

**FIRST AMENDMENT OF
DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS**

FOR

REGENT SQUARE BROWNSTONES

A RESIDENTIAL SUBDIVISION IN HARRIS COUNTY, TEXAS

STATE OF TEXAS

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KNOW ALL BY THESE PRESENTS THAT:

COUNTY OF HARRIS

Pursuant to that certain instrument entitled "Declaration of Covenants, Conditions, Restrictions and Easements for Regent Square Brownstones" (the "Declaration") filed on December 15, 2008 under Clerk's File No. 20080599671, Official Public Records of Real Property of Harris County, Texas, including Section 10.04.2 of the Declaration and Sections A2.01.1 and A9.01 of Exhibit "A" to the Declaration, *HWD, LTD.*, a Texas limited partnership (hereinafter referred to as "Declarant") hereby amends the Declaration as follows:

**I.
Definitions**

In addition to the definitions contained herein, all definitions set forth in the Declaration (including Article II of the Declaration) are incorporated by reference herein.

**II.
Amendments**

1. Section 2.08 of the Declaration is hereby deleted in its entirety and the following substituted in place thereof:

SECTION 2.08 "Development Period" means the period of time beginning on the date of recordation of the Declaration in the Official Public Records of Real Property of Harris County, Texas, and ending on the earlier occurrence of either of the following events:

2.08.1 completion of the initial sale (as defined in **Section A2.01.4** of Exhibit "A" to the Declaration) of the last Lot in the Subdivision; or

2.08.2 upon the date of filing in the Official Public Records of Real Property of Harris County, Texas of Declarant's notice of termination of the Development Period, provided that at any time prior to complete termination of the Development Period Declarant may file one or more statements of limited termination of the Development Period to apply only to the specific functions, rights and/or responsibilities as stated therein.

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RP 067-98-1408

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2. Sections 5.07, 5.08 and 5.09 of the Declaration are hereby deleted in their entirety and the following substituted in place thereof:

SECTION 5.07 Lien for Assessments.

5.07.1 Continuation of Lien. The continuing lien covering each and every Lot within the Subdivision as established by the Declaration as filed on December 15, 2008, Official Public Records of Real Property of Harris County, Texas (sometimes herein referred to as the "Original Declaration") is hereby ratified and confirmed, effective as of the aforesaid date of filing of the Original Declaration in the Official Public Records of Real Property of Harris County, Texas, and shall continue in full force and effect as herein provided. All sums assessed against each Lot pursuant to the Declaration (as amended), whether by regular, special or specific assessment, are secured by the said continuing lien on each Lot in favor of the Association.

5.07.2 Perfection of Lien. The recordation of the Original Declaration constitutes record notice and perfection of the Association's continuing lien, effective from the date of recordation of the Original Declaration. No further recordation of a claim of lien or other notice of any type or kind whatsoever is required to establish or perfect such lien. To further evidence such lien, the Association may, but is not required to, from time to time prepare and file in the Official Public Records of Real Property of Harris County, Texas, written notice of default in payment of assessments applicable to one or more Lots, in such form as the Board may direct.

5.07.3 Priority of Lien. The Association's continuing lien is superior to all other liens or encumbrances on each Lot except:

(a) a lien for real property taxes and other governmental assessments or charges on a Lot (a "Tax Lien") to the extent so required by law but not otherwise (it being the intent hereof that the Association's continuing lien is superior to any Tax Lien if permitted by law, including as provided in Section 32.05 of the Texas Tax Code);

(b) a first lien securing payment of purchase money for a Lot, or a lien securing payment for work and materials used in constructing improvements on a Lot (a "First Lien") (i) as to and only as to assessments (regular, special or specific) the obligation for payment of which accrues from or after the applicable First Lien is duly recorded in the Official Public Records of Real Property of Harris County, Texas, and (ii) as to and only to the extent of unpaid sums secured by such First Lien;

(c) an extension of credit (commonly known as a home equity loan) made in accordance with and pursuant to Section 50(a)(6), Article XVI, of the Texas Constitution, as amended;

(d) a reverse mortgage made in accordance with and pursuant to Section 50(a)(7), Article XVI, of the Texas Constitution, as amended; and

(e) such other mortgages, deeds of trust, liens or other encumbrances to which the Board may from time to time by written agreement specifically and expressly agree, subject to such terms and conditions as set forth in the applicable written agreement.

5.07.4 Other Liens. Except as provided in **Section 5.07.3** or as otherwise expressly provided herein, all other Persons acquiring liens or encumbrances on any Lot are deemed to consent that such liens or encumbrances are inferior to the Association's lien for assessments, as provided herein, whether or not consent is specifically set forth in, and notwithstanding any contrary provisions in, any instruments creating such liens or encumbrances.

