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Amend

AMENDED AND RESTATED DECLARATION OF RESTRICTIONS

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STATE OF TEXAS §
 § KNOWN ALL MEN BY THESE PRESENTS
COUNTY OF HARRIS §

This Amended and Restated Declaration of Restrictions (“Declaration”) amends and restates the restrictive covenants set forth in the “Supplemental Petition to Create Restrictions” recorded under Harris County Clerk’s File No. N004307 (the “1991 Restrictions”) and the “Amendment of Restrictions” recorded under Harris County Clerk’s File No. 20140490255 (the “First Amendment of Restrictions”), each in the Real Property Records of Harris County, Texas for Cherryhurst, an addition to the City of Houston, Harris County, Texas, recorded in Volume 5, Page 38 of the Map Records of Harris County, Texas (the “Cherryhurst Subdivision”), as set forth below.

WITNESSETH:

WHEREAS, the undersigned is President of the Cherryhurst Civic Association, a Texas nonprofit corporation, organized for the purpose of promoting the general welfare of the Cherryhurst Subdivision;

WHEREAS, the 1991 Restrictions were created under the process prescribed by Chapter 201 of the Texas Property Code by the following documents: Notice of Formation of Petition Committee (Clerk’s File No. M575195), the Petition to Create Restrictions (Clerk’s File No. M981591), the Supplemental Petition to Create Restrictions (Clerk’s File No. N004307), and the Certificate of Compliance (Clerk’s File No. N083132), and subsequently amended by the Amendment of Restrictions (Clerk’s File 2014040255), all of which are recorded in the Real Property Records of Harris County, Texas;

WHEREAS, (A) certain lots in the Cherryhurst Subdivision affirmatively opted into the 1991 Restrictions by signature pages attached to the Petition to Create Restrictions (Clerk’s File No. M981591) in which the owners of said lots elected for the 1991 Restrictions to apply to their properties; (B) any lots in the Cherryhurst Subdivision that did not affirmatively opt out of the 1991 Restrictions at the time, either (i) by selecting the “Excluded” box on a signature page attached to the Petition to Create Restrictions (Clerk’s File No. M981591) or (ii) by filing a separate statement in the Real Property Records electing to exclude such lot within one year of the filing of said Petition to Create Restrictions are subject to the 1991 Restrictions, as amended, and (C) other lots in the Cherryhurst Subdivision have subsequently opted into the 1991 Restrictions by voluntarily filing instruments to that effect in the Real Property Records of Harris County, Texas. All such lots described in the previous sentence are subject to the 1991 Restrictions, as amended, and are referred to herein as the “Restricted Lots”;

WHEREAS, the First Amendment of Restrictions modified the 1991 Restrictions and affects the Restricted Lots;

WHEREAS, Article II (General Provisions), Section 3 of the 1991 Restrictions provides that the restrictions therein may be amended by an instrument signed by 75% of the owners of Restricted Lots;

WHEREAS, it is the desire of at least 75% of the owners of Restricted Lots in the Cherryhurst Subdivision to amend the 1991 Restrictions, as amended by the First Amendment of Restrictions, and to restate all applicable restrictions for the Restricted Lots as set out herein;

WHEREAS, at least 75% of the owners of Restricted Lots in the Cherryhurst Subdivision have signed this Declaration, as required for amendment of the 1991 Restrictions under Article II (General Provisions), Section 3 thereof;

NOW, THEREFORE, the undersigned hereby declare that each and every Restricted Lot within the Cherryhurst Subdivision shall be held, sold and conveyed subject to the Amended and Restated Restrictions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the Restricted Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of the owners of the Restricted Lots, their heirs, successors and assigns, and each owner thereof.

[Amended and Restated Restrictions begin on the following page]

Amended and Restated Restrictions:

This Declaration is between property owners of Restricted Lots (defined below) in the Cherryhurst Subdivision (defined below), an addition to the City of Houston, Harris County, Texas, as recorded in Volume 5, Page 38 of the Map Records of Harris County, Texas.

