



(1) through Five (5) therein according to the map or plat thereof filed in record at the office of the County Clerk of Brazos County, Texas.

NOW THEREFORE, the majority of lot owners of Peach Crossing Subdivision do hereby make, adopt and establish the following restrictions, declarations, easements, limitations, charges, agreements, covenants, conditions and stipulations, each of which shall be applicable to PEACH CROSSING SUBDIVISION which comprises all of the designated lots in Blocks One (1) through Five (5) therein according to the map or plat thereof filed in record at the office of the County Clerk of Brazos County, Texas. These restrictions supersede and replace the prior restrictions established by the PEACH CROSSING SUBDIVISION developer, HOMEYER.

## I.

### DEFINITIONS

The following terms when used herein shall have the following meanings:

- a. "HOMEYER" shall mean MARK A. HOMEYER, developer of PEACH CROSSING SUBDIVISION.
- b. "PEACH CROSSING" shall mean the Peach Crossing Subdivision.
- c. "SUBDIVISION" shall mean Peach Crossing Subdivision, which consists of all of the designated LOTS in Blocks One (1) through Five (5), according to the map or plat thereof filed of record in Vol. 6166 Pages 114 of the County Clerk of Brazos County Texas.
- d. "RECORDING DATE" shall mean the date upon which this document is filed of record with the County Clerk of Brazos County, Texas.
- e. "LOT" or "PARCEL" shall mean those plots of land originally shown on the map or plat of the SUBDIVISION filed of record with the Clerk of Brazos County, Texas. In the event two lots are merged by a single owner, those lots shall count as 2 LOTS or PARCELS for purposes of the *Restrictions* and voting rights.
- f. "OWNER" shall mean and refer to the record OWNER, whether one (1) or more PERSON(S) or entities of the fee simple title to any LOT in the SUBDIVISION, or any part or interest therein. OWNER shall not mean or refer to any mortgagee, under any applicable theory of mortgage, unless and until such mortgagee has acquired legal title pursuant to foreclosure or any proceeding in lieu of foreclosure. The term OWNER shall further include any PERSON or entity claiming title to any LOT or portion thereof by adverse possession; any PERSON or entity leasing, renting or otherwise occupying any LOT or part thereof; and/or any PERSON or entity claiming interest in a LOT or part thereof under a contract of sale.

- g. "ACC" shall mean and/or refer to the Architectural Control Committee established under the provisions of this document.
- h. "ASSOCIATION" shall mean and refer to PEACH CROSSING ASSOCIATION, INC., a Texas non-profit corporation, provided for in this document, its successors and assigns. The management body of the ASSOCIATION is the Board of Directors. Throughout this document, the term "ASSOCIATION" normally is in reference to the management authority of the ASSOCIATION, or the "Board of Directors."
- i. "COMMON AREAS" shall mean all real property owned by the ASSOCIATION for the common use and enjoyment of OWNERS.
- j. "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, permanent swimming pools, garages, poles, signs, exterior air conditioning, water softener fixtures or equipment, pumps, walls, tanks, reservoirs, pipes, meters, antennae towers and/or other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, satellite, TV. antennas, and/or other utilities.
- k. "PERSON(S)" shall refer to any natural person, individual(s), and/or any other entity unless the context indicates otherwise having the legal right to hold title to real property.
- l. "PLANS" and "SPECIFICATIONS" shall mean any and all documents designated 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 buildings products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such IMPROVEMENT.
- m. References to the singular shall include the plural, and the plural shall include the singular.
- n. Terms utilizing unbolded, capital letters are used as defined terms. Terms utilizing regular upper and lower class casing are used generically unless otherwise indicated.

## II.

### RESTRICTIONS

For the purpose of creating and carrying out a uniform plan for the parceling and sale of PEACH CROSSING as a district set aside for residential homes and certain other uses accessory thereto. The following restrictions, including without limitation restrictions, covenants, declarations, easements, limitation, charges, agreements, and conditions (hereafter collectively called the “*Restrictions*”), are hereby established and adopted to apply uniformly to use, occupancy and conveyance of all the PARCELS in PEACH CROSSING. Every contract, deed or conveyance which may be hereafter executed with regard to any of the property in the SUBDIVISION shall be conclusively deemed to have been executed, delivered and accepted subject to the following *Restrictions*, even if the *Restrictions* are not set out in full and are not incorporated by reference in such contracts of sale, deed, lease, or other transfer of interest in any such PARCEL.