SECTION 5.08 Effect of Nonpayment of Assessments.

5.08.1 Delinquency Date. Any assessments, regular, special or specific, which are not paid by the due date are delinquent as of midnight of the due date.

5.08.2 Automatic Remedies. Except to the extent otherwise expressly agreed in writing by the Board, if any assessments are not paid by the due date, then:

(a) late charges, interest from the due date, and all compliance costs (including reasonable attorney's fees), all as set forth in **Section 5.06**, shall be added to and included in the amount of such assessment;

(b) all voting rights of the Owner are automatically suspended until all assessments (including all specific assessments) are paid in full;

(c) the Association may notify any credit bureau and/or any mortgagee or other lienholder with respect to the applicable Lot as to any default under the Governing Documents, including delinquency in payment of assessments and any other monetary amounts due to the Association; and/or

(d) the Association may exercise any other rights and remedies and institute and prosecute such other proceedings as it deems necessary to collect all amounts due.

5.08.3 Elective Remedies After Notice. If any assessments are not paid within thirty days after the due date, then the Association may elect to exercise any or all of the following remedies, in addition to and not in lieu of the automatic remedies as above provided, and without prejudice to any other rights or remedies, provided that notice and opportunity to be heard is first given:

(a) Acceleration of Assessments. The Association may accelerate, through the end of the year in which notice of default and intent to accelerate is given and for an additional six month period thereafter, all regular assessments and all special or specific assessments (including any installment payments) due or to become due during said period.

(b) Suspension of Services. The Association may suspend until all assessments (including all specific assessments) are paid in full, all other rights of the delinquent Owner, the Owner's tenants, and the Related Parties of either, to (i) receive any and all services provided to the applicable Lot and any improvements thereon, and/or (ii) use, employ or receive the benefits of any other Community Properties and/or Subdivision Facilities, including all rights to use of any and all recreational facilities, if any. Notwithstanding the foregoing, no Owner, Owner's tenant, or any of their Related Parties may be denied any rights of ingress, egress or regress to or from the Subdivision.

5.08.4 Action for Debt; Foreclosure.

(a) Each Owner, by acquisition of any Lot within the Subdivision or any right, title or interest therein, expressly grants to and vests in the Association (i) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (ii) the right and power to foreclose the Association's continuing lien for assessments by all methods available for the enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale; and (iii) a continuing power of sale in connection with the non-judicial foreclosure of the Association's continuing lien for assessments as herein provided.

(b) The Board or the then President of the Association may appoint, in writing, at any time and from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of and as the agent of the Association, including without limitation to deliver and file the notices required by Section 51.002 of the Texas Property Code (as amended), and to conduct the sale and to otherwise comply with said statute. The Board or the then President of the Association may, at any time and from time to time, remove any such Trustee and appoint a successor or substitute Trustee without further formality than an appointment and designation in writing. Except as otherwise provided by this Declaration, the Association will exercise its power of sale pursuant to Section 51.002 of the Texas Property Code (as amended). The Association has the right and power to bid on any Lot at any foreclosure sale, either judicial or non-judicial, and to acquire, hold, lease, mortgage, or convey the same.

(c) If directed by the Association to foreclose the Association's continuing lien, Trustee will, either personally or by agent, give notice of the foreclosure sale as required by the Texas Property Code as then in effect, and sell and convey all or part of the applicable property "AS IS", "WHERE IS", and "WITH ALL FAULTS" to the highest bidder, subject to prior liens, encumbrances and any other matters of record and without representation or warranty, express or implied, by Trustee or the Association. The Association shall indemnify Trustee and hold Trustee harmless from and against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the Association's lien or otherwise pursuant to the Declaration or other Governing Documents, including indemnification for all court and other costs, and attorneys fees incurred by Trustee in defense of any action or proceeding taken against Trustee regarding any of the foregoing.

(d) The filing of suit to collect any sums due hereunder or to foreclose the Association's continuing lien for assessments may never be considered an election so as to preclude exercise of any other rights or remedies, including without limitation foreclosure under power of sale before or after a final judgment. After foreclosure, either judicial or non-judicial, the former Owner and anyone claiming under the former Owner must immediately surrender possession to the purchaser. If not, the former Owner and anyone claiming under the former Owner will be mere tenants at sufferance of the purchaser, and the purchaser may obtain immediate possession pursuant to any actions or remedies permitted by law, including an action for forcible detainer or eviction to be maintainable by the purchaser.

