

THE BROOKS AT CUMBERLAND PARK
PHASE I

DECLARATION OF COVENANTS, RESTRICTIONS, AND CONDITIONS
(With Lien For Assessments and Power of Sale)

This Declaration of Covenants, Restrictions, and Conditions (the "Declaration") is made on the 29th day of January, 2003, by Broadway South Development, "M" No.1, Ltd., a Texas limited partnership whose mailing address is P.O. Box 1084, Tyler, Texas 75710 (the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of The Brooks at Cumberland Park, Phase I, a planned unit residential subdivision in Tyler, Smith County, Texas, according to the plat thereof recorded in Cabinet D, Slide 129-A, of the Plat Records of Smith County, Texas, and

WHEREAS, in order to enable Declarant to implement a general plan of development and accomplish the development of the Property (as herein defined) as a residential development of high quality and standards in a consistent manner with continuity and to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property to the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements hereinafter set forth (the "Covenants").

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the Covenants, which shall be deemed as covenants running with the land and imposed upon and intended to benefit and burden each Lot, hereinafter defined, and the Common Areas, hereinafter defined.

ARTICLE I – DEFINITIONS

- 1.1 **Definitions.** The following words, phrases, or terms used in this Declaration shall have the following meanings:
- (a) *Act* means the Texas Residential Property Owner's Protections Act, Chapter 209, Texas Property Code, effective January 1, 2002, as amended from time to time.
 - (b) *Architectural Control Committee* (sometimes referred to herein as the "ACC") initially means the Declarant (and/or such persons who shall be named to serve by Declarant). Provided, the Board shall have the right at any time to change the number of members comprising the Architectural Control Committee and the persons forming the membership of the Architectural Control Committee at the sole discretion of the Board by the filing for record in the Official Public Records of Smith County, Texas, of a statement to such effect as provided in Section 4.2.
 - (c) *Assessment* means any general or special assessment at any time imposed under the terms and provisions of this Declaration.
 - (d) *Assessment Lien* means the lien created and imposed against each Lot by Article VIII of the Declaration.
 - (e) *Association* means The Brooks at Cumberland Park Homeowner's Association, a Texas non-profit corporation, its successors and assigns.
 - (f) *Board* means the Board of Directors of the Association.
 - (g) *Code* means the Texas Property Code, as amended from time to time.

- (h) *Common Areas* means all open space as shown on the plat, along with the areas within the public right-of-way between the public street and open space, and all public planting areas, such as medians within the public streets, except for the Lots and public streets and right-of-ways. The Common Areas shall specifically include Lot 7 and Lot 8, NCB 1730-A, Lot 33, NCB 1730-B, Lot 48, NCB 1730-E.
- (i) *Common Areas Maintenance Charges* means any and all costs assessed, as provided in Section 7.2 of this Declaration.
- (j) *Common Fence* means the perimeter fence along and between the subdivision, Skidmore Lane, and Loop 49 rights-of-way, and between the open space area at the intersection of Old Mill Run and Skidmore Lane and Lot #1, NCB 1730-B.
- (k) *Covenants* means the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements set forth herein.
- (l) *Declarant* means Broadway South Development, "M" No. 1, Ltd., and any successor or assignee of any or all of Declarant's rights and powers hereunder, but with respect to any such successor or assignee (i) such successor or assignee shall not be deemed to be a "Declarant" unless such successor or assignee is expressly designated as such pursuant to a written instrument signed by Declarant, which written instrument shall be filed of record in the Official Public Records of Smith County, Texas, designating that part of the Property to which it related, and (ii) such successor or assignee shall only have those rights and powers of Declarant that are specifically assigned to such successor or assignee pursuant to such written instrument.
- (m) *Declaration* means this Declaration of Covenants, Restrictions, and Conditions, as amended or supplemented from time to time, as herein provided.
- (n) *Deed* means a deed or other instrument conveying the fee simple title to all or any portion of the Property, including but not limited to a Lot.
- (o) *Dwelling* means a residential unit or structure, and any portion thereof, situated on a Lot designed and intended for use and occupancy as a primary residence by a single family.
- (p) *Lot* means each of the following Lots, as shown on the Plat:
- (1) Type "A" Lots:
 - Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, NCB 1730-A
 - Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10, Lot 11, Lot 12, Lot 13, Lot 14, Lot 15, Lot 16, Lot 17, Lot 18, Lot 19, Lot 20, Lot 21, Lot 22, Lot 23, Lot 24, Lot 25, Lot 26, Lot 27, Lot 28, Lot 29, Lot 30, Lot 31, Lot 32, NCB 1730-B;
 - (2) Type "B" Lots:
 - Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, NCB 1730-C
 - Lot 1, NCB 1730-F
 - Lot 24, Lot 25, Lot 26, Lot 27, Lot 28, Lot 29, NCB 1730-E
- together with (i) any Lots which may, from time to time, result from the resubdivision, combination or division of any of the Lots as may be shown on a plat or plats of the Property, or any part thereof, hereafter filed for record in the Plat Records of Smith County, Texas and (ii) such additional property or Lots as may be added to the Subdivision as provided in the Declaration.
- (q) *Lots* means, collectively, all Lots described in Section 1.1(p) above.

- (r) *Maintenance Charges* means any and all costs assessed as provided in Section 7.1 of this Declaration.
- (s) *Member* means every person or entity that holds membership in the Association, as provided in Article XI of this Declaration.
- (t) *Owner* means the person or persons, entity or entities who, individually or jointly, own record title to a Lot. The term "Owner" shall exclude any person or persons, entity or entities, having an interest in a Lot merely as security for the performance of an obligation. The term "Owner" shall include Declarant if Declarant is a record title owner of a Lot.
- (u) *Permanent Improvements* means, with respect to any Lot or any other part or parcel of the Property, any and all improvements, structures, and other materials and things located thereon, including without limitation, trees, berms, shrubs, hedges, and fences.
- (v) *Plat* means the plat of the Property presently on file in Cabinet D, Slide 129-A of the Plat Records of Smith County, Texas, as such plat may be amended from time to time.
- (w) *Property* means all of the real property described on the Plat, and any additional real property as may be subsequently added thereto by Declarant in accordance with the terms of this Declaration.
- (x) *Public Planting Areas* means all areas within the public street right-of-ways selected by the Association for special landscaping and maintenance, i.e., center islands within Old Mill Run and Winding Brook Lane.
- (y) *Subdivision* means the residential subdivision located in Smith County, Texas, and known as "The Brooks at Cumberland Park, Phase I," according to the Plat, and such additional real property as may be added thereto by Declarant as provided in this Declaration.

ARTICLE II – PROPERTY SUBJECT TO RESTRICTION

- 2.1 General Declaration. Declarant hereby declares that the Property is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a common plan or scheme for the subdivision, improvement and sale of the property, and is established for the improvement and sale of the Property, and is further established for the purposes of enhancing and perfecting the value, desirability, and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, all Owners and their respective successors in interest.
- 2.2 Owners Bound. From and after the date of recordation of this Declaration, the Covenants shall be binding upon and inure to the benefit of Declarant, each Owner, the heirs, executors, administrators, personal representatives, successors and assigns of each Owner and the Association. Each Owner (excluding only Declarant), his heirs, executors, administrators, personal representatives, successors and assigns, expressly agrees to pay, and to be personally liable for, the Assessments provided for hereunder, and to be bound by all of the Covenants herein set forth.
- 2.3 Additional Property. Additional real property may become subject to this Declaration in the following manner:
 - (a) Declarant shall have the unilateral right to add or annex additional real property to the development scheme of the Declaration by filing of record a supplementary Declaration of Covenants, Restrictions, and Conditions with respect to such additional real property, hereinafter referred to as the "Supplementary Declaration," provided, however, that such

- Supplementary Declaration may contain such complementary additions and modification of the Covenants as may, in the sole determination of Declarant, its successors or assigns, be necessary or desirable to reflect the different character, if any, of the additional real property.
- (b) Any additions made pursuant to Subsection 2.3(a), when made, shall automatically extend the jurisdiction, functions, duties, and membership of the Association to the additional real property added to the Subdivision.
 - (c) Declarant shall have the exclusive and unilateral right, without the joinder, approval or consent of any person(s) or entity(ies), including, but not limited to, any Owner(s) or Member(s) to cause the Association to merge or otherwise consolidate with any similar homeowners' association then having jurisdiction over any real property located in whole or in part within two (2) miles of any real property then subject to the jurisdiction of the Association. Upon such a merger or consolidation of the Association, the Association's properties, rights, and obligations may, by operation of law or otherwise, be transferred to another surviving or consolidated association or, alternatively, the Association may be made the surviving entity pursuant to a merger or consolidation. The surviving or consolidated entity shall have the right to administer the Covenants together with the covenants and restrictions established upon any other real properties as one scheme.
 - (d) Notwithstanding the fact that Declarant may cease to be a Member of the Association by virtue of its sale or conveyance of all of its interest in the Property, the Declarant, its successors and assigns, shall continue to be entitled to implement and exercise all of its rights under and pursuant to this Section 2.3. With respect to any additional real property made subject to the Covenants by virtue of a Supplemental Declaration, Declarant shall be an Owner and a Member with respect to such additional real property, and as it may be divided or subdivided according to applicable law, and as the Property may be expanded or increased by annexation, merger or consolidation.

