

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
BROOK HOLLOW HOME OWNERS' ASSOCIATION**

THE STATE OF TEXAS  
COUNTY OF BRAZOS

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF BROOK HOLLOW HOME OWNERS' ASSOCIATION (the "Declaration") is made effective as of the date of filing, by BROOK HOLLOW HOME OWNERS' ASSOCIATION (hereinafter sometimes referred to as "Declarant").

This Declaration does hereby modify, amend and fully replace and restate the original Declaration which was executed on January 24, 1974 and recorded on February 19, 1974 at Volume 324, Page 473 of the Official Records of Brazos County, Texas ("Original Declaration"). This Declaration does also hereby modify, amend and fully replace and restate any and all amendments and supplemental declarations to the Original Declaration previously recorded.

WHEREAS on the 24<sup>th</sup> day of January, 1974, Woodson Lumber Company of Cameron, a Texas Corporation ("Developer"), executed the Original Declarations related to BROOK HOLLOW, NUMBER 5, PHASE 1, a subdivision in the City of Bryan, Brazos County, Texas, as shown by the recorded map or plat thereof in Volume 309, Page 301 of the Official Records of Brazos County, Texas; and

WHEREAS on the 6<sup>th</sup> day of April, 1976, Developer filed a Supplemental Declaration of Covenants and Restrictions related to BROOK HOLLOW, NUMBER 5, PHASE 2, recorded at Volume 350, Page 533 of the Official Records of Brazos County, Texas, and as shown by the recorded Plat thereof in Volume 339, Page 237 of the Official Records of Brazos County, Texas, and as shown by the replat thereof recorded in Volume 344, Page 221 of the Official Records of Brazos County, Texas; and

WHEREAS on the 15<sup>th</sup> day of May, 1978, Developer filed a Supplemental Declaration of Covenants and Restrictions related to BROOK HOLLOW, NUMBER 5, PHASE 4, (SAVE AND EXCEPT LOTS 1 & 2 of Block 5) recorded at Volume 397, Page 3 of the Official Records of Brazos County, Texas, and as shown by the recorded Plat thereof in Volume 382, Page 719 of the Official Records of Brazos County, Texas, and as shown on the replats thereof recorded in Volume 396, Page 553 and Volume 529, Page 29 of the Official Records of Brazos County, Texas; and

WHEREAS on the 15<sup>th</sup> day of September, 1983, Developer filed a Supplemental Declaration of Covenants and Restrictions related to BROOK HOLLOW, NUMBER 5, PHASE 6, recorded at Volume 604, Page 583 of the Official Records of Brazos County, Texas, and as shown replats thereof recorded in Volume 558, Page 387 of the Official Records of Brazos County, Texas; and

WHEREAS on the 15<sup>th</sup> day of September, 1983, in that same document (Volume 604, Page 583), Developer also executed and filed for record Restrictions and Covenants relating to BROOK HOLLOW, Lot 14, Block 7-A and Block 7-B of Number 5, Phase 6; and

WHEREAS on the 7<sup>th</sup> day of January, 2009, the owners of the BROOK HOLLOW HOME OWNERS' ASSOCIATION filed an Amendment to the Declaration and Supplemental Declaration of Covenants and Restrictions to BROOK HOLLOW, NUMBER FIVE (5), PHASE ONE (1) and PHASE SIX (6), recorded in Volume 8920, Page 43 of the Official Records of Brazos County, Texas, and then on the 18<sup>th</sup> day of February, 2010 filed a Correction to that Amendment, recorded in Volume 9506, Page 30 of the Official Records of Brazos County, Texas, with the purpose of including all of the Phases of Brook Hollow which are members of said Association; and

WHEREAS it is now the desire of a majority of the owners of the BROOK HOLLOW HOME OWNERS' ASSOCIATION to replace the Original Declaration, as well as all Supplemental Declarations and all Amendments to those restrictions so as to update the same and make them subject to the more recently enacted laws of the State of Texas;

NOW THEREFORE the undersigned Owners declare that the Declaration of Covenants and Restrictions recorded in Volume 324, Page 473 of the Official Records of Brazos County, Texas, and all supplemental declarations and amendments filed thereafter shall be modified, amended and replaced as hereinafter provided:

## **ARTICLE 1 DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings hereinafter specified:

1.01 Architectural Committee. "Architectural Committee" or "Committee" shall mean the committee created by the Board to review and approve plans for the construction of Improvements on the Property. If the Board does not appoint an Architectural Committee, the Board shall serve as the Architectural Committee.