#### A. BUILDING AND CONSTRUCTION RESTRICTIONS

1. Except as otherwise herein provided, each PARCEL in the SUBDIVISION shall be used only for non-commercial residential and recreational purposes. Only single-family residential dwellings and appurtenances ordinary to residential living shall be permitted. To this end, without limitation, the following structures may not be built on any PARCEL in the Residential portion of the SUBDIVISION: Hospitals, clinics, rest homes, duplex houses, apartment houses, garage apartments for Lease to the general public, mobile homes, hotels, or any retail, wholesale, or other business or commercial establishment of any kind or nature; however, OWNER shall be allowed to construct a small [defined as not having an under roof living area, excluding porches, garages, patios and the like, of less than six hundred (600) square feet not to exceed one-thousand two hundred (1,200) square feet], separate (detached or attached) living quarters. Said living quarters may only be constructed in conjunction with or after construction of a primary residence, and will either be adjacent to or behind the primary residence only, and are not to be placed in front of the primary residence.
2. No residence shall be constructed on any PARCEL that has an under roof living area, excluding porches, garages, patios and the like, of less than two thousand (2,000) square feet;
3. No IMPROVEMENT greater than thirty-two (32) feet in height may be constructed on any LOT without the prior written approval of the ACC. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed IMPROVEMENT to the ridge line of the roof of the proposed IMPROVEMENT;
4. All single family dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows and similar openings)

shall be constructed of at least eighty percent (80%) masonry or other material specifically approved in writing by the ACC. Masonry includes ceramic tile, brick, rock, stucco, Fiber-Cement siding (Fiber-Cement siding not to constitute more than 50% of masonry usage) and all other materials commonly referred to in the College Station, Texas, area as masonry. The use of prefabricated materials, including antique homes moved from other locations, shall not be allowed;

5. All dwellings must include at least a two-car, side-entry garage that may not protrude more than five (5) feet past the front of the house, and must be constructed of eighty percent (80%) masonry;
6. The surface of all roofs of principal and secondary structures shall be wood shingle, shakes, tile, quality composition shingle with a minimum of a 25-year warranty, or approved metal roof. The ACC shall have authority to approve other roof treatments and materials if the form utilized will not be a detriment to the quality of the neighborhood;
7. 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 ACC and approval of such design, including the aesthetics thereof, shall be required before construction may begin;
8. All driveways shall be constructed of concrete or asphalt (asphalt is allowed only for the section of the driveway in the County right-of-way). No rock, limestone, dirt, or other forms of materials shall be permitted. All driveways must connect to streets within the subdivision. Driveways within County right-of-way shall be constructed in accordance with Brazos County Requirements. The property owner is responsible for obtaining the necessary permit to construct any driveway within County right-of-way. Driveways must be approved by the ACC prior to construction.
9. The ACC shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil or Liquid Petroleum Gas "LPG" and including permanent swimming pool filter tanks. No elevated tanks of any kind, with the exception of LPG tanks and temporary above-ground swimming pools (which are removed seasonally), shall be erected, placed or permitted on any LOT. All tanks shall be screened so as not to be visible from any other portion of the Property. Permanent above-ground swimming pools are prohibited. In addition, temporary above-ground swimming pools (which are to be seasonally removed) may only be placed behind (defined as behind the imaginary line extending from the furthest-back heated living area point of the primary the primary residence structure) the primary residence structure, and not in front of or adjacent to the primary residence. LPG tanks shall not be placed in front (defined as in front of the imaginary line extending

from the furthest-forward point of the primary residence structure) of the primary residence structure.

