

Single Family  
Home

~~Single Family Home~~

Peterson Way  
Ella Dr.

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SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR BRIAR MEADOWS CREEK, PHASE II

THIS DECLARATION, made this 2nd day of July, 2008, by BURTON CREEK DEVELOPMENT, LTD., hereinafter referred to as "Declarant"; WITNESSETH:

WHEREAS, Declarant is the developer of the certain property in the County of Brazos, State of Texas, known as "Briar Meadows Creek - Phase I" which is more particularly described on the plats recorded in Vol. 7910, Pg. 39 and Vol. 8364, Pg. 33 of the Deed Records of Brazos County, Texas; and

WHEREAS, Briar Meadows Creek - Phase 1 is subject to certain deed restrictions described on the Amended Declaration of Covenants, Conditions and Restrictions recorded in Vol. 8607, Pg. 70 of the Official Records of Brazos County, Texas; and

WHEREAS, Declarant is the developer of the certain property in the County of Brazos, State of Texas, known as "Briar Meadows Creek - Phase II" which is more particularly described on the plats recorded in Vol. 8654, Pg. 188 of the Official Records of Brazos County, Texas, and made a part hereof for all purposes (hereinafter referred to as "Properties") ; and

WHEREAS, Declarant, in conformity with its rights set forth in Article II, Section 2.02 and Article XI of the Briar Meadows Creek - Phase 1 Deed Restrictions recorded in Vol. 8607, Pg. 70 of the Official Records of Brazos County, Texas; desires to annex the Properties into those deed restrictions to provide for uniform development in the Briar Meadows Creek Subdivision and to unite such properties under a single homeowners association as provided herein; and

WHEREAS, Declarant desires to develop a residential area for active seniors; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities, and for enhancing the desirability and attractiveness of the Properties, together with such additions as may hereafter be made thereto (as provided in said Article II, Section 2.02. and other related provisions) to the covenants, restrictions, conditions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Properties, each of the owners thereof, and the community; and

WHEREAS, Declarant has created certain Common Property within the Subdivision as hereinafter described and it has deemed it desirable to create an agency to which should be delegated and assigned the powers of maintaining the Common Property as well as administering and enforcing the covenants, conditions and restrictions and collecting and disbursing the assessments and charges as hereinafter created.

NOW THEREFORE, the Declarant hereby declares all of the Properties, together with the Common Property, 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 Properties. These 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 above described Properties, or any part thereof, their heirs, executors, successors and assigns, and shall inure to the benefit of each Owner hereof.

## ARTICLE 1

### DEFINITIONS

Section 1.01. The following words when used in the Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

a. "Association" shall mean and refer to Briar Meadows Creek Owners Association, Inc. a Texas nonprofit Corporation, its successors and assigns.

b. "Properties" or "Property" shall mean and refer to all that certain real property in the plats recorded in Vol. 8654, Pg. 188 of the Official Records of Brazos County, Texas, and additions thereto, as may be made subject to this Declaration under the provisions of Article II hereof.

c. "Common Properties" or "Common Areas" shall mean that Real Property and such additional Real Property as may hereafter be annexed under the provisions of Article II, Section 2.02, and designated as "Common Properties" or "Common Areas", all of which shall be intended to be devoted to enhancing the value and attractiveness of the Property and any additional Properties annexed hereto and for the common use and enjoyment of the Owners of the Properties or Owners of any additional land annexed hereto and the Members of the Association.

d. "Lot" shall mean and refer to those certain tracts and parcels of land, being 33 in number, shown upon the recorded subdivision map of the Properties recorded in Vol. 8654, Pg. 188 of the Official Records of Brazos County, Texas, and designated with a numerical number thereon and any such tracts or parcels of land within any addition to the existing Properties as may hereafter be made pursuant to Article II, Section 2.02, hereof.

e. "Living Unit" shall mean and refer to any portion of a building situated upon a lot designed and intended for use and occupancy as a residence by a single family only, no exceptions.

f. "Owner" or "Lot Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities of the fee simple title to any Lot situated within the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

g. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 3.01 and 3.02, hereof.

h. "Townhouse" or "Townhome" shall mean and refer to a residential structure constructed on an individual Lot or building site, which is one (1) of a series of dwelling units designed for single-family occupancy, which townhomes may or may not be structurally connected (other than by fence or screening device). They may be immediately adjacent to and abutting each other without side yards between individual dwelling units. Townhomes which abut each other must have a firewall constructed between them. The firewall must be built in conformity with the ordinance of the City of Bryan.

i. "Patio Home" shall mean and refer to any building which is designed and used exclusively for single family residential purposes, and may be either conventional or zero lot line construction as defined below:

1. "Conventional" shall mean a dwelling constructed with a side yard of at least five feet in width on both sides of the dwelling;

2. "zero lot line" shall mean a dwelling constructed immediately adjacent to one side property line (having no side yard on that side) with the other side having at least ten feet of yard or a brick, tile, or concrete patio. If a patio is constructed on the side, an adjacent patio wall may be built even though said wall may obstruct the view from windows of the dwelling next door.

j. "Patio Wall" shall mean a wall constructed to give privacy to a patio and may be built adjacent to any area where a patio is allowed.

k. "Dwelling" shall mean and refer to any building or portion thereof which is designed or used exclusively for single family residential purposes.

l. "Structure" shall mean and refer to anything constructed, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground.

m. "Principal Dwelling or Structure" shall mean and refer to the principal structure or dwelling which fulfills the use and purpose of which the Lot is intended.

n. "Construction and Sale Period" shall mean that period of time during which Declarant is developing the Properties and sell the same, which time period shall extend from the date hereof until such time as Declarant transfers title to all of the Lots including all Lots annexed pursuant to the provision of Article II, Section 2.02.

o. "Lienholder or Mortgagee" shall mean the holder of a mortgage lien on any Lot or Living Unit of the Properties.

p. "Private Access Areas" shall mean the setbacks from front streets and alleys, to rear or side, as well as the 20' minimum utility easement. This also includes 10' or 20' utility easements to the rear of all other lots.

q. "Subdivision" shall mean and refer to Briar Meadows Creek – Phase II, in the City of Bryan, Brazos County, Texas, as shown on that certain plat recorded in Vol. 8654, Pg. 188 of the Official Records of Brazos County, Texas.

r. "Declarant" shall mean and refer to BURTON CREEK DEVELOPMENT, LTD., its successors and assigns, but not individually. The term "successors" or "assigns" shall not be construed to mean or to include any person or entity which shall acquire from Declarant one (1) or more of the Lots in the subdivision for occupancy or re-sale unless Declarant shall expressly assign unto such person or entity all or part of its rights and privileges of "Declarant" under this declaration.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

Section 2.01. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the State of Texas, County of Brazos, and is more particularly described by plat recorded in Vol. 8654, Pg. 188 of the Official Records of Brazos County, Texas, reference to which is made for all purposes.

Section 2.02. Annexation. The Declarant, its successors and assigns, shall have the right, but not the obligation to bring within this Declaration existing Subdivision, additional Properties and Common Properties in future stages of the development, thereby subjecting such additional lands to this Declaration, in accordance with the terms and conditions of Article XI, hereinafter provided.

## **ARTICLE III**

### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 3.01. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot, which is subject to the covenants herein or any other covenants of record and to any and all assessments by the Association, shall be a Member of the Association. Provided, that any such person or entity that holds such interest merely as security for the performance of any obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to assessment by the Association. No Owner except Declarant shall have more than one (1) membership.

Section 3.02. Voting Rights. The Association shall have (2) classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1.01 with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 3.01. When more than one (1) person holds such interest or interests in any Lot all such persons shall be Members, and 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 such Lot.

Class B. Class B Member(s) shall be the Declarant and its successor. Class B Member(s) shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Section 3.01. Provided however, that the Class B membership shall cease and become converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

1. Upon the written consent of Declarant or his successors; or
2. January 1, 2015; or
3. All lots have been conveyed to Class A Members.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be Class A Member entitled to the votes as above provided for Class A Members in the Lots in which it holds the interests required for membership under Section 1.01.

Section 3.03. Non-Profit Corporation. Briar Meadows Creek Owners Association, Inc. shall be a nonprofit corporation, and all duties, obligations, authority, benefits, liens and rights hereunder in favor of the Association shall vest in said Corporation.

Section 3.04. Bylaws. The Association may make whatever rules or bylaws it may choose to govern the organization; provided however, that the same are not in conflict with the terms and provisions hereof.

Section 3.05. Inspection of Records. The Members of the Association shall have the right to inspect the books and records of the Association at reasonable times during the normal business hours. They are to be maintained and retained in a secure site by the secretary-treasurer.

