

USE AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AGREEMENT is entered into by and between BRIARHILLS PROPERTY OWNERS ASSOCIATION, a Texas non-profit corporation, hereinafter referred to as "POA" and BRIARHILLS HOMEOWNER'S ASSOCIATION, a Texas non-profit corporation, hereinafter referred to as "HOA", and in consideration of the following premises, conditions and mutual promises, the parties do hereby agree that:

WHEREAS, the POA is the owner and operator of all the amenities and improvements presently located on the real property described in Exhibits "A" and "B" attached hereto and incorporated herein for all purposes and designated as the "Common Area" in the Declaration of Covenants, Conditions and Restrictions of Briarhills, Section One, recorded under Clerk's File No. E-346053 of the Official Public Records of Real Property of Harris County, Texas, which amenities consist of a guard house, storage building, adult swimming pool, childrens' swimming pool, two (2) tennis courts, childrens' play area, bath house, multi-level club house, parking lots, grounds and landscaping appurtenant thereto (which amenities and any replacements or additions thereto are hereinafter called "Amenity Package"); and,

WHEREAS, the POA is the homeowners association for the owners of the property in Briarhills, Section One, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 219, Page 100 of the Map Records of Harris County, Texas, as well as for the owners of property in Briarhills, Section Three, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 248, Page 106 of the Map Records of Harris County, Texas; and,

WHEREAS, the HOA is the homeowners association for the owners of property in Briarhills, Section Four, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 307, Page 83 of the Map Records of Harris County, Texas, as well as for the owners of property in Briarhills, Section Five, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 293, Page 55 of the Map Records of Harris County, Texas and may in the future be the homeowner's association for the owners of property currently platted and known as Briarhills, Section Seven, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 307, Page 85 of the Map Records of Harris County, Texas; and,

WHEREAS, the HOA desires to obtain for the residents who are and will become members of the HOA, the right to enter upon, use and enjoy the Amenity Package; and,

WHEREAS, the POA desires to grant to the HOA the right for its members to enter upon, use and enjoy the Amenity Package, subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises and the consideration hereinafter set forth, the parties hereto agree as follows:

The POA hereby grants, sells and conveys unto the HOA and its successors, the right, privilege and easement to enter upon, use and enjoy the Amenity Package. It is understood that such grant, sale and conveyance shall permit the members of the HOA and their families, tenants, invitees or contract purchasers to enter upon, use and enjoy the Amenity Package.

The easement, rights and privileges herein granted shall be irrevocable, and shall run with the land described in Exhibits "A" and "B" hereto subject only to the

right of the POA to exclude the HOA members from use of the Amenity Package in the event the payment obligations provided for herein are not satisfied as herein provided. The POA hereby binds itself, its successors and assigns, to warrant and forever defend the above described easement, rights and privileges unto the HOA, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This instrument shall be binding upon the successors and assigns of the parties hereto. It is further intended by the parties hereto that the easement, rights and privileges granted herein shall be appurtenant to and burden the real property described in Exhibits "A" and "B" hereto.

In consideration of the above grant of easement, rights and privileges, the HOA has paid to the POA the cash sum of One Hundred and No/100 Dollars (\$100.00), the receipt and sufficiency of which is hereby acknowledged by the POA.

As additional annual consideration for the use of the Amenity Package, the HOA shall pay a sum of money annually to the POA (such sum hereinafter called "useage fee"), such payment being due and payable each year beginning in 1983, on or before March 15th of each such year. It is understood and agreed by the parties that the useage fee is to represent a pro-rata portion of the actual cash expenses of operating and maintaining the Amenity Package for the immediately prior year, and shall not include expenses incurred by the POA for trash service, accounting, billing and collecting, legal, management services, maintenance, utilities, or other expenses other than expressly for the operation and maintenance of the Amenity Package unless otherwise specified herein. The POA shall provide an itemized breakdown of all such expenditures at the time of submitting its annual useage fee billing to the HOA. The useage fee shall be determined by taking the actual cash expenses of operating and