10. Only one single family dwelling, one small, separate living quarters (as described in II.A.1.), and appurtenances thereto, such as garages and barns, may be placed or constructed on each of the PARCELS as platted as of the RECORDING DATE. No tent, shack or other temporary building, IMPROVEMENT or structure shall be placed upon the Property without the prior written approval of the ACC;
11. No Eighteen (18) Wheel Tractor Trailer Trucks shall be allowed to park in the subdivision or on any Lot.
12. No building or structure, except fences, shall be located on any PARCEL nearer to the front property line than twenty-five feet (25'), or nearer to either side of the property line than fifteen feet (15'), or nearer to the back property line than twenty-five feet (25');
13. Drainage structures where required under private driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without back water, and shall be sized by the county as required. Additionally the pipe shall have a 4 to 1 slope as extended beginning at the exposed portion of the pipe to the end thereof and shall be covered with set rock, brick or cement.
14. No building materials of any kind or character shall be placed or stored on any PARCEL more than thirty (30) days prior to construction of a building or IMPROVEMENTS are commenced. All materials shall be placed within the building lines as established above. At the completion of the building or IMPROVEMENT excess or scrap material must be immediately removed from the premises;
15. No stumps, trees, underbrush, refuse of any kind, and/or scrap material from IMPROVEMENTS being erected on any PARCEL shall be placed on any other PARCEL, or on streets or easements;
16. Exposed openings resulting from any excavation made of any PARCEL shall be back filled and the disturbed ground shall be leveled and reseeded with seed, fiber mulch, blanket seeding, or sod. No change of elevation on any PARCEL greater than five feet (5') shall be made without prior approval of the ACC;
17. No residential dwelling shall be built without a State of Texas approved septic tank or other sewage disposal system that is so approved; and
18. Mailboxes shall be erected and maintained on each LOT upon which a residence is situated, and shall be fixed on masonry stanchions (columns), approved by the ACC. No metal or wood post stands are permitted. Each

mailbox shall be new when installed, constructed of durable steel or aluminum, and of size and shape conforming to postal authority standards for single family residential postal depositories. Mailboxes shall be located in accordance with postal and county regulations;

19. All front yards must be sodded with Saint Augustine, Bermuda, or Zoysia Grass unless otherwise approved by the ACC, and must be irrigated (front lawn irrigation system must be maintained in working order), and
20. The ACC may approve or disapprove, for any reason or no reason, at its sole discretion any item 1-19 above (within the parameters established by state and federal law). Lot owners are advised not to proceed with any activity described in 1-19 above without written approval from the ACC.

#### B. GENERAL RESTRICTIONS

1. No noxious or offensive trade or activity shall be carried on upon any PARCEL nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood;
2. No “commercial activity” of any kind shall be conducted on any LOT within that portion of the SUBDIVISION affected by this declaration. “Commercial Activity” shall include but not be limited to, the offering for sale of any product or service, the manufacture or growth of any product for purposes of sale without regard to whether such activities are conducted in or from residential dwellings or otherwise. “Commercial activities” do not include such items as garage sales, lemonade or other stands run by and for the benefit of children, or any activity conducted for the benefit of the Association;
3. No animals, swine, livestock, or poultry of any kind, except as in hereinafter provided in the subsequent paragraph shall be raised, bred or kept on any LOT except dogs, cats, or household pets, not to exceed four (4) in number, provided they are not kept, bred, or maintained for any commercial purpose.

However, rabbits, chickens and turkeys, raised for youth projects such as 4-H or FFA may be granted an exception from the foregoing limitations during the duration of the project, but only upon gaining approval from the ACC. Owners of such animals will be required to submit written proof of such participation annually. There will be no wild, exotic or naturally undomesticated animals allowed to be caged or otherwise kept on any PARCEL within the SUBDIVISION. No animals (excluding cats), including dogs, will be allowed to roam free in the SUBDIVISION. In the event any animal creates a nuisance to the SUBDIVISION in the sole and exclusive opinion of the ACC, such animal will be removed from the SUBDIVISION. PEACH CROSSING or members of the ACC shall have the right to enter and remove any such animal which is placed on any PARCEL in violation of this Section, 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.