(e) Each owner, by acquisition of any Lot within the Subdivision or right, title or interest therein, specifically covenants and stipulates as to each and every Trustee's foreclosure sale that the recitals in any appointment or designation of Trustee, any conveyance by the Trustee and any affidavit of the Trustee or the Association related thereto shall be full proof and evidence of the matters therein stated, that all prerequisites of the foreclosure sale shall be presumed to have been performed, and that the foreclosure sale made under the powers herein granted shall be a perpetual bar against the Owner(s) of the Lot(s) sold and their heirs, executors and administrators, successors and assigns, and any Persons whatsoever claiming or to claim thereunder.

5.08.5 Extinguishment of Inferior Liens. Foreclosure of the Association's continuing lien for assessments terminates, extinguishes and forever discharges all inferior or subordinate liens and encumbrances (being all liens and encumbrances except as provided by **Section 5.07.3**) as to the affected Lot. The foregoing applies to judicial and non-judicial foreclosure of the Association's continuing lien for assessments regardless of whether or not the holder of the inferior or subordinate lien or encumbrance is made a party to or given notice of any suit or proceedings in connection therewith.

SECTION 5.09 Miscellaneous Provisions.

5.09.1 Effect of Foreclosure or Bankruptcy. The effect of judicial or non-judicial foreclosure of a lien which is superior to the Association's continuing assessment lien under this Declaration, or acceptance of a deed in lieu thereof, and the effect of the discharge of an Owner in bankruptcy is determined as of the date of foreclosure, the date of signing of a deed in lieu which is accepted by the grantee or the date of filing of the bankruptcy in which the Owner is discharged, as the case may be (the "Discharge Date"). Foreclosure or acceptance of a deed in lieu as aforesaid does not relieve the former Owner from the personal obligation for payment of assessments due as of the Discharge Date, but does release the Association's continuing assessment lien as to and only as to assessments due prior to the Discharge Date. The purchaser at foreclosure or grantee under a deed in lieu and an Owner discharged in bankruptcy is also relieved from any obligation for payment of assessments due prior to the Discharge Date, but is obligated to pay all assessments assessed or assessable from and after the Discharge Date and the Association's continuing assessment lien fully secures payment of said assessments. For purposes of the foregoing "assessments assessed or assessable" means (i) prorated regular annual

assessments based on the number of months remaining in the calendar year in which the Discharge Date occurs regardless of whether the applicable regular annual assessment is payable in advance annually, semi-annually or quarterly, and (ii) any installments for special or specific assessments so payable which become due after the Discharge Date.

5.09.2 Revival of Assessment Lien. The Association's assessment lien is automatically revived as to any Owner who reacquires ownership of the applicable Lot within two years after the Discharge Date (as defined in the immediately preceding Section) to the same effect as if none of the events causing the Discharge Date to occur had occurred if ownership is reacquired (i) from the purchaser at foreclosure or the grantee under the deed in lieu of foreclosure, or (ii) from any successor in title to such purchaser or grantee and the reacquisition of ownership constitutes a fraudulent transfer under Chapter 24 of the Texas Business and Commerce Code or under any other state or federal statutes or laws.

5.09.3 No Merger. The Association's assessment lien is not, by merger or otherwise, extinguished or otherwise effected by acquisition of ownership of a Lot at any time and in any manner by the Association except as otherwise expressly agreed in writing by the Association.

5.09.4 Assessments as Independent Covenant. The obligation to pay assessments is a separate and independent covenant and contractual obligation on the part of each Owner. No off-set, credit, waiver, diminution or abatement may be claimed by any Owner to avoid or diminish the obligation for payment of assessments for any reason, including, by way of illustration but not limitation (i) by nonuse of any Community Properties or abandonment of a Lot, (ii) by reason of any alleged actions or failure to act by Declarant, the Association, the ACC, or any of their Related Parties, whether or not required under this Declaration or other Governing Documents, (iii) for inconvenience or discomfort arising from the making of repairs or improvements which may be or are the responsibility of Declarant, the Association, the ACC, or any of their Related Parties, or (iv) by reason of any action taken by Declarant, the Association, the ACC, or any of their Related Parties, to comply with any law, ordinance, or any order or directive of any governmental authority, or pursuant to any judgment or order of a court of competent jurisdiction.