maintaining the Amenity Package for the previous calendar year and multiplying such sum by the average of the percentages obtained by dividing the total number of developed lots (as such term is hereafter defined) covered by the HOA by the sum of the total number of developed lots covered by the POA plus the total number of developed lots covered by the HOA as of the first day of each month during the prior one year period beginning March 1st and ending February 1st. For purposes hereof, the term "developed lot" shall mean that the streets and utilities servicing a platted lot have been substantially completed as certified by the Engineer that is supervising the construction of same. It is stipulated that Sections One and Three of Briarhills have been fully developed and the number of developed lots currently covered by the POA is accordingly 452. As Sections Four and Five of Briarhills are being developed in phases (i.e., the streets and utilities servicing such lots will be constructed and installed at different times), the number of developed lots therein shall increase from time to time until Sections Four, Five and Seven (if annexed into the jurisdiction of the HOA) are fully developed. At such time as such Sections are fully developed, the percentage utilized to determine the usage fee (i.e., the percentage multiplied by the actual cash expenses of operating and maintaining the Amenity Package for the prior year) shall be constant and will not vary from year to year unless additional developed lots are added to the jurisdiction of the HOA or the POA.

The parties agree that the usage fee shall specifically include, without limitation, the following:

- a. General maintenance expenses of the facilities constituting the Amenity Package and the grounds appurtenant thereto.
- b. Pest control expenses relating directly to the Amenity Package.
- c. Management expenses relating to the Amenity Package.
- d. Legal expenses relating directly to the Amenity Package.

- e. Utility and telephone expenses relating directly to the Amenity Package.
- f. Ad valorem tax expenses relating to the Amenity Package, provided that the POA agrees to use its best efforts to obtain exemptions from such taxes.
- g. Insurance expenses relating directly to the Amenity Package.
- h. Pool tag identification expenses relating to use controls.

The parties agree that the usage fee shall exclude, without limitation, the following:

- a. Fees paid by the POA for billing and collecting.
- b. Office supply expenses of the POA.
- c. Trash collection expenses of the POA.
- d. Fees paid for accounting management services of the POA, not related to the Amenity Package.
- e. Fees relating to the street lights paid by the POA.

The POA will cause the billings it receives which include services rendered or items supplied in addition to those directly related to the Amenity Package (for example, any electric bill which covers electricity consumed at the swimming pool as part of the Amenity Package as well as in connection with the street lights which are not part of the Amenity Package) to be sufficiently detailed to identify the portion of such bills which relate directly to the Amenity Package. The parties hereto, in light of the impossibility of determining the exact portion of the accounting fees and management fees incurred by the POA that relate to the Amenity Package and therefore should be included in the usage fee, hereby stipulate that same shall be determined by taking into account fifteen percent (15%) of the base management fees of the POA as an expense relative to the Amenity Package in calculating the annual usage fee.

It is agreed that in the event the HOA fails to pay the useage fee within sixty (60) days after its due date, the POA may exclude members of the HOA from using any and all of the facilities comprising the Amenity Package for the remainder of the year in which such useage fee was related, but upon the payment of the useage fee for any subsequent year, the members of the HOA shall again be permitted to use such facilities. It is agreed that the annual useage fee shall be adjusted upward or downward, as the case may be, for each year in accordance with the actual cash expenses of operating the Amenity Package for the immediately preceeding year. Any provision herein to the contrary notwithstanding, it is expressly agreed that the sole remedy afforded to the POA for the failure of the HOA to pay any useage fee shall be the exclusion of the HOA members from useage of the amenities as provided above.

The HOA acknowledges and agrees on behalf of its members that the useage of the pool, tennis facilities and other facilities constituting the Amenity Package shall be subject to the reasonable rules and regulations promulgated by the Officers and/or Directors of the POA pursuant to the Bylaws and Declarations governing the POA, provided such rules are uniform and apply to all persons using the facilities of the Amenity Package.

