forty (40); an easement three (3) feet in width off the West side of lot thirteen (13), for a distance of twenty (20) feet from the rear property line toward the front property line; an easement three (3) feet in width off the East side of lot fourteen (14), for a distance of twenty (20) feet from the rear property line toward the front property line. There is further retained a five (5) foot aerial easement off the East side of lot one (1) where same adjoins the Park in Section two.

In block thirty-six (36) there is an easement five (5) feet in width off the rear of all lots; an easement five (5) feet in width off the West side of lot five (5); an easement five (5) feet in width off the East side of lot six (6); an easement five (5) feet in width off the East side of Lot thirty-six (36); an easement five (5) feet in width off the West Side of Lot thirty-seven (37); an easement five (5) feet in width off the South Side of Lot twenty-one (21); an easement five (5) feet in width off the North Side of lot twenty-three (23); an easement three (3) feet in width off the West side of lot eleven (11); for a distance of twenty (20) feet from the rear property line toward the front property line; an easement five (5) feet in width off the East Side of lot twelve (12), for a distance of twenty (20) feet from the rear property line toward the front property line.

In block thirty-seven (37) there is an easement five (5) feet in width off the rear of each lot; an easement five (5) feet in width off the West side of lot four (4); an easement five (5) feet in width off the East Side of lot five (5); an easement five (5) feet in width off the East side of Lot thirty (30); an easement five (5) feet in width off the West Side of lot thirty-one (31); an easement three (3) feet in width off the West Side of lot eight (8) for a distance of twenty (20) feet from the rear property line toward the front property line; an easement three (3) feet in width off the East side of lot nine (9) for a ~~easement three (3) feet in width off the East side of lot nine (9) for~~ a distance of twenty (20) feet from the rear property line toward the front property line.

In block thirty-eight (38), there is an easement five (5) feet in width off the rear of each lot; an easement five (5) feet in width off the West side of lot three (3); an easement five (5) feet in width off the East side of lot four (4); ~~an easement five (5) feet in width off the East side of lot twenty-nine (29); an easement five (5) feet in width off the West side of lot thirty (30); an easement three (3) feet in width off the West side of lot nine (9) for a distance of twenty (20) feet from the rear property line toward the front property line; an easement (5) feet in width off the East Side of lot ten (10), for a distance of twenty (20) feet from the rear property line toward the front property line.~~

In block thirty-nine (39) there is an easement five (5) feet in width off the rear of all lots; an easement five (5) feet in width off the West side of lot two (2); an easement five (5) feet in width off the East side of lot three

(3); an easement five (5) feet in width off the North Side of lot fifteen (15); an easement five (5) feet in width off the South Side of lot twenty-five (25); an easement three (3) feet in width off the East side of lot sixteen (16) for a distance of twenty (20) feet from the rear property line toward the front property line; an easement three (3) feet in width off the West side of Lot seventeen (17), for a distance of twenty (20) feet from the rear property line toward the front property line; an easement three (3) feet in width off the East Side of Lot twenty-one (21) for a distance of twenty (20) feet from the rear property line toward the front property line; an easement three (3) feet in width off the West side of lot twenty-two (22) for a distance of twenty (20) feet from the rear property line toward the front property line.

In block forty (40) a tract of land twenty (20) feet in width has been dedicated in the rear of all lots in this block; and the right is reserved for all utilities to be installed in a five (5) foot strip on the West side of this dedicated tract of land where same abuts lots one (1) to six (6,) + inclusive, and a portion of lot seven (7); and the right is reserved for all utilities to be installed in a five (5) foot strip on the South Side of this dedicated tract of land where same abuts a portion of lot seven (7) and all of lots eight (8) to sixteen (16), + inclusive; there is an easement five (5) feet in width off the North Side of lot four (4); an easement five (5) feet in width off the South Side of lot five (5). No ground easement has been retained on the East side of lot one (1) there is, however, a five (5) foot aerial easement retained on the East side of lot one (1), and on the rear of all other lots in this block.

In addition to the ground easements above listed, an additional aerial easement of five (5) feet ~~is~~ reserved; resulting in a total overall unobstructed ground easement ten (10) feet wide from the ground upward and an unobstructed aerial easement twenty (20) feet wide from a plane twenty (20) feet above the ground upward centered on the ground easement, this easement being needed particularly by the light and telephone companies for the protection of all overhead wires.