1.02 Articles. "Articles" shall mean the Certificate of Formation of BROOK HOLLOW HOME OWNERS' ASSOCIATION, as that instrument may be amended from time to time, which instrument is filed in the office of the Secretary of State of the State of Texas.

1.03 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of the Declaration.

1.04 Association. "Association" shall mean BROOK HOLLOW HOME OWNERS' ASSOCIATION, a Texas nonprofit corporation.

1.05 Board. "Board" shall mean the Board of Directors of the Association. Board members may, but need not, be Members of the Association.

1.06 Bylaws. "Bylaws" shall mean the Bylaws of the Association as adopted by the Board, and from time to time amended.

1.07 Common Areas. "Common Areas" shall mean any land conveyed, leased, dedicated or assigned by Declarant, or a third party with the Association's consent, to the Association for maintenance and operation, including, but not limited to, easements, roads, entryways, roadways, rights-of-ways, parkways, median strips, sidewalks, parks, recreational areas, pavilions, walking trails, swimming pools, water features, trails, paths, ponds, creeks, or lakes within the Property.

1.08 Declarant. "Declarant" shall mean BROOK HOLLOW HOME OWNERS' ASSOCIATION, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of BROOK HOLLOW HOME OWNERS' ASSOCITION as Declarant, must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignments of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.09 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

1.10 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, pole signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.11 Living Unit. "Living Unit" or "Living Units" shall mean any portion of a building situated on the Property designed and intended for use and occupancy as a residence by a single family.

1.12 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a recorded plat of the Property, together with all Improvements located thereon.

1.13 Member. "Member" or "Members" shall mean any person(s), entity, or entities holding membership rights to the Association.

1.14 Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.15 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.16 Owner. "Owner" or "Owners" shall mean a person or persons, entity or entities, holding a fee simple interest in any Lot or Living Unit on the Property, but shall not include a Mortgagee.

1.17 Person. "Person" or "Persons" shall mean an individual or individuals, entity or entities having the legal right to hold title to real property.

1.18 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement,

including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.19 Property. "Property" or "Properties" shall mean all such existing properties, and additions thereto, as are subject to this Declaration, the Original Declaration and any Supplemental Declarations referenced herein or properly filed thereafter.

1.20 Subdivision. "Subdivision" shall mean the Brook Hollow properties, phases and additions thereto are subject to this Declaration, the Original Declaration and any Supplemental Declarations referenced herein or properly filed thereafter.

## **ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION**

The properties, phases and additions known as Brook Hollow, Number 5, Phases 1, 2, 4 and 6, said property being located in Brazos County, Texas, described on Exhibit "A" attached hereto, and as further referenced and described in the recitals herein, shall be subject to this Declaration.

## **ARTICLE 3 GENERAL RESTRICTIONS**

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.01 Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Property without the prior approval of the Architectural Committee.

3.02 Antennas. No external antennas of any kind shall be permitted on any Lot without prior written approval of the Architectural Committee as to antenna size, height, placement and visibility. No satellite antenna nor any antenna dish may be parked, erected or installed either permanently or temporarily, on any Lot, except in backyard areas where it is substantially concealed from public view.

3.03 Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee.

3.04 Signs. No sign of any kind may be erected or maintained on any Lot without the consent in writing of the Architectural Committee except the following permitted signs:

- (A) Signs advertising the Lot for sale (whether the initial sale of the Lot or any subsequent sale of the Lot with or without Improvements);
- (B) Not more than one (1) political sign per candidate, and then only for the period from one month prior to and three days after an official election day;

- (C) School spirit signs; or
- (D) Security signs.

No permitted sign shall exceed five (5) square feet without the prior written approval of the Architectural Committee. Declarant or the Architectural Committee shall have the right to enter and remove any unapproved sign, advertisement, billboard or structure which is placed on any Lot without the Declarant or the Architectural Committee's consent, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal.

3.05 Clotheslines, Garbage Cans, Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or its occupants. No clotheslines shall be erected or installed on the exterior portion of any Lot and no clothing, linens or other material shall be aired or dried on the exterior portion of any Lot, unless screened from view from any adjacent lot or street. All garbage cans, above-ground storage tanks, mechanical equipment, woodpiles, yard equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. No garbage cans or refuse containers shall be permitted to remain at the front of a dwelling either within street or upon the Properties. All rubbish, trash, and garbage shall be stored in appropriate containers approved by the Board and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot.

