

THE STATE OF TEXAS     )  
                                  )  
COUNTY OF BURLESON    )

KNOW ALL MEN BY THESE PRESENTS

That Birch Creek Forest, Ltd., a Texas Limited Partnership, having its principal place of business in Houston, Harris County, Texas (hereinafter called the "Developer") being the owner of that certain tract of land shown on the Exhibit "A" Plat attached as that certain subdivision known as Birch Creek Forest, Section I, a plat of which subdivision was recorded in the Office of the County Clerk of Burleson County, Texas, on ~~May~~ <sup>June</sup> 11, 1971, after having been approved as provided by law, and being recorded under File No. 771 in the County Clerk's Records of Burleson County, Texas, and desiring to create and carry out a uniform plan and scheme for the improvement, development and sale of property in said Birch Creek Forest, Section I (herein referred to as "the Subdivision"), does hereby adopt, establish, promulgate and impress the following Reservations, Restrictions and Covenants, which shall be and are hereby made applicable to Birch Creek Forest, Section I:

I

GENERAL PROVISIONS

APPLICABILITY

1. Each Contract, Deed or Deed of Trust which may be hereafter executed with respect to any property in the subdivision shall be deemed and held to have been executed, delivered and accepted subject to all of the provisions of this instrument, including, without limitation, the Reservations, Restrictions and Covenants herein set forth, regardless of whether or not any of such provisions are set forth in said Contract, Deed or Deed of Trust, and whether or not referred to in any such instrument.

2. The streets, roads and easements shown on said recorded plat are dedicated to the public as shown on said plat. The utility easements shown thereon are dedicated subject to the reservations hereinafter set

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RESERVATIONS

3. a. The utility easements shown on the recorded plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operation in Burleson County, Texas, as well as for the benefit of the Developer and the property owners in the Subdivision to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, gas, water, sanitary sewers, storm sewers and any other utility or service which the Developer may find necessary or proper. Provided, however, all such easements specifically dedicated for a certain purpose may not be used for any other purpose without the expressed consent of the Developer. No fence or any other structure shall be constructed on or across utility easements shown on the recorded plat as would unduly interfere with the construction, repair, maintenance and operation of such utility systems.

b. The title conveyed to any property in the Subdivision shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewer or sanitary sewer lines, poles, pipes, conduits or other appurtenances or facilities constructed by the Developer or public utility companies upon, under, along, across or through such public utility easements; and the right (but not the obligation) to construct, maintain, repair and operate such systems, utilities, appurtenances and facilities is reserved to the Developer, its successors and assigns.

c. The right to sell or lease such lines, utilities, appurtenances or other facilities to any municipality, governmental agency, public service corporation or other party is hereby expressly reserved to the Developer.

d. The Developer reserves the right to make such changes in and additions to the utility easements and green areas (such green areas being also employed as drainage easement areas) as may be necessary for the purpose of more efficiently serving the Subdivision or any property therein.

e. Neither the Developer, nor its successors or assigns, using said utility easements shall be liable for any damage done

by any of such parties or any of their agents or employees to shrubbery, trees, flowers or other property of the land owner situated on the land covered by said utility easements.

f. The Developer reserves the right to maintain the streets and green areas shown on the recorded plat. The Developer further reserves the right to improve and landscape, for park and recreational purposes, any one or more of such park or green areas at any time, and from time to time, hereafter.

g. The Developer reserves the right at any time, and from time to time, hereafter to promulgate and impose restrictions (as well as vary and amend any such restrictions) as to all or any portion of the unplatted reserve, or unrestricted areas of the Subdivision identified on the aforesaid plat. Any such action by the Developer shall not, in order to be fully binding, require the joinder of any other person, whether such person be an owner of property in the Subdivision, a lienholder, a mortgagee, a Deed of Trust beneficiary or any other person.