3. **Section A2.01.4 of Exhibit "A"** to the Declaration is hereby deleted in its entirety and the following substituted in place thereof:

A2.01.4 "Completion of the Initial Sale" of Lot Defined. As used herein and in the Declaration and as to the each Lot, "completion of the initial sale" means and occurs upon substantial completion of the construction of a single family residence and related improvements upon the Lot and completion of the closing on the sale of the Lot to, and conveyance of fee simple title to the Lot to, a Person other than Declarant or an Authorized Builder for use and occupancy of the Lot for a single family residence. Leasing of a Lot by Declarant, including any lease with an option to purchase, does not constitute completion of the initial sale of the Lot. In the case of a purchase option, completion of the initial sale of the Lot shall not be deemed to have occurred until exercise of the purchase option and completion of the closing and conveyance of title to the Lot as aforesaid.

4. **Section A3.01** of Exhibit "A" to the Declaration is hereby deleted in its entirety and the following substituted in place thereof:

A3.01 Assessments.

A3.01.1 Right of Declarant to Set Rates and Impose Special Assessments. During the Development Period Declarant is entitled to established all Association budgets, to change the annual rate of regular assessment as set forth in **Section 5.03** of the Declaration and/or the annual painting and roof assessment as set forth in **Section 5.06.2** of the Declaration, and/or to impose special assessments as set forth in **Section 5.05** of the Declaration without the joinder, vote or consent of any Owner and without further formality than giving of notice thereof as provided in **Section 5.03.2, 5.06.2** or **Section 5.05** of the Declaration, as applicable.

A3.01.2 Payment of Assessments by Declarant; Reimbursement.

(a) Notwithstanding anything to the contrary contained herein, or in the Declaration any other Governing Documents, Declarant is exempt from payment of all assessments (regular, special or specific) until the first day of January following the year in which the Development Period is terminated. From and after the first day of January following termination of the Development Period, Declarant shall pay regular assessments and special assessments, if any, equal to one-half the rate that would otherwise be applicable until, as to each Lot owned by Declarant, the first day of the month following completion of the initial sale of the Lot (as defined in **Section A2.01** of the Declaration). The aforesaid one-half rate will also apply during any period of time during which Declarant is leasing a Lot, whether during or after the Development Period, provided that during the leasing period Declarant may pay the applicable assessments on a monthly basis. Upon termination of any such lease other than by completion of the initial sale of the applicable Lot, or in the event of re-acquisition of ownership of any Lot by Declarant, the rate of assessment then applicable to Declarant shall again apply in accordance with this Section. The foregoing Declarant exemption from payment of assessments shall also apply to any Lot used by Declarant for a model residence, or for any other development, marketing or sales purposes regardless of whether record title remains in Declarant (such as, for example but without limitation, in the case of the sale of a resident to an Owner and lease back to Declarant for use as a model). In such cases, completion of the initial sale as provided in **Section A2.01** hereof shall not be deemed to have occurred until the first day of the month following termination of any such use of the Lot by Declarant.

(b) In lieu of payment of assessments as aforesaid, Declarant will contribute to the Maintenance Fund during the Development Period an amount, if any, equal to the Actual Operating Expenses of the Association less all funds available to the Association regardless of source and regardless of any principles of accrual or other accounting which might otherwise be applicable; provided, **DECLARANT SHALL NEVER BE REQUIRED TO CONTRIBUTE MORE THAN AN AMOUNT EQUAL TO ONE-HALF OF THE FULL ANNUALIZED RATE OF REGULAR ANNUAL ASSESSMENTS WHICH WOULD**

OTHERWISE BE PAYABLE BY DECLARANT AS A CLASS A OWNER OF ONE OR MORE LOTS. "Funds available to the Association" includes, without limitation, all assessments (regular, special and specific) received from all other Owners subject to payment of assessments plus all other income received by the Association from any source (such as, for example, interest income). "Actual Operating Expenses" means those expenses reasonably necessary during the Development Period for the discharge of the Association's functions and duties under this Declaration, but does not include payment of any water utility assessments or other utility or special service assessments to be paid after completion of the initial sale of the first Lot in the Subdivision to provide water or other utilities or special services to individual Lots, if any, or any capital expenditures (determined in accordance with generally accepted accounting principals), or any amounts paid or to be paid to capital, contingency or other reserves, or any prepaid items, inventory or similar expenses attributable to periods after expiration or termination of the Development Period. The determination of Actual Operating Expenses by Declarant is final and conclusive. Declarant will contribute to the Maintenance Fund as aforesaid from time to time as Declarant may determine.