Section 3.06. No Duty to Insure on Guarantee Safety.

THE HOMEOWNERS ASSOCIATION SHALL NOT BE CONSIDERED TO HAVE A DUTY TO INSURE OR GUARANTEE THE SAFETY OF THE OWNERS IN THE SUBDIVISION OR TO BE A PROVIDER OF SECURITY SERVICES, WHETHER OR NOT SUCH SERVICES ARE PROVIDED BY THE HOMEOWNERS ASSOCIATION, THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS, DAMAGE OR INJURY BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES AND SERVICES TAKEN OR PROVIDED. EACH OWNER, TENANT, GUEST OR INVITEE ACKNOWLEDGES AND

UNDERSTANDS THAT THE HOMEOWNERS ASSOCIATION, ITS OFFICERS, DIRECTORS AND COMMITTEE MEMBERS ARE NOT SECURITY SERVICES PROVIDERS AND ACKNOWLEDGES THAT THE HOMEOWNERS ASSOCIATION, ITS DIRECTORS, OFFICERS AND COMMITTEE MEMBERS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO ANY SECURITY MEASURES UNDERTAKEN WITHIN THE SUBDIVISION.

## **ARTICLE IV**

### **PROPERTY RIGHTS IN THE COMMON PROPERTIES**

Section 4.01. Members' Easements of Enjoyment. Subject to the provisions of Section 4.03 of this Article IV, every Member of the Association shall have a right and easement of enjoyment in and to the Common Properties and other dedicated easements shown on the Subdivision plat as dedicated or private access and such easements shall be appurtenant to and shall pass with the title to every Lot. This applies to both existing Common Property as herein described and additional lands annexed as Common Properties under the provisions of Article II, Section 2.02, in that all the Common Properties are for the use of all Members when and if said land is developed in accordance with the provisions contained herein.

Section 4.02. Title to Common Properties. The Declarant may retain the legal title to the Common Properties until such time as, in the sole opinion of the Declarant, the Association is able to maintain the same, but notwithstanding any provision herein, the Declarant hereby covenants for itself, its successors and assigns that it shall convey all right, title and interest it has in the Common Properties serving the Subdivision to the Association and its Members no later than the 1st day of January, 2015. The Association shall upon such conveyance accept title to said Common Properties. Upon conveyance, the Common Properties shall be owned by the Association or its successors and assigns. Any common properties including the detention pond, serving the Subdivision shall be conveyed and accepted, in the same manner, within one year of the beginning of the development of each of said phases.

Section 4.03. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Declarant and/or of the Association (in accordance with its Articles and Bylaws) to borrow money and/or spend money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage said Common Properties; and
- b. The right of Association to dedicate or transfer all or any part of the Common Properties to any public agency or authority, subject to such conditions as may be agreed to by the Members of the Association. No such transfer or dedication shall be effective unless:

c. An instrument of agreement to such dedication or transfer, signed by(2/3) of each class of Members entitled to vote is properly recorded, in the Deed Records of Brazos County, Texas; and

d. Written notice of proposed action under this provision is sent to every Owner and Lienholder not less than fifteen (15) days nor more than (60) days in advance of said action.

e. The right of the Declarant to dedicate or transfer all or any part of the Common Properties to any Public or governmental agent or authority for such agency to totally or partially maintain and keep in good repair and condition.

Section 4.04. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Properties and facilities to the members of his family, his tenants (single family only per Sec. 7.01) or contract purchasers who reside on the Property. The Owners hereby covenant that any lease executed on a Lot or any Living Unit thereon shall be in writing and contain provisions binding any lessee thereunder to this instrument and any amendment thereto and the terms of the restrictions, rules and regulations applicable to the Property, and the Common Properties and further the lease shall provide that non-compliance with said terms shall constitute a default under the lease.

## ARTICLE V

### ASSESSMENTS

Section 5.01. Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it in the Subdivision, and Home Owner, for the Lot owned by Home Owner, hereby covenants, and each Owner of a Lot in the Subdivision is hereby deemed to covenant by acceptance of a deed to such Lot (whether or not it shall be so expressed in such deed), to pay to the Association, (a) on the first sale of each lot, but not on any subsequent sale, a fee ("initial fee") of two hundred dollars (\$200.00) at the time the lot deed is accepted at closing; and (b) special assessments for capital improvements. Such assessments shall be established and collected in the manner hereinafter provided. The initial fee, regular annual assessments, and special assessments for capital improvements, together with interest, costs and reasonable attorneys' fees thereon, shall be a charge upon the land and a continuing lien on each Lot against which as assessment is made. Said fee, assessment and lien shall continue in full force irrespective of whether the Lot has been transferred and conveyed to another person and/or entity. Each such assessment, together with interest, costs and reasonable attorneys' fees thereon, shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due. Declarant and professional builders who purchased lots for the purpose of building spec homes shall be exempt from payment of the initial fee.

Section 5.02. Purpose of Regular Annual Assessments. The initial fees and regular annual assessments levied by the Association shall be used to comply with the ordinances, rules and regulations of the City of Bryan relative to the maintenance, repair and keeping of the Common Areas and/or private roads, private access easements and streets,

sidewalks, retention or detention ponds, and drainage areas, to promote the health, safety, and welfare of the Subdivision, and to pay for the costs for such improvement, repair and maintenance of the Common Area and/or private roads, private streets and accessments, sidewalks, retention or detention ponds and drainage areas, which cost shall include, but not limited to the following:

- a. Water, sewer, garbage, electrical, and other utility services for the Common Area if deemed necessary by the Association;
- b. Expense of development of common areas including concrete walks, stepping stones, plantings, trees, beds, improvements, benches, picnic tables, gazebo, common structures or group mailboxes (including mailboxes), statues, and underground water sprinkler systems.
- c. Acquisition of equipment for the maintenance, repair and improvement of the Common Area as may be determined by the Association;
- d. Maintenance and repair of the drainage area, retention pond and/or drainage facility in the Common Area;
- e. Fire and extended coverage insurance upon the insurable improvements, if any, in or on the Common Area; and
- f. Liability insurance insuring the Association and its members against any and all liability to the public, or to any Owner or member of his family, or to any tenant, invitee or guest of an Owner, and/or insuring the Association and its members against any liability arising out of their occupancy and/or use and/or maintenance of the Common Area ; the policy limits shall be set by the association and shall be reviewed at least annually and increased (or decreased) as determined by the Association.

Section 5.03. Power to Fix Regular Annual Assessments. The power and authority to fix and levy the regular annual assessments shall rest exclusively with the Board of Directors of the Association, and when the same are determined and fixed by the Board of Directors, as herein provided, same shall be final, conclusive and binding upon each Lot Owner, his heirs, successors and assigns, including contract purchasers. When the City of Bryan requires that certain capital improvements be constructed, reconstructed, repaired or replaced, the Board of Directors shall have the power and authority to fix and levy the same exclusively and such assessment shall be conclusive and binding on each Lot and Lot Owner, his heirs, successors and assigns.

Section 5.04. Special Assessments for Capital Improvements. In addition to the regular annual assessments authorized and provided for above, the Association may fix and 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 construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto. Any such special assessment exceeding FIVE THOUSAND AND NO/100 DOLLARS

(\$5,000.00) in cost before becoming effective and a binding obligation of the Lot Owners, must be approved by a two-thirds (2/3rds) vote of Class A Members who are voting, either in person or by proxy, at a meeting duly called for this purpose. Only Class A members may approve such capital improvements. Provided, however, any capital improvement required by the City of Bryan to be constructed, reconstructed, repaired or replaced, in the Common Area, such special assessment shall not require the vote of the membership but the Board of Directors shall have the power and authority to fix and levy the same exclusively and such assessment shall be conclusive and binding on the Lot and Lot Owners, their heirs, successors and assigns.

Section 5.05. Notice and Quorum for Action Under Section 5.04. Written notice of the purpose of taking any action authorized under Section 5.04 of this Article shall be sent to all Members not less than ten (10) nor more than fifty (50) days in advance of such meeting. Such notice must state that the Purpose (or one of the purposes) of the meeting is to vote upon a special assessment, specifying the purpose of the proposed special assessment. At the first such meeting called, the presence of Members, either in person or by proxy, entitled to cast fifty percent (50%) or more of all the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements; and the required quorum at such second meeting shall be one-half (1/2) of the required quorum for the preceding meeting.

Section 5.06. Uniform Rate of Assessment. Regular annual assessments and special assessments for capital improvements (but not the additional Lot assessments provided for later herein) must be taxed at a uniform rate for all Lots in the Subdivision, except as otherwise expressly provided below in this Article.