It is understood and agreed by the parties hereto that the grant of the easement, rights and privileges herein by the POA is effective as of the date of execution of this agreement, is perpetual, and is in no manner contingent upon payment of future annual useage fees. However, such fact shall in no way limit the right of the POA to exclude or prevent members of the HOA from using the pool, tennis courts and other facilities constituting the Amenity Package for any year in which the useage fee is not paid in accordance with this agreement.

This instrument constitutes the entire agreement of the parties hereto and any representation or statement, written or oral, previously made and not incorporated herein shall be of no force or effect and is not binding on the parties hereto.

This instrument shall be construed in accordance with the laws of the State of Texas and the venue of any suit concerning this agreement shall be Harris County, Texas. Further, the prevailing party in any action to enforce the terms and provisions of this instrument shall be entitled to recover reasonable attorney's fees and costs of court. Either party may at its option, in the event of the breach of this agreement by the other party, seek specific performance of this instrument. This agreement may be amended only by written agreement of all the parties hereto.

Should any provision of this instrument be adjudged invalid, illegal or unenforceable, then such provision shall be excluded herefrom and this instrument construed as though such provision were not a part thereof.

It is represented and warranted by the POA that its undersigned representative has been granted authority to execute this instrument on behalf of the POA and that any required approval of its members or Directors has been obtained prior to execution of this instrument.

It is represented and warranted by the HOA that its undersigned representative has been granted authority to execute this instrument on behalf of the HOA and that any required approval of its members or Directors has been obtained prior to execution of this instrument.

EXECUTED and EFFECTIVE this 28th day of JANUARY,
1983.

BRIARHILLS PROPERTY OWNERS ASSOCIATION

Attest:

[Signature]
Secretary

By: James C. Boy
President

BRIARHILLS HOMEOWNER'S ASSOCIATION

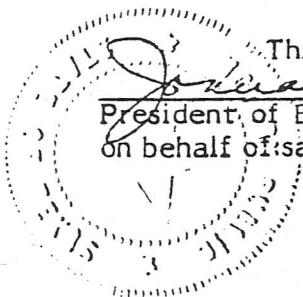
Attest:

[Signature]
Secretary

By: James C. Boy
President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

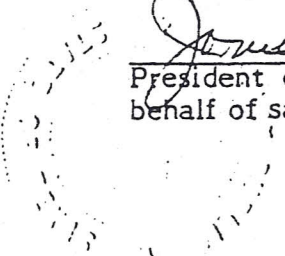
This instrument was acknowledged before me on this the 28th day of January, 1983 by James C. Boy, President of Briarhills Property Owners Association, a Texas non-profit corporation, on behalf of said corporation.



Winifred O. Collins
Notary Public in and for
The State of TEXAS WINIFRED O. COLLINS
Notary Public, State of Texas
My Commission Expires 12-5-84

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 28th day of January, 1983 by James C. Boy, President of Briarhills Homeowner's Association, a Texas non-profit corporation, on behalf of said corporation.



Winifred O. Collins
Notary Public in and for
The State of TEXAS WINIFRED O. COLLINS
Notary Public, State of Texas
My Commission Expires 12-5-84

AMENDMENT TO USE AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

WHEREAS, BRIARHILLS PROPERTY OWNERS ASSOCIATION, a Texas non-profit corporation, hereinafter referred to as "POA" and BRIARHILLS HOMEOWNERS ASSOCIATION, a Texas non-profit corporation, hereinafter referred to as "HOA", heretofore entered into that one certain Use Agreement ("Use Agreement") dated January 28, 1983, and

WHEREAS, the HOA and POA desire to amend such Use Agreement to clarify that certain items not specifically listed therein are to be included in the calculation of the usage fee, as defined in the Use Agreement.