3.06 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.07 Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the Architectural Committee.

3.08 Nuisance and Lateral Support. No noxious or offensive activity or work shall be conducted upon any Lot so as to impair the structural soundness or integrity of any Improvement on any other Lot, or which may be or may become an annoyance or nuisance to the neighborhood.

3.09 Repair of Improvements. All Improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.

3.10 Alteration or Removal of Improvements. Exclusive of normal maintenance, any construction or removal in connection with any Improvement, which in any way alters the exterior appearance of said Improvement, shall be performed only with the prior written approval of the Architectural Committee.

3.11 Solar Equipment. In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall

be submitted to the Architectural Committee and approval of such design, including the aesthetics thereof, shall be required before construction may begin.

3.12 Drainage. There shall be no interference with the established drainage patterns over any of the Property, unless adequate provision is made for proper drainage and approved by the Architectural Committee.

3.13 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted on a Lot except in contained barbecue units while attended and in use for cooking purposes, or within safe and well-designed (i) interior fireplaces, (ii) exterior fireplaces, or (iii) outdoor chimneys (or chimeneas).

3.14 Mining and Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No well, pump, shaft, casing or other facilities for the removal of subsurface water shall be placed or maintained on any Lot, and no boring, drilling, removal or exploration for subsurface water or the injection of water or waste water shall be conducted on any Lot.

3.15 Machinery and Equipment. Without the approval of the Association, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association; provided, however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by any public utility, in the performance of its legitimate functions.

3.16 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon a Lot without the prior written approval of the Architectural Committee.

3.17 Vehicles. No vehicle or trailer, which is inoperative, wrecked, dismantled, discarded or which does not have (i) a lawful license affixed thereto, (ii) an unexpired license plate or plates, and (iii) a valid motor vehicle safety inspection certificate, shall be permitted upon any Lot. If visible from the street for a period longer than 72 hours such violative vehicles shall be subject to being towed away by the Association at the owner's expense.

No truck or van with more than two axles, service vehicles (including but not limited to, those containing multiple tool boxes, ladder racks, welding equipment, construction equipment or other similar equipment or accessories), boat, trailer, motor home, mobile home, house trailer, or recreational vehicle, may be kept on the street in front of any Lot, or upon any Lot, unless it is kept inside the garage or yard areas, behind fences or walls, and concealed from public view. No vehicle of any kind may be parked on lawn areas for any reason. These restrictions shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and used for the construction, repair and maintenance of any Lots. Passenger vehicles 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. Any vehicle parked for a longer time may be towed away by the Association at the

Lot owner's expense. 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 for vehicles. No major repair work, dismantling, or disassembling of motor vehicles or other machinery or equipment shall be permitted in or on any drive, street, garage, carport or any part of any lot.

No motorcycles, motorbikes, dirt-bikes, motor-scooter, go-carts, or three and four wheel "off-road" vehicles, nor any similar vehicles, whether licensed or unlicensed may be operated by unlicensed operators on any Lot or on neighborhood streets. Furthermore, no motor vehicle that is operated, either legally or illegally, on the Lots or neighborhood streets shall be permitted to make or emit any noxious or offensive noises, smells, or fumes, or to be operated in such a manner that may be or become a danger, nuisance or annoyance to the neighborhood.

**3.19 Fences and Party Walls.** No fence, wall, or any other structure shall be erected, added or placed on any Lot nearer to any front lot line than the nearest front corner of the residential dwelling, unless approved by the Committee. All fences, walls and mailboxes shall be of a nature and quality so as to be harmonious with, and enhance, and not detract from the general appearance of the Subdivision and must be approved in writing by the Committee prior to construction. Unless otherwise expressly provided herein, each individual lot owner is responsible for keeping, repairing, replacing and maintaining any existing fence or wall that is on the Owner's Lot or adjacent right-of-way. All fences will be made of cedar, spruce, fir, pine, redwood or ornamental metal unless otherwise approved by the Committee. Cyclone fences are allowed only if fully screened from public view (i.e., "dog runs"); however, any and all such cyclone fences and the use thereof must first be approved in writing by the Committee. Fences may be reasonably stained to enhance natural appearance but are not to be painted unless approved by the Committee. The "good side" of the fence (that is, the side that shows fence slats or pickets only) shall always face the public street closest to such fence or common area, as appropriate. Final approval of fencing and its facing shall be at the full discretion of the Committee. The Association shall maintain all fencing and walls located in or bordering Common Areas, and such determination shall be made in the Association's sole discretion.