Section 5.07. Collection of Regular Annual and Special Assessments. The regular annual assessment shall be collected by the Association on a monthly or quarter-annual basis, as determined by the Board of Directors from time to time. Special Assessments for capital improvements shall be collected on approving the establishment and levy of such special assessments.

Section 5.08. Establishment and Notice of Regular Annual Assessment. At the organizational meeting of the initial Board of Directors of the Association, the regular annual assessment for the first calendar year shall be fixed and established by the Board Of Directors, and written notice thereof (including the basis upon which such regular annual assessment is to be collected) shall be forthwith given to each Owner subject thereto. The first such regular annual assessment shall be adjusted according to the number of full calendar months remaining in the calendar year of the first annual assessment period. Thereafter, not less than (30) days prior to the commencement of each calendar-year assessment period, the Board of Directors of the Association shall fix and establish the regular annual assessment for such ensuing assessment year and shall give written notice thereof (including the basis upon which such regular annual assessment is to be collected) to every Owner subject to such regular annual assessment. Upon a person or entity becoming the Owner of a Lot in the Subdivision (and upon notification of such fact given to the Board of Directors of the Association), it shall be the duty of the Board of Directors to notify such new Owner of the regular annual assessment charged upon his Lot (in the same manner as notice is given to those Owners owning Lots as of the commencement of

any annual assessment period). The failure of the Board of Directors to fix an annual assessment for any year or to give written notice to any Owner, as herein required, shall not in any manner exempt or relieve such Owner from his obligation to pay the regular annual assessment on his Lot or Lots, but such Owner shall not be in default for failure to pay his regular annual assessment (on the due date or dates thereof) until notice of such regular annual assessment is given to such Owner in the manner herein provided. In any year when the Board of Directors shall fail to fix an annual assessment prior to the start of a calendar year the regular annual assessment shall remain the same as for the previous year until such time as such regular annual assessment is changed for such calendar year effective on the date of such change for the balance of the calendar year. Each Lot Owner (including Declarant) covenants and agrees to give written notice to the Board of Directors of the Association upon the sale or transfer by such Lot Owner of his Lot, including the name and mailing address of the Lot purchaser(s) and the date upon which the sale or transfer was effectuated.

Section 5.09. Limited Exemption from Regular Annual Assessments. Notwithstanding anything herein to the contrary, Declarant and any professional home builder who purchases a Lot for the purpose of building a spec home shall not be liable for or obligated to pay regular annual assessments on any Unimproved Lot or on any Improved Lot until a residence has been completed thereon. All other Owners of an unimproved Lot shall pay an annual assessment on each unimproved Lot owned by such owner equal to twenty-five (25%) of the regular annual assessment which would otherwise be assessed against each such Unimproved Lot if a residence were constructed on such Lot, commencing on the date that the regular annual assessments first became effective following the organizational meeting of the initial Board of Directors of the Association. The lower Unimproved Lot assessment set out in the immediately preceding sentence shall be effective only for such time as such Lot is an Unimproved Lot. Once the house is completely constructed and sold, the new owner of the lot and home pays the full next assessment. Assessments shall be prorated for any portion of a year the particular lot is owned.

Section 5.10. Date of Commencement of Regular Annual Assessments. The regular annual assessments provided for above in this Article shall commence as to each Lot on the first (1st) day of the calendar month next following date that the first regular annual assessment is set by the Association under the provisions of Section 5.08 above. Example: If the annual meeting date is on or before December 20th, then the annual dues are due on or before January 1st of the next calendar year.

Section 5.11. Certification of payment of Assessments. The Association shall, upon demand, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on any specified Lot have been paid. A properly executed certificate as to the status of assessments on a particular Lot shall be conclusive and binding upon the Association as of the date thereof as to any and all persons or entities relying thereon (other than the Owner of such Lot). The Association may charge \$25.00 for the issuance of such certificates.

Section 5.12. Lien for Assessments; Remedies of Association. Any assessment (whether regular annual, special, or additional Lot assessment) not paid within ten (10) days of the due date shall bear interest from the due date until paid at the lesser of eighteen per cent (18%) per annum or the highest rate permitted by applicable law (subject to the provisions herein

which limit the interest contracted for, charged, or received to the maximum amount permitted by applicable law). In addition, any Owner whose assessment is more than ten (10) days past due shall owe a late penalty of Ten Dollars (\$10.00) per month to the Association in addition to the interest thereon due hereunder. To secure the prompt payment of the aforementioned assessments, a lien is hereby created and granted for the benefit of the Association upon each Lot, and all improvements, additions, fixtures, and appurtenances now situated or hereinafter placed thereon. The Association or its agents may bring an action at law for a judgment against the Owner personally obligated to pay the same without foreclosing or waiving the lien securing the assessments owing by the defaulting Owner or foreclose the lien against the Lot for which an assessment is due and may enforce such lien by all methods available for enforcement of liens, including non-judicial foreclosure by the power of sale hereinafter granted for the benefit of the Association. 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/her Lot. If the Owner defaults on any assessment due hereunder, the Association may collect in addition to the assessment all costs and expenses incurred in collecting said assessment, including but not limited to, reasonable attorneys' fees and the cost of recording the notice of assessment required hereunder. The lien created herein to secure assessments shall also secure all interest accruing thereon, and all late charges and costs and expenses of collecting the assessment, including but not limited to reasonable attorneys' fees and costs of recording any notice of assessment as provided herein.

Section 5.13. Subordination of Assessment Lien to Mortgages. The assessment lien herein provided should be superior to all other liens and charges except only the following:

- a. tax and special assessment liens in favor of the State of Texas, County of Brazos, City of Bryan, and/or Bryan Independent School District;
- b. all sums unpaid on any First Mortgage of record, including all indebtedness due thereunder including but not limited to reasonable attorney's fees and costs incurred in collection of the debt if secured by said First Deed of Trust or Mortgage, but excluding indebtedness secured thereby solely by inclusion in the documents creating such First Mortgage or First Deed of Trust of any "other indebtedness" or "Mother Hubbard" clause securing debts unrelated to the debt secured by the First Mortgage or First Deed of Trust and including additional advances made thereon prior to the filing of notice of assessment lien thereon by the Association. A "First Mortgage" and/or "First Deed of Trust" is defined for purposes hereof as a Deed of Trust or other lien which has first and paramount authority under applicable law and which secures notes or indebtedness given for payment of all or part of the purchase price of the Lot and/or the construction or repairs or additions to the improvements on the Lot or ad valorem taxes assessed and due on the Lot.

A sale or transfer of a Lot shall not affect the assessment lien thereon. However, the sale of a Lot pursuant to the foreclosure of a First Mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to unpaid charges which accrued prior to such foreclosure sale or transfer in lieu thereof. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due and payable or from the lien thereof.

The holder of any First Mortgage shall be entitled, upon written request made to the Association, to written notification from the Association of any default by such holder's mortgagor (or grantor under a Deed of Trust or Trust Deed) in any obligation under this Declaration or the Bylaws of the Association which is not cured within sixty (60) days from the date upon which such default occurred. The Association shall have the power to subordinate the assessment lien to any other lien, such power being entirely within the discretion of the Association.

Section 5.14. Books and Records. Proper books and records shall be kept by the Association with respect to all assessments made by the Association, and each Owner shall at all reasonable times have access to such books and records. The books and records shall be kept in such a manner as to separately identify the assessments and payments thereof on each Lot in the subdivision. No payment made on any individual assessment account shall be transferred or credited to another account without the express written consent of the party making such payment.

Section 5.15. Exempt Property. The following Property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

- a. All Properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use except that the existence of an easement or other such interest in any Lot shall not exempt such Lot from the full assessment imposed on such Lot hereby as if such easement or other interest were not located thereon;
- b. All Common Properties as defined in Article I, Section 1.01 (c) hereof;
- c. All properties exempted from taxation by the laws of the State of Texas upon the terms and to the extent of such legal exemption.

Section 5.16 Management Agreements. Each Owner of a Lot hereby agrees to be bound on the terms & conditions of all management agreements entered into by the Association relative to performing the duties, responsibilities and authorities of the Association.

Section 5.17. Additional Properties and Common Areas. The Association shall use the proceeds of the assessments for the use and benefit of all of the Owners of the Properties as well as all Owners of any additional properties that may be annexed under Article II, Section 2.02. Provided however, that each future phase or section, so annexed, will be entitled to the benefit of the assessment fund and must be impressed with and subjected to the assessment charges herein, on an equitable basis, with the existing Properties assessed herein and further made subject to the jurisdiction of the Association. Such charges will begin upon homeowner closing. (See Article V).