4. No sign(s), billboards, or structures of any kind advertising a company, commercial service, product for sale, or any other commercial activity [with the exception of a single sign advertising property for sale (not exceeding five (5) square feet in size)]; may be erected or maintained on any PARCEL without the prior written consent of the ACC. Political signs, which are permissible under section 202.009 of the Texas Property Code, so long as they are not placed within 90 days preceding or 10 days following the election to which they relate – although such political signs must be ground mounted and any single candidate can have only one sign on a given lot-owner's property, are permissible. Members of the ACC or the Board of Directors shall have the right to enter and remove any such items which are in violation of this restriction, which are placed on any PARCEL, and in so doing, shall not be liable and are expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal
5. No part of the SUBDIVISION shall be used or maintained as dumping grounds for rubbish, trash, or garbage. Equipment for the storage or disposal of such material(s) shall be kept in a clean and sanitary condition. No trailer(s); recreational vehicle(s); tent(s); boat(s); and/or stripped down, wrecked, junked, or otherwise wholly inoperable vehicle shall be kept, parked, stored, and/or maintained on any portion of the driveway and/or front yard in front of the building line of the permanent structure. Some shall be kept, parked, stored, or maintained on other portions of a LOT only within an enclosed structure or a screened area which prevents the view thereof from adjacent LOTS or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. Exceptions to the provision must be approved in writing by the ACC.
6. OWNERS shall not permit the accumulation of trash, rubbish, weeds, or other unsightly objects on their PARCELS or on the easements or on the alley or the streets abutting the same. Each OWNER shall be responsible for proper disposition of his/her trash or garbage. OWNERS shall keep the drainage easements free of obstructions; each lot must be maintained in an aesthetically pleasing fashion and mowed such that grass does not exceed 10 inches in height. If a lot is not in compliance with this regulation, the ASSOCIATION may mow the premises and/or remove any trash, rubbish or debris and bill the lot owner for the cost thereof. Said bill will be deemed additional Assessments and failure to pay such bill shall be governed by Article VII.
7. After commencement of construction of any structure or IMPROVEMENT, the work thereon shall be diligently prosecuted to the end and the structure or IMPROVEMENT shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof.

8. All construction projects shall be completed within 12 months of the setting of the forms for the foundation. After such time, all tractors, trailer, and offices must be immediately removed. All other activities deemed part of new home construction, such as mailbox placement/construction and sprinkler installation, etc., must also be complete within such time. All sodding must be complete within 90 days of the owner assuming residence in his or her house.
9. All new fencing in the SUBDIVISION shall be “corral-style” fence, defined as the same style used in the commons area at the subdivision entrance. All other fence styles are required to receive a variance from the ACC. Prior to construction, fence placement/location must be approved by the ACC. In the event LOT OWNER paints said fence, LOT OWNER shall maintain said fence;
10. No act may be performed which is likely to pollute the air or water in any part of the SUBDIVISION, nor may any property OWNER violate any ordinance designed to eliminate pollution at that time in force whether it be State, County or City;
11. No firearms may be discharged in the SUBDIVISION or on any PARCEL, easement or common area;
12. Representatives of the ASSOCIATION or the ACC may from time to time at any reasonable hour, enter and inspect any part of the SUBDIVISION to ascertain compliance with this document or any amendments hereto;
13. No oil or gas drilling, development, refining, quarrying or mining operations of any kind shall be permitted on any LOT, nor shall any tanks, tunnels, mineral excavations or shafts be permitted on any LOT. No derrick or other structures designed for use in boring or drilling for oil, natural gas, or other minerals shall be erected, maintained or permitted on any LOT save and except existing locations at time of plat approval. Notwithstanding the foregoing, each OWNER, by its acquisition of a parcel of the SUBDIVISION acknowledges that has been, or will be reserved by third parties or predecessors in title to the Property;
14. Primary residences, detached living quarters, or any portion of a LOT may not be used as rental property. This provision excludes sales-leaseback provisions that are part of an executed contract for sale of residential property. Such sales-leaseback provisions are permitted so long as they do not exceed six (6) months. The Board shall have the authority to approve leasing of a residential unit in what the Board deems to be extenuating circumstances.
15. The ACC may approve or disapprove, for any reason or no reason, at its sole discretion any item 3-5, 7-9, 13 (within the parameters established by state

and federal law). Lot owners are advised not to proceed with any activity described in 3-5, 7-9, 13, above without written approval from the ACC.