(c) Without limitation of subsection (b) above, the exclusions from Actual Operating Expense include, for example, additions of or to amenities, deposits or other costs payable by the Association for utilities or any other services, costs to bring any Community Properties in to compliance with any change in applicable statutes, ordinances or other governmental rules, regulations or decisions, and funding for any types of reserves (including contingency reserves for unanticipated expenses). ACCORDINGLY, AN INCREASE IN THE AMOUNT OF ANNUAL REGULAR ASSESSMENTS AND/OR ONE OR MORE SPECIAL ASSESSMENTS MAY (AND PROBABLY WILL) BE NECESSARY AFTER TERMINATION OF THE DEVELOPMENT PERIOD TO PAY EXPENSES, FUND RESERVES AND OTHERWISE COVER DEFICITS RESULTING FROM DECLARANT'S LIMITED FUNDING OBLIGATIONS AS HEREIN PROVIDED. DECLARANT, THE ASSOCIATION AND THEIR RELATED PARTIES ARE NOT LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ANY BASIS WHATSOEVER WITH RESPECT TO ANY SUCH DEFICITS OR ANY SUCH INCREASE IN ASSESSMENTS OR IMPOSITION OF SPECIAL ASSESSMENTS.

(d) FROM TIME TO TIME UP TO THE DATE OF TERMINATION OF THE DEVELOPMENT PERIOD, DECLARANT MAY OFFSET ANY "SURPLUS FUNDS" OF THE ASSOCIATION (BEING ALL FUNDS REMAINING AFTER PAYMENT OF ACTUAL OPERATING EXPENSES AS HEREIN DEFINED AND PROVIDED) AGAINST ALL DECLARANT CONTRIBUTIONS MADE BY DECLARANT DURING THE DEVELOPMENT PERIOD. "DECLARANT CONTRIBUTIONS" MEANS ALL DEFICIT FUNDING BY DECLARANT AS PROVIDED IN THE PRECEDING SUBSECTION, AND ANY OTHER MONIES PAID BY DECLARANT ON BEHALF OF OR FOR THE BENEFIT OF THE ASSOCIATION AND/OR SUBDIVISION, INCLUDING WITHOUT LIMITATION ALL AD VALOREM TAXES AND OTHER ASSESSMENTS IN THE NATURE OF PROPERTY TAXES PAID FOR OR FAIRLY ALLOCABLE TO ANY COMMUNITY PROPERTIES. DECLARANT MAY DEMAND AND RECEIVE REPAYMENT FROM SUCH SURPLUS FUNDS UP TO THE FULL AMOUNT OF DECLARANT CONTRIBUTIONS, WITHOUT INTEREST, AT ANY TIME EITHER DURING OR AFTER THE DEVELOPMENT PERIOD.

(e) DECLARANT'S GOOD FAITH DETERMINATION OF ACTUAL OPERATING EXPENSES, SURPLUS FUNDS, DECLARANT CONTRIBUTIONS AND ANY OTHER MATTERS PERTAINING TO THE PROVISIONS OF THIS SECTION ARE FINAL.

III.
Integration and Ratification; Effective Date

The foregoing amendments to the Declaration are deemed to be a part of and are to be interpreted in accordance with the Declaration, effective as of the date of filing of the Original Declaration. All provisions of the Declaration not so amended are hereby ratified and confirmed in each and every particular, and will continue in full force and effect pursuant to the terms of the Declaration.

IN WITNESS WHEREOF, Declarant has executed this First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Regent Square Brownstones on this 16 day of SEPTEMBER, 2009.

HWD, LTD.
a Texas limited partnership
"Declarant"
By: HAHNFELD WITMER DAVIS INC.,
a Texas corporation,
its general partner

By: 
KURT F. HAHNFELD, President



RP 067-98-1416

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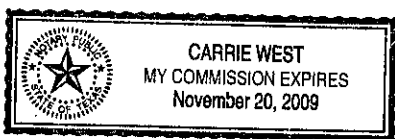
DECLARANT'S ACKNOWLEDGMENT

STATE OF TEXAS

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COUNTY OF HARRIS

This instrument was acknowledged before me on the 16 day of September, 2009, by KURT F. HAHNFELD, as President of HAHNFELD WITMER DAVIS INC., a Texas corporation, on behalf of the corporation as general partner of HWD, LTD., a Texas limited partnership, on behalf of the partnership.



Carrie West

Notary Public, State of Texas

Name: Carrie West

My Commission Expires: 11/20/09

AFTER RECORDING RETURN TO:

Mr. Lou W. Burton
Williams, Birnberg & Andersen, L.L.P.
2000 Bering Dr., Suite 909
Houston, Texas 77057

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW. THE STATE OF TEXAS COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

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OCT - 5 2009



Dorely B. Kayman

COUNTY CLERK
HARRIS COUNTY, TEXAS

**FILED FOR RECORD
8:00 AM**

OCT - 5 2009

Dorely B. Kayman
County Clerk, Harris County, Texas

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.