ARTICLE III – LAND USE

- 3.1 Single Family Residential Use. All Lots and Permanent Improvements shall be occupied, used, improved, and devoted exclusively to Single Family residential use. "Single Family," as used herein, means one (1) family consisting of persons related by blood, adoption, or marriage, or by no more than four (4) unrelated persons. No other persons may occupy any Dwelling without the prior written consent of the Board, which consent may be withheld for any reason. Each Owner, by accepting a Deed to any Lot, agrees to be bound by the definition of Single Family as set forth in this Section 3.1.
- 3.2 No Commercial Activity or Use. No Lot or improvements on any Lot may be used for any business, professional, commercial, or industrial purposes of any kind whatsoever. No activity or use, whether or not for profit, shall be conducted on any Lot or in any improvements on any Lot which is not related to Single Family residential purposes. Provided, nothing in the Declaration shall prohibit the Declarant from using a Dwelling as a temporary sales office of otherwise using, improving, developing, or marketing the Property for sale for profit.
- 3.3 Zoning. The Property is currently zoned "PUR." No Owner shall use, improve or occupy any Lot in violation of the applicable zoning ordinances.
- 3.4 Easements and Setbacks. The Property and the Lots are subject to the applicable easements, building setbacks, and declaration shown on the Plat.
- 3.5 Public Streets. All streets within the subdivision are public streets on public right-of-ways, along with public utility easements. The City of Tyler and public utility entities shall, at all times, have the full right of ingress and egress to and from their respective easements.
- 3.6 Open Space. Lot 7 and Lot 8, NCB 1730-A, Lot 33, NCB 1730-B, and Lot 48, NCB 1730-E, are designated on the Plat as "Open Space" Lots. The said Lots shall be maintained as a Greenbelt and

shall not be used for any other purpose or improved, except for (i) sanitary sewer, storm sewer, and other public utilities within the easement areas designated on the Plat; (ii) walking trails and other similar improvements consistent with maintenance of the said Lots as a Greenbelt, and (iii) any other improvements approved by the Board.

ARTICLE IV – ARCHITECTURAL CONTROL

- 4.1 **Reservation and Assignment of Architectural Control.** Declarant, desiring (i) to provide for the preservation of the values and amenities in and upon the Property and each Lot, and (ii) to subject the Common Areas and each Lot to the reservation of architectural control hereinafter expressed for the purpose of implementing a general plan of development for the Property to insure the creation of a high quality, architecturally harmonious subdivision, which general plan of development and reservation of architectural control is for the benefit of the Property and each Lot and each Owner, as well as for the benefit of the Declarant as developer of the Property, hereby reserves the right and all rights to determine, approve or disapprove as to:
- (a) compliance with any specific restrictions imposed by the Declarant, the Architectural Control Committee, or anyone acting on behalf of either the Declarant, or the Architectural Control Committee, with respect to a Lot, the Lots, and the Property and/or any part thereof, and
 - (b) without limitation, harmony of external design, adequacy of structural design, location of improvements, allowing and location of exterior lighting, building and landscaping setbacks from property lines, outbuildings, playground equipment, recreational equipment, athletic equipment, basketball goals, swimming pools, square footage of improvements, driveways, and landscaping in relation to surrounding structures and topography which are not or hereafter may be existing or proposed, including, but not by way of limitation, architectural designs, setbacks, landscaping, color schemes, types and quality of construction materials, quality of workmanship, any and all subdivisions, resubdivisions (where permitted), exterior additions to, changes in, construction, paving, alteration or excavation of the Common Areas or of any Lot or any part thereof (including, but not limited to the trees now located or to be located thereon) and any and all Dwelling, structures and other improvements located thereon, either permanent or temporary, including without limitation, additions to, changes in, or alterations or grade, landscaping, roadways, walk-ways, signs, exterior lights, walls, fences, buildings, or other structures on improvements of any type or nature located thereon which any person or entity, including without limitation, governmental and quasi-governmental agencies, seeks to commence, erect, construct, place or maintain upon the Common Areas or upon any Lot, or any part thereof.
- 4.2 **Appointment.** Except as otherwise herein expressly provided, the Board shall have the exclusive right to appoint the members of the Architectural Control Committee. The Board shall appoint the members of the Architectural Control Committee by filing a designation of appointment in the Official Public Records of Smith County, Texas. The number of members constituting the Architectural Control Committee and the members of the Architectural Control Committee may be changed or modified by the Board at any time by the filing of a supplemental designation of appointment in the Official Public Records of Smith County, Texas.
- 4.3 **Construction Requests.** All requests for approval of any of the items set forth in Section 4.1 ("Construction Requests") shall be submitted in writing to the Architectural Control Committee at P.O. Box 1084, Tyler, Texas 75710, or at such other address as may from time to time be designated by Declarant or the Board, and shall be accompanied by complete and specific plans and specifications showing the nature, kind, shape, elevations, height, materials, color, location, landscaping, and other material attributes of the structure, improvement, addition, change, alteration, or excavation of the Common Areas or any Lot or any part thereof. All such requests for approval shall also be accompanied by the payment, in tender acceptable to the Architectural Control Committee, of an application fee as shall be set by the Architectural Control Committee from time to time in its sole discretion.

- 4.4 Designation of Power of Approval. With respect to the Common Areas and each Lot, or any part thereof, Declarant does herein and hereby delegate the power of approval and disapproval reserved in Section 4.1 to the Architectural Control Committee. This delegation of the power of approval, and disapproval may be rescinded at any time by the Declarant by the filing of an instrument so stating such act of rescission in the Official Public Records of Smith County, Texas. As long as this delegation of the power of approval and disapproval is in effect, any person or entity owing any interest in the Common Areas, or any part thereof, or any Lot, or any part thereof (where permitted), shall be required to deal with the Architectural Control Committee and not the Declarant, and the Declarant shall have no responsibility or liability of any nature whatsoever for any act or omission of the Architectural Control Committee.
- 4.5 Prior Approval. No dwelling, building, garage, outbuilding, storage building, fence, wall, sign, exterior lighting, pole, antenna, television, satellite disc or dish, driveway, sidewalk, other walkway, mailbox, athletic equipment, recreational equipment, playground equipment, basketball goals, other structure or apparatus, either permanent or temporary, or landscaping shall be commenced, erected, constructed, placed, or maintained upon the Common Areas or upon any Lot, nor shall any exterior addition thereto, change therein, or alteration, excavation, subdivision, or resubdivision thereof including, without limitation, changes in or alteration of grade, landscaping, roadways, and walkways, be made until the plans and specification showing the nature, kind, shape, height, materials, color, location, and other material attributes of the same shall have been submitted in writing to and approved in writing by the Architectural Control Committee as to (i) compliance with the Covenants herein contained, and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not limited to, as to architectural designs, setbacks, landscaping, color schemes, and construction materials. The Architectural Control Committee shall have the right to promulgate a form for submission of such items to the Architectural Control Committee, and upon such promulgation, all Owners shall be required to use the form for all such submissions. In the event the Architectural Control Committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specification have been properly submitted to it, approval will not be required, and the requirements for approval set forth in this Section 4.5 shall be deemed to have been fully satisfied. Non-exercise of the powers hereby reserved by Declarant in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in other or different instances. Likewise, approval of any one set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of willful misconduct attributable to the Architectural Control Committee, such Architectural Control Committee shall not be liable for the improper enforcement or failure to exercise any of the powers reserved and delegated unto said Architectural Control Committee pursuant to this Article. The fact that some type of structure or improvement may be mentioned in this Declaration is not in the manner to be construed as a statement that such type of structure or improvement will be allowed on any Lot in the Subdivision, as the final approval or disapproval for any type of structure or improvement on any Lot is expressly vested solely in the Architectural Control Committee to be exercised at its sole discretion.
- 4.6 No Liability. In no event shall any approval obtained from Declarant or the Architectural Control Committee pursuant to the terms of this Article be deemed to be a representation of any nature regarding the structural integrity or safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations, nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval. No member of the Architectural Control Committee shall, at any time, have any liability to any Owner, Member, or other person or entity for any decision(s) that are made by the ACC, so long as such decision(s) are made in good faith and are not arbitrary or capricious. Any and all errors or omissions from the plans submitted to the ACC shall be the sole responsibility of the Owner of the Lot to which the plans and improvements relate, and the ACC, and each member thereof, shall have no obligation to check the plans for errors or omissions or to check such plans for compliance with this Declaration, zoning ordinances, laws, building lines, easements or rights-of-way, or any other issue.