16. The ASSOCIATION may approve or disapprove, for any reason or no reason (within the parameters established by state and federal law), at its sole discretion any item 1-2, 6, 14. Lot owners are advised not to proceed with any activity described in 1-2, 6, 14, above without written approval from the ASSOCIATION.

### III.

#### **ARCHITECTURAL CONTROL**

1. There is hereby created the Architectural Control Committee (ACC) which shall consist of at least three (3) members, and not to exceed six (6) members. The ACC is composed of members appointed by the ASSOCIATION. In the event the ACC has less than 3 members, the ASSOCIATION'S Board of Directors will appoint 2 additional members from the Board. In the event there are no non-Board ACC members, the entire Board will temporarily serve as members of the ACC, until the number of ACC members is restored to 3 or more by Board appointment.

The members of the ACC shall not be entitled to any compensation for services rendered pursuant to this covenant. The ACC'S approval or disapproval as required by the *Restrictions* shall be in writing.

2. No IMPROVEMENT of any kind shall be erected, placed or altered in the exterior design after being erected or placed on or attached to any PARCEL in the SUBDIVISION until the construction plans, landscaping plans, or other plans, specifications and plot plans showing the location and size of such IMPROVEMENT has been submitted to the ACC as to the harmony of external design with the existing structures on PARCELS in the SUBDIVISION, as to type of exterior materials and exterior paint colors, as to quality of workmanship and materials, and as to locations with respect to topography and finished ground elevations, and compliance with all applicable provisions of this document, and general compatibility within the SUBDIVISION. IMPROVEMENTS used herein include, but are not limited to, building(s), fences, towers, antennas, porches, decks, walls, permanent swimming pools, water wells, playground equipment, outdoor cooking or eating facilities of a permanent nature, docks, piers, barns, silos, cages, sheds, streets, alleys, excavations and other earth movements. After approval in writing has been given, the erecting, placing or altering of the IMPROVEMENTS on any PARCEL shall be made only in accordance with the approved plans, specifications and plot plans, unless variations or changes are also approved in the same manner.
3. Members of the ACC shall not be liable in damages to anyone submitting plans to them for approval, or to any OWNER or lessee of any PARCEL affected by these

*Restrictions*, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans submitted. Every person who submits plans to the ACC for approval agrees by submission of such plans, and every OWNER or lessee of any PARCEL within the property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against members of the ASSOCIATION or ACC, to recover any such damages.

#### IV.

#### **PEACH CROSSING ASSOCIATION, INC.**

1. **Creation.** The ASSOCIATION, a Texas non-profit corporation, shall be incorporated with its initial registered office in Brazos County, Texas and with its principal office established by the Board of Directors.
2. **Incorporation.** The membership of the Board of Directors shall be determined by majority vote of the land OWNERS of record that are subject to a required maintenance charge payable to the ASSOCIATION. The voting shall be conducted according to rules established by the Bylaws of the ASSOCIATION.
3. **Powers and Functions.** The ASSOCIATION shall have powers and functions provided by applicable law, its Articles of Incorporation, its Bylaws, as heretofore or hereafter amended, respectively, and such other powers as set forth herein, including without limitation, at its option, the right to maintain streets, lakes, utilities, recreational areas; to provide for garbage pickup (at a cost to the individual property OWNER if the Maintenance Fund is insufficient for this purpose), hire police protection, furnish power or gas for street lighting, maintain esplanades, and other common areas; and to establish rules and regulations for the use of lakes, rivers, streets, and other SUBDIVISION facilities, specifically erected and installed and designated to be controlled by the ASSOCIATION. The ASSOCIATION shall administer the Maintenance Fund hereinafter provided.
4. **Membership.** LOT ownership and membership in the ASSOCIATION shall be inseparable. Transfer of a LOT automatically transfers membership in the ASSOCIATION and all rights of the transferor with respect to the COMMON AREAS and facilities to which ownership of such LOT relates.