## ARTICLE VI

### YARD MAINTENANCE FUND

The Association may create a fund to be used for maintenance of the private yards of each homeowner in the subdivision. Each owner may elect to participate and receive maintenance services by signing a contract with the Association. The Association shall promulgate a contract form to provide such services which shall specify what services are to be provided and the price for same. Participation shall be made strictly optional to the lot owners. Payment for services shall be made in advance.

## ARTICLE VII

### ARCHITECTURAL CONTROL

Section 7.01. General Authority of Architectural Control Committee. No building, fence, wall, screening device, patio, patio enclosure, swimming pool, spa or other structure (of whatever kind of description) shall be commenced, constructed, erected, placed or reconstructed on any Lot or building site or Property in the Subdivision or upon any part of the Common Area, nor shall any exterior addition to or change or alteration of any Structure, Dwelling, Townhouse, Patio Home, Principal Dwelling or Shelter, Living Unit or improvement in the Subdivision, be made until the plans and specifications therefore, showing (i) the kind, shape, configuration and size thereof; (ii) the location of all improvements, including driveways and sidewalks; (iii) the kind, nature and quality of materials; (iv) the color of the exterior wall and the trim colors and all details relative to the exterior of the structure and (v) finished grade, topography and elevation; have been submitted to and approved by the Declarant until the Architectural Control Committee is formed and after that to the Architectural Control Committee (herein called the "Committee") as to (vi) the quality of materials; (vii) the conformity of the planned improvements with the covenants contained in this Declaration; (viii) the harmony of external design (including type, quality and color of roof, exterior materials and color scheme and trim) and location of the planned improvements in relation to other existing or planned structures in the Subdivision. The Committee shall give or withhold approval (as is in the judgment of the Committee proper of all matters set forth in this Section and in the succeeding sections of the Article (where approval of the Committee is required). Any such approval or disapproval shall be in writing and signed by the chairman of the Committee (or by its designated representative). If plans and specifications meeting the requirements set forth above in this Section (as to the contents thereof) are submitted to the Committee and are not approved or disapproved within thirty (30) days after receipt of same by the Declarant or by any person the Committee designates, then the approval of the plans and specifications by the Committee shall not be required. Significant items that will be required will be the following:

- a. Homes will be 75% masonry with 100% masonry (i.e. brick, stone or stucco) facing the street or side street. Hardy Plank material will not be considered to be a masonry product.
- b. Mail boxes to be made of same type of material as the home if gang mail boxes have not been provided by the Post Office.

c. Underground sprinkler system in the front yards is required and must be installed by a licensed irrigator in the State of Texas.

d. Fences at the front of adjoining lots to Zero Lot Line homes must be of ornamental iron or masonry construction. No chain link fences are permitted, except to enclose swimming pools and only then if they are not visible from the street.

e. Rain gutters shall be installed and maintained on the side of Zero Lot Line homes (where the wall adjoins the property line) to carry the rain water from the roof to either the rear or front of that home's property.

f. Removal of Trees, Trash and Care of Lots during Construction of Residence:

(i) All Owners and Builders, during their respective construction of a residence are required to remove and haul from the Lot all tree stumps, trees, limbs, branches, underbrush and all other trash or rubbish cleared from the Lot for the construction of the residence, construction of other improvements and landscaping. No burning is allowed on the Lot and no materials or trash hauled from the Lot may be place elsewhere in the Subdivision or on land owned by Declarant whether adjoining the Subdivision or not.

(ii) All owners and Builders, during their respective construction of a residence, are required to continuously keep the Lot in a reasonable clean and organized condition. Papers, rubbish, trash, scrap and unusable building materials are to be kept picked up and hauled from the Lot. Other usable building materials are to be kept stacked and organized in a reasonable manner upon the Lot.

(iii) No trash, materials or excess dirt is allowed in the street or street right-of-way. All Owners and Builders shall keep the street and street right-of-way free from trash, materials and excess dirt. Any such trash, materials or excess dirt or fill inadvertently spilling or getting into the street or street right-of-way shall be removed, without delay, not less frequently than daily. Dirt spilling into the street as a result of construction on a Lot shall not be allowed to enter the storm sewer inlet. In the event this occurs the Owner / Contractor shall remove the dirt from the storm sewer at the Owner / Contractor's expense.

Section 7.02. Committee Control of Landscaping. Landscaping of the front yard of each and every Dwelling, Townhouse, Patio Home, Principal Dwelling or Lot, in the Subdivision shall be subject to prior approval of the Committee. No trees, shrubs, plants or other vegetation of any kind or description shall not be planted, nor shall any other type of landscaping in such front yard be commenced or done, without the prior approval of the Committee. Plans for landscaping and an underground sprinkler system in the front yard (showing and describing the kind, size, nature and location thereof) shall be submitted and approved or disapproved by the Declarant until the Committee is formed and then by the Committee (as is in the judgment of the Committee proper). Underground sprinkler systems must be installed by a licensed irrigator in the State of Texas. If landscaping plans meeting the requirements of this Section (as to the contents thereof) are submitted to the Committee and are not approved or disapproved within thirty (30) days after receipt by the Declarant or the person designated by the Committee, the

approval of such plans by the Committee shall not be required. All plans must be hand delivered to the Declarant, Association President, Secretary-Treasurer, or chair designate of the committee. Time is of the essence.

Section 7.03. Committee Approval on Repainting. After the original construction of a Dwelling, Townhouse, Patio Home, Principal Dwelling, Structure or other improvements on a Lot in the Subdivision, no exterior repainting or other exterior improvement of any kind shall be commenced or done to the same until the committee shall have approved in writing the proposed color scheme and color trim for such repairing or plans for such other exterior improvements. The person proposing such repainting shall submit to the Committee a detailed color scheme, with swatches or samples of the proposed paint colors; and the Committee shall approve or disapprove the proposed exterior color scheme (as in the judgment of the Committee is proper to protect and preserve harmony with other existing or planned structures in the Subdivision). If the Committee does not approve or disapprove such proposed color scheme within fifteen (15) days after receipt by the Declarant or the person designated by the Committee, the approval thereof by the Committee shall not be required.

Section 7.04. Drainage. Each Owner of a Lot agrees for himself or herself, his or her heirs, legal representatives, assigns or successors-in-interest that he or she will not in any way interfere with the established drainage pattern over his or her Lot from adjoining Lots or other Lots in the Subdivision; and he or she will make adequate provisions for the drainage of his or her in the event it becomes necessary to change the established drainage over his or her Lot (which provisions for drainage shall be included in the Owner's plans specifications submitted to the Committee and shall be subject to the Committee's approval). For the purposes hereof, "established drainage" is defined as the drainage that existed at the time that the overall grading of the Subdivision, including landscaping of any Lot in the Subdivision, was completed by Declarant. It is the responsibility of the Builder and/or Owner to provide satisfactory drainage around a residence and garage. All Owners (including Builders), unless otherwise approved by the Committee, must finish the grade of their respective Lots so as to establish good drainage from the rear of the Lot to the front street or from the front of the Lot to the rear (Creek) as dictated by existing grading plan of the Subdivision. No pockets or low areas may be left on the Lot (whether dirt or concrete) where water will stand following a rain or during watering. With the approval of the Committee, an Owner may establish an alternate drainage plan that must be submitted to and approved by the Committee prior to the construction thereof. The Committee's sole function in reviewing drainage plans is to see if the drainage pattern has been or will be altered by the proposed construction and to make a determination if the Owner/Builder has evaluated the effects of their construction to other properties and of the effect of potential flowing and rising water that may affect the submitted improvements. In no case shall the street curb be broken or cut to facilitate drainage or drain pipes without first obtaining the Committee's approval for the design and construction of an approved curb cut.

Section 7.05. Composition of Committee. The Committee shall be composed of three (3) members. The initial members of the Committee shall be a representative of the Declarant, as chairman, Donna Spelce and Paul Leventis, until the Owner's Association committee is activated by Declarant once 100% of Lots have been sold to and occupied by Class "A" members. The Committee, by a majority vote of the members thereof, shall have the power to

designate a representative (who may or may not be a member of the Committee) to act for the Committee; and upon the designation of such representative by the Committee, such representative shall have the power and authority to do any act or make any decision which the Committee itself could do or make under this Declaration. Neither the Committee nor its authorized representative shall have the right to demand, charge or receive any fee or other compensation as a condition to the examination of any plans or specifications submitted hereunder or for granting approval (or disapproval) thereof.