The parties to this Declaration intend to restrict the use of the lots owned by them, so that all of the Restricted Lots will benefit from these restrictions as a result of the preservation of the value and the character of the said lots.

In consideration of the mutual benefits, promises, covenants, and agreements, the owners of Restricted Lots in the Cherryhurst Subdivision, as coventors and coventees, on behalf of themselves and their successors in interest, agree to the following terms, covenants, conditions and restrictions which are applicable to all of the Restricted Lots.

ARTICLE I

DEFINITIONS

1. "Cherryhurst Subdivision" shall mean the subdivision in the City of Houston, Texas, according to the map or plat thereof recorded in Volume 5, Page 38 of the Map Records of Harris County, Texas. *fel*
2. A "lot" shall mean that portion of any of the plots of land shown upon the plat recorded in Volume 5, page 38 of the Map Records of Harris County, Texas, and depicted on the attached Exhibit "A".
3. "Restricted Lots" shall mean (A) those certain lots in the Cherryhurst Subdivision that affirmatively opted into the 1991 Restrictions (defined below) by signature pages attached to the Petition to Create Restrictions (Clerk's File No. M981591) in which the owners of said lots elected for the 1991 Restrictions to apply to their properties; (B) any lots in the Cherryhurst Subdivision that did not affirmatively opt out of the 1991 Restrictions at the time, either (i) by selecting the "Excluded" box on a signature page attached to the Petition to Create Restrictions (Clerk's File No. M981591) or (ii) by filing a separate statement in the Real Property Records electing to exclude such lot within one year of the filing of said Petition to Create Restrictions, (C) other lots in the Cherryhurst Subdivision that have subsequently opted into the 1991 Restrictions, as amended, by voluntarily filing instruments in the Real Property Records of Harris County, Texas confirming such application of the restrictions to said lots, and (D) any other property (including property outside the Cherryhurst Subdivision) for which the owner thereof has filed (now or in the future) an instrument in the Real Property Records of Harris County, Texas adopting the 1991 Restrictions, as amended from time to time (including this Declaration), to be applicable to said property. Each lot as described in this paragraph 3 is a "Restricted Lot".

4. A "residence" shall mean a single, enclosed dwelling unit containing facilities for living, sleeping, cooking and eating. A "residence" is a single family house, townhouse, or a garage apartment.
5. "1991 Restrictions" shall mean the restrictive covenants set forth in the "Supplemental Petition to Create Restrictions" recorded under Harris County Clerk's File No. N004307 in the Real Property Records of Harris County, Texas.
6. A "pitched roof" shall mean a roof sloping downward in two parts at an angle from a central ridge, so as to leave a gable (i.e., the part of a wall that encloses the end of a pitched roof) at each end.
7. A "hipped roof" shall mean a roof that slopes upward from all sides of the structure, meeting at a single peak or where a roof ridge meets two hips at either end of the structure.
8. A "ridge" (i.e., the ridge of a roof or "roof ridge") shall mean the horizontal top area of a sloped roof system where two sloped roof areas meet.

ARTICLE II

RESTRICTIONS

1. All Restricted Lots shall be used for residential purposes only, except that a business office or professional activity to which the general public is not invited, shall be allowed, as long as there is no physical evidence of the business office or professional activity apparent from the street or neighboring lots. Such business office or professional activity shall be allowed to employ and use on the Restricted Lot only residents of the Restricted Lot. The allowed incidental business office or professional activity specifically excludes food service, industrial, manufacturing (other than incidental home crafts and hobbies), warehousing, motor vehicle and equipment repair or storage activities or any other business activity that would detract from the residential character of the Cherryhurst Subdivision. Except as described above, no Restricted Lot shall be used for any type of business or commercial purpose, or for any industrial, manufacturing, warehousing, or motor vehicle and equipment repair purpose whatsoever. Use of any of the Restricted Lots as a hotel or boarding house is prohibited. No structure of a temporary character, trailer, mobile home, tent, shack or other out building shall be used on any Restricted Lot at any time as a residence either temporarily or permanently.
2. New construction and exterior renovation of existing structures shall be limited to single family homes (i.e., no townhomes) or garages (with or without apartments) with a height (excluding chimneys) not to exceed twenty-five (25) feet. Notwithstanding the foregoing, such height limitation may be exceeded by up to ten (10) feet provided the additional height is within a roof that is either a pitched roof or hipped roof and has a minimum 4:12 slope. Height shall be measured from the natural grade level of the applicable lot to the highest point of the roof. All