Each wall which is built as part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section 3.19, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the rights of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. An Owner who negligently or willfully causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section 3.19 shall be appurtenant to the land and shall pass to such Owner's successors in title.

**3.20 Livestock.** No animals, livestock, poultry or insects of any kind shall be raised, bred or kept on any Lot, except that dogs (excluding Pit Bulls, Chows, Rottweiler, Dobermans or any dog with a wolf mix, which are strictly prohibited), cats, or other household pets may be kept if they are not used, maintained or bred for any commercial purposes, and provided such pets do

not become a nuisance to the neighborhood. All dogs with a previous record of aggressive behavior or instances of biting shall be fenced.

**3.21 Maintenance of Lawns, Plantings, Walls and Exteriors.** Those portions of each improved Lot that are within the subdivision common properties area and are visible from the street, primarily the front yard, shall be maintained by the Association with domestic grass and/or suitable ground cover, integrated with any natural trees and bushes that may be incorporated into the landscaping. In any case, whether a yard is primarily covered with grass and/or ground cover or largely covered with natural growth, the yard shall be kept in a manner consistent with a well-maintained attractive neighborhood.

If the Owner of any Lot fails to keep the grass and vegetation within their dwelling boundaries cut as often as may be necessary to maintain the Lot in a neat and attractive condition, the Association may have the grass or vegetation cut, and the Owner shall be obligated to pay, or otherwise reimburse the Association, for the cost of such work. This includes the front garden area that runs approximately six feet off of the front of each dwelling unit, the beds located in the rear of each unit and abutting any individual unit's rear mailbox and the area within any courtyard within an owner's property line.

The Association shall be responsible for maintaining the walls that are situated within the common area. Corner lot owners are responsible for maintaining the outside of walls that are situated within their property lines.

The Association may also provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article 7, including painting, making repairs, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

By acceptance of its grant deed, each Lot Owner grants to the Association and its duly authorized agents or employees authority to enter upon such Owner's property without threat of trespass or other liability against the Association excepting willful misconduct by the Association, its officers, employees and agents.

**3.22 Sight Lines.** No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot within the area defined by a line drawn between two points located twenty (20) feet from the point of intersection of the street right-of-way property lines immediately adjacent to the Lot, as reasonably located by the Architectural Committee. Measurements shall be by chord, and not arc. No tree shall be permitted to remain within such areas unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

**3.23 Garage Conversions.** No garage or any portion thereof, may be constructed into enclosed living space unless the Architectural Committee first approves the Plans and Specifications for conversion and construction in writing.

**3.24 Swimming Pools, Recreational Amenities, Other Common Areas.** Any swimming pools, recreational amenities or other improvements in Common Areas constructed on the Property shall be governed by rules and regulations for use or prohibitions against use established by the Board from time to time.

3.25 Doors and Windows. No "burglar bars," steel or wrought iron bars, or similar fixtures, whether designated as decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any dwelling. However, any above-referenced items installed prior to the execution and filing of this Amended and Restated Declaration shall be considered grandfathered and not subject to the provisions of this article. Except as set forth herein, no signs, numerals or other writing shall be written on or placed in the doors, windows or exterior walls of any dwelling, either temporarily or permanently, except that the Board may, in its discretion, permit house numbers to be written temporarily on a single window of a dwelling while occupants are moving in, provided such numbers are removed within seventy-two (72) hours after the occupants have taken occupancy. Address plaques may be installed on an exterior wall facing a street so long as such address plaque has been approved by the Architectural Committee. Sheets or similar temporary window treatments may be used for a short time after taking occupancy of a dwelling, provided they are removed and replaced with permanent window treatments within a reasonable time, not to exceed fourteen (14) days, after taking occupancy of the dwelling, as determined in the sole discretion of the Board. Foil, cardboard, plywood, newspaper, sheets or bed linens shall not be used as window coverings at any time, except for bona fide emergencies of less than three (3) weeks or as otherwise specifically set forth in this paragraph.