V.

**MAINTENANCE CHARGE**

1. **Creation of Annual Maintenance Charge.** Each PARCEL in PEACH CROSSING is hereby subjected to annual maintenance charge of Two Hundred and No/100 (\$200.00) Dollars per year, payable annually in advance by the OWNER of each PARCEL on the first day of January of each year, beginning 2007 and each succeeding year thereafter until terminated as provided below, to the ASSOCIATION, its successors and assigns, for the purpose of creating a fund described below, known as the "Maintenance Fund." Where any PARCEL is owned by more than one person or entity, said maintenance charge shall be payable by all such OWNERS, jointly and severally. The maintenance charge shall be prorated between purchasers and sellers of PARCELS in the proportion that the remaining months of the calendar year bear to the whole year. By acceptance of a deed or other instrument of conveyance, or by any other claim of legal title to any PARCEL or portion thereof, each OWNER agrees and consents to the maintenance charge shall be paid for each year from 2004 through 2014 and shall be extended automatically for successive periods of ten (10) years unless before 2014, or before the 31<sup>st</sup> day of December of any tenth year thereafter, the Owners of record of a majority of the PARCELS in the SUBDIVISION vote to discontinue such charge by written instrument which shall be signed and acknowledged by the OWNERS of record of a majority of the PARCELS and recorded in the Official Records of Brazos County, Texas.
  
2. **Purpose and Use of Maintenance Fund.** The maintenance charge shall be used to pay "maintenance expenses" which shall include without limitation expenses incurred for any of the following purposes: Lighting, constructing, improving and maintaining any rights of way, easements, entry, streets, sidewalks, paths, fences, lakes, pier, park, parkways, stables, tracks, pools, lodge, esplanades, and any structures, facilities or area which can be used by all OWNERS which in the opinion of the ASSOCIATION would benefit the SUBDIVISION as a whole; collecting and disposing of garbage, ashes, rubbish and the like in said areas (other than garbage, ashes, rubbish, and the like from constructed residential dwellings), caring for vacant PARCELS, employing watchmen or any other action deemed desirable to protect persons and property, payment of legal and all other expenses in connection with the operation of the ASSOCIATION, and the enforcement of all recorded charges, restrictions, covenants, agreements and conditions affecting property to which maintenance charges apply, payment of all expenses in connection with the collection and administration of the maintenance charges, and doing any other things necessary and desirable in the opinion of the ASSOCIATION to keep property neat and in good order of which it considers of general benefit to the SUBDIVISION. The act of the ASSOCIATION and its expenditures of the Maintenance Fund shall be final so long as it acts in good faith.

3. **Increases or Reductions to Annual Maintenance Charge.** The ASSOCIATION may increase or reduce the maintenance charge from time to time by action applied uniformly to all PARCELS in the SUBDIVISION as provided below.
4. **Assessments.** From and after 2004, the ASSOCIATION'S Board of Directors, at its next annual or special meeting and at each annual meeting thereafter, shall set the amount of the monthly assessments for each year for each LOT, taking into consideration the current maintenance costs and future needs of the ASSOCIATION; except, however, the monthly assessments may not be increased in any one year by more than twenty percent (20%) of the then existing annual assessment, except on the affirmative vote of OWNERS entitled to cast two-thirds (2/3) of the votes of the ASSOCIATION, in person or by proxy at a meeting duly called for such purposes.

## VI.

### **SPECIAL ASSESSMENTS**

1. In addition to the annual assessments for maintenance charges authorized above, the ASSOCIATION may levy in any assessment year, special assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvements upon the COMMON AREA, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of a three-fourths (3/4) majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of a meeting called for this purpose shall be sent to all members not less than thirty (30) days or more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting and the proposal to be voted on.
2. The ASSOCIATION may also levy fines or penalties not to exceed the combination of \$200 per occurrence per year against OWNERS non-compliant with the sections II. and III. of these *Restrictions* upon a majority vote of the Board of Directors after the following conditions have been met:
  - a) Owners have been sent two written or e-mailed notices to the address or e-mail address on file with the ASSOCIATION regarding the condition of non-compliance, not less than thirty (30) days apart.
  - b) Owners have failed to provide a corrective action plan deemed satisfactory by the Board of Directors within 30 days of the sending of the second notice.