h. Until such time as water taps are made for each separate residential lot, and water service is commenced, there shall be levied against every individual residential lot, severally, a standby charge not to exceed \$3.00 per month. Such charge shall be fixed from time to time by the Developer; or, in the event a water district is established by the Board of Directors of the utility district, which charge shall be due and payable in monthly installments in advance; and the payment of such standby charge or charges shall be and is secured by a vendor's lien to be retained in the deed or deeds conveying each such lot or lots. Such standby charge, the liens securing the payment thereof, and the right and responsibility for the enforcement thereof shall be immediately assigned without recourse to any such utility district upon its formation in consideration of its furnishing or proposing to furnish such water service to such residential lot or lots. Such charge, and all liens securing the payment thereof, shall be released and discharged automatically (without further action) on any lot upon the conveyance of any lot to the initial person or persons who will reside on the property and the completion of a dwelling or residence on the property upon payment of a tap-on water charge of \$125.00 to the Developer or the water district is same as has been created. Such completion may be evidenced by the creation and recordation of the

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first lien mortgage or deed of trust on the improved property or by the execution of a release by the Developer or by the Board of Directors of the utility district of the vendor's lien created hereunder to secure the standby charge.

#### DURATION

4. The provisions hereof, including the Reservations, Restrictions and Covenants herein set forth, shall run with the land and shall be binding upon the Developer, its successors and assigns, and all persons or parties claiming under it or them for a period of thirty-five (35) years from the date hereof, at which time all of such provisions shall be automatically extended for successive periods of ten (10) years each, unless prior to the expiration of any such period of thirty-five (35) years or ten (10) years, the then owners of a majority of lots in the Subdivision shall have executed and recorded an instrument changing the provisions hereof, in whole or in part, the provisions of said instrument to become operative at the expiration of the particular period in which such instrument is executed and recorded, whether such particular period be the aforesaid thirty-five (35) year period or any successive ten (10) year period thereafter.

#### ENFORCEMENT

5. In the event of any violation or attempted violation of any of the provisions hereof, including any of the Reservations, Restrictions or Covenants herein contained, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions. It shall be lawful for the Developer or for any person or persons owning property in the Subdivision (or in any other Section of Birch Creek Forest) to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of

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such provisions.

#### PARTIAL INVALIDITY

6. In the event that any portion of the provisions hereof shall become or be held invalid, whether by reason of abandonment, waiver, estoppel, judicial decision or otherwise, such partial invalidity shall not effect, alter or impair any other provision hereof which was not thereby held invalid; and such other provisions, including Restrictions, Reservations and Covenants shall remain in full force and effect, binding in accordance with their terms.

#### EFFECT OF VIOLATIONS ON MORTGAGES

7. No violation of any provision hereof, or any portion thereof, shall affect the lien of any Mortgage or Deed of Trust presently or hereafter placed of record or otherwise affect the rights of the Mortgagee under any such Mortgage, holder of any such lien or beneficiary of any such Deed of Trust; and any such Mortgage, lien or Deed of Trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained, including said Reservations, Restrictions and Covenants.

## II

### ARCHITECTURAL CONTROL

#### BASIC RULE

1. a. No building or other improvements (including septic tanks) of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design thereof or any addition made thereto or exterior alteration made therein after original construction, on any property in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) of the construction plans and specifications and a plat showing the location of such building or other improvements. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality of materials, harmony of external design with existing and proposed structures and location with respect to topography and finished grade elevation.

b. With reasonable diligence, and in all events within six months from the commencement of construction (unless completion

is prevented by war, strikes or Act of God), any dwelling commenced shall be completed as to its exterior, and all temporary structure shall be removed.

c. These requirements for approval as herein set out cover not only the residence to be constructed in the Subdivision, but all piers and other structures built in the water as well as on the land, and also apply to any retaining wall and any significant moving of soil in or out of the water.