3.26 Seasonal Decorations. No Owner or Occupant of any Lot shall keep or maintain any decorations related to seasonal events (Christmas, Independence Day, Thanksgiving, Halloween, for example, without limitation) for more than ten (10) days after (or for more than thirty (30) days prior to) the date of the actual seasonal event.

3.27 Basketball Goals and Sports Equipment. No basketball goals (pole, backboard or rim) or other sports equipment, shall be permanently or temporarily located within fifteen (15) feet of the front Lot line on any Lot, or the side Lot line along any public street.

3.28 Occupancy. A residence may only be occupied by:

- (A) A single-family unit which may consist of the owner of the residence, his or her spouse, his or her children, and his or her parents; or
- (B) No more than two unrelated individuals and lineal descendants thereof (persons are unrelated if they are not within the second degree of consanguinity to one another); or
- (C) The owner, the spouse of the owner, the parents of the owner, or the lineal descendants of the owner and their authorized guests, but which is not used by such persons as a rooming or boarding house for unrelated persons; or
- (D) Not more than two unrelated persons and lineal descendants thereof under a lease agreement with the owner of the residence; or
- (E) A single-family unit consisting of no more persons than are otherwise authorized herein under a lease agreement with the owner of the residence.

3.29 Compliance. Each Owner shall comply strictly with the provisions of the Declaration as the same may be amended from time to time. Failure to comply shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggravated Owner. Declarant, for itself, its successor or assigns, reserves the right to enforce

these restrictive covenants, though it may have previously sold and conveyed all subdivided Lots controlled by these covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.

3.30 No Warranty of Enforceability. While the Association has no reason to believe that any of the restrictive covenants or other terms and provisions contained in the Declarations are or may be invalid or unenforceable for any reason or to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance upon one or more such restrictive covenants, terms or provisions shall assume all the risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold the Association harmless therefrom.

## **ARTICLE 4 RESIDENTIAL RESTRICTIONS**

4.01 Residential Use. All Lots shall be improved and used solely for residential purposes inclusive of a garage, fencing, and other such improvements as are necessary or customarily incident to residential use. No Owner shall occupy or use his Lot or any Improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than the private residence.

## **ARTICLE 5 BROOK HOLLOW HOME OWNERS' ASSOCIATION**

5.01 Organization. Brook Hollow Home Owners' Association is incorporated in Texas as a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.02 Membership. Any Person or entity upon becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest, which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with title to the said property interest.

5.03 Voting Rights. Each Owner, as defined in Article 1 herein, shall be a member of the Association. There will be only one class of members, and each member shall be entitled to one (1) vote for each Lot or Living Unit in which they hold the interest required for membership by Article 1. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members and the vote for such Lot or Living Unit shall be exercised as they among themselves decide, but in no event shall more than one (1) vote be cast with respect to any such Lot or Living Unit. This provision shall take the place of the Class A and B Memberships as is recited in the original Declaration due to the fact that the events as prescribed therein have occurred, and therefore there is only one (1) class of membership, and that is a Class A member entitled to one (1) vote for each Lot in which he or she holds the interest required for membership under Article 1.

5.04 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to any limitations upon the exercise of its power as

are expressly set forth in this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers at all times:

- (A) Policies, Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such policies, rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions.
- (B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.
- (C) Records. To keep books and records of the Association's affairs.
- (D) Assessments. To levy Assessments as provided in Article 7 below.
- (E) Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency, after ten (10) days' written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Declarations, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon (i) shall be a personal obligation of the Owner of the Lot entered upon, (ii) shall be a lien upon the Lot entered on and Improvements thereon, and (iii) shall be enforced in the same manner and to the same extent as provided in Article 7 hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the names of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Declaration. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the provisions of this Declaration.
- (F) Fines. To levy and collect fines against Owners for any violation of the Declaration which is not cured by the Owner in the judgment of Board within 30 days after written notice of such violation as provided in Section 9.04. Fines may be assessed repeatedly for continuous violations. Fines shall be uniform according to a fine schedule to be established from time to time by the Board.
- (G) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper for the operation of the Association.

#### 5.06 Common Areas.

- (A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:
  - (1) To accept, own, operate and maintain all Common Areas, together with any Improvements of any kind or purpose located in said areas; and to maintain in good repair and condition all lands, Improvements, and other Association property owned by or leased to the Association.