- 4.7 Discretionary Authority. Any exercise of discretionary authority by the Declarant, the Architectural Control Committee, or the Board shall be presumed reasonable, as provided in Section 202.004 of the Code.

ARTICLE V – RESIDENTIAL STRUCTURES AND LOTS

- 5.1 Minimum Floor Areas. Each Dwelling shall have a floor area, exclusive of porches (open or closed), patios, garages, carports, balconies, or decks, with a minimum of 1,300 square feet of heated and cooled space, if located on a Type "A" Lot, and 1,550 square feet if located on a Type "B" Lot.
- 5.2 Types of Structures. Unless otherwise approved by the Architectural Control Committee, no Permanent Improvements shall be erected, constructed, altered, or permitted to remain on any Lot other than one (1) detached Single Family residential dwelling. Each Dwelling shall have a private garage as provided in Section 5.3. No used or previously constructed building or other structure shall be moved onto any Lot at any time. No structure of any kind of a temporary character and no trailer, mobile home, motor home, recreational vehicle, manufactured home, trailer home, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.
- 5.3 Garage Construction. All dwellings shall be built with a minimum two-car garage. Any front-entry garage shall be no wider than two car widths. All garage doors shall have automatic remote operators. All garages shall remain closed at all times unless in use. All garages constructed on any Lot shall be approved in writing by the Architectural Control Committee prior to the beginning of construction on the Dwelling. Garages may not be closed in and occupied or used as part of a Dwelling. Garages may not be used for other than storage and parking vehicles without the express written consent of the Architectural Control Committee, which consent may be withheld for any reason.
- 5.4 Setbacks. All Permanent Improvements shall be located on each Lot in compliance with the setback lines as shown below. For purposes of this covenant, roof overhang, eaves and open porches shall be considered as a part of the Dwelling.
- Type "A" Lots
 - Front – 17' to the front of the main structure and 20' to the front of the garage
 - Rear – 7.5'
 - Sides – No less than 15' for a total of both sides and no less than 4' on other side. No improvements shall be constructed within 15' of an adjacent dwelling unless approved in advance by both the Architectural Control Committee and the City of Tyler.
 - Type "B" Lots
 - Front – 20'
 - Rear – 20'
 - Sides – 7.5' each
- The street "side" setback on either Type "A" or Type "B" corner Lots shall be a minimum of 15'.
- 5.5 Retaining Walls, Fences, Hedges and Other Screening Material. No retaining wall, fence, planter, hedge or other screening material may be erected or maintained on the Common Areas or on any Lot without the prior written consent of the Architectural Control Committee.
- 5.6 Construction Materials and Exterior Color. All materials used in the construction of the exterior of any Dwelling or other structure must be approved in writing by the Architectural Control Committee before commencement of construction. Exterior material shall be either brick, natural stone, or Hardiboard type cementous siding, or a combination thereof unless otherwise approved by the Architectural Control Committee. Generally, brick, and/or a combination of brick and natural stone shall cover a minimum of 70% of the exterior walls, unless otherwise approved by the Architectural Control Committee. Only new

construction materials shall be used (except as approved in writing by the Architectural Control Committee on a case-by-case basis). The Architectural Control Committee shall have the right to impose limitations on the exterior color of any Permanent Improvement, including roof and trim color.

- 5.7 Water Wells. At no time shall the drilling, usage, or operation of any water well be permitted on the Common Areas or on any Lot.
- 5.8 Air Conditioners and Heaters. No window or wall type air conditioner or heater shall be permitted to be used, erected, placed, or maintained on or in any Dwelling or elsewhere on any Lot or the Common Areas. All air conditioning units shall be screened or otherwise concealed from view from the streets.
- 5.9 Fences, Walls and Hedges. No wire of any type or chain link material shall be allowed in the construction of any fence on the Property. Any fence, wall, hedge, or other similar structure or Permanent Improvement must be included in a Construction Request with respect to location, height, and type of material and must be approved in writing by the Architectural Control Committee. Fence material must be wood, brick, natural stone, decorative iron, or a combination thereof, as approved by the Architectural Control Committee. No fence higher than six feet (6') will be constructed unless approved by the ACC. Notwithstanding any other provisions of this Declaration to the contrary, a fence approved by the Architectural Control Committee shall be exempt from the rear and interior setback lines.
- 5.9A Common Fence and Maintenance Easement. The common fence shall be owned by the Association. The owner of any Lot that abuts the common fence shall be responsible for the reasonable upkeep and maintenance of the fence abutting his property and shall have no right to remove the fence, either all or in part, to modify the fence in any way without express written approval of the Association's Board of Directors, in accordance with any reasonable rules adopted by the Association. In the event an owner fails to reasonably maintain the fence, then following thirty- (30) days' written notice, the Association may make repairs and assess the owner the cost of any said repairs, including all labor, materials, and any other expenses as a result of owner's failure to maintain the fence. A maintenance easement extending five feet (5') inside any Lot abutting the common fence and running along and parallel to the common fence is hereby reserved into the Developer, its successors or assigns, for the express purpose of maintaining the common fence. Such easement is described by meets and bounds on **Exhibit A**, attached hereto. The Developer, its successors or assigns, shall have no obligation to maintain the common fence.
- 5.9B Extension of the Common Fence. At the time of construction of a dwelling on any of NCB 1730-B, Lot numbers 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, or 20, the owner of any such Lot shall construct, at his sole expense, a wooden fence consistent with the existing common fence, without brick columns, along the north property line of any such Lot and within the common fence maintenance easement described in **Exhibit A** attached hereto. Following the construction of such fence and approval by the Architectural Control Committee, the fence shall then become the exclusive property of the Association, and the fence and its maintenance shall be subject to the restrictions and covenants contained herein above, along with any reasonable rules adopted by the Association pertaining to the common fence.
- 5.10 Utilities. Each Dwelling shall be required to be connected to the water distribution system and sanitary sewer collection system in the Subdivision in the easements adjacent to or within the respective Lot upon which the Dwelling is located. Individual underground electrical service drops must be installed to each Dwelling. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installations including, without limitation, the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in applicable utility company rules, regulations, and terms and conditions of service, as the same may be amended from time to time without notice. No gas, electric, power, telephone, water, sewer, cable television, or other utility or service lines of any nature or kind shall be placed, allowed, or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required. Water pressure booster pumps may be desirable for some Lots, and any installation and maintenance of such facilities shall be

at the sole cost and expense of the Owner of the Lot. Unless otherwise expressly approved by the Architectural Control Committee, electric meters shall be placed within 150 feet of the electric service hand hole, which is located on the front or side of each Lot.