#### ARCHITECTURAL CONTROL AUTHORITY

2. a. The authority to grant or withhold architectural control approval as referred to above is vested in the Developer, except, however, that such authority of the Developer shall cease and terminate upon the election of the Birch Creek Forest Architectural Control Committee (provided for in b. below), in which event such authority shall be vested in and exercised by the Birch Creek Forest Architectural Control Committee, hereinafter referred to, except as to plans and specifications and plats theretofore submitted to the Developer which shall continue to exercise such authority over all such plans, specifications and plats.

b. At such time as 90% of the lots in the Subdivision and in all other Sections of Birch Creek Forest (as platted, from time to time, hereafter) shall have been sold by the Developer, or sooner at the election of the Developer, then the Developer shall cause a statement of such circumstances to be placed of record in the Deed Records of Burleson County, Texas. Such statement shall name the then acting President, Vice President, and Secretary-Treasurer of the Birch Creek Forest Club who shall then become the Birch Creek Forest Architectural Control Committee. Such officers' successors in office shall thereafter act as such committee. Provided, however, any one or more interested lot owners may call an election to designate a separate Birch Creek Forest Architectural Control Committee of three (3) lot owners in which event the said officers of Birch Creek Forest Club shall no longer act as such committee (either group is hereinafter referred to as the "Committee"). In the event of such an election each lot owner shall be entitled to one (1)

vote for each lot owned by that owner.

Any owner may appoint a proxy to cast his ballot in such election, provided that his written appointment of such proxy is attached to the ballot as a part thereof. The results of each such election shall promptly be determined on the basis of the majority of those owners then voting in such election.

The elected Committee shall continue to act until requested in writing to call an election by thirty (30) or more lot owners in the Subdivision. Members of the Committee may, at any time, be relieved of their position and substitute members shall be designated by vote as set forth above.

Upon the death, resignation, refusal or inability of any elected member of the Committee to serve, the remaining members of the Committee shall fill the vacancy by appointment or call an election to designate a new committee member within 30 days.

If the Committee should fail or refuse to take any action herein provided to be taken by the Committee with respect to setting elections, conducting elections, counting votes, determining results and evidencing such results, or naming successor Committee members, and such failure or refusal continues for a period which is unreasonably long (in the exclusive judgement of the Developer), then the officers of Birch Creek Forest Club may validly perform such function.

c. The members of the Committee shall be entitled to compensation for services rendered and reimbursement for reasonable expenses incurred. All such sums payable as compensation and/or reimbursement shall be payable only out of the "Maintenance Fund", hereinafter referred to.

#### EFFECT OF INACTION

3. Approval or disapproval as to architectural control matters as set forth in the preceding provisions shall be in writing. In the event that the authority exercising the prerogative of approval or disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plat submitted to it in compliance with the preceding provisions within thirty (30) days following such submission, such plans and

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specifications and plat shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plat and all of the other terms and provisions hereof.

#### EFFECT OF APPROVAL

4. The granting of the aforesaid approval shall constitute only an expression of opinion, whether by the Developer or the Committee, that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plat; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plat or in the event that such building and/or improvements are constructed in accordance with such plans and specifications and plat, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercised thereof.

### III

#### GENERAL RESTRICTIONS

1. Except as provided in Section III, paragraph 2, below, no building shall be erected, altered or permitted to remain on any lot other than as follows:

one (1) detached single-family residential dwelling not to exceed two (2) stories in height and a private garage (or other covered car parking facility) for not more than two (2) automobiles and other than bona fide servants' quarters; provided however, that the servants' quarters structure shall not exceed the main dwelling in area, height or number of stories; and the living area of the main residence structure (exclusive of porches (opened or screened), garage, driveways or terraces shall contain not less than 750 square feet on the ground or first floor.

2. The Developer, its successors or assigns, at its election may build or cause to be built town-houses or cluster type apartment dwellings on all or any portion of the following lots: All of the lots in Block Three (3); and Lots 2,3,4,5,14,15,16,17, 20, and 21 in Block Four (4); and

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in such event the said lots or portions thereof may be re-platted with other dimensions, easements and public facilities and the provisions thereof with respect to lot size and building lines shall not be applicable.