buildings constructed or renovated shall have the exterior appearance of having not more than two (2) stories; provided, however, the foregoing does not preclude the addition of dormers or windows above the second story for conversion of attic space to living space. In the event dormers are added to the roof above a second story, the total interruptions to the roof may not exceed fifty percent (50%) of the total surface area of such roof and the roof shall have a minimum 4:12 slope. Notwithstanding the foregoing, any townhouse lawfully existing as of October 10, 2014 may be renovated, replaced or rebuilt to a height and number of floors not to exceed the height and number of floors of said townhouse existing on October 10, 2014.

3. No multi-unit rental residences, apartments, halfway houses, boarding houses or rooming houses shall be constructed. Conversion of existing single family residences or townhouses into multi-unit rental residences, apartments, halfway houses, boarding houses or rooming houses is prohibited.

4. Each residence shall have a minimum setback of a total sum of eight (8) feet from its side property lines (excluding chimneys) (e.g., four (4) feet from one side property line plus four (4) feet from the opposite side property line equals a sum total of eight (8) feet, or five (5) feet from one side property line plus three (3) feet from the opposite side property line equals a sum total of eight (8) feet). No residence shall be built that is more than fifty (50) feet wide.

5. Parking cars or other vehicles on the grass in the front yard is prohibited. No vacant Restricted Lot shall be used as a parking lot. Curb cuts are prohibited at the front setback area of any Restricted Lot that has unimpeded alley access (i.e., the only point of access to such Restricted Lot shall be via the alley). One curb cut is permitted on each Restricted Lot with no alley access and such curb cut shall not exceed a total width of thirteen (13) feet (except to the extent provided by applicable law). One curb cut is permitted on each corner Restricted Lot and such curb cut shall not exceed a total width of twenty-six (26) feet (except to the extent provided by applicable law). It is the intention of this section to prohibit circular driveways and multiple driveways.

6. A fence built inside the front setback shall not obscure the front elevation of a residence. Notwithstanding the foregoing, an iron rod fence with openings between rods or a low picket fence shall not be considered to obscure the front elevation of a residence.

7. All residences shall be oriented toward and facing Fairview Street, Haver Street, Cherryhurst Street, Missouri Street, California Street or such other street that is parallel to said streets, except that all residences on the east side of Yupon Street south of Fairview Street shall face Yupon Street and all residences on the west side of Mandell Street south of Fairview Street shall face Mandell Street. Garage apartments shall face either the front property line or the back property line if there is an adjoining alley. Garage apartments located on corner Restricted Lots may orient toward and face California Street, Missouri Street, Windsor Street, Yupon Street, Ridgewood Street or Mandell Street. Notwithstanding the foregoing, townhouses existing on the

date that this Declaration is filed of record may be rebuilt at their current orientation, even if the same would violate this restriction.

8. No beer, wine, liquor or other alcoholic beverage shall be sold on any of the Restricted Lots.

9. If a residence located on a Restricted Lot is totally destroyed or rendered uninhabitable by fire, wind, rain or any other disaster, or is condemned by the City of Houston, then the owner or owners of the Restricted Lot shall either begin repair and restoration of the property or clean the Restricted Lot of debris within nine (9) months of the date of the disaster or condemnation. This restriction is not intended to prevent the owner from rebuilding the premises. Completion of the restoration/rebuilding/repair shall be completed within twenty-four (24) months of the time the work begins.

10. No Restricted Lot, alley or street shall be used as a storage facility, or as dumping ground for rubbish, trash, or garbage. Garbage or other waste shall be disposed of in accordance with City of Houston ordinances, rules and regulations.