- 5.11 Outbuildings. Any proposed outbuildings or other Permanent Improvements must be approved in writing by the Architectural Control Committee.
- 5.12 Signs. No signs or billboards (including, but not limited to, commercial and similar signs) which are visible from any neighboring Lot or visible from streets or access roads shall be erected or maintained on any Lot or parcel or property within the Subdivision, except the following types of signs, each of which must be approved in writing by the Architectural Control Committee:
- (a) Signs which may be required by legal proceedings;
 - (b) Not more than a one (1) residential identification sign (street number and/or name of Owner) for a maximum combined total face area of one hundred forty-four square inches (144");
 - (c) Such other signs, the nature, number, and location of which have been approved in writing by the Architectural Control Committee;
 - (d) A "For Sale" sign advertising that the Lot and Permanent Improvements are being offered for sale, provided such sign shall not exceed a total of five (5) square feet.
- Provided, notwithstanding anything herein to the contrary, Declarant may display such signage as Declarant may deem necessary or appropriate in connection with advertising and marketing of the Subdivision.
- 5.13 Re-subdivision. Except as provided in Article XIV, no Lot shall be further subdivided, and no portion less than all of any Lot, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of Declarant.
- 5.14 Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed on any Lot unless previously approved in writing by all governmental authorities having jurisdiction with respect thereto and by the Architectural Control Committee. No outside toilets of any kind are permitted, except during the period of construction of a Dwelling during which time chemically treated outside toilets shall be maintained in a manner subject to approval of the Architectural Control Committee. No installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any body of water or water source or onto any Lot.
- 5.15 Storm Water Pollution Prevention. A Notice of Intent shall be filed by the owner or owner's builder with the EPA (and/or TCEQ as deemed appropriate by State law), prior to the commencement of construction on any Lot. With respect to each Lot, the Owner shall be solely liable for any failure to comply with the Storm Water discharge general permit and/or Storm Water Pollution Prevention Plan and hereby agrees to hold Declarant, the Architectural Control Committee, and the Association harmless from any losses or damages suffered as a result of Owner's failure to comply.
- 5.16 Chimneys. All fireplace chimneys, which are visible from any street, shall be of masonry construction, or framed with siding material approved by the ACC.
- 5.17 Railroad Ties and Timbers. No railroad ties or timbers may be used in any landscape feature, which is visible from any street.
- 5.18 Driveways. As to any Lot, all driveways shall be Constructed entirely of concrete, or other material approved by the Architectural Control Committee and shall be paved before any Dwelling may be occupied.

- 5.19 Sidewalks. Sidewalks along the streets shall be required as shown on the Sidewalk Plan approved by the City of Tyler and the Declarant, as same may be amended from time to time by the Board with the City of Tyler's approval. Where required, sidewalks shall be constructed and maintained at the Owner's expense in accordance with such specifications as may be prescribed from time to time by the Architectural Control Committee or the City of Tyler. Sidewalks which are not required by the Sidewalk Plan (including sidewalks to the Dwelling) shall be constructed at such locations and under such specifications as may be approved or prescribed by the Architectural Control Committee.
- 5.20 Prosecution of Construction. Construction of a Dwelling, once commenced, shall be completed with reasonable diligence and, in any event, within twelve (12) months from the commencement of construction, unless completion is prevented by war, labor strike, or by an act of God.
- 5.21 Sprinkler System. Each Dwelling shall include a sprinkler system which shall be used on a regular basis for the maintenance of and perpetuation of the lawn, landscaping, and other vegetation associated with the Lot.

ARTICLE VI – GENERAL RESTRICTIONS

- 6.1 On-Street Parking. On-street parking on the Subdivision Streets shall be and is hereby restricted to only reasonable and normal deliveries, pick-ups, or short-time guests and invitees, and all parking on the Streets shall be subject to such reasonable rules and regulations as shall be adopted from time to time by the Architectural Control Committee or the Board. At no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot, park or allow to be parked for any reason on the Streets (i) any motor home, recreational vehicle, bus, tractor, trailer, or bob-tail truck, (ii) any van in excess of three-quarters (3/4) of a ton, or truck of any type in excess of three-quarters (3/4) of a ton, nor (iii) any vehicle with painted advertising or magnetic sign(s).
- 6.2 Off Street Parking. At no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot, park or allow to be parked for any reason on any Lot in the Subdivision any (i) boat, motor home, recreational vehicle, bus, tractor, trailer, or bob-tail truck, nor (ii) van in excess of three-quarters (3/4) of a ton, or truck of any type in excess of three-quarters (3/4) of a ton, unless parked completely inside the garage of a Dwelling such that the door on the garage can be completely closed and such that such boat, motor home, recreational vehicle, bus, tractor, trailer, bob-tail truck, van or other type of truck is completely concealed from being visible from all points outside the Dwelling.
- 6.3 Overnight Parking. Any and all vehicles to be parked overnight on any Lot shall be parked in the garage on the Lot to the extent that the garage is fully utilized (e.g. if a garage is a two car garage, there must be two motor vehicles parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage, etc.). If, and only if, the garage is fully utilized by parking vehicles inside the garage, then an Owner may allow a vehicle to be parked overnight on an Owner's Lot outside of the garage. In any event, no vehicle shall be parked on the lot except on the paved driveway portion of the lot. The Board shall have the right to adopt parking rules or regulations that are more restrictive than the restrictions set forth in this Section 6.3 at the sole discretion of the Board and, in such event, the more restrictive measure shall control in the event of any conflict between this Section 6.3 and any rule or regulation adopted by the Board. Notwithstanding anything to the contrary contained in this Declaration, in no event shall any Owner be allowed to park any vehicle on any street in the Subdivision overnight.
- 6.4 Emergency or Temporary Maintenance Vehicles. The provisions of this Declaration shall not prevent any emergency vehicle repairs or the operation of any emergency vehicle (such as an ambulance or fire engine) within the Subdivision. The provisions of this Declaration shall not prevent the operation or temporary use of construction trailers, vans, or other trucks, machinery/equipment, construction shelters, or facilities maintained during and used exclusively in connection with the construction of any Permanent Improvement approved in writing by the Architectural Control Committee.

- 6.5 Garbage. No rubbish, garbage, or trash shall be placed or be allowed to remain at the exterior of any Dwelling or other structure on any Lot, except in containers meeting the specifications of the Architectural Control Committee. The placement, maintenance, and appearance of all such containers shall be subject to reasonable rules and regulations of the Board. The placement of all such containers shall be in areas attractively screened or concealed from view from neighboring Dwellings, pathways, and streets, except on garbage pickup days, when containers may be placed out for pickup and returned on the same day as pickup. Each Owner is responsible for regular removal of all rubbish, garbage, and trash from the Owner's Lot. Rubbish, garbage, and trash shall not be allowed to accumulate.
- 6.6 Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on any Lot except pursuant to prior written approval of and in accordance with rules and regulations promulgated by the Board, provided, however, that dogs, cats, birds, or fish may be kept thereon as household pets so long as, in the sole discretion of the Board, such pet is not, or does not become, a nuisance, threat, or otherwise objectionable to other Owners. If, in the discretion of the Board, an Owner's pet or pets do become a nuisance or threat to any Owner or otherwise becomes objectionable to any Owner, the Board shall give notice to the Owner of the pet or pets of such nuisance, threat, or objection, and the Owner shall thereafter not be allowed to keep such pet or pets on the Owner's Lot or anywhere else upon the Property.
- 6.7 Burning and Incinerators. No open fires shall be permitted on any Lot at any time, and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.
- 6.8 Firearms and Weapons. No Lot or any other portion of the Property shall be used or permitted for hunting or for the discharge of any pistol, rifle, shotgun, or any other firearm, or any bow and arrow, or any other device capable of killing or injuring.
- 6.9 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall, in the sole opinion of the Board, induce, breed, or harbor plant disease or noxious insects.
- 6.10 Machinery, Fixtures and Equipment. No exterior machinery, fixtures or equipment of any type including, without limitation, playground equipment and clotheslines, shall be placed, allowed or maintained upon any Lot except with prior written approval of the Architectural Control Committee.
- 6.11 Motor Vehicles. The operation of any and all motorized vehicles within or upon the Property or any part thereof shall be subject to such rules and regulations as shall from time to time be established by the Board of the Declarant, and the City of Tyler. No motorized vehicles (except motorized devices utilized by disabled citizens) may be operated upon the common areas.
- 6.12 Misuse and Mismanagement. No Lot and no part of the Common Areas shall be maintained or utilized in such manner as to (i) present an unsightly appearance, (ii) unreasonable offend the sensitivity of a reasonable person, or (iii) constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, any Owners or residents of the Subdivision, as determined in the sole opinion of the Architectural Control Committee, the Board of the Declarant.
- 6.13 Violation of Statutes, Ordinances, and Regulations. No Lot nor the Common Areas shall be maintained or utilized in such manner as to violate any applicable statute, ordinance, or regulation of the United States of America, the State of Texas, the County of Smith, the City of Tyler, or any other governmental, or quasi-governmental agency, or authority having jurisdiction over the Property.
- 6.14 Violation of Rules or of Covenants. No Lot shall be maintained or utilized in violation of (i) this Declaration, or (ii) the rules and regulations of the Declarant, and Architectural Control Committee, the Board or the Association, or (iii) any of the Covenants.
- 6.15 Renting Restricted. No part of any Dwelling, guest quarters, garage, or other structure of any type whatsoever on any Lot may be rented by any Owner or by any other person or entity at any time without