IV

SPECIAL RESTRICTIONS

1. a. No building shall be located on any lot nearer to the front street line than thirty (30) feet (except that any lot with a depth of less than 80 feet may have a front set-back line of only 15 feet) or nearer to the street side line than twenty (20) feet (except that the Developer or the Committee may permit a building within fifteen (15) feet of a street side line). Subject to the provisions of Paragraph 2, no building shall be located nearer than five (5) feet to an interior side lot line, except that a garage or other permitted accessory building located forty (40) feet or more from the front lot line may be a minimum distance of three (3) feet from an interior side lot line. For the purpose of this covenant, eaves, steps and unroofed terraces shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of the construction on a lot to encroach upon another lot.

b. No structure shall be placed on any lot which (by reason of high walls or fences, excessive height, specially peaked roof design, location on lot, etc.) unreasonably will obscure the view of Lake Somerville from a dwelling located or reasonably to be located upon an abutting lot (and for this purpose "abutting lot" includes a lot separated only by a street). The decision of the Developer or Committee in this matter shall be final.

2. Any owner of one or more adjoining lots (or portions thereof) may consolidate such lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting site, in which case side set-back lines shall be measured from the resulting side property lines rather than from the lot lines as indicated on the recorded plat. Any such composite building site must have a frontage at the building set-back lines of not less than the minimum frontage of lots in the same block. Any such composite building site (or building site resulting from the remainder of one or more lots having been consolidated into a composite building site) must be of not less than seven thousand (7,000) square feet in area. Any modification of a building site (changing such building site from either a single lot building site or from a multiple

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whole lot building site), whether as to size or configuration, may be made only with the prior written approval of the Developer until the Committee is selected and thereafter, only with the prior written approval of the Committee. Upon any such required approval having been obtained, such composite building site shall thereupon be regarded as a "lot" for all purposes hereunder, except, however, that for purposes of voting for the Committee (as provided under Paragraph 2.b. of II above), an owner shall be entitled to one (1) vote for each whole lot within such owner's building site.

3. All lots in the Subdivision shall be used only for single-family residential purposes except as provided in Section III, 2, above. No noxious or offensive activity of any sort shall be permitted, nor shall anything be done on any lot which may be or become an annoyance or nuisance to the neighborhood. No lot in the Subdivision shall be used for any commercial, business or professional purpose nor for church purposes. The renting or leasing of any improvements thereon or portion thereof, without the prior written consent of Developer or Committee, is prohibited. No house trailer, camper trailer, camper vehicle or motor vehicle (or portion thereof) or any mobile type home or moveable pre-fabricated home shall be lived in on any lot. The Developer or Committee reserves the right to control the parking of all types of vehicles and trailers on all streets in the Subdivision.

4. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, except, however, that a garage may contain living quarters for bona fide servants and except also that a field office, as hereinafter provided, may be established.

Until the Developer has sold all other lots in Birch Creek Forest (and during the progress of construction of residences in the Subdivision), a temporary field office for sales and related purposes may be located and maintained by the Developer (and/or its sales agents). The location of such field office may be changed, from time to time, as lots are sold. The Developer's right to maintain such field office (or permit such field office to be maintained) shall cease when all lots in Birch Creek Forest, except the lot upon

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5.) No animals, livestock or poultry of any kind shall be

raised, bred or kept on any lot, except that dogs, cats or other common household pets may be kept as household pets provided they are not kept, bred or maintained for commercial purposes and provided they do not constitute a nuisance and do not, in the sole judgement of the Developer or Committee constitute a danger or potential or actual disruption of other lot owners, their families or guests.

6. Where a wall, fence, planter or hedge is not specifically prohibited hereunder, the following (as to any permitted wall, fence planter or hedge) shall apply: No wall, fence, planter or hedge in excess of two (2) feet high shall be erected or maintained nearer to the front lot line than the front building set-back line, nor on corner lots nearer to the side lot line than the building set-back line parallel to the side street. No rear fence, wall or hedge and no side fence, wall or hedge located between the side building line and the interior lot line (or located on the interior lot line) shall be more than six (6) feet high. Any structure permitted under this paragraph may be prohibited by the Developer or Committee (whose decision shall be final) if such improvement or structure will unreasonably obscure the view of Lake Somerville from a dwelling located or reasonably to be located upon an abutting lot (and for this purpose "abutting lot" includes a lot separated only by a street).