Section 7.06. Vacancies and Filling of Vacancies. In the event of the death or resignation of any member or members of the Committee, the remaining member or members of the committee shall have the power to designate a successor or successors to fill the vacancy or vacancies existing on the Committee. Until such successor(s) shall have been designated, the remaining member(s) of the Committee shall have continuing authority to act pursuant to the provisions of this Article.

Section 7.07 Term of Committee; Surrender of Authority. The members of the Committee herein appointed (or their designated successors) shall serve for a term of ten (10) years from the date of this Declaration, and upon the expiration of such ten (10) year term, all of the powers, authorities, duties and discretions herein conferred or imposed upon the Committee shall automatically vest in the Board of Directors of the Association. However, the Committee may, at any time prior to the end of such ten (10) year term, surrender to the Board of Directors of the Association all of the then members of the Committee and recorded in the office of the County Clerk of Brazos County, Texas.

Section 7.08. Limitation Of Liability. Neither the Declarant, the Association, the Committee, nor any of the members or any representative thereof shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

## **ARTICLE VIII**

### **PARTY WALLS**

Section 8.01. Definition of Party Wall. For the purposes of this Article, a "party wall" shall be deemed to mean and include:

- a. The common dividing wall between two (2) adjacent Townhouse or Patio Homes; or
- b. A fence constructed on (or substantially on) the common side Lot line of two (2) abutting Lots.

Section 8.02. General Rules of Law to Apply. To the extent that same are not inconsistent with the provisions of this Declaration, the general rules of law of this State

regarding party walls and liability for property damage due to willful or negligent acts or omissions shall apply thereto.

Section 8.03 Maintenance and Repair of Party Walls. The costs of ordinary repair and maintenance shall be shared equally by the Owners and the abutting Lots, Townhouses or Patio Homes (if applicable). Painting, alterations, or additions to one side only of the common wall shall be 100% paid by the respective Lot owner.

Section 8.04 Destruction by Fire or Other Casualty. Except for a dividing wall between adjacent Owners, the Owners shall contribute equally to the costs of repairing, reconstructing or replacing the same. Either Owner making use of such party wall may make or effect such repairs, reconstruction or replacement (which shall be repaired, reconstructed or replaced as nearly as possible to its original condition). The party making or causing such repairs, reconstruction or replacement shall be entitled to contribution from the other Owner for his pro rata share of the costs so incurred, as provided in this Section. The repair, restoration or reconstruction of a dividing wall between adjacent Townhouses shall be the responsibility of the Rebuilding Party, as provided above herein.

Section 8.05. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under the provisions of this Article shall be deemed a charge upon the land of the Owner liable for such contribution.

## **ARTICLE IX**

### **OCCUPANCY RESTRICTIONS**

#### **RESTRICTED OCCUPANCY FOR LOT 1, BLOCK 1; LOTS 1-7, BLOCK 2; LOTS 1-4, BLOCK 3; AND LOTS 3-20, BLOCK 4**

Section 9.01. The provisions of this Article IX are intended to comply with and be consistent with the provisions of the Fair Housing Act and the exemption in such Act which exempts housing for older persons from the prohibition against discrimination based on familial status set forth in 42 U.S.C. &3607 (b)(2)(C) or any successor statute.

Section 9.02. These lots in Briar Meadows Creek – Phase II are intended to provide housing for persons 55 years of age or older. The Community shall be operated as an age-restricted community in compliance with all applicable state and federal laws. No person under 19 years of age shall reside in any Residence or Unit for more than 60 total days in any calendar year.

Section 9.03. As provided in the exemption in the Fair Housing Act, at least 80% of all the Residences and Units in Briar Meadows Creek – Phase II if occupied, shall permanently be occupied by at least one person 55 years of age or older. Such person shall be referred to in this Section as the “qualifying occupant.” Once a Residence or Unit is occupied by a qualifying occupant as such individual’s legal residence, the members of his or her household over the age of 19 who occupy the Residence or Unit with such person may continue to live there even if the

qualifying occupant's residency terminates, so long as at least eighty percent (80%) of the Residences and Units are occupied by one qualifying occupant. Members of a qualifying occupant's household 19 years of age or older shall have the right to use all Common Property for as long as they reside in the Residence or Unit, irrespective of their age and of whether the qualifying occupant dies or otherwise ceases to reside in the Residence or Unit. At no time shall less than 80% of the Lots (and Residences located thereon) and Units subject to this Declaration be occupied by at least one qualifying occupant. Notwithstanding anything to the contrary in this declaration or unless prohibited by law, the restriction that no person under the age 19 may be a permanent occupant of any Residence or Unit shall be in perpetuity and shall not be subject to amendment.

Section 9.04. The Board shall establish policies and procedures from time to time as necessary to maintain its status as an age restricted community under state and federal law.

Section 9.05. Children shall be the direct responsibility of their parents or legal guardians, (or of the Owner or the occupant of the Residence or Unit if the parents or legal guardians are not the Owner or occupant) including full supervision of them while within the Community and including full compliance by them of these restrictions and all Rules of the Association. All children under nineteen (19) years of age must be accompanied by a responsible adult when entering and/or utilizing any of the Common Property.

Section 9.06. This Article IX shall in no way be deemed to restrict ownership of any Lot or Unit; provided, however, no Owner may occupy a lot or Unit nor permit occupancy of a Lot or Unit except in with the requirements of this Article IX. Lot and Unit Owners shall be responsible for including the statement that the Lots and Units within Briar Meadows Creek – Phase II are intended for the housing of persons 55 years of age or older, as set forth above, in conspicuous type in any lease or other occupancy agreement or contract of the sale relating to such Owner's Lot of Unit, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and for clearly disclosing such intent to any prospective tenant, purchaser or other potential occupant of the Lot or Unit. Every lease of a Lot or Unit shall provide that failure to comply with the requirements and restrictions of this Article IX shall constitute a default under the lease. Lot and Unit Owners shall be responsible for enforcing compliance with any tenant under any such lease.

Section 9.07. In the event of any change in occupancy of any Lot or Unit, as a result of transfer, sale, gift, lease, sublease, assignment, death, birth, marriage, separation, divorce or otherwise, the Owner of such Lot or Unit shall immediately notify the Board of Directors in writing and provide to the Board the names and ages of all current occupants of the Lot or Unit and such other information as the Board may reasonably require to verify the age of each occupant. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the owner and the Lot or Unit for each day after the change in occupancy occurs until the Association receives the requirements and information, regardless of whether the occupants continue to meet the requirements of this Article IX, in addition to all other remedies available to the Association under this Declaration and Texas law.

Any such monetary fines shall be deemed a Benefited Assessment and may be collected and enforced as such.

Section 9.08. Any Owner may request in writing that the Board of Directors make an exception to the requirements of this Article IX with respect to his or her Lot or Unit. The Board may, but shall not be obligated to, grant exemptions in its sole discretion, provided that the requirements for exemption from the Act would still be met. Any exemption granted by the Board shall automatically terminate upon transfer of ownership of the Lot or Unit, unless an earlier termination is provided for by the Board. Should a request for an exemption be denied, then the Owner making such request acknowledges that occupants not in compliance with this Article IX must immediately vacate the Lot or Unit. The Declarant shall exercise this authority on the behalf of the Board until such time as 100% of the Lots and Unit have been sold to and occupied by Class "A" members.

Section 9.09. The Association shall be responsible for maintaining age records on all occupants of Lots and Units. The Board shall adopt policies, procedures and rules to monitor and maintain Compliance with this Article IX, the Fair Housing Act and any successor statute, including Policies regarding visitors, conducting a census of the occupants of Lots and Units, requiring copies of birth certificates or other proof of age for such occupant of the Lot or Unit to be provided to the Board on a periodic basis, updating the records by surveying or other means at least once every two (2) years, the granting of exemptions pursuant to this Article IX, and enforcement. The Association shall periodically distribute such policies, procedures and rules to the Owners and make copies available to Owners, their tenants and Mortgages upon reasonable request.

Section 9.10. The Association shall have the power and authority to enforce this Article IX in any legal manner available, as the Board deems appropriate, including, without limitation, taking action to evict the occupants of any Lot or Unit which does not comply with the requirements and restrictions of this Article IX and/or which results in the Community not complying with the exemption under the Fair Housing Act or any successor statute. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AND ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OR HIS OR HER LOT OR UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS ARTICLE IX. This power-of-attorney shall be deemed to be coupled with an interest and shall be irrevocable for as long as such Owner owns a Lot and Residence and/or Unit in the Community. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Lot or Unit which in the judgment of the Board are reasonably necessary to monitor compliance with this Article IX.