the prior written consent of the Architectural Control Committee. In consenting to rental to a guest, the Architectural Control Committee shall have the right to place such rules, regulations, and restrictions on such rental as the Architectural Control Committee shall, in its sole discretion, determine which rules, regulations, and restrictions may vary from situation to situation. No "For Rent" sign or "For Lease" sign or any other similar sign or signs may be placed, allowed, or permitted at any time on any Lot.

- 6.16 Garage and Estate Sales. The conduct of garage, yard, and estate sales within the Subdivision shall be subject to such prohibitions, limitations, and restrictions as may be adopted from time to time by the Board.
- 6.17 Antennas. No exterior television, radio, or other antennae, disc or dish of any type shall be placed, allowed or maintained upon any Lot without the prior written approval and authorization of the Architectural Control Committee. In approving any antennae, disc, or dish, the ACC shall have the right to place rules, regulations, and restrictions on such placement as the ACC shall, in its sole discretion, determine which rules, regulations, and restrictions may vary from situation to situation.
- 6.18 Storage. No storage building of any kind shall be permitted, except with prior written approval and authorization of the Architectural Control Committee. Any outdoor storage as may be approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals by the Architectural Control Committee) from view from neighboring properties, dwellings and streets. This provision shall apply, without limitation, to woodpiles, greenhouses, camping trailers, boat trailers, travel trailers, boats, mobile homes, and unmounted pickup camper units.
- 6.19 Outside Lighting. No outside lighting that may create glare or undue illumination of the common area or another Lot shall be placed, allowed, or maintained on any Lot. This provision shall not prohibit the use of architectural or accent lighting, provided prior written approval from the Architectural Control Committee is obtained.

ARTICLE VII – MAINTENANCE

- 7.1 Improper Maintenance by Owner. In the event any portion of any Lot, any Dwelling, or any Permanent Improvement is in the reasonable judgment of the Board so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property or any adjacent land now or hereafter owned by Declarant, or its successors or assigns, not presently included as a part of the Property, but which may be affected thereby or related thereto, or (iii) as to not in any manner comply with any of these Covenants, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver written notice thereof to the offending Owner that unless corrective action is taken within ten (10) days from the date of such written notice to remedy the situation, the Board may cause such action to be taken at such Owner's cost to remedy the situation, including entry upon the Owner's Lot, if necessary. Any entry upon a Lot by the Board, or anyone at the direction of the Board, shall not be deemed a trespass or other violation of any law, ordinance, or statute, and neither the Board nor anyone else entering upon any Lot shall be subject to any liability therefor. If after the expiration of said ten- (10) day period the requisite corrective action has not been taken, the Board shall be and is hereby authorized and empowered by the violating Owner to cause such remedial action to be taken, and all costs thereof and associated therewith including, but not limited to, the costs of collection, court costs, and reasonable attorneys' fees, such costs being herein collectively called the "Maintenance Charges," together with interest accruing thereon from the date or dates of occurrence of such costs at the lesser of ten percent (10%) per annum or the maximum rate of interest which may be charged under applicable law from such date until paid, shall be assessed against the offending Owner and the offending Owner's Lot. The Maintenance Charges, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VIII hereof. Written notice of such assessment shall be delivered to the offending Owner by the Board, which notice shall specify the amount of such Maintenance Charges and shall demand payment thereof within thirty (30) days after the date of said notice.

- 7.2 Maintenance of Common Areas. By accepting a Deed to any Lot, each Owner (excluding only Declarant): (i) agrees to and shall pay such Owner's pro rata share of the cost to landscape, irrigate, light repair, and maintain the common fence, sign, public planting areas, and Common Areas, and (ii) agrees that the landscaping, irrigation, repair, lighting, and maintenance of the Common Areas will enhance the beauty and value of the Subdivision and the Owner's Lot. The costs for landscaping, irrigation, repair, lighting, and maintenance of the Common Areas shall hereinafter be called the "Common Areas Maintenance Charges." Each Owner's pro rata share of the Common Area Maintenance Charges shall initially be \$12.50 per month and shall be adjusted from time to time, as deemed necessary, by the Association's Board of Directors. The Declarant, its successors and assigns, or the Board, subject to the approval of the Architectural Control Committee, shall have the right to determine how the common fence, sign, public planting areas, and Common Areas will be landscaped, irrigated, repaired, lighted, and maintained. On or before the first day of each month, each Owner agrees to pay the Owner's pro rata share of the Common Area Maintenance Charges. If the Owner's pro rata share is not paid within said thirty (30) days following the date due, the Declarant or the Board shall be and is hereby authorized and empowered to take any and all such action as determined in the sole discretion of the Declarant or the Board to enforce the collection of the Owner's unpaid pro rata share of the Common Area Maintenance Charges, together with court costs, reasonable attorneys' fees, and interest accruing thereon from the due date at the lesser of ten percent (10%) per annum or the maximum rate of interest which may be charged under applicable law. The Common Area Maintenance Charges, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VIII hereof.

ARTICLE VIII – IMPOSITION OF LIEN; OWNERS' AGREEMENT

- 8.1 Imposition of Assessment Lien and Priority of the Lien. Each Lot shall be and is subject to a continuing servitude in the form of the right and authority of the Declarant, the Architectural Control Committee, or the Board, acting either jointly or independently, to impose a lien (the "Assessment Lien"), against an Owner's Lot at any time after the date of recordation of this Declaration for all delinquent Maintenance Charges, Common Areas Maintenance Charges, and/or Assessments, and all interest accrued thereon, court costs and reasonable attorneys' fees as provided for in this Declaration. Except as provided in Section 9.3 hereof, the Assessment Lien against an Owner's Lot shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise and be imposed upon each such Lot, except that such Assessment Lien shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior.
- 8.2 Owner's Agreement. Each Owner, and the Owner's heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees:
- (a) that the Owner acquires the Owner's Lot subject to the Maintenance Charges, the Common Areas Maintenance Charges, the Assessments, and the Assessment Lien;
 - (b) that by accepting a Deed to the Owner's Lot, the Owner is, shall be, and shall remain personally liable for any and all Maintenance Charges, Common Areas Maintenance Charges and Assessments assessed against the said Owner's Lot while the said Owner is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether the said Owner signed the Deed;
 - (c) that by accepting a Deed to the Owner's Lot and to secure the Owner's performance hereunder, the Owner conveys the Lot, and all portions thereof, to the Association, and its successors and assigns, in trust, with a power of sale, and warrants and agrees to defend the title to the Lot, and all portions thereof. If the Owner pays all of the Maintenance Charges, Common Areas Maintenance Charges and Assessments imposed against the Owner's Lot as provided herein, this conveyance in trust shall have no further effect. If the Owner fails to pay any of the Maintenance Charges, Common Areas Maintenance Charges or Assessments imposed against the Owner's Lot, the Association in its capacity as trustee shall have the right to nonjudicially foreclose upon the Assessment Lien granted herein as provided in Section 9.2 (b).