(2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon individual Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(B) In addition to, and not in limitation of, the power and authority of the Association as set forth in Section 5.04 of this Declaration, the Association, acting through the Board, shall have the power and authority:

- (1) To grant and convey portions of Association property, including fee title, leasehold estates, easements, right-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating or maintaining Improvements for the Subdivision.
- (2) To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association, or within city-owned parks, parkways, entrance ways, or street rights of way which the Association desires to maintain or pay for, in the best interest of the Association and the aesthetic appearance of the Subdivision as a whole.
- (3) To enter into contracts with such terms and provisions as the Board shall determine, to operate and maintain any of the Common Areas or to provide any service or perform any function on behalf of the Association in connection with the purposes of the Association.
- (4) To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.

**5.07 Indemnification.** The Association shall indemnify any director, officer, or member of a committee duly appointed pursuant to the Articles or Bylaws who by reason of the fact that such person is or was a director, officer or member of such a committee of the Association was, is, or is threatened to be made, a named defendant or respondent in (i) any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, (ii) any appeal in such an action, suit, or proceeding, and (iii) any inquiry or investigation that could lead to such an action, suit, or proceeding (hereinafter a "Proceeding"), and against all judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with any such Proceeding to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time. Such authorization of indemnification shall be deemed to be mandatory and deemed to constitute authorization of indemnification and advancement of expenses to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time.

## **ARTICLE 6** **ARCHITECTURAL COMMITTEE**

**6.01 Membership of Architectural Committee.** The Architectural Committee shall consist of three (3) or more representatives appointed by the Board. No person who is a current board member, a current board member's spouse, or is residing in a current board member's household may not be appointed to serve on the Architectural Committee.

**6.02 Review by Committee.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Committee. In the event said Board, or its designated committee, fails to approve or disapprove the plans and specifications within thirty (30) days after they have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## **ARTICLE 7** **FUNDS AND ASSESSMENTS**

**7.01 Assessments.**

- (A) The Association may from time to time levy Assessments against each Lot whether or not improved. Except for special assessments, the level of Assessments shall be equal and uniform between all Lots.
- (B) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.
- (C) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the owner of the Lot against which the Assessment falls due, and shall become a lien against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

**7.02 Regular Annual Assessments.** The annual Assessment in the first year following the adoption of this Amended and Restated Declaration of Covenants and Restrictions shall be \$900.00 (nine hundred and no/100 dollars) per Lot. Thereafter, prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration. Assessments sufficient to pay such estimated expenses plus a prudent reserve shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association in the time and manner directed by the Board at its sole discretion, either (a) annually, by January 15 of the fiscal year, or (b) at the board's discretion pursuant to terms and conditions as defined in a "Guidelines for Alternative Payment Plans" document.

7.03 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under this Declaration. The amount and due date of any special Assessments shall be at the reasonable discretion of the Board. The Board may also make special Assessments against individual Owners for costs related to exterior repair or maintenance obligations as provided for in Section 3.21 herein, as well as repair of damages or loss to Common Areas or property for which the Association has a repair or maintenance obligation caused by the negligence or intentional acts of any Owner or occupants of a Lot.

7.04 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the owner of the Lot covered by such Assessments. Except as otherwise provided in Section 7.01(A) hereof, no Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from due date thereof (or if there is no such highest rate, then at the rate of 1-1/2% per month), together with all costs and expenses of collection, including reasonable attorneys' fees.

7.05 Assessment and Fine Lien and Foreclosure. All sums assessed in the manner provided in this Article but not paid by the Owner, and all fines assessed by the Board in the manner provided in Section 5.04, shall, together with interest as provided in Section 7.04 hereof and the cost of collection, including attorneys' fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment or fine, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust filed of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment and fine lien to any other lien. Such power shall be entirely discretionary with the Board and an officer of the Association, duly authorized by the Board, shall effectuate such subordination. To evidence an Assessment and fine lien, the Association may prepare a written notice of Assessment and fine lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a description of the Lot. Such notice shall be signed by an officer of the Association, duly authorized by the Board, and shall be recorded in the office of the County Clerk of Brazos County, Texas. Such lien for payment of Assessments or fines shall attach with the priority above set forth from the date such payment becomes delinquent, and may be enforced subsequent to the recording of a notice of Assessment and fine lien as provided above) by the foreclosure of the defaulting Owner's Lot by the Association judicially or by expedited foreclosure proceedings pursuant to the provisions of Section 209.0092 of the Texas Property Code and Texas Rules of Civil Procedure Rules 735 and 736, and successor statutes, and each Owner expressly grants the Association a power of sale in connection therewith, or the Association may institute suit against the Owner personally obligated to pay the Assessment or fine and/or for foreclosure of the aforesaid lien judicially. Any Owner may waive expedited foreclosure proceedings. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee the status of any Assessments or fines relating to the Mortgagee's mortgage and remaining unpaid for longer than thirty (30) days after due.

