FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARK MEADOW

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions for Park Meadow ("Restrictive Covenants") dated October 31, 2000, and filed with the County Clerk of Brazos County, Texas, on the 3rd day of November, 2000, under Clerk's File No. of the Official Public Records of Real Property of Brazos County, Texas, restrictive covenants were placed upon certain property described in the Declaration of Covenants, Conditions and Restrictions for Park Meadow as recorded in Volume 3972 at Page 248 of the Official Records of Brazos County, Texas; and

WHEREAS, the Developer as defined in said Restrictive Covenants was Bryan Development, Ltd.;

WHEREAS, Section 8.03 of the Restrictive Covenants provides:

8.03 Amendments by Developer.

(a) This Declaration may be amended during the first three (3) year period by an instrument signed by Owners of not less than sixty-seven percent (67%) of the Lots now in the Development or which may hereafter be annexed thereto in accordance with the provisions with this Declaration.

(b) The Developer shall have and reserves the right until December 31, 2002, without the joinder or consent of any Owner or mortgagee, to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record, for the purpose of clarifying any ambiguity or conflicts herein or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Corporation, Federal National Mortgage Association, Veteran's or Federal Housing Administration, provided that no such amendment shall change the vested property rights of any Lot Owner except as provided in 8.03(a) above.

WHEREAS, the Deed Restrictions contain certain ambiguities which Developer desires to clarify;

NOW THEREFORE, Developer amends the Restrictive Covenants as follows:

1. Article V shall be deleted in its entirety and in its place shall be substituted the following:

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENT

5.01 Creation of the Lien and Personal Obligation for Assessments. The Developer for each Lot owned by it within the Properties hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association; (1) annual assessments or charges (which may include both general and neighborhood assessments or charges); and (2) special assessments for capital improvements; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due.

5.02 Purpose of Annual Assessments.

(a) General assessments levied by the Association shall be used exclusively for the purpose of: (1) promoting the recreation, health, safety, and welfare of the residents in the Properties; (2) for enhancing the desirability and attractiveness of the Properties; (3) for the improvement and maintenance of the Common Areas and for services and facilities relating to the use, benefit and enjoyment thereof; (4) paying a portion of the cost of maintaining the common areas of Park Hudson as provided in Section 5.14 hereof; and (5) if authorized by the Board of Directors of the Association, for the maintenance of any portion of the Properties which has been dedicated to the city or the public. General assessments shall include, but are not limited to, funds to cover the actual cost of operation of the Association; all taxes; management fees, accounting or legal fees; insurance costs; the costs of maintenance, care and improvement of the Common Areas and any additional Common Areas that may be annexed under Article II, Section 2.02; the care, maintenance and repair of the entranceway to the Park Meadow Subdivision, including the "Park Meadow" entrance sign, the lighting incidental thereto, and the grounds appurtenant thereto, the maintenance, landscaping, improving and care of grounds that are dedicated to the public lying within the Properties and/or Common Areas, drainage lakes, ponds, walkways, or other publicly dedicated easements, rights-of-ways or drainageways; and the cost of constructing, maintaining and repairing other facilities and cost of other service activities, including mowing grass, landscaping, and maintaining sprinkler systems, street lighting or other necessary lighting, construction and maintenance of swimming pools, tennis courts, jogging paths, recreational buildings and facilities, and purchasing, operating and paying for equipment, utility charges and for such other things necessary or desirable in the opinion of the Association to keep the Properties, the Common Areas, and any additionally annexed properties, attractive, neat and in good order or which, in

the opinion of the Association, shall be of general benefit to the Owners and occupants of the Lots and the Properties. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive as long as such judgment is exercised in good faith. Unless specifically provided otherwise in these Protective Covenants, the by-laws or any agreement by and among the Owners, General Assessments shall be allocated equally among the Lots.

(b) Neighborhood assessments shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of owners of the Lots against which the Neighborhood Assessment is levied. Neighborhood assessments, as requested or established for a particular Lot or group of Lots shall be levied only against the Lot or group of Lots for whose benefit the neighborhood assessment is made. It is understood that the judgment of the Association in the expenditure of assessed funds shall be final and conclusive as long as such judgment is exercised in good faith.

5.03 Basis and Maximum of Annual Assessments (including both General and Neighborhood Assessments).

(a) General Assessments

(1) Until January 1 of the year immediately following the conveyance of the first Lot within the Properties to an Owner, the Board of Directors of the Association shall fix the annual general assessment rate per Lot.

(2) From and after January 1 of the year immediately following the conveyance of the first Lot within the Properties to an Owner, the maximum annual general assessment may be set effective January 1 of each year by the Board of Directors of the Association, without a vote of the membership, by an amount not to exceed one hundred twenty percent (120%) of the preceding year, provided, however, that the maximum annual general assessment may be set effective January 1 of each year in excess of one hundred twenty percent (120%) of the preceding year upon a vote of the Members as hereinafter provided.

(3) The Board of Directors of the Association may, after consideration of current maintenance costs and further needs of the Association fix the actual general assessment for any period year at a lesser amount.