ARTICLE IX – ENFORCEMENT OF DECLARATION AND OF ASSESSMENT LIEN

- 9.1 Enforcement by Declarant or Architectural Control Committee. The Declarant, the Architectural Control Committee, or the Association, acting either jointly or independently, shall each have the right, jointly or severally, to enforce the provisions of this Declaration including, but not limited to, enforcement of the Assessment Lien. However, if the Declarant, the Architectural Control Committee or the Association shall fail or refuse to enforce this Declaration or any part hereof for an unreasonable period of time after written request from an Owner to do so, then any Owner shall also have the right to enforce this Declaration at the said Owner's sole cost and expense by any appropriate action, whether at law or in equity, and neither the Declarant, nor the Architectural Control Committee, nor the Association shall have any liability for failing or refusing to enforce this Declaration to any Owner or any other person or entity.
- 9.2 Enforcement Remedies. If the Owner of any Lot fails to pay any Maintenance Charges, Common Areas Maintenance Charges or Assessment assessed, or to pay any interest accrued on any Maintenance Charges, Common Areas Maintenance Charges or Assessment, and any and all costs (including court costs and attorneys' fees) incurred by either the Declarant, the Architectural Control Committee and/or the Association, as applicable, shall have the right to enforce the payment of the Maintenance Charges, Common Areas Maintenance Charges and Assessments, and all interest accrued thereon and costs incurred by either the Declarant, the Architectural Control Committee, or the Association, or any one of them, in collecting same, and/or enforce the Assessment Lien by taking any one or more of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Declarant, the Architectural Control Committee and the Association do not prejudice the exercise of any other remedy at law, in equity or pursuant to contract):
- (a) bring an action at law and recover judgment against the Owner personally obligated to pay the Maintenance Charges, Common Areas Maintenance Charges or Assessments, or
 - (b) enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a nonjudicial foreclosure sale of the Lot in accordance with the provisions of the Act and the Code (the Declarant, the Association or any Owner may be the purchaser at any such foreclosure sale), or
 - (c) suspend the Owner's right to use Common Areas.

Provided, the provisions of this Section 9.2 shall be subject to the applicable notice, hearing and alternative dispute resolution provisions and procedures of the Act.

- 9.3 Subordination of the Assessment Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any valid first mortgage lien (purchase money or improvement loan) held by, or deed of trust of which the beneficiary is, an institutional lender which is chartered (or licensed) by the United States or any state within the United States. Sale or transfer of any Lot shall not affect the Assessment Lien, provided, however, that is the sale or transfer is pursuant to foreclosure of any such superior mortgage lien

ARTICLE X – RIGHTS AND POWERS

- 10.1 Right to Inspect. The Declarant, the Architectural Control Committee, and the Association, jointly or severally, shall have the right to enter upon all Lots for the purpose of inspecting whether or not the Owner thereof is in compliance with this Declaration and the Covenants. If, during the course of construction of a Dwelling upon a Lot, the Declarant, the Architectural Control Committee, or the Association, jointly or severally, determines in its/their sole discretion that there is a violation of the Covenants, the Declarant, the Architectural Control Committee, or the Association, as appropriate, may order a discontinuance of the construction of the Dwelling until such time as corrective measures have been taken to assure full compliance with the covenants, and an Owner's failure to immediately

discontinue or cause the discontinuance of construction of the Dwelling, upon demand by Declarant, the Architectural Control Committee, or the Association, shall constitute a further violation of this Declaration by that Owner.

- 10.2 Fines. The Board shall have the right to levy reasonable fines against any Owner who (i) violates any of the Covenants, (ii) violates any other covenant, restriction, reservation, charge, servitude, assessment, or conditions set forth in this Declaration, or (iii) violates any rule or regulation enacted, passed, or otherwise approved by the Declarant, the Architectural Control Committee, the Board or the Association. Such fines against any Owner shall be an Assessment, as herein defined. Provided, the provisions of this Section 10.2 shall be subject to the applicable notice, hearing, and alternative dispute resolution provisions and procedures of the Act.
- 10.3 Fees. The Architectural Control Committee and the Board shall have the power and authority to prescribe, collect, and waive such reasonable fees as they may deem appropriate in connection with, or incident to, the exercise of their rights and authority under this Declaration including, without limitation, application fees for Construction Requests and other requests for permission, consent, variance, or approval.

ARTICLE XI – THE ASSOCIATION

- 11.1 Establishment. Declarant shall cause incorporation of the Association as a non-profit corporation by the filing of the Articles of Incorporation of The Brooks at Cumberland Park Homeowner's Association with the Secretary of State of the State of Texas and the subsequent issuance by the Secretary of State of the Certificate of Incorporation of the Association. The Association may be formed before or after the date on which this Declaration is recorded.
- 11.2 Bylaws. Bylaws for the Association will be established and adopted by the Declarant or the Board consistent with this Declaration.
- 11.3 Membership and Registration. The Declarant and each other Owner of a Lot, including successive buyers, shall automatically and mandatorily become and be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of the Lot. The Association shall make its books and records reasonably available to the Members to the extent required under Section 209.005 of the Act. Each Member shall, promptly upon purchase of a Lot, (i) complete and submit to the Association a registration form including such information as may be required by the Association, and (ii) pay to the Association a registration fee in the amount of \$25.00 (or such other amount as may be determined by the Board from time to time). Such registration fee shall not be applicable to the Declarant or to any bona fide homebuilder who, upon approval by the Declarant, purchases a Lot for the sole purpose of constructing a dwelling thereon to be sold speculatively to a third-party owner. Any such third-party owner shall, upon closing on the Lot, pay the registration fee and otherwise comply with all the terms of this paragraph. If, for any reason, a new speculative house becomes occupied by anyone, then the owner of the Lot must register and pay said fee.
- 11.4 Voting Rights. The Association shall have two (2) classes of membership to be designated as Class "A" and Class "B."
- (a) Class "A" Members shall be all Owners, with the exception of the Declarant. No Class "A" Member shall be entitled to vote as long as the Declarant owns any Class "B" membership interest. Each Class "A" Member shall, once the Class "A" Members are entitled to vote, be entitled to one (1) vote for each individual Lot owned. When more than one person owns an interest in an individual Lot, all such persons shall be members of the Association; however, the one (1) vote for such Lot shall be exercised collectively as the Owners of the particular Lot shall among themselves determine.
 - (b) The Declarant shall be a Class "B" Member for so long as it owns any Lot in the Subdivision, including additions to the Subdivisions as provided herein. When any Lot is sold by the

Declarant to an Owner other than the Declarant, the Class "B" membership with respect to such Lot shall cease and automatically become a Class "A" membership. For so long as the Declarant owns any Class "B" membership, the Declarant shall be the only Member of the Association entitled to vote.