11. No signs, advertisements or billboards may be put up on any Restricted Lot. The only signs allowed will be those (i) advertising the premises for sale or rent, and those signs shall not be larger than six (6) square feet; and (ii) plaques or markers or other type of designation erected or affixed on the property awarded by federal, state or municipal government or a civic association.

12. Persons subsequently acquiring title to the Restricted Lots shall accept title to those lots subject to these restrictions and covenants. These restrictions and covenants shall be deemed covenants running with the land, and those acquiring title to the Restricted Lots, as well as their successors in title, shall be bound by these restrictions as long as they are in effect. If any person shall violate or attempt to violate any of these restrictions, any person owning property subject to these restrictions, and/or the Cherryhurst Civic Association, or its successor, may take whatever legal action is necessary to enforce these restrictions.

13. If any of these restrictions are held to be invalid or unenforceable, then that holding shall be construed narrowly, and the remaining restrictions shall remain in full force and effect.

ARTICLE III

GENERAL PROVISIONS

1. Any owner of a Restricted Lot and/or the Cherryhurst Civic Association or its successors or assigns, shall have the right to enforce, by any legal means, all restrictions imposed by this Declaration. Before filing suit to enforce a violation of any restriction from this Declaration, the offending Restricted Lot owner must receive a notice of such violation signed by at least ten (10) Restricted Lot owners. The offending Restricted Lot owner shall then have thirty (30) days to

cure such violation. If the violation is not cured within the thirty (30) day cure period, a Restricted Lot owner and/or Cherryhurst Civic Association or its successors or assigns may bring suit against the offending Restricted Lot owner. Failure to enforce a restriction shall not waive the right to subsequently enforce the same, or other, restrictions.

2. The restrictions of this Declaration shall run with the lands restricted by it, and shall be enforceable by any owner of a Restricted Lot, or by the Cherryhurst Civic Association, and their respective legal representative, and /or successors in title. Unless this Declaration is amended or cancelled, it shall be effective for ten (10) years from the date it is filed in the county Clerk's records of Harris County, Texas. At the end of the first ten (10) years, the restrictions in the agreement shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended or cancelled at any time by an instrument signed by not less than seventy-five percent (75%) of the owners of the Restricted Lots. No amendment shall be effective until recorded in the County Clerk's records of Harris County, Texas.

3. Certain Restricted Lots that were not in compliance with the 1991 Restrictions at the time of their adoption were, and are still, grandfathered as to the 1991 Restrictions and the grandfathering status of any such Restricted Lots, for purposes of those restrictions set forth in the 1991 Restrictions, is governed by the grandfathering provision of the 1991 Restrictions, which is reproduced in its entirety below:

Any use or condition which does not comply with the restrictions set forth in the agreement, which was in existence prior to the adoption of the agreement, shall not be affected by the terms of this agreement. None of these restrictions shall be enforceable against any present owner whose non-conformance falls within the terms of this paragraph. However, the voluntary discontinuation of any "non-conforming use" by an owner shall operate to prevent the reestablishment of such use after it has been abandoned. (Article II, Section 4 of the Supplemental Petition to Create Restrictions).

4. Certain Restricted Lots that were not in compliance with the restrictions added by the "Amendment of Restrictions" recorded under Harris County Clerk's File No. 20140490255 were, and are still, grandfathered as to said restrictions added by said Amendment of Restrictions.

5. This Declaration adds to and modifies the restrictions applicable to the Restricted Lots of Cherryhurst Subdivision. For purposes of this paragraph, those additional or modified restrictions set forth for the first time in this Declaration are referred to herein as the "2017 Restrictions". Any use or condition which does not comply with the 2017 Restrictions that was in existence prior to the recording of this Declaration in the Real Property Records of Harris County, Texas, may remain in effect. None of these 2017 Restrictions shall be enforceable

against any present owner whose non-conformance falls within the terms of this paragraph; provided, however, the voluntary discontinuation of any "non-conforming use" by any owner shall operate to prevent the reestablishment of such use after it has been abandoned.