(4) For the purpose of figuring the amount of general assessment, where a single family residential dwelling is constructed on more than one Lot, (as such Lot is shown by recorded plat), then and in that event, such dwelling shall be, for

the purpose of general assessment, considered as one Lot, and the Owner of such dwelling shall not be entitled to more than one vote.

(b) Neighborhood Assessments

(1) Until January 1 of the year immediately following the conveyance of the first Lot within the Properties to an Owner, the Board of Directors may fix one or more neighborhood assessment rates.

(2) From and after January 1 of the year immediately following the conveyance of the first Lot within the Properties to an Owner, the maximum rate for any existing neighborhood assessment may be set effective January 1 of each year by the Board of Directors of the Association, without a vote of the affected Members, by an amount not to exceed one hundred twenty percent (120%) of the preceding year, provided, however, that the maximum rate for an existing neighborhood assessment may be set effective January 1 of each year in excess of one hundred twenty (120%) of the preceding year upon a vote of the affected Members as hereinafter provided.

(3) The Board of Directors of the Association may, after consideration of needs of the affected Owners fix any neighborhood assessment for any period year at a lesser amount.

5.04 <u>Special Assessments for Capital Improvements</u>. In addition to the annual assessments authorized by Section 5.03 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas, including, but not limited to, swimming pools, tennis courts, lakes, ponds, jogging paths and other recreational facilities, together with fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

5.05 <u>Change in Basis and Maximum of Annual Assessments</u>. Subject to the limitations of Section 5.03 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 5.03 hereof (prospectively) for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to

all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. For the purpose of voting on changes in neighborhood assessments, the voting Members shall include only the Members owning the particular Lot or Lots for whose benefit the neighborhood assessment is levied.

5.06 Quorum for Any Action Authorized Under Section 5.04 and 5.05. The quorum required for any action authorized by Sections 5.04 and 5.05 hereof, shall be as follows:

At the first meeting called, as provided in Sections 5.04 and 5.05 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty-seven percent (67%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 5.04 and 5.05 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than thirty (30) days following the preceding meeting. For the purpose of voting on changes in Neighborhood Assessments, the voting Members shall include only the Members owning the particular Lot or Lots for whose benefit the neighborhood assessment is levied.

5.07 Date of Commencement of Assessment.

(a) As to each Lot owned by any Owner other than Developer, the annual assessment shall commence on the date that such Lot is conveyed by Developer to Owner.

(b) Any provision contained in this instrument to the contrary notwithstanding, as long as Developer owns any Class B voting rights, as set out in Article III, Section 3.02 herein, Developer shall not be liable for annual or special assessments as set out in Article V, provided however, the Developer shall be responsible for the difference in the cost borne by the Association and the assessments received from the Lot Owners holding Class A Votes. Provided further, any Owner who is a bona-fide builder and/or contractor who has purchased five (5) or more Lots from the Developer for purposes of constructing dwellings thereon and selling the same to subsequent purchasers, shall not be liable for the annual assessments as set out in Section 5.03 of this Article in the event the Developer notifies the Association in writing that said Owner is a bona-fide builder and/or contractor and that the Developer shall continue to be responsible for the difference in the cost borne by the Association and the assessments received from all of the other Lot Owners holding Class A Votes who do not qualify hereunder as a bona-fide builder and/or contractor. Such exemption shall terminate as to any Lot or Lots which said builder leases or sells or at any time the Developer should notify the Association of the Developer's desire to terminate its responsibility to pay for the costs as above described for the benefit of such builder and/or contractor. The builder shall then be assessed and pay assessments on the same basis as any other Class A Member.

(c) The annual assessment shall be due and payable in advance by each Owner to the Association, on or before January 31 of each year.

(d) The annual assessment for the first year shall be fixed by the Association prior to the sale of the first Lot to an Owner. Except for the first year, the Association shall fix the amount of the assessment at least thirty (30) days in advance of each assessment year, which shall be the calendar year; provided, however, that the Association shall have the right to adjust the assessment upon thirty (30) days written notice given to each Owner, as long as any such adjustment does not exceed the maximum permitted hereunder. Written notice of the assessment shall be sent as soon as is practicable to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the annual and special assessments on a specified Lot have been paid and the amount of any delinquency. Reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

5.08 Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of the Association.

(a) Payment of the assessments shall be both a continuing and affirmative covenant, personal to the Owner, (other than the Developer and as provided in Section 5.07 (b)) and a continuing covenant running with the land. Each Owner and each prospective Owner is hereby placed on notice that such provision may operate to place him in the responsibility of payment of the assessment attributable to the period prior to the date of his purchase of a Lot. Payment of said assessment shall be made to said Association at its principal place of business or such other place the Association may otherwise direct or permit.

(b) Any assessment which is not paid when due shall be delinquent and any such assessment which is not paid within thirty (30) days after the date of delinquency, shall bear interest from the date of delinquency until paid, at the rate of ten percent (10%) per annum or at such other rate of interest as may be set by the Association not exceeding the maximum interest rate permitted under applicable law.