- 11.5 Suspension of Class "A" Voting Rights. It is possible, as provided in Section 11.4, for the Class "A" Members to become entitled to vote (by virtue of the Declarant's sale of all Lots in a particular unit or phase of the Subdivision), and then to have such entitlement to vote subsequently suspended because of the Declarant adding additional real property to the Subdivision as provided in Section 2.3 of this Declaration. If, at any time while the Class "A" Members are entitled to vote, Declarant adds or annexes additional real property to the Subdivision, the Class "A" Members' entitlement to vote shall be suspended and deferred for any period(s) of time that the Declarant shall own any Lot in the Subdivision which has never been sold by Declarant. The Declarant's reacquisition of any Lot that has been previously owned by a Class "A" Member shall not result in the suspension or deferral of the entitlement of the Class "A" members to vote.
- 11.6 Board of Directors. The Board shall be elected by the Members as provided in the Bylaws. The Board shall conduct the business of the Association, except when a membership vote is expressly required by this Declaration, the Articles of Incorporation, or the Bylaws of the Association.
- 11.7 Assessments. Each Lot is hereby subject to an annual maintenance charge and assessment for the purpose of creating a fund to be used for the mutual benefit of all Owners in the Subdivision. The amount of such annual maintenance charge shall be determined by the Board and, except as is provided in Subsections 11.7(a) and 11.7(b) below, such annual maintenance charge may be used for, among other purposes, operations, upkeep, repair, maintenance, and improvement of the Common Areas. The Board shall also have the right, from time to time, to levy and charge to the Owners special assessments for such purposes that shall benefit the Subdivision, as the Board, in its sole discretion, shall determine. Except as is provided in Subsections 11.7(a) and 11.7(b) below, the special assessments shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Board. The annual maintenance charge, and any special assessments, and any fine levied against any Owner as provided in Section 10.2 of this Declaration, shall be collectively referred to herein as the "Assessments." If the Owner shall own more than one Lot, the Owner shall be responsible for paying the full annual maintenance charge and the full special assessment for each Lot owned by the Owner.
- (a) Notwithstanding anything contained in this Declaration or elsewhere, the Declarant shall not, at any time, be required to pay or otherwise be responsible for payment of any annual maintenance charge or any special assessment with respect to any Lot or other property owned by Declarant.
- (b) Notwithstanding anything contained in this Declaration or elsewhere, a residential contractor/home builder ("Contractor") who purchases a Lot directly from the Declarant shall not be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment for a period of one (1) year from the date that such Contractor purchases a Lot from the Declarant. If, prior to the expiration of the one-year exemption period, the Contractor sells the Lot to any other person or entity, the exemption shall automatically and without notice lapse, and the new Owner shall be fully responsible for all annual maintenance charges and special assessments.
- 11.8 Conflicts. The Association may make whatever rules, regulations, and Bylaws it deems necessary or desirable to govern the Association and its Members provided, however, that any conflict between the Association's rules, regulations, and Bylaws and the provisions of this Declaration shall be controlled by and resolved in favor of this Declaration.
- 11.9 Management. The Association shall have the authority to enter into a management agreement with Declarant or any affiliate of Declarant or any other entity for the purpose of management of the

Association and the administration of the Association's duties, and Declarant or its affiliate or any other entity may charge a fee for services rendered under such management agreement.

- 11.10 Management Certificate. The Association shall record in Smith County, Texas, a management certificate in compliance with the provisions of Section 209.004 of the Act.
- 11.11 Compliance with Chapter 207 of the Code. The Association shall adopt policies and procedures to ensure that it complies with the applicable provisions of Chapter 207 of the Code regarding delivery of Subdivision information in a timely manner.

ARTICLE XII – RESERVATIONS OF DECLARANT

- 12.1 Reservations. Notwithstanding anything herein to the contrary, the following rights are hereby reserved by Declarant:
- (a) The easements shown on the Plat are dedicated as stated on the Plat. The said easements are for the use and benefit of any public utility operating in Smith County, Texas, as well as for the private benefit of Declarant, to allow for the construction, repair, maintenance, and operation of a system or systems of electric light and power, telephone lines, television cable lines, security, gas, water, sanitary sewers, storm sewers, and any other utility or service which Declarant may find necessary or proper.
 - (b) Declarant reserves the right from time to time to make changes in the location, shape, and size of, and additions to, the easements described in Section 12.1(a) above, for the purpose of more efficiently or desirably installing utilities therein and thereon.
 - (c) The title conveyed to a Lot or any part of the Property shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewers or sanitary sewer lines, poles, pipes, conduits, cable television lines, or other appurtenances or facilities constructed by Declarant or public utility companies upon, under, along, across, or through such utility easements.
 - (d) The right to dedicate, sell, or lease the lines, utilities, appurtenances, and other facilities described in Section 12.1(c) to any municipality, governmental agency (including any water control or utility district created under Article XV Section 59 of the Texas Constitution covering the Property, as well as other lands), public service corporation or other party is hereby expressly reserved to Declarant.
 - (e) Neither Declarant, nor its successors or assigns, shall be liable for any damage done by any of such parties or any of their agents or employees to shrubbery, trees, flowers, or other property of any Owner situated on the Lots covered by the above-described utility easements.
 - (f) The right to enter upon the Property during installation of streets and utilities for the purpose of performing excavation, construction, and paving is hereby reserved to Declarant, its successors and assigns. Neither Declarant nor its respective successors or assigns, shall be liable for any damage done by said parties or any of their agents or employees to shrubbery, trees, flowers, or other property of the Owner which necessitated by such construction.
 - (g) Declarant, its successors, assigns, licensees, and invitees shall at all times have the right to use Common Areas for purposes of ingress and egress to and from any other property developed by Declarant, its successors or assigns.

ARTICLE XIII – TERMS, AMENDMENTS, TERMINATIONS

- 13.1 Term, Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as may be amended from time to time, shall continue in full force and effect to and including December 31, 2017. From and after December 31, 2017, this Declaration, as it may have been amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners of at least seventy-five percent (75%) of the Lots (there being only one vote per Lot which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes for termination at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten- (10) year extension.
- 13.2 Amendments.
- (a) Until the Declarants initially sells all of the Lots, such sales being evidenced by the recording of a deed from the Declarant to the initial buyer of a Lot, the Declarant shall have the right to unilaterally change or amend this Declaration at any time for any reason or purpose as determined at the sole discretion of the Declarant in order to develop, protect, and enhance the Property. After all of the Lots have been initially sold by Declarant, this Declaration may be amended or changed in whole or in part at any time only by the affirmative vote of the then owners of at least seventy-five percent (75%) of the Lots, including the additional or annexed Lots (each Owner having one vote per Lot owned which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine), casting their votes to amend or change this Declaration at a special meeting called pursuant to Section 13.3.
- 13.3 Election Procedures. The affirmative votes required under Sections 13.1 and 13.2 hereof shall be obtained and evidenced by the requisite vote of the Owners (including Declarant, if applicable) present at a meeting of Owners duly called by at least fifty percent (50%) of the Owners or by the Declarant pursuant to notice to all of the Owners on or prior to ten (10) days before the date of the meeting, at which meeting the requisite percentage of Owners, in person or by proxy, vote to so amend or terminate this Declaration. The notice of the meeting must set forth the proposal as to amendment of this Declaration (and/or the Covenants contained herein), and such affirmative vote of the requisite percentage of Owners must be evidenced by minutes of the meeting duly certified by the Owners who called the meeting or the Declarant. In any event, a copy of the minutes shall be delivered to the Declarant prior to any amendment or change becoming effective.
- 13.4 Recording Amendments. Upon the amendment or change of this Declaration (and/or the Covenants contained herein) as herein provided, and upon the other conditions set forth in Section 13.1 or 13.2 (as the case may be) and 13.3 of this Article being satisfied, then each amendment shall be executed by the (i) Declarant, or (ii) Owners who voted in favor of the amendment or change, placed in recordable form, and filed of record in the Real Property Records of Smith County, Texas.
- 13.5 Effect. Upon the filing of an amendment or change in accordance with Section 13.4, this Declaration and the Covenants, as amended, shall remain in full force and effect.
- 13.6 Other Right of Amendment. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be required by any federal, state, or local agency which requires such an amendment as a condition precedent to such agency's approval of this Declaration, or any federally-chartered lending institution as a condition precedent to lending funds upon the security of the Property or any portion thereon. Any such amendment shall be effected by the recordation by Declarant of a Certificate of Amendment signed by Declarant with proper signature acknowledged, specifying the federal, state, or local governmental agency or the federally-chartered lending institution requiring the amendment and setting forth the amendatory language required by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's requirement for such an amendment, and such Certificate, when recorded, shall be binding upon the Property, or the affected portion thereof,

and all persons or Owners having an interest in the same. Declarant shall not have any right to amend this Declaration except in accordance with and pursuant to the provisions of Sections 13.2 and 13.6, and as otherwise expressly provided in this Declaration.

ARTICLE XIV – RESERVATION OF RIGHT TO RESUBDIVIDE

- 14.1 Subject to the approval of any and all appropriate governmental agencies having jurisdiction over the Subdivision, Declarant hereby reserves the right at any time to subdivide or resubdivide, as the case may be, and/or plat or replat, as the case may be, all or any portion of the Subdivision or of any Lot or Lots then owned by Declarant without the consent of any Owner, the Association, or any other party. Declarant further reserves the exclusive right, subject to approval of the City of Tyler, to amend the PUR site development plan of the Brooks at Cumberland Park (which is filed with the City of Tyler), to change the configuration of lots and streets, to extend streets to adjacent property owned by Declarant, and to change the location and number of entry points into the subdivision prior to platting.