No object or thing which obstructs sight lines other than existing trees between two (2) and six (7) feet above the roadways within the triangular area formed by intersecting street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines (or extensions thereof) shall be placed, planted or permitted to remain on corner lots.

7. The drying of clothes in public view is prohibited, and the owners or occupants of any lots at the intersection of streets or adjacent to green areas, alleys, parks, playgrounds or other facilities where the rear yard or portion of the lot is visible to the public, shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view.

8. All lots shall be kept at all times in a sanitary, health- full and attractive condition, and the owner or occupant of all lots

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shall keep all weeds and grass thereon cut and shall in no event use any lot for storage of material (or equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted), nor permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. The Developer or the Committee may require all garbage and trash to be placed only in plastic bag containers. All clothes lines, yard equipment or storage piles shall be kept screened by a service yard, drying yard or other similar facility as herein otherwise provided, so as to conceal them from view of neighboring lots, streets or other property. No boats, trucks, trailers or unsightly vehicles shall be stored on any lots or drives, except in enclosed garages or storage facilities protected from the view of the public or other residents of the Subdivision.

In the event of default on the part of the owner or occupant of any lot in observing the above requirements or any of them, such default continuing or reoccurring after ten (10) days written notice thereof; the Developer (until the Committee is selected, and thereafter, the Committee) may, without liability to the owner or occupant in trespass or otherwise, enter upon (or authorize one or more others to enter upon) said lot, and cause to be cut, such weeds and grass, and remove or cause to be removed such garbage, unsightly vehicles, or trash and rubbish and do any other thing necessary to secure compliance with these restrictions, so as to place said lot in a neat, attractive, healthful and sanitary condition, and may charge the owner or occupant of such lot for the reasonable cost of such work and associated materials. The owner or occupant, as the case may be, agrees by the purchase or occupation of the property to pay such statement immediately upon receipt thereof; however, the payment of such charge is not secured by any nature of lien on the property.

9. Before initial residential occupancy, no sign, advertisement, billboard or advertising structure of any kind may be erected or maintained on any lot in the Subdivision without the prior approval of the Developer or Committee; and any such approval which is granted by the Developer or Committee may be withdrawn at any

time by the Developer or Committee, in which event, the party granted such permission shall, within the period designated by the Developer or Committee (which in no event shall be less than five (5) days), thereupon remove same. After initial residential occupancy of improvements on any particular lot in the Subdivision, no sign, advertisement, billboard or advertising structure of any kind other than a normal for-sale sign approved by the Developer or Committee as to design, not exceeding two feet by three feet (2' x 3') erected on a post in the ground, and applicable to such lot alone, may be erected or maintained on such lot.

The Developer until the Committee is selected, and thereafter, the Committee, shall have the right to remove and dispose of any such prohibited sign, advertisement, billboard or advertising structure which is placed on any lot, and in so doing shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal nor in any way be liable for any accounting or other claim by reason of the disposition thereof.

10. The digging of dirt or the removal of any dirt from any lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on such lot. No growing trees 15 feet or more in diameter measured at a point 12 inches from the ground shall be cut from any lot without the prior approval of the Developer or Committee except to provide room for construction of improvements or to remove dead or unsightly trees.

11. No outside aerial, pole or other device shall project above the highest ridge of the house by more than fifteen (15) feet.

12. No lot or other portion of Birch Creek Forest shall be used or permitted for hunting or for the discharge of any pistol, rifle, shotgun, or any other firearm, or any bow and arrow or any other device capable of killing or injuring.

13. Driveways and walkways shall be entirely of concrete, gravel or asphalt (except however, some other material may be used with the prior permission of the Developer or Committee).

14. No outside toilets will be permitted, and no installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any water body. No septic tank or other means of sewage dis-

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posal may be installed unless approved by the proper governmental authorities having jurisdiction with respect thereto and the Developer or Committee.