In addition to the "fee" described above, the LOT OWNER shall be responsible for any costs to correct an out of compliance condition incurred by THE ASSOCIATION. The ASSOCIATION may also enforce all remedies provided against any PARCELS for which the special assessment remains unpaid, as described in Section VI, 2, of these Restrictions.

3. The Special Assessments shall be payable by the OWNERS on the dates and terms as may be established by the ASSOCIATION. The ASSOCIATION may enforce all remedies provided against any PARCELS for which the special assessment remains unpaid, as described in Section VI, 2, of these *Restrictions*.

## VII.

### **EFFECT OF NON-PAYMENT OF DEBTS: REMEDIES OF THE ASSOCIATION**

1. The ASSOCIATION shall have a lien against any PARCEL for which the annual maintenance charge or other special assessments or charges are not be paid effective upon the thirtieth (30<sup>th</sup>) day following the date said charge became due and payable. Annual dues are payable January 1<sup>st</sup> for the full ensuing year. Other assessments are due as of the invoice date. Any assessments and charges which are not paid within thirty (30) days of these dates are considered delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of twelve percent (12%) per annum on the entire unpaid balance (including any previous monthly interest assessments). The amount of said lien shall be for the amount of the charge then due, owing and unpaid plus an additional delinquency charge of twelve percent (12%) per annum, compounded monthly, of the unpaid balance accruing from the date said charge became due and payable. The ASSOCIATION shall have the right to evidence the existence of this lien by filing a sworn and acknowledged statement of lien in the Office of the County Clerk of Brazos County, Texas, but the failure of the ASSOCIATION to so file a statement of lien shall not affect the validity of the lien as between the ASSOCIATION and the OWNER. The ASSOCIATION may bring an action at law against the OWNER or member personally obligated to pay the same, or foreclose the lien against the property. Any interest, costs, and reasonable attorney's fees of any such action will be added to the amount of such assessment. Each OWNER, by his acceptance of a deed to a LOT hereby expressly vests in the ASSOCIATION, or its agents the right and power to bring all actions against such OWNER personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the ASSOCIATION in a like manner as a mortgage or deed of trust lien on real property and such OWNER hereby expressly grants to the ASSOCIATION, a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the ASSOCIATION, shall be for the benefit of all other LOT OWNERS, and shall be exercisable by a Trustee to be named or designated by the Board of Directors of the ASSOCIATION. Any sale pursuant to this power shall be conducted in accordance with the provisions of Article 3810 of the *Texas Revised Civil Statutes Annotated*. The ASSOCIATION acting on behalf of the LOT OWNERS shall have the power to bid in an interest at foreclosure sale and to acquire and hold, lease, mortgage, and convey the property. In addition to the aforementioned, OWNER shall automatically forfeit his or her right to vote in ASSOCIATION business if any delinquent debts are payable to the ASSOCIATION at the time of said vote. Voting rights shall be fully and automatically restored for

future business when all debts are fully paid and OWNER is in good financial standing with the ASSOCIATION.

**VIII.**

**SUBORDINATION OF THE LIEN TO MORTGAGES**

The liens of the assessments provided for herein shall be subordinate to the lien of any first mortgage and/or mortgages granted or created by the OWNER of any LOT to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such LOT. Sale or transfer of any LOT or transfer of any LOT pursuant to a foreclosure under such purchase money or IMPROVEMENT, mortgages or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such LOT from liability for any assessments thereafter becoming due or from the lien thereof. No extinguishment of the lien shall relieve the delinquent LOT OWNER from his/her personal obligation and liability therefore.

**IX.**

**RE-SUBDIVISION**

No LOT may be re-subdivided into smaller LOTS.