Section 9.11. Each Owner shall be responsible for ensuring compliance of its Lots or Units with the requirements and restrictions of this Article IX and the rules of the Association adopted hereunder by itself and by its tenants and other occupants of its Lot or Unit. EACH OWNER, BY ACCEPTANCE OF TITLE TO A LOT OR UNIT, AGREES TO INDEMNIFY, DEFEND AND HOLD THE ASSOCIATION, DECLARANT, AND BRIAR MEADOWS

CREEK OWNER'S ASSOCIATION, INC., AND THE EMPLOYEES AND AGENTS OF EACH HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES AND CAUSES OF ACTION WHICH MAY ARISE FROM FAILURE OF SUCH OWNER'S LOT OR UNIT TO SO COMPLY.

### **RESTRICTED OCCUPANCY FOR LOT 5, BLOCK 3; AND LOTS 1-2, BLOCK 4**

Section 9.12. Non-Age Restricted Lot 5, Block 3; and Lots 1-2, Block 4: Occupancy shall be limited to one (1) family, which shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related living together as a single household unit. It is not the intent of the Declarant to exclude any individual from a dwelling who is authorized to so remain by any state or federal law. If it is found that this section, or any other section, of the Declaration is in violation of any law, then the prohibited section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

## **ARTICLE X**

### **USE RESTRICTIONS**

Section 10.01. Single Family Residential Use. Lot 1, Block 1; Lots 1-7, Block 2; Lots 1-4, Block 3; and Lots 3-20, Block 4 are for active senior citizen occupants and at least one occupant in each single family residential dwelling must meet the minimum age requirements of Article IX above. Lot 5, Block 3; and Lots 1-2, Block 4 are not restricted by age but limited to one (1) family as described above in Article IX, Section 9.12 above. No Lot or building site in the Subdivision shall be used for any purpose other than for single family residential dwelling use. No owner shall occupy or use his Lot or the improvements thereon, or permit the same or any part thereof to be occupied or used, for any purpose other than a single family residence for a person or persons. No Lot within the Subdivision shall be used for any other purposes or have constructed thereon any residential dwelling other than a Townhouse or Patio Home (refer to definitions in Section 1.01 of this Declaration) with an attached garage for no more than two (2) vehicles and further meeting the specifications of this Article. All dwellings constructed in the Subdivision, as to matters of exterior design and materials used, shall be architecturally compatible and in harmony with the existing dwellings constructed in the Subdivision and approved by the Committee as so required herein. All Owners and/or occupants of the dwellings constructed in the subdivision shall from time to time upon the request of the Declarant and/or the Homeowners Association, their agents and representative submit evidence requested by them to establish the ages of all occupants in any dwelling or improvement on any Lot or Lots in the Subdivision. Failure of the Owner and/or occupants to respond within the time period requested shall be deemed a violation of this restriction.

Section 10.02. Obstruction of Common Area. There shall be no obstruction of the Common Area, except for perimeter fences separating the Common Area of the Subdivision from properties outside of the Subdivision or other fences, barriers or obstructions approved by

Committee and intended to promote the general health, safety and welfare of the Owners and the members of their families and their guests and tenants.

Section 10.03. Prohibited Acts. No Owner shall do, or permit to be done by any members of his family or his guests or tenants, any act in or on the Common Area which shall be in violation of (i) any applicable ordinance, statute, rule or regulation of any municipal or other governmental authority, (ii) the provisions of this Declaration, (iii) the Bylaws of the Association, or (iv) the rules and regulations duly adopted and published by the Board of Directors of the Association.

Section 10.04. Nuisances or Annoyances. No noxious or offensive activity shall be carried on by any Owner, or by any member of his family or his guests or tenants, in or on any Lot or the Common Area, nor shall anything be done thereon which may be or become a nuisance or annoyance to the other Owners.

Section 10.05. Vehicles. No motor home, mobile home or house trailer of any kind will be allowed on any lot or home in the subdivision. No truck (larger than a ¾ ton truck or van), boat, trailer, or recreational vehicle of any kind, nor any inoperable vehicle or unlicensed motor vehicle, may be parked on the driveway or in front of any Lot or on any Lot or on any street, right of way or private access in front of any Lot unless it is kept inside the garage or to the rear of the home behind fences or walls which make said vehicle concealed from public view. No vehicle of any kind may be parked on lawn areas in front or to the side of any home so that said vehicle would be visible from the street. These restrictions shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and used for the construction, repair or maintenance of the Subdivision or of any Properties in the Subdivision or for the construction of any Dwelling in the Subdivision. Passenger vehicles belonging to visitors of the residence may be parked on the street in front of Lots for periods of time not to exceed twelve (12) hours in any twenty-four (24) hour period. This restriction is not to be construed to prohibit periodic overnight guests from parking on the street, but is to specifically prohibit residents from using the street as the usual overnight parking spot for their own vehicles. No major repair, work, dismantling, disassembling or assembling of motor vehicles or other machinery or equipment shall be permitted in or on any driveway, street, garage, carport or any part of any Lot or Commons area.

Section 10.06. Temporary structures. No structures of a temporary character, trailer, basement, tent, barn or other outbuilding or accessory building shall be used on any Lot at anytime as a residence, either temporarily or permanently. No mobile home or manufactured housing shall ever be allowed on or used on any Lot.

Section 10.07. New Construction Only. No used residence or other structure shall be moved onto any Lot or building site in the Subdivision, it being required that all permanent improvements shall be solely of new construction.

Section 10.08. Signs. No sign of any kind shall be displayed to public view on any Lot or building site in the Subdivision, except one (1) sign of not more than two feet (2') by three (3') advertising a Property for sale or rent or a sign of not more than eight feet (8') by twelve

(12') used by Declarant or a builder to advertise the Property during the construction phase or sales period. In addition, each owner is allowed one (1) political sign of not more than two feet (2') by three (3'), which sign shall be erected no more than thirty (30) days prior to a called election day and shall be removed no more than one (1) day after that same election day.

Section 10.09. Oil and Mining operations. No gas or oil drilling, gas or oil development operations, oil refining or storage, quarrying or mining operations, or like activities of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot in the Subdivision.

Section 10.10. Antennas. Without the prior written approval of the Committee, no antenna or other device for receiving or transmitting television and/or radio signals shall be erected, constructed or installed on any Lot or Patio Home in the Subdivision nor shall any "dish" type satellite or any other receiving and/or transmitting device be erected, constructed or installed on any Lot in the Subdivision. Without the prior written approval of the Committee, no "dish" type satellite or any other receiving and/or transmitting device that is greater than twenty four (24") inches in diameter be erected, constructed or installed on any Dwelling, Structure, Townhouse, or Patio Home in the Subdivision. In no event shall any "dish" type satellite or any other receiving and/or transmitting device be erected, constructed or installed in a manner that is visible from the street in front of the Dwelling, Structure, Townhouse, Patio Home in the Subdivision. The Committee reserves the right to refuse the allowance of an antenna, a "dish" type satellite receiving device or other television and/or radio receiving or transmitting device on any Lot in the Subdivision where the Committee judges, in its sole discretion, that such antennae or device would be detriment to the Subdivision or that it may require proper screening from the view of other Lots in the Subdivision as a condition to allowing the same. In the event the Committee shall approve in writing the installation of an antenna or other such receiving device, the place and manner of installation shall also be approved in writing by the Committee. TV Cable will be available to all lots.

Section 10.11. Livestock, Poultry and Household Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot in the Subdivision, except that dogs, cats and other household pets, may be kept provided (i) they are not kept, bred or maintained for any commercial or breeding purposes, (ii) they do not become a nuisance, and (iii) they are not allowed to roam or wander unattended and unleashed outside the privacy fence of any residence in the Subdivision.

Section 10.12. Garbage and Refuse Disposal. No Lot or any part of the Common Area shall be used or maintained as a dumping ground for rubbish, trash, refuse or other waste materials. Trash, garbage and other waste shall be kept in sanitary closed containers pending collection thereof; and garbage cans and other receptacles shall (except when placed on the street or drive for regular collection purposes) be hidden or screened from public view. No undeveloped Lot shall be used for the open storage of any materials whatsoever, except for materials used or to be used in the construction of improvements upon any Lot or building site, and then only for so long as such construction progresses. Upon completion of the improvements, any remaining materials, together with all rubble, rubbish, trash and debris shall be promptly removed from such Lot by the builder or owner.

Section 10.13. Water Wells and Sewage Treatment or Disposal Systems. No water well, septic tank or sewage treatment or disposal system (except for sanitary sewer lines connecting with the sewer lines connecting with the public Sanitary sewer system) shall be permitted on any Lot in the Subdivision.