(c) The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same; or upon compliance with Notice provisions as hereinafter set forth, foreclose the lien against the Lot as hereinafter provided. Expenses incurred in connection therewith, including interest, costs and reasonable attorney's fees shall be chargeable to the Owner in default and recoverable in such action. Each Owner vests in the Association or its assigns the right and power to bring all actions at law against such Owner for the collection of such delinquent assessments and to foreclose such lien against such Owner of the Lot or Lots; provided, however, under no circumstances shall the Developer or the Association be liable to any Owner or to any other person or

entity for failure or inability to enforce or attempt to enforce any assessments. In addition, to the extent permitted by law, Developer reserves and assigns to the Association, without recourse, a vendor's lien against these Lots to secure payment of the annual assessment and a special assessment which is levied pursuant to the terms hereof.

(d) No action shall be brought to foreclose said assessment lien under the power of sale herein provided less than thirty (30) days after the date a notice of claim of lien is deposited with the U.S. Postal Service, Certified or Registered, Postage Prepaid, to the Owner of said Lot, and a copy thereof recorded by the Association in the office of the County Clerk of Brazos County, Texas; said notice and claim must cite a good and sufficient legal description of any such Lot, record Owner or reputed Owner thereof, the amount claimed, (which may, at the Association's option, include interest on the unpaid assessment, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Claimant.

(e) Any such sale provided for above, is to be conducted in accordance with the provisions applicable to the exercise of power of sale in mortgages and deeds of trusts, as set forth in Article 3810 of the Revised Civil Statutes of the State of Texas, or in any other manner permitted by law. Each Owner, by accepting a deed to his Lot, expressly grants to the Association a power of sale, as set forth in said Article 3810, in connection with the assessment lien. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(f) The assessment lien and the right to foreclosure sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association, and its successors and assigns, may have hereunder and by law, including a suit to recover money judgment for unpaid assessments, as above provided. The officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release when any default has been cured for which a notice of claim of lien was filed by the Association. The Association may charge such fees as it deems appropriate to cover the costs of preparing and filing and recording such release

5.09 <u>Subordination of the Lien to Mortgages</u>. The lien of the assessments provided for herein shall be subordinate to the lien of any duly recorded purchase money or first mortgage note upon the Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Property pursuant to a decree of foreclosure or non-judicial foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

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

(a) All Properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) All Common Areas as defined in Article I, Section 1.01(b) hereof;

(c) All Properties exempted from taxation by the laws of the State of Texas upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens.

5.11 Insurance Requirements. The Association, through its Board of Directors, or its duly authorized Agent, may obtain a comprehensive policy of public liability insurance covering all of the Common Areas insuring the Association, with such limits as it may consider acceptable, such coverage to include protection against liability for property of others and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use. The Association may, if it deems proper and necessary, obtain property insurance on the Common Areas and facilities owned by the Association affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and any such other risks as shall be customarily covered with respect to projects similar in construction, location and use.

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

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

5.14 Contribution to Park Hudson Property Owners Association. Developer and its successors and assigns, including the Association, shall pay annually to the Park Hudson Property Owners Association, Inc., an amount of money determined in accordance with Section 14 of the Park Hudson Protective Covenants recorded in Volume 3375, Page 176 of the Official Records of Brazos County, Texas as if Park Meadow was subject to the Park Hudson Protective Covenants. Such payment shall be to pay a portion of the cost of maintenance and preservation of the common areas owned and maintained by the Park Hudson Property Owners Association, Inc. Developer acknowledges the benefit derived from the common areas owned and

maintained by the Park Hudson Property Owners Association, Inc. by the Owners of Lots within Park Meadow. The cost of the payments to the Park Hudson Property Owners Association, Inc. shall be included in the Annual Assessments that can be levied against the Owners of Lots pursuant to this Article V of the Declaration.

2. Except as expressly set forth herein, all the terms and provisions of the Deed Restrictions shall continue in full force and effect. If any ambiguities or conflicts arise between the Deed Restrictions and this First Amendment, the terms of this First Amendment shall be controlling.

Executed this 1st day of May, 2002.

BRYAN DEVELOPMENT, LTD.
BY: BRYAN DEVELOPMENT GENERAL PARTNER, Inc., General Partner

By: [signature]
Name: William J. Lero
Title: President

THE STATE OF TEXAS §
§
COUNTY OF ~~HARRIS~~ BRAZOS §

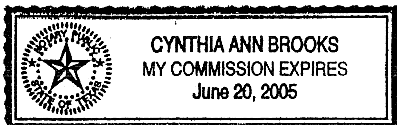
BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM J. LERO, PRESIDENT of BRYAN DEVELOPMENT GENERAL PARTNER, INC., as GENERAL PARTNER of BRYAN DEVELOPMENT, LTD., a Texas, ~~known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said association.~~ **

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day of May, 2002.

** Limited Partnership, on behalf of said limited partnership.

STAMP NAME AND EXPIRATION DATE OF COMMISSION BELOW:

[signature: Cynthia Ann Brooks]
Notary Public in and for the State of Texas


CYNTHIA ANN BROOKS
MY COMMISSION EXPIRES
June 20, 2005

C:\Wpdocs\22030\025\FIRST AMENDMENT TO.Doc