**X.**

**WATER SERVICE**

The SUBDIVISION is serviced by Wellborn Water. Each Lot Owner shall be required to contract directly with Wellborn Water. The cost of water, tap fees, membership fees, expansion reserve fees, installation fees, monthly use fees and meters shall be subject to the fee schedule of Wellborn Water and paid by the Lot Owner.

**XI.**

**MISCELLANEOUS PROVISIONS**

1. The foregoing *Restrictions* are adopted as part of and shall apply to each and every PARCEL in the SUBDIVISION. Such *Restrictions* are equally for the benefit of all subsequent OWNERS or PARCELS in PEACH CROSSING and accordingly, shall be covenants running with the land. Any OWNER or lien holder of any of the property or the ASSOCIATION shall have the power to prosecute in the appropriate court a suit at law or in equity to prevent any violation or attempted violation of the *Restrictions* and to recover damages for any violation or attempted violation including, but not limited to, reasonable attorney's fees; provided, however that this clause shall not restrict any governmental agency from acting to enforce any of the *Restrictions*.

2. The term of the *Restrictions* shall be for a period from the filing of this instrument for record in Brazos County, Texas, until the 1<sup>st</sup> day of January, A.D., 2014, after which date such *Restrictions* shall be automatically extended for such successive periods of ten (10) years each, unless and until, by instruments executed by the then record OWNERS of a majority of the PARCELS in PEACH CROSSING and duly recorded in Official Records of Brazos County, Texas, such *Restrictions* are altered, rescinded, modified or changed, in whole or in part.
3. Nothing contained in this document or any violation of any of the *Restrictions* shall have the effect of impairing or affecting the rights of any mortgagee or trustee under any mortgage or deed of trust outstanding against of the SUBDIVISION or any portion thereof.
4. Every person who now or hereafter owns or acquires any right, title or interest in or to any property in the SUBDIVISION is and shall be conclusively deemed to have consented and agreed to every covenant, condition, reservation and restriction contained herein, whether or not any reference to this declaration is contained in this instrument by which such person acquires an interest in the property.
5. The invalidity, violation, abandonment, waiver of or failure to enforce any one or more of or any part of the provisions of this document shall in no way affect or impair the remaining provisions or parts thereof which shall remain in full force and effect.
6. If one-hundred percent (100%) of owners or the developer (prior to sale of any land included in said area) of a property scheme directly adjacent to PEACH CROSSING wish to be made part of the ASSOCIATION (as evidenced in writing by the requesting parties), the ASSOCIATION, shall have the right to bring within the scheme of this Declaration additional properties thereby subjecting such additional lands to this Declaration, by filing of Record a Supplementary Declaration with respect to such additional property which shall extend the scheme of this Declaration to such property. The ASSOCIATION shall accept same to be owned and managed pursuant to the terms and conditions of this Declaration. In order to be considered, such lands must be directly adjacent to the Peach Crossing Subdivision and must be considered in whole (IE, not only part of that scheme). Upon acceptance into the ASSOCIATION, all such lands would be immediately subject wholly to these *Restrictions*. Slightly differing *Restrictions* may be adopted for any new areas, so long as eighty percent (80%) of existing LOT OWNERS approve of these differences.
7. All projects which were completed prior to the filing of these revised restrictions, which were completed in accordance with the prior Restrictions dated July 2004, are hereby grandfathered in under those earlier Restrictions. That said, projects previously completed but were not in compliance with those Restrictions are subject to full application and interpretation of these Restrictions, dated November XX, 2008.
8. LOTOWNERS are responsible for understanding and complying with all applicable local, state, and federal law. These Restrictions are not intended to be all-inclusive of

such laws and regulations, and the ASSOCIATION bears no responsibility for failure of LOTOWNERS to properly comply with said laws and regulations.

Dated this 15th day of OCTOBER, 2008. As approved by a majority vote of Peach Crossing Lot Owners on October 13, 2008.

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J. Dale Browne, President

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF BRAZOS    §

This instrument was acknowledged before me on the 15th day of OCTOBER, 2008, by J. Dale Browne, President Peach Crossing Association.

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NOTARY PUBLIC, STATE OF TEXAS