NOW, THEREFORE, for and in consideration of the premises, and the benefits inuring to the parties hereto, POA and HOA do hereby amend the Use Agreement by adding the following:

The parties agree that the usage fee shall specifically include, in addition to the items set forth on pages four and five of the Use Agreement, the HOA's prorata portion (as calculated pursuant to the formula contained in the Use Agreement) of the following items:

1. All expenses incurred for security guards and security patrols employed specifically to protect the Amenity Package.
2. Costs and expenses relating to security devices installed to protect the Amenity Package.
3. All costs and expenses incurred in connection with the expansion of the existing improvements

constituting the Amenity Package or the addition of new improvements to the Amenity Package.

- 4. The annual contribution of the POA to a capital reserve fund established and maintained by the POA for the purpose of maintaining funds on hand for expansion of and improvements to the Amenity Package and/or for emergency repairs thereto. The POA shall determine the amount and use of any funds disbursed from such reserve fund at its sole discretion, provided the POA agrees to exercise such discretion in good faith and utilize such funds only in connection with the Amenity Package.

Nothing contained herein shall be construed as to limit the ability of the POA to apply funds, which are collected pursuant to the Use Agreement, towards any other cost and expense related to the maintenance, repair, improvement, replacement, or preservation of any improvement now or hereafter made a part of the Amenity Package.

Except as amended hereby, the Use Agreement shall remain unchanged and the parties hereto do each ratify the Use Agreement, as amended hereby, for all purposes.

EXECUTED AND EFFECTIVE this 12 day of October, 1983.

BRIARHILLS PROPERTY OWNERS ASSOCIATION

ATTEST:

[Signature] Secretary

By: [Signature] Name: Title:

BRIARHILLS HOMEOWNERS ASSOCIATION

ATTEST:

[Signature] Secretary

By: James C. Box Name: James C. Box Title: President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the
day of _____, 1983 by _____,
President of Briarhills Property Owners Association, a Texas
non-profit corporation, on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

7th This instrument was acknowledged before me on this the
day of December, 1983 by JAMES C. BOY,
President of Briarhills Homeowners Association, a Texas
non-profit corporation, on behalf of said corporation.


NOTARY PUBLIC, STATE OF TEXAS

WINIFRED O. COLLINS
Notary Public, State of Texas
My Commission Expires 12-5-84

SECOND AMENDMENT TO USE AGREEMENT

STATE OF TEXAS }
 }
COUNTY OF HARRIS }

THIS SECOND AMENDMENT TO USE AGREEMENT is entered into by and between BRIARHILLS PROPERTY OWNERS ASSOCIATION, a Texas non-profit corporation, hereinafter referred to as "POA" and BRIARHILLS HOMEOWNERS ASSOCIATION, a Texas non-profit corporation, hereinafter referred to as "HOA" for the purpose of amending that certain USE AGREEMENT dated January 28, 1983 and that certain AMENDMENT TO USE AGREEMENT dated October 12, 1983, each of which was entered into by POA and HOA on the aforesaid dates.

NOW, THEREFORE, in consideration of the mutual covenant exchanged by the parties herein and the benefits inuring to the parties hereto, POA and HOA do hereby amend the USE AGREEMENT and the AMENDMENT TO USE AGREEMENT as follows:

1. In the USE AGREEMENT at page 2 delete the first paragraph and insert in its place: "WHEREAS, the HOA is the homeowners association for the owners of property in Briarhills, Section Four, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 307, Page 83 of the Map Records of Harris County, Texas, as well as for the owners of property in Briarhills, Section five, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 292, Page 55 of the Map Records of Harris County, Texas, as well as for the owners of property in Briarhills, Oaks of Parkway section, a subdivision of Harris County Texas, according to the map or plat thereof recorded in Volume 307, Page 85 of the Map Records of Harris County, Texas; and,"

2. In the USE AGREEMENT at page 3, line 17, delete "March 15th of each such year" and insert in its place: "the dates specified in this agreement, as amended" .

3. In the USE AGREEMENT at page 3, line 19, after the word "prior" insert "calendar"; and after the word "year" insert "(January 1st to December 31st)".