15. No oil drilling, oil development operations, oil refining, or mining operations of any kind shall be permitted upon any lot, nor shall any 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 on any building site. At no time shall the drilling, usage or operation of any water well be permitted on any lot without the expressed consent of the Developer.

16. Drainage structures under private driveways shall always have a net drainage opening area of sufficient size to permit the free flow of water without backwater and, in no event, shall be smaller than eighteen (18") inches in diameter. Driveways into lots must have adequate culverts through ditch. All entrances into lots from street must provide adequate culverts through ditch and must have approval of Developer or Committee.

## V

### BIRCH CREEK FOREST CLUB MEMBERSHIP

Each person acquiring property in the Subdivision (whether acquiring same initially or upon resale) must first apply and be accepted for membership in the Birch Creek Forest Club, and must remain a member in good standing as long as they own property in the Subdivision. It is contemplated that the Club facilities will include tennis courts, a swimming pool, and appropriate club quarters. After the Developer has sold 90% of lots in all Sections of Birch Creek Forest Subdivision, or sooner at the election of Developer, the club officers will act as the Birch Creek Forest Architectural Control Committee (subject to II-2.b. above) and will be charged with administration of the Maintenance Fund provided for below.

## VI

### MAINTENANCE FUND

1. Each lot (or residential building site) in the Subdivision shall be and is hereby made subject to an annual Maintenance Fund charge (hereafter referred to as the "Maintenance Fund"), except as otherwise hereinafter provided.

2. The Maintenance Fund referred to shall be used to create a fund to be known as the "Maintenance Fund"; and each such Mainte-

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ance Fund charge shall (except as otherwise hereinafter provided) be paid by the owner of each lot (or residential building site) annually, in advance, on or before January 1st of each year, beginning in 1972.

3. The exact amount of each Maintenance charge (not to exceed three (\$3.00) dollars per month per lot) will be determined by the Developer or Committee during the month preceding the date of said maintenance charge. All other matters relating to the assessment, collection, expenditure and administration of the Maintenance Fund shall be determined by the Developer or Committee.

In addition to the maintenance charge herein referred to each lot in the event street lighting is installed in Section I, shall be subject to a monthly charge not to exceed fifty (50¢) cents for street lighting services which shall be in addition to all other charges which such lot owners may incur for electric service.

4. The maintenance charge shall not, without the consent of the Developer, apply to lots owned by the Developer or owned by any person, firm, association or corporation engaged primarily in the building and construction business which has acquired title to any such lots for the sole purpose of constructing improvement thereon and thereafter selling such lots; however, upon any such sale of such lots by such persons, firm, association or corporation to a purchaser whose primary purpose is to occupy and/or rent and/or lease such lot (and improvements thereon, if any) to some other occupant, then the maintenance charge shall thereupon be applicable to such lot; and the Developer hereby consents to the applicability of the maintenance charge to each such lot under the circumstances herein stated. Any transfer of title to any lot by any such person, firm, association or corporation engaged primarily in the building and construction business to a transferee engaged primarily in the building and construction business shall not result in the applicability of the maintenance charge to such lot owned by the transferee or any succeeding transferee primarily engaged in the building and construction business without the consent of the Developer. The Developer reserves the right at all times, in his own judgment and discretion, to exempt any lot in the Subdivision from the maintenance charge, and exercise of such judgment and discretion when

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made in good faith shall be binding and conclusive on all persons and interests. The Developer shall have the further right at any time, and from time to time, to adjust, alter or waive said maintenance charge from year to year as it deems proper; and Developer shall have the right at any time to discontinue or abandon such maintenance charge, without incurring liability to any person whomsoever by filing a written instrument in the Office of the County Clerk of Burleson County, Texas, declaring such discontinuance or abandonment.