Section 10.14. Subdivision or Combination of Platted Lots. The subdivision of a Lot or Lots shall be subject, in all respects, to the requirements, limitations and prohibitions of any applicable ordinance or statute of the City of Bryan, Texas, and State of Texas. Any Owner of one (1) or more adjacent platted Lots or portions thereof may consolidate and combine the same into one (1) building site and may construct improvements upon such resulting job site, subject again to the requirements, ordinances and statutes of the City of Bryan, Texas, and State of Texas. Any such composite building site must have a minimum frontage (at the building set back line) of not less than the minimum frontage of the other Lots in the same block. Any such composite building site, if same meets all of the foregoing requirements, shall be deemed to constitute a "Lot" under the terms and provisions of this Declaration.

Section 10.15. No Activity Affecting Structural Integrity. No Owner shall do any act or work that will impair the structural soundness or integrity of a party wall or of another residence or which will impair any easement or right of use thereof. No Owner shall do any act or allow any condition to exist which will adversely affect any abutting or adjoining residence in the Subdivision including rain water drainage to the front or side street or rear or side alleys.

Section 10.16. All utility service lines between meter points and dedicated easements shall be underground. Meters for utilities shall be visible from the main street of the Subdivisions. Air conditioning compressors, condenser units and any other mechanical equipment shall not be visible from the main streets of the Subdivision, hidden by a wall or shrub.

Section 10.17. Minimum Set Back Lines. No dwelling structure, including attached garage or other accessory building, but excluding open porches, courtyards, privacy fences and like screening devices, shall be located nearer to the front Lot line, nearer to a side street line, or nearer to the rear Lot line than the building set back lines shown upon the plat of the Subdivision. Further, no open porch, courtyard, privacy fence or like screening device shall be located nearer to the front Lot line than the front of the dwelling, nor nearer to the side street line (if any) than the side of the dwelling, except as may be constructed or placed as part of the original construction of such residential improvements pursuant to plans and specifications approved by the Committee.

Section 10.18. Height and Area Limitations. No dwelling or other building constructed on any Lot in the Subdivision shall exceed two (2) stories in height. No one-story dwelling shall be permitted on any Lot in which the living floor area (inclusive of enclosed utility and storage rooms, but exclusive of garages and open porches, patios or courtyards) shall be less than 1,250 square feet heated and air conditioned space. No one and one-half (1-1/2) story, or two-story homes will be permitted on any Lot in which such living floor area of the main or ground floor shall be less than 1,000 square feet. No one and one-half (1-1/2) or two-story home will be permitted on any lot in which the total living floor area is less than 1,250 square feet.

Section 10.19. Garages; No conversion. A garage for the parking and storage of one to two vehicles shall be constructed in conjunction with and as part of the original construction of any townhouse; patio home or dwelling in the subdivision. No garage shall be less than or reduced to less than a one car garage or converted into a den, family room, game room, or living quarters nor shall any other conversion or enclosure thereof be made which shall prevent its use for its original intended purpose of housing vehicles. Two car garages are encouraged.

Section 10.20. Rights of Declarant and Builders. Declarant, either alone or in conjunction with one (1) or more builders, shall undertake the work of developing and improving the Lots in the Subdivision. The completion of such work and the sale, rental and other disposition of the residential Dwellings is essential to the establishment of the Subdivision and an ongoing and attractive residential community. In order that such work may be completed and the Subdivision established as a fully occupied residential community as soon as practical and possible, nothing contained in this Declaration shall be understood or construed to:

- a. Prevent Declarant or the employees, agents, representatives, contractors or subcontractors of Declarant from going on any part of the Common Area or on the Lots in the Subdivision whenever it is deemed necessary or advisable in connection with the completion of the work;
- b. Prevent Declarant or a builder, or the employees, agents, representatives, contractors or subcontractors of Declarant or a builder from constructing, placing and maintaining on any part or parts of the Subdivision owned or controlled by Declarant or such builder such structures (including, without limitation, temporary construction offices and storage facilities) as shall be reasonably necessary or advisable in connection with the completion of the work, the establishment of the Subdivision as a completed residential community, and the disposition of Lots (whether improved or unimproved) by sale, lease or otherwise;
- c. Prevent Declarant or a builder from using or occupying a residence as a sales, leasing or construction office or a "model" home during the construction, sale or leasing period or periods; or
- d. Prevent Declarant or its agents and representatives, or a builder from installing and maintaining "for sale," "for rent," or "for lease" signs upon any Lot or Lots owned or controlled by Declarant or such builder as may be reasonably necessary or advisable in connection with the sale of unimproved Lots or the sale or leasing of improved Lots in the Subdivision.
- e. Prevent Declarant or Association from permitting the use of undeveloped lots and vacant non-platted portions of the Subdivision away from (not adjacent to) building lot sites for temporary storage of building materials. The builder will ultimately clean up all such materials before leaving the Subdivision after completing construction of the last home he intends to build therein.

With the approval of the Declarant, the new home builders buying the lots with the age restricted occupancy will have the right to sell homes to persons between the ages of 50 and 54 years of age, provided that no less than 80% of the homes are occupied by at least one person who is 55 years of age or older. No individual homeowner may sell his or her home for occupancy by a person younger than 55 years of age without Board Approval.

Section 10.21. Maintenance of Property and Easements. No Owner of any Lot either vacant or improved shall be permitted to let such Lot and improvements thereon go unmaintained, and he shall keep the same in a neat and orderly manner. All drainage areas, utility easements, and other easements located on an Owner's Lot or Lots shall be kept neat, clean and in good order and free from debris and obstructions by the owner of that particular Lot or Lots at his sole cost and expense. Any Owners of such areas designated on the Subdivision Plat shall be responsible for maintaining such area and keeping the same in good order and in a neat and clean condition and free from debris, unsightly growth, and obstructions. Such expense for the purposes of this declaration of covenants and conditions and restrictions, shall be considered a part of the assessments against said Lot or Lots and shall further carry with it the right of the Association to create a lien against the Lot or Lots as so provided herein to collect said expenses incurred by the Committee and/or Association. Provided further, all Owners of the Lots their heirs, executors, successors and assigns hereby grant, convey and assign unto the Association and Architectural Control Committee its agents and employees, the right of ingress and egress and regress on, over and across any part of their Lot or Lots for the purposes of forcing and carrying out the maintenance, restoration and up keep of the Private Access Easement and other easements as specified herein.

Section 10.22. Construction and Maintenance Easements For Zero Lot Line Properties. A five foot building easement is provided on Property that abuts the Zero Lot Line Lots to be used only by the adjoining property owner for the construction or repair of the exterior side wall of his house. The adjoining property owner must replace any existing fence on the property line with his house wall but shall not disturb any part of the fence on the property line with his house wall but shall not disturb any part of the fence not replaced by his house wall. This easement when used must be left clean and neat and any grass or patio slab removed must be replaced. The adjoining property owner must be notify the property owner of his intent to do any construction or maintenance at least fifteen days before work is started in order that the property owner may at his option remove his fence and protect his landscaping.

Section 10.23. Ordinances Controlling. In the event of any conflict between the existing ordinances of the City of Bryan, Texas, affecting the Subdivision and this Declaration, the provisions of such ordinances shall control; except, however, that if any restriction contained in this Declaration shall be more restrictive than any comparable restriction imposed by city ordinance, then the provision of this Declaration shall control.

## **ARTICLE XI**

### **ANNEXATIONS OF ADDITIONAL PROPERTIES AND COMMON AREA**

Additional properties and Common Areas may be annexed to the Properties with the consent of two-thirds (2/3) of each class of Members of the Association. Notwithstanding anything contained in this Article, Declarant, their heirs, successors and assigns, shall have the right but not the obligation, without the consent of any other Owners or any Mortgagee to bring within this Declaration all or any part of any real property contiguous to the Subdivision at any time on or before January 1, 2015, in one (1) or more future stages or additions of development, and/or as Common Properties. Provided however, nothing in this Declaration shall be construed to represent that Declarant, its successors or assigns, are under any obligation to add or annex such real property to this Declaration, its covenants, conditions and restrictions unless the Declarant, nor shall said real property be subject to this Declaration, its covenants, conditions and restrictions unless the Declarant so desires and unless the same is so annexed by the Declarant of Covenants and Restrictions as hereinafter provided. Any such additional properties annexed hereunder shall be developed in accordance with a general plan of development under which the architectural standards prevailing in this Declaration will be continued to such additional properties so annexed. Provided however, such Supplemental Declarations of Restrictions may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties, which may include, but is not limited to, authorizing land use within the annexed properties for different sized single family dwellings, townhouses, and patio homes on different Lot sizes. Provided further, such Supplemental Declarations may contain modifications, which shall pertain to the annexed properties relative to assessments, so as to establish, when considering the assessments then prevailing for the existing Properties, a fair and equitable basis and maximum charge for Lots within the existing Properties as well as the annexed properties. In no event, however, shall such supplementary declarations revoke, modify or add to the covenants and restrictions established by this Declaration relative to the existing Properties so as to diminish the rights of the Owners of said Lots or create more burdens upon said Lots and their Owners.