## **ARTICLE 8 EASEMENTS**

8.01 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the Property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property.

8.02 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Association nor any supplier of any utility service using any easement area shall be liable to any Owner for any damage done by them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonably relating to the construction, maintenance, operation or repair of any facility in any such easement area.

8.03 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon require. Each Owner further covenants not to disturb any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the plat of the Subdivision. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the Architectural Committee.

8.04 Blanket Easement. An easement is hereby retained in favor of the Association over all Lots and the Common Areas for the purpose of enforcing the Declaration, and for the construction of a common cable television system, a common sprinkler system, maintenance of landscaping, or any other item for the common benefit of the Owners as shall be determined by the Association. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the Common Areas to effectuate the foregoing purposes shall not be deemed as trespass.

## **ARTICLE 9 MISCELLANEOUS**

9.01 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall remain in effect for a period of twenty (20) years from date hereof (the "Termination Date"), unless amended as herein provided. On the Termination Date, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each.

9.02 Dissolution. Upon termination of this Declaration, the Association shall be dissolved. In the event of any such dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to any appropriate public agency to be used for purposes similar to those of the Association with respect to the Common Areas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

9.03 Amendment by Owners. This Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least fifty-one percent (51%) of the number of votes entitled to be cast pursuant to Section 5.03 hereof.

9.04 Notices. Any notice permitted or required by this Declaration shall be in writing and shall at least be delivered by certified mail. Any delivery made by certified mail or by regular mail shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

9.05 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed, governed and enforced under the laws of the State of Texas.

9.06 Enforcement and Nonwaiver.

- (A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, and/or the Board shall have the right to enforce any and all of the provisions of the Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.
- (B) Nonwaiver. The failure to enforce any provision of the Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.
- (C) Liens. The Association shall have the right, when appropriate in this judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

9.07 Construction.

- (A) Restrictions Severable. The provisions of the Declarations shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
- (B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.
- (C) Sole and Absolute Discretion. Notwithstanding anything herein to the contrary, whenever a party to this Declaration is entitled to exercise its "sole and absolute discretion", such discretion may be exercised by that party for any reason or for no reason, whether such discretion is arbitrary, uncontrolled or unreasonable. Any

parties' exercise of its "sole and absolute discretion" shall be final and shall not be subject to appeal or be subject to adjudication by a court of law, arbitration, mediation, or otherwise.

- (D) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles.
- (E) Deadlines on Business Day. If any deadline in this Declaration should fall on a Saturday, Sunday or a Texas or federal holiday, such deadline shall automatically be extended to the next business day.
- (F) Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

9.08 Multiple Originals. This instrument may be executed in multiple originals and each shall have the same force and effect as the others.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

[Signature Pages Follow]

EXHIBIT A

BEING all of BROOK HOLLOW, Number 5, Phase 1, a subdivision of the City of Bryan, Brazos County, Texas, as shown by the recorded map and plat thereof in Volume 306, at Page 301 of the Official Deed Records of Brazos County, Texas; and

BEING all of BROOK HOLLOW, Number 5, Phase 2, a subdivision of the City of Bryan, Brazos County, Texas, as shown by the recorded map and plat thereof in Volume 339, at Page 237, and the replat thereof recorded in Volume 344, Page 221 of the Official Deed Records of Brazos County, Texas; and

BEING all of BROOK HOLLOW, Number 5, Phase 4 (SAVE AND EXCEPT Lots 1 & 2 of Block 5), a subdivision of the City of Bryan, Brazos County, Texas, as shown by the recorded map and plat thereof in Volume 382, at Page 719, and the replats thereof recorded in Volume 396, Page 553 and in Volume 529, Page 29 of the Official Deed Records of Brazos County, Texas; and

BEING all of BROOK HOLLOW, Number 5, Phase 6 (Replat), as shown by the recorded map and replat thereof in Volume 558, Page 387 of the Official Deed Records of Brazos County, Texas.