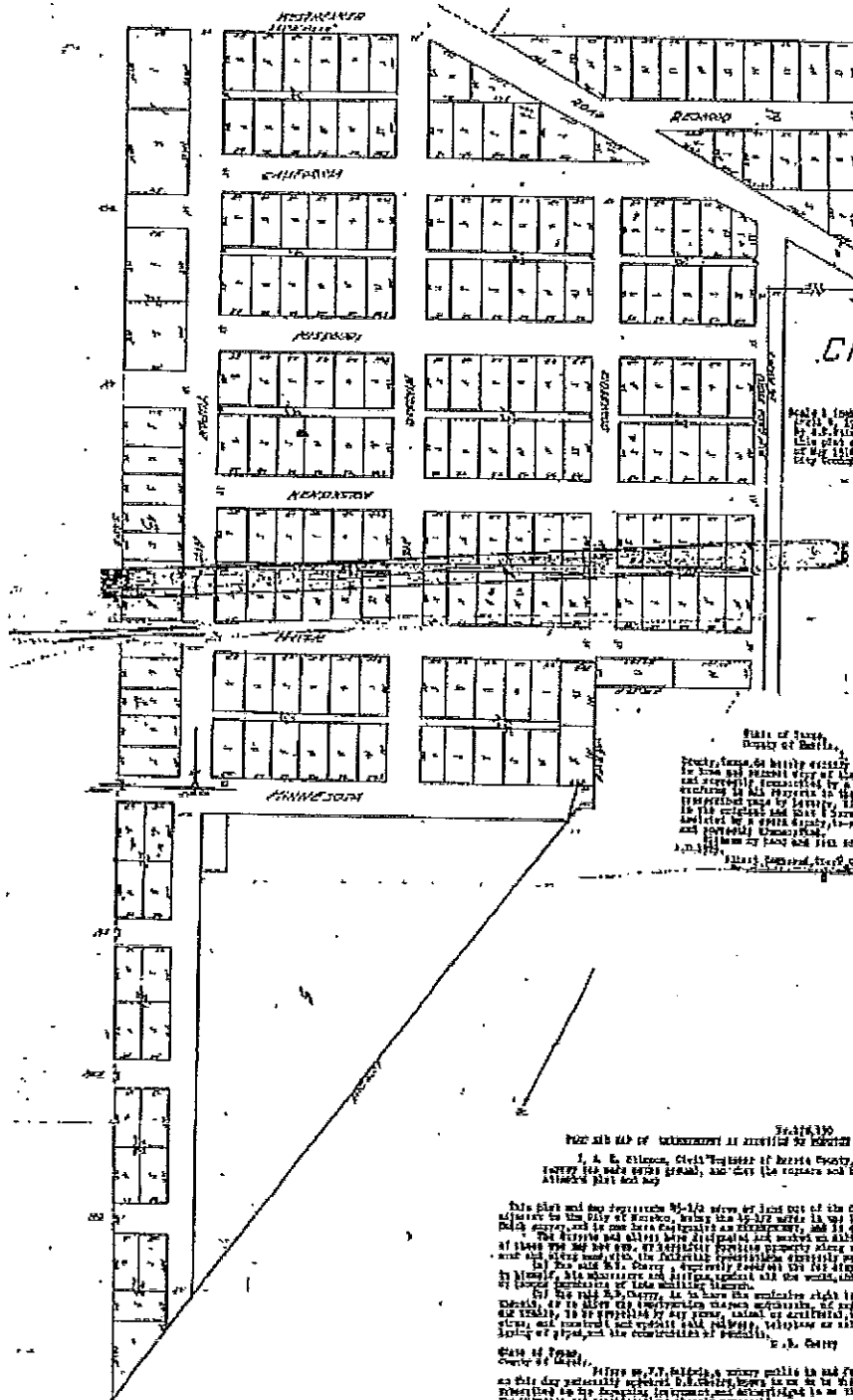
6. Neither Cherryhurst Civic Association nor any of the directors, members, officers, agents or representatives of Cherryhurst Civic Association shall be liable for any loss, damage, or injury (including, without limitation, legal fees or court costs) arising out of or in any way connected with any action taken in good faith to enforce these covenants and restrictions or the performance of the duties of Cherryhurst Civic Association. Furthermore, none of the members Cherryhurst Civic Association shall be personally liable for debts contracted for or otherwise incurred by Cherryhurst Civic Association or for any torts committed by or on behalf of the Cherryhurst Civic Association, or for a tort of another of such individuals, whether such other individuals were acting on behalf of the Cherryhurst Civic Association or otherwise.