5. The maintenance charges collected shall be paid into Maintenance Fund to be held and used for the benefit, directly or indirectly, of the Subdivision; and such Maintenance Fund may be expended by the Developer or Committee for any purposes which, in the judgment of the Developer or Committee will tend to maintain the property values in the Subdivision, including by way of example but not by way of limitation: the payment of maintenance or improvement expenses incurred by lighting, streets, sidewalks, paths, alleys, green areas and parks, parkways, esplanades, areas between streets and lot lines, ramps, boat landings, collecting and disposing of garbage, ashes, rubbish and the like, employing policemen and watchmen, providing fire protection, collecting of maintenance charges, enforcement of restrictions, and generally for doing any other thing necessary or desirable in the opinion of the Developer or Committee to maintain or improve the property of the Subdivision. The use of the Maintenance Fund for any of these purposes is permissive and not mandatory and the decision of the Developer or Committee with respect thereto shall be final, so long as made in good faith.

6. In order to secure the payment of the Maintenance Fund charge hereby levied, a vendor's lien shall be and is hereby reserved in the Deed from the Developer to the Purchaser of each lot or portion thereof, which lien shall be enforceable through appropriate judicial proceedings by the Developer or Committee. Said lien shall be deemed subordinate to the lien or liens of any bona fide lender which hereafter lends money for the purchase of any property in the Subdivision, and/or for construction (including improvement) and/or permanent financing of improvements on any such property.

7. These provisions as to the Maintenance charge and Maintenan-

ance Fund shall continue in effect unless changed in the manner and at the time or times hereinabove provided for effecting changes in the restrictive covenants hereinabove set forth.

8. From and after the filing of the statement provided for in II.2.b above, the Committee shall administer the said Maintenance Fund provided for above, subject to VII. below.

#### VII

##### TRANSFER OF FUNCTIONS OF THE DEVELOPER

The Developer may at any time hereafter cause one or more non-profit corporations to be organized under the laws of the State of Texas for the purpose of exercising all or any of the duties and prerogatives of the Developer hereunder (including the matters relating to "Maintenance Fund" charges and street lighting services). Any such delegation of authority and duties shall serve to automatically release the Developer from further liability with respect thereto and vest such duties and prerogatives in such non-profit corporations. Any such delegation shall be evidenced by an instrument amending this instrument, placed of record in the Deed Records of Burleson County, Texas, and joined by the Developer and the aforesaid non-profit corporations but not, however, requiring the joinder of any other person in order to be fully binding, whether such other person be an owner of property in the Subdivision, a lienholder, mortgagee Deed of Trust beneficiary or any other person.

#### VIII

##### AMENDMENTS

Any or all of the covenants herein may be annulled, amended or modified at any time by the recommendation of the Developer or the Committee, and ratified by a vote of two-thirds of the lot owners in the Subdivision. All such lot owners shall be given thirty (30) days' notice in writing of any proposed amendment before same is adopted. There shall be no annulment, amendment or modification of these covenants without the prior recommendation of the Developer or Committee.

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BINDING EFFECT

All of the provisions hereof shall be covenants running with the land thereby affected. The provisions hereof shall be binding upon and inure to the benefit of the owners of the land affected and the Developer and their respective heirs, executors, administrators, successors and assigns.

X

ROAD CONSTRUCTION

The roads in Birch Creek Forest Subdivision have been constructed as set out in Exhibit "B" attached hereto.

EXECUTED at Houston, Texas, on this the 26 day of May, 1971.

BIRCH CREEK FOREST, LTD.  
A Texas Limited Partnership

By J.R. Imber  
President of  
Fish Realty Corporation,  
General Partner

ATTEST:

[Signature]  
Secretary

STATE OF TEXAS    ()

COUNTY OF HARRIS   ()

BEFORE ME, the undersigned authority, on this day personally appeared J.R. IMBER, known to me to be the person whose name is subscribed to the foregoing instrument, as President of Fish Realty Corporation, a corporation, General Partner of Birch Creek Forest, Ltd., a Texas Limited Partnership, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said Limited Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 26 day of May, 1971.

Wanda S. Snack  
Notary Public in and for  
Harris County, Texas

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WANDA S. SNACK  
Notary Public in and for Harris County, Texas  
My Commission Expires June 1, 1971.

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