## **ARTICLE XII**

### **MISCELLANEOUS**

Section 12.1. Term of Covenants. The covenants and restrictions contained in this Declaration shall run with and bind the land and the same shall be binding upon and inure to the benefit of Declarant, the Association and all Owners, together with their respective heirs, legal representatives, successors and assigns. The covenants and restrictions herein contained shall be binding for a period of forty (40) years from the date of this Declaration. Upon the expiration of such forty (40) year period, they shall be automatically extended for successive periods of ten (10) years each unless otherwise amended or terminated as provided in Sections 12.2 hereof.

Section 12.2. Amendment of Termination of Covenants. This Declaration may be amended or the covenants and restrictions hereof terminated, in whole or in part, as follows:

- a. During the initial forty (40) year period, any such amendment or termination shall be effected only by a written instrument signed by the Owners of not less than seventy-five (75%) of the Lots in the Subdivision and duly recorded in the office of the County Clerk of Brazos County, Texas; or

b. At any time after such initial forty (40) year period, any such amendment or termination shall be effected only by a written instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots in the Subdivision (including not less than 67% of the Owners, other than Declarant, of the Lots in the Subdivision) and duly recorded in the office of the County Clerk of Brazos County, Texas.

Section 12.3. Severability. In the event that any of the provisions of this Declaration, or any Portion thereof, shall be held to be invalid, illegal or unenforceable by judgment or decree of a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect, invalidate or impair any other provision, or portion thereof; and all remaining provisions, or parts of provisions, shall remain valid and in full force and effect in accordance herewith.

Section 12.4. Failure to Enforce is Not a Waiver. The failure of Declarant, the Association or any Owner to enforce any covenant or restriction herein contained shall not be construed or deemed to constitute a waiver of the right to thereafter enforce any such covenant or restriction or to enforce any other covenants or restriction hereof.

Section 12.5. Enforcement. In the event of any violation or breach, or attempted violation or breach, of any of the terms or provisions of his Declaration, Declarant, the Association or any Owner, their heirs, executors, administrators, successors and assigns, shall be authorized to enforce the terms, covenants and restrictions hereof by any proceedings at law or in equity against the person(s) violating or breaching, or attempting to violate or breach, the same, including actions for prohibitive or mandatory injunctive relief; and it shall not be a prerequisite to the granting of any such injunctive relief that there be any showing that irreparable damage or harm will result if such injunctive relief is not granted, additionally, any person entity entitled to enforce the terms, covenants or restrictions of this Declaration may recover such damages, both actual and punitive, as such party may show that he or it is entitled by reason of any such violation or breach. In any action for enforcement of the terms, covenants or restrictions hereof, whether for injunctive relief or damages, if the party prosecuting such action is successful, he or it shall be entitled to recover, in addition to any damages awarded, reasonable attorney's fees and all costs of court.

Section 12.6. It shall be the duty of each Owner to designate to the Association his mailing address for receipt of notices and statements required or permitted to be given hereunder by the Association. Upon the designation of an address by an Owner, all notices and statements given by the Association shall be transmitted by United States Mail to Owner at such address. An Owner shall have the right to change his address for receipt of notices by furnishing to the Secretary-Treasurer of the Association a written notice of change of address. Failing the designation of an address for receipt of notice, or failing the designation of a changed or different address, notices sent by the Association to the last address designated by Owner, or in the absence of any designation, to the address of the Owner's property in the Subdivision, shall be deemed properly given.

Section 12.7. Any notice given to an Owner in accordance with the above provisions shall be deemed to be effective as of the earlier of (i) the date of receipt thereof by Owner, or (ii)

three (3) business days after such notice or statement was deposited in the United States Mail, properly addressed (as required above) and with full postage prepaid.

Section 12.8. It shall be the duty of the Board of Directors of the Association to maintain a full and complete record of ownership of Lots in Subdivision. Declarant and builders, upon making each sale shall notify the Board of Directors of the identity of the purchaser or grantee purchasing the Property and a description of the Property so purchased, as well as the date of conveyance.

Section 12.9. It shall be the duty of Owner, upon transferring ownership of his property, or any interest or title therein (other than a transfer to a trustee or Mortgagee as security for an obligation), to notify the Board of Directors of the Association of such transfer, identifying the Property or interest conveyed, the name of the purchaser or transferee, and the date of the conveyance. In the absence of any of the sale or conveyance to the Association, as provided above, the Association shall be authorized to deem and consider Owner as the recordholder and Owner of the Lot and property for all purposes of the Declaration, including, without limitation, (i) receipt of notices hereunder, (ii) performance of maintenance provided for herein, and (iii) payment of the annual assessments and all other assessments provided for herein; and Owner shall continue to be bound and personally obligated for the performance of these Declarations until notice of such transfer of ownership is actually received by the Association.

Section 12.10. Notices to be given by an Owner or by the Declarant to the Association shall be in writing and shall be transmitted by United States Mail to the Association at 1722 Broadmoor, Suite 212, Bryan, TX 77802 until the Association is duly formed. The Association shall, by written notice to the Declarant and all Owners, designate a new or different address for receipt of notice.

Section 12.11. Notices given to the Association shall be effective upon receipt.

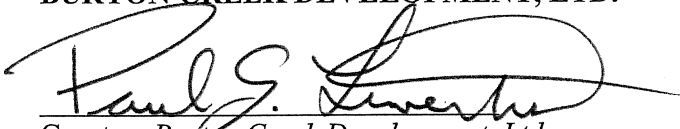
Section 12.12. It is the intention of the Declarant and the Association to conform strictly to applicable usury laws. Accordingly, if any transaction contemplated by this Declaration or the By-laws of the Association would be usurious under applicable law, then, in that event, notwithstanding anything to the contrary in this Declaration or in the By-laws to the contrary, it is agreed the aggregate of consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this Declaration and/or the By-Laws of the Association or otherwise in connection with this Declaration and/or the By-laws shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess paid to the Association or any other person hereunder shall be refunded to the party paying same.

Section 12.13. Amendments by Declarant. The Declarant shall have and reserves the right during the construction and sale period, without the joinder or consent of any Owner or Mortgagee, to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record, for the purpose of clarifying any ambiguity or conflicts herein or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Corporation,

Veteran's or Federal Housing Administration, provided that no such amendment shall change property rights of any Lot Owner except as provided in Section 12.2 of Article XIII herein.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers, on this the 2nd day of July, 2008.

**BURTON CREEK DEVELOPMENT, LTD.**



Grantee: *Burton Creek Development, Ltd.*

By *Burton Creek Management, LLC, General Partner*

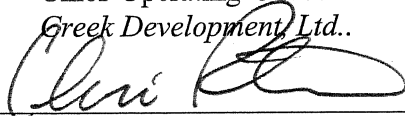
By *Paul Leventis, Chief Operating Officer*

Date: 7/2/2008

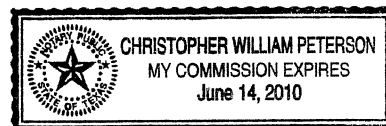
**ACKNOWLEDGMENT**

State of Texas       §  
County of Brazos   §

This instrument was acknowledged before me on 7/2/08 [date], by Paul Leventis as Chief Operating Officer of Burton Creek Management, LLC, the general partner of *Burton Creek Development, Ltd.*



Notary Public, State of Texas



C:\Documents and Settings\Christopher Peterson\My Documents\Deed restrictions\Briar Meadows Briar Meadows Creek Supplemental Deed Restrictions 07 02 08.wpd

HONORABLE KAREN MCQUEEN, COUNTY CLERK  
BRAZOS COUNTY

JUL 02, 2008

as stamped hereon by me.

BRAZOS COUNTY

STATE OF TEXAS       COUNTY OF BRAZOS  
I hereby certify that this instrument was  
filed on the date and time stamped hereon by me  
and was duly recorded in the volume and page  
of the Official Public records of:

Lynn Greer

Receipt Number - 344999

Amount       127.00

Document Number: 01002929

As a  
Recording

On: Jul 02, 2008 at 04:32P

Filed for Record in:  
BRAZOS COUNTY

