



## **Declaration of Covenants, Conditions and Restrictions of Brookfield Improvement Corporation, Inc.**

That whereas, Kirkwood Development Company, Inc., except as below stated, is the owner of that certain real property in Harris County, Texas, as described as follows:

Partial Re-Plat and Extension of Brookfield, Section One, Re-Plat "A", being a subdivision of a certain 53.4338 acre tract of land in the N. T. & B. R. R. Survey, Section 11, A-406, Harris County, Texas, according to the map or plat thereof recorded in the Office of the County Clerk of Harris County, Texas, at volume 196, Page 15, Map Records of Harris County, Texas; and

Whereas, the hereinafter named parties designated on Exhibit "A" hereof as "lot owners" are presently the owners of various respective lots out of said "Re-plat A", these parties joining in the execution of this Declaration as ratifiers, confirmers and adopters of this Instrument, and these lot owners, together with Kirkwood Development Company, Inc., comprise all of the owners of the above described property; and

Whereas, Kirkwood Development Company, Inc., will convey the said properties, subject to certain prospective covenants, restrictions, liens and charges as hereinafter set forth:

Now, therefore, Kirkwood Development Company, Inc., hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. The easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

### **ARTICLE I**

#### **DEFINITIONS**

Section 1. "Association" shall mean and refer to Brookfield Improvement Corporation, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons entities, of a

fee simple title to any lot or portions of a lot on which there is or will be built a detached single family dwelling, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinafter described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and shall include for example, but not by way of limitation, all recreational facilities, community facilities, swimming pools and entrances and entry fencing. The Common Area to be owned by the Association is the approximate 0.3301 acre tract described as follows:

Reserve "A" out of Partial Re-Plant and Extension of Brookfield, Section One, Re-Plat "A", being a subdivision of a certain 53.4338 acre tract of land in the H. T. & B. R. R. Survey, Section 11, A-406, Harris County, Texas, according to the map or plat thereof recorded in the Office of the County Clerk of Harris County, Texas, at Volume 196, Page 15, Map Records of Harris County, Texas.

Section 5. "Lot" shall mean and refer to that portion of any of the plots of land shown upon the above stated recorded subdivision map on which there is or will be built a single family dwelling. There is excepted herefrom the hereinabove described Common Area as noted on said subdivision map.

Section 6. "Declarant" shall mean and refer to Kirkwood Development Company, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Upon conveyance of same to the Association, every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to the title of every Lot, subject to the following provisions:

- a. the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas;
- b. the right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty days for any infraction of its published rules and regulation;
- c. the right of the Association to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property;
- d. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of

enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on January 1, 1977;

provided, however, that the Class B membership shall be reinstated upon annexation to the properties of any additional residential property and/or Common Area, but subject to further cessation in accordance with the limitations set forth in the preceding paragraphs (a) and (b) of this article.

### ARTICLE IV

#### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area owned by the Association and areas affecting the

houses situated upon the properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following conveyance of the first Lot to an Owner, the maximum annual assessment shall be seventy-two dollars (\$72.00) per Lot.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than three percent above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above three percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. As long as there is a class B membership, the Board of Directors may charge a fraction of the annual assessment on each Lot until the conveyance of said Lot by Declarant to an Owner, provided that, after any conveyance of the Common Area, any such fractional charge to Declarant shall not be less than fifty percent (50%).

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that, any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly call for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 50 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except as provided in Section 3(c) hereof, and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of seven and one-half percent (7 1/2%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interests, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Brookfield improvement Corporation, Inc., or its agents, the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all action brought in the name of the Association in a like manner as mortgage deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgage granted or created by the Owner of any Lot to secure payment of monies advanced and used for the purpose of purchasing and/or improving such Lot. Sale or transfer of any Lot pursuant to a foreclosure under such purchase-money or improvement mortgages or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessment created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Management Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to the Lot Owners. All management agreements shall be made with responsible parties having experience adequate for the management of a project of this type.

## ARTICLE V

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior additions to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE VI

### EXTERIOR MAINTENANCE

In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The costs of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

## ARTICLE VII

### USE RESTRICTIONS

1. Said Lot shall be used for residential purposes only and no building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two stories in height and a private garage for no more than three (3) cars.
2. No home shall be built on a lot having a width at the building line of less than sixty feet (60'), except lots fronting on a curved street and/or cul-de-sac.
3. No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building set-back lines shown on the recorded plat. No side yards at the front building set-back line shall be less than five feet, except a three (3) foot side yard shall be permissible for the garage or other permitted accessory building located sixty (60) feet or more from the front property line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of a building on any lot to encroach upon another lot. If two or more lots, or fractions thereof, are consolidated into the building site in conformity with the provisions of Section 2 above, these building set-back provisions shall be applied to such resultant building site as if it were one original, platted lot.
4. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No utility company, water district, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees or servants, to shrubbery, trees or flowers or other property of the owner situated on the land covered by said easements.
5. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
6. No permanent building structure shall be moved onto any lot.
7. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.
8. Dwellings on corner lots shall have representable frontage on all streets on which that particular lot fronts.
9. No residence, together with the lot upon which it is situated, shall be sold by the original builder for less than \$20,000.00.
10. Fifty percent of all front elevations, on one-story residences only, excluding gables and window and door openings, must be of masonry veneer.