7. This Declaration may be executed in multiple counter-parts, all of which shall be considered part of the same instrument.

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EXHIBIT "A"

5/38



PLAT SHOWING
CHERRYHURST
AFTER DIVISION OF LAND

Scale 1 inch = 100 ft. Approved by Order of the Board of Commissioners of Tarrant County, Texas, on the 15th day of May, 1908.

State of Texas,
County of Tarrant,
I, J. E. Wilson, Clerk of the County Court of Tarrant County, Texas, do hereby certify that the foregoing plat of land, containing 100 acres, more or less, and more particularly described as hereinafter set forth, is a true and correct copy of the original plat on file in my office, and that the same has been approved by the Board of Commissioners of Tarrant County, Texas, on the 15th day of May, 1908, and that the same is now on file in my office, and that the same is now on file in my office, and that the same is now on file in my office.

For all the of **CHERRYHURST** is situated in **TARRANT** COUNTY, TEXAS.
I, J. E. Wilson, Clerk of the County Court of Tarrant County, Texas, do hereby certify that the foregoing plat of land, containing 100 acres, more or less, and more particularly described as hereinafter set forth, is a true and correct copy of the original plat on file in my office, and that the same has been approved by the Board of Commissioners of Tarrant County, Texas, on the 15th day of May, 1908, and that the same is now on file in my office, and that the same is now on file in my office.

This plat and the description of the same were filed in the office of the Clerk of the County Court of Tarrant County, Texas, on the 15th day of May, 1908, and the same were approved by the Board of Commissioners of Tarrant County, Texas, on the 15th day of May, 1908, and the same are now on file in my office, and that the same is now on file in my office, and that the same is now on file in my office.

I, J. E. Wilson, Clerk of the County Court of Tarrant County, Texas, do hereby certify that the foregoing plat of land, containing 100 acres, more or less, and more particularly described as hereinafter set forth, is a true and correct copy of the original plat on file in my office, and that the same has been approved by the Board of Commissioners of Tarrant County, Texas, on the 15th day of May, 1908, and that the same is now on file in my office, and that the same is now on file in my office.

State of Texas,
County of Tarrant,
I, J. E. Wilson, Clerk of the County Court of Tarrant County, Texas, do hereby certify that the foregoing plat of land, containing 100 acres, more or less, and more particularly described as hereinafter set forth, is a true and correct copy of the original plat on file in my office, and that the same has been approved by the Board of Commissioners of Tarrant County, Texas, on the 15th day of May, 1908, and that the same is now on file in my office, and that the same is now on file in my office.

CERTIFICATION OF AMENDMENT OF RESTRICTIONS

The foregoing Amendment has been signed by the required number of owners pursuant to Article II (General Provisions), Section 3 of the 1991 Restrictions, which signatures are attached as "Exhibit B".

CHERRYHURST CIVIC ASSOCIATION,
a Texas nonprofit corporation

By: Rhonda B. Rudge
Name: Rhonda B. Rudge
Title: President

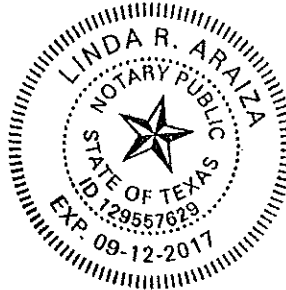
STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was sworn to and subscribed before me on July 27 2017, by Rhonda B. Rudge, President of Cherryhurst Civic Association, a Texas nonprofit corporation on behalf of said nonprofit corporation. 100

Linda R. Ariza
Notary Public in and for the State of Texas

My Commission Expires:

9-12-2017



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AFTER RECORDING RETURN TO:

Cherryhurst Civic Association
~~1621 Cherryhurst St.~~ 1806 Haver St.
Houston, Texas 77006