4. In the USE AGREEMENT at page 4, lines 2 to 6, delete "average of the percentages obtained by dividing the total number of developed lots (as such term is hereafter defined) covered by the HOA by the sum of the total number of developed lots covered by

the POA plus the total number of developed lots covered by the HOA as of the first day of each month during the prior one year period beginning March 1st and ending February 1st" and insert in its place: "percentage obtained by dividing the total number of POA and HOA developed lots into the number of HOA developed lots and multiplying by 100."

5. In the USE AGREEMENT at page 4, line 11, delete "453" and insert in its place "451" and add: "It is further stipulated that Sections 4,5, and Oaks of Parkway of Briarhills have been fully developed and the number of developed lots currently covered by the HOA is accordingly 311. The parties further stipulate that since all Sections covered by both the POA and the HOA are fully developed, the percentage utilized to determine the annual usage fee billing to the HOA shall be 41% unless and until additional developed lots are included within the jurisdiction of either the HOA or the POA." Delete the remainder of the paragraph extending from line 11 to line 19.

6. In the USE AGREEMENT at page 4, before line 20, insert the following as a new paragraph: "The POA shall present the annual usage fee billing to HOA, calculated as set forth herein for the immediate prior calendar year, on or after February 15th of each year. The usage fee payment shall be due by March 15th or thirty days after the actual billing date, whichever is later, such date hereinafter referred to as the "Due date". As used herein, the "Default date" shall mean the date sixty days after the Due date. The date on which payment in full is actually received by POA shall be referred to hereinafter as the "Payment date". Upon payment in full prior to the Default date, the members of HOA shall enjoy full usage rights as set forth herein for the twelve months next following the Payment date, or until the Default date of the next calendar year, whichever is longer. In any year that the HOA fails to make payment in full on or before the Default date, the POA shall have the right but not the obligation to exclude HOA members from the use of the Amenity Package as set forth in this agreement for the period from the Default date in the year in which full payment is not made until the next Payment date. "

7. In the USE AGREEMENT, at page 6, lines 3 and 4, delete the phrase "the remainder of the year in which such usage fee was related" and insert in its place: "the period set forth in this agreement, as amended".

8. In the AMENDMENT TO USE AGREEMENT, delete the items numbered 3. and 4. in their entirety.

Except as amended hereby, the USE AGREEMENT and the AMENDMENT TO USE AGREEMENT shall remain unchanged and the parties hereto do each ratify them for all purposes.

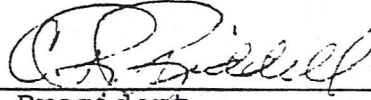
EXECUTED AND EFFECTIVE this 4th day of May, 1990.

BRIARHILLS PROPERTY OWNERS
ASSOCIATION

ATTEST:

Secretary

By



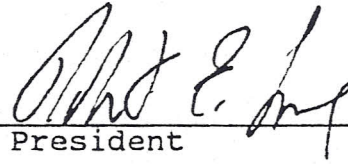
President

BRIARHILLS HOMEOWNERS ASSOCIATION

ATTEST:

Secretary

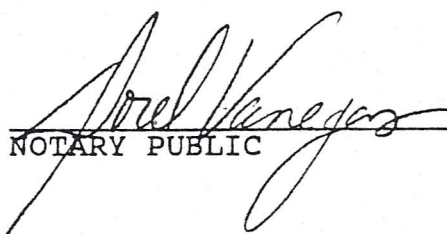
By



President

THE STATE OF TEXAS }
COUNTY OF HARRIS }

This instrument was acknowledged before me this 4th day of May, 1990 by C. R. Riddell, President of Briarhills Property Owners Association, a Texas non-profit corporation, on behalf of said corporation.



NOTARY PUBLIC

THE STATE OF TEXAS }
COUNTY OF HARRIS }

This instrument was acknowledged before me this 4th day of May, 1990 by ROBERT E. LOWE, President of Briarhills Homeowners Association, a Texas non-profit corporation, on behalf of said corporation.



NOTARY PUBLIC