#### ARTICLE IX. UPKEEP

##### Upkeep

~~The Owners~~~~purchasers~~ of property in said subdivision shall be required to keep the weeds cut on the particular property owned by each, and shall not permit the accumulation of trash, rubbish, or other unsightly obstacles on the premises, the easements, or in the alley, or in the street abutting the same. The area in the street between the pavement and the property line shall at all times be kept clean and free of unsightly obstacles.

#### ARTICLE X. ORGANIZATION

(a) Every Owner of a Lot will, solely by virtue of ownership and without further action, be a member of Garden Oaks Maintenance Organization, Inc., a Texas non-profit corporation (the "Organization"). The Organization establishes, assesses, and collects mandatory assessments, making it subject to Chapter 209 of the Texas Property Code. The business and affairs of the Organization is managed by its Board of Directors.

(b) Each Lot is entitled to one (1) vote, regardless of the number of Owners of a Lot. Multiple Owners of any single Lot must vote in agreement (under any method they devise among themselves) but, in no case will such multiple

Owners cast portions of votes. The vote attributable to any single Lot must be voted in the same manner (i.e. all Owners of the Lot for, or all Owners of the Lot against a particular issue) but, in no event can there be more than one (1) vote cast per Lot.

A Lot is entitled to two (2) votes only if all of the following conditions are satisfied: (i) applicable City of Houston subdivision ordinances would permit subdivision of the Lot by re-platting, (ii) each resulting Lot would satisfy the frontage requirements imposed herein, (iii) no Structure that is located on one resulting Lot would encroach onto the adjacent Lot or violate setback lines after subdivision (e.g., a building may not be located on the original Lot such that the lot line created by the subdivision would, with respect to existing Structures, result in an encroachment or violation of setback lines), and (iv) each resulting Lot may be conveyed to a separate Owner as a fee simple tract of land.

No Owner will have a right to vote unless (i) the Owner is shown on the membership rolls of the Organization, or (ii) the recorded deed evidencing ownership of the Lot has been delivered to the Organization.

(c) The Organization's Bylaws govern the Organization and may be amended pursuant to the Bylaws.

(d) After the effective date of this Amended and Restated Declaration, the Organization shall be renamed to the Garden Oaks Homeowners Association, Inc. which will continue with the same rights of the Organization including any new rights as may be created or designated in its Bylaws.

This Amended and Restated Declaration shall be effective as of the date of recording in the Official Public Records of Harris County, Texas. If any provision of this Declaration is found to be in conflict with the Restrictions and Amendment of Gardens Oaks, Section Three, this Amended and Restated Declaration shall control.

IN WITNESS WHEREOF, pursuant to the authority provided herein, this Amended and Restated Declaration was approved by the affirmative vote of the Owners in Garden Oaks, Section Three.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the President of the Garden Oaks Maintenance Organization, Inc.;

That this instrument constitutes the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Garden Oaks, Section Three, and was affirmatively approved by the Owners in Garden Oaks, Section Three.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this the  
day of \_\_\_\_\_, 201 .

~~This instrument of dedication relates to and affects the above-described property and shall not affect other property not herein described.~~

~~IN TESTIMONY WHEREOF GARDEN OAKS CO., has caused these presents to be executed by its President, and its corporate seal affixed hereto on this 20th day of April, 1939.~~

~~GARDEN OAKS CO.~~

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: ~~E.L. CRAIN,~~ President

~~(Seal)~~

~~ATTEST: KATY RANDALL, Secretary~~

STATE OF TEXAS §

§

~~\_\_\_\_\_ )~~

~~\_\_\_\_\_ )~~

COUNTY OF HARRIS § ~~\_\_\_\_\_ )~~

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, ~~the E.L. Crain,~~ President of the Garden Oaks Maintenance Organization, Inc., ~~Co., a corporation,~~ known ~~by~~ me to be the person whose name is subscribed to ~~this~~ ~~the foregoing~~ instrument, and acknowledged to me that s/he executed the same for the purposes ~~and consideration therein~~ expressed, and in the capacity ~~therein stated,~~ and as the act and deed of said corporation.

GIVEN UNDER my hand and seal of office, this \_\_\_\_\_ the ~~20th~~ day of \_\_\_\_\_, 201 ~~April, 1939.~~

\_\_\_\_\_

~~NELL WISER~~ Notary Public - State of ~~in and for Harris County,~~ Texas

After Recording Return To:

Sipra S. Boyd

Roberts Markel Weinberg Butler Hailey PC

2800 Post Oak Blvd. 57<sup>th</sup> Floor

Houston, Texas 77056

            
(Seal)