ARTICLE XV – MISCELLANEOUS


- 15.1 Interpretation of the Covenants. Except for judicial construction, the Board shall have the exclusive right and power to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by the court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by this Declaration and the provisions hereof.
- 15.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other, remaining provisions hereof, which remaining provisions shall be and remain in full force and effect.
- 15.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change or condition or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.
- 15.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarant, the Board, or the Architectural Control Committee, as applicable, shall have the right to adopt rules and regulations with respect to all other aspects of the rights, activities, and duties of the Declarant, the Board or the Architectural Control Committee, as applicable, provided said rules and regulations are not inconsistent with the provisions of this Declaration.
- 15.5 Disclaimer of Representations. Anything to the contrary in this Declaration, notwithstanding and except as otherwise may be expressly set forth in a written document signed by Declarant, neither the Declarant nor the Architectural Control Committee makes any warranties or representations whatsoever that the plans presently envisioned for the Complete development of the Property can or will be fully carried out.
- 15.6 Limitation of Liability. In the absence of willful misconduct attributable to the (i) Declarant, (ii) Architectural Control Committee (and any and all members thereof), or (iii) the Board, neither Declarant, the Board, nor the Architectural Control Committee (nor any member thereof) shall have any liability of any nature whatsoever arising out of or in any matter related to the performance or nonperformance of any of the rights and powers reserved unto Declarant, the Board or the Architectural Control Committee, or their respective heirs, personal representatives, successors or assigns, pursuant to this Declaration. Notwithstanding anything in this Declaration to the contrary, the Association and each Owner agree that in no event shall Declarant, its owners, agents, or representatives, be liable for any obligation, representation, warrant, or other undertaking of any kind respecting the Subdivision or any matter pertaining to the Common Areas or any Lot, unless such obligation, representation, warranty, or

undertaking is expressed in writing, signed by Declarant and supported by independent consideration described or recited therein.

- 15.7 Gender and Number. Whenever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; words in the plural shall include the singular.
- 15.8 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.
- 15.9 Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to each such person or entity at the address given by such person or entity to the party sending the notice or to the address of the Dwelling or the office by such or entity if no address has been given. Such address may be changed from time to time by notice in writing.
- 15.10 Enforcement by Injunction. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions hereof, including any of the Covenants, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provisions; it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions.
- 15.11 Suspension of the Covenants. The Declarant and the Architectural Control Committee shall and do have the right during the period of construction, development, and sale of the Lots in the Subdivision, to grant reasonable and specifically-limited exemptions from the Covenants to Declarant and any other developer or contractor. Any such exemptions shall be granted only upon specific written request, itemizing the exemption requested, the location thereof, the need therefor, and the anticipated duration thereof, and any authorization and approval thereof shall be similarly itemized. No such exemption shall be broader in terms of activity, location, or time than is reasonably required.
- 15.12 Non-Waiver. Any failure or delay on the part of either the Declarant, the Architectural Control Committee and/or the Board (i) to exercise any right, remedy or duty under this Declaration, or (ii) to take any action to enforce the Covenants or the Declaration, with regard to any one matter or situation or group of matters or situations in any manner covered by or arising out of the Covenants or Declaration shall not in any manner be deemed or construed to be a waiver of any subsequent matter or situation or group of matters or situation arising hereunder. No forbearance of any type for any period of time, either the Declarant, the Architectural Control Committee and/or the Board shall be in any manner deemed or construed to be a waiver of any right remedy or duty hereunder, but all such rights, remedies, and duties shall continue in full force and effect as if no forbearance had occurred.
- 15.13 Liberal Interpretation. This Declaration, and all of the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements, shall be liberally construed to effectuate the purposes of this Declaration, and to give effect to its purpose and intent as provided in Section 202.003 of the Code.
- 15.14 Chapter 202 of the Code. This Declaration is a "dedicatory instrument," as defined in the Act and in Chapter 202 of the Code.

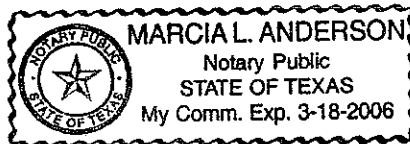
In witness whereof, the undersigned has signed this Declaration on date first set forth above.


**BROADWAY SOUTH DEVELOPMENT, "M" NO. 1, LTD.
BY BROADWAY SOUTH DEVELOPMENT, LC, ITS SOLE
GENERAL PARTNER**

By 
John R. Garrett, President

ACKNOWLEDGEMENT

This instrument was acknowledged before me on January 29, 2003, by John R. Garrett, President of Broadway South Development, LC, as sole general partner of Broadway South Development, "M" No. 1, Ltd., a Texas Limited Partnership, and in the capacity therein stated.




Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

John R. Garrett
P.O. Box 1084
Tyler, TX 75710

Filed for Record in:
SMITH COUNTY, TEXAS
JUDY CARNES, COUNTY CLERK
On Jan 29 2003
At 2:58pm
Receipt #: 255661
Recording: 51.00
Doc/Num : 2003-0004266
Doc/Type : REC
Deputy -Gloria Parks

THE BROOKS AT CUMBERLAND PARK
COMMON FENCE MAINTANENCE EASEMENT

BEING a 0.0029 acre tract in the Thomas J. Blackwell Survey, Abstract 112, Tyler, Smith County, Texas and being part of The Brooks at Cumberland Park, Phase 1 as shown on a Corrected Final Plat in Cabinet D, Slide 129-A of the Smith County Plat Records, Smith County, Texas and being more completely described as follows:

BEGINNING at a ½" iron rod found at the Southwest corner of Lot 1, N.C.B. 1730-B on the Southeast right-of-way of Skidmore Lane;

THENCE North 46 degrees 22 minutes 27 seconds East, a distance of 397.34 feet with said Southeast right-of-way of Skidmore Lane and with the Northwest boundary line of Lots 1 through 6, N.C.B. 1730-B to a ½" iron rod found at the Northwest corner of said Phase 1;

THENCE with the North boundary line of Lots 6 through 20, N.C.B. 1730-B an around a curve in a counterclockwise direction having a delta angle of 04 degrees 50 minutes 20 seconds, an arc distance of 986.76 feet, a radius of 11684.16 feet, and a chord of North 85 degrees 57 minutes 32 seconds East, a distance of 986.47 feet to a ½" iron rod found at the Northeast corner of said Lot 20, N.C.B. 1730-B;

THENCE South 12 degrees 29 minutes 05 seconds West, a distance of 5.29 feet with the East boundary line of said Lot 20 to a ½" iron rod set;

THENCE South 85 degrees 57 minutes 31 seconds West, a distance of 983.26 feet, 5 foot parallel and perpendicular distance from said North boundary line of Lots 20 through 6, N.C.B. 1730-B to a ½" iron rod set;

THENCE South 46 degrees 22 minutes 27 seconds West, a distance of 395.38 , 5 foot parallel and perpendicular distance from said Northwest boundary line of Lots 6 through 1, N.C.B. 1730-B to a ½" iron rod set on the Southwest boundary line of said Lot 1, N.C.B. 1730-B;

THENCE North 44 degrees 02 minutes 04 seconds West, a distance of 5.00 feet with said Southwest boundary line of Lot 1, N.C.B. 1730-B to the PLACE OF BEGINNING containing 0.0029 acre of land.

Bearing Basis Is Texas State Plane Coordinate System, Grid North Central Zone NAD 83, Feet Based On 1993 Adjustment Of NAD 83 System (Ref. Mon. FAA TYRA).

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, do hereby certify that this boundary description represents the results of a survey made on the ground.

KK / 1/2
Kevin L. Kilgore

10-24-2002

Date

STATE OF TEXAS COUNTY OF SMITH
I hereby certify that this instrument was
filed on the date and time stamped hereon
by me and was duly recorded in the Official
Public records of Smith County, Texas.



JAN 29 2003

Judy Carnes
JUDY CARNES
COUNTY CLERK, Smith County, Texas