11. No outbuildings shall exceed in height the dwelling to which they are appurtenant, without written consent of the Architectural Committee.
12. Every outbuilding, except a greenhouse, shall correspond in style and architecture to the dwelling to which it is appurtenant.
13. No building of frame construction on the exterior (of any kind or character) shall be erected on any lot unless same at the time of construction shall receive at least two coats of paint, unless approved by the Architectural Committee.
14. No signs of any character shall be allowed on any lot except one sign of not more than five square feet advertising the property for sale or rent, provided, however, Kirkwood Development Company, Inc., and any entity similarly building in the properties has the right, during the construction and sales period, to construct and maintain such facilities as it determines are necessary or convenient, including, but without limitation, signs, offices, storage areas and model units.
15. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts, be permitted on any lot. No derrick or other structure designed for any use in boring for oil, natural gas or other minerals shall be erected and maintained or permitted on any lot.
16. No building material of any kind or character shall be placed or stored upon the property until the owner is ready to commence to improve, and then such material shall be placed within the property lines of the lot or parcel of land upon which the improvements are to be erected, and shall not be placed in the street or between the pavement and property line, except during the construction period.
17. No lot shall be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment of the storage and disposal of such material shall be kept in a clean and sanitary condition.
18. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other house-type pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.
19. No fence, wall, hedge or gas meter shall be placed, or permitted to remain, on any of said lots nearer to the street or streets adjoining such lot than is permitted for the main residence on such lot, except for decorative subdivision entry fences, or fences used for enclosing community facilities installed by Kirkwood Development Company, Inc., and/or Brookfield Improvement Corporation, Inc., which are approved in accordance with Article V hereof.
20. No shrub or tree planting which obstructs sight lines at elevations between two and six feet above the roadway shall be planted or permitted to remain on any corner lot within the triangular area formed by the street property line and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

## ARTICLE VIII

## **GAS LIGHT INSTALLATION**

Declarant shall install a gas light on each lot to be located not more than ten feet (10') from the front property line of each said lot.

## **ARTICLE IX**

### **ELECTRICAL DISTRIBUTION SYSTEM**

An underground electric distribution system will be installed in Partial Re-Plat and Extension of Brookfield, Section One, Re-Plat "A", which is hereby designated an "Underground Residential Subdivision". The Owner of each Lot in said subdivision shall, at such Owner's own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code), the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at such Owner's cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained in said subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electrical distribution system in the Underground Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable), upon Declarant's representation that the Underground Residential Subdivision is being developed for single family dwellings of the usual and customary type, constructed upon the premises, designed to be permanently located upon the Lot where originally constructed and built for sale to bona fide purchasers (such category of dwellings expressly excludes, without limitation, mobile homes and duplexes). Therefore, should the plans of Lot Owners in the Underground Residential Subdivision be changed so that dwellings of a different type will be permitted in such Subdivision, the company shall not be obligated to provide electric service to a lot where a dwelling of a different type is located unless (a) Declarant has paid to the company an amount representing the excess in costs, for the said entire Underground Residential Subdivision of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision, or (b) the Owner of such Lot, or the applicant for service, shall pay to the company the sum of (i) \$1.00 per front Lot foot, it having been agreed that such amount reasonable represents the excess in cost of the underground distribution system to serve such Lot over the cost of the equivalent overhead facilities to serve such Lot, plus (ii) the cost of rearrangement and/or addition is determined by the company to be necessary.

## **ARTICLE X**

### **GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver to



the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of the Declarant shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty year period by an instrument signed by not less than ninety (90) percent of the Lot Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded in Harris County, Texas.

Section 4. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make provisions hereof apply to corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.

Section 5. Annexation. Additional residential property and common area within the area described in Volume 196, Page 15 of the Map Records of Harris County, Texas, may be annexed to the Properties with the consent of two-thirds (2/3) of each class of membership; or upon submission and approval by FHA/VA of an overall plan of the entire development, and subsequent approval of each stage of development, such additional stages may be annexed by the Board of Directors without the approval by the membership.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration:

Annexation of additional properties, conveyances and/or dedication of Common Area, Amendment of this Declaration of Covenants, Conditions and Restrictions, Mergers and Consolidations, Mortgaging of the Common Area and Management Agreement.

Section 7. Ratification of Lienholders. The hereinafter named parties designated "lienholders" on Exhibit "b" hereof join in the execution of this Instrument to evidence their respective ratifications, confirmations and adoptions hereof.

This Declaration is executed and recorded in lieu of and to take the place of that certain Restriction Instrument files August 31, 1972, under Harris County Clerk's File No. D-675598, covering the property being the subject of this Declaration, and said prior recorded Restriction Instrument shall be of no further force or effect.

In Witness Whereof, the undersigned being Declarant, has hereunto set its hand and seal this 11th day of October, 1972.

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