

**SUPPLEMENT AND AMENDMENT TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
BRIARCREEK**

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

THAT WHEREAS, Bell-Nash/Rathgeber Joint Venture, a Texas joint venture ("*Declarant*") previously recorded that certain Declaration of Covenants, Conditions and Restrictions-Briarcreek ("*Original Declaration*" in Document No. 2001108049, Real Property Records of Travis County, Texas, to provide certain protective easements, covenants, conditions and other terms governing that certain real property located in Travis County, Texas (the "*Property*"), which Original Declaration was amended and restated by instrument recorded in the Official Records of Travis County, Texas, in Document No. 2002102865 (the "*Declaration*"); and

WHEREAS, Declarant desires to convey the Property subject to certain additional conditions, restrictions, liens and charges hereinafter set forth; and

WHEREAS, Declarant desires, pursuant to Sections 6.03 and 10.02 of the Declaration, to supplement and amend the Declaration such that the Property shall be and is bound by the covenants, conditions, restrictions, liens, charges and other terms of this Supplemental and Amendatory Declaration of Covenants, Conditions and Restrictions (this "*Supplemental Declaration*"); and

WHEREAS, Declarant's purpose in supplementing and amending the Declaration is to satisfy Declarant's obligations to Travis County, Texas as set forth in the Cooperation Agreement between Travis County and Continental Homes of Texas, L.P., relating to the Design, Construction, Operation and Maintenance of a Public Swimming Pool in the East Metro Park and the Use, Operation, and Maintenance Agreement related to the East Metro Park, which agreements shall be recorded in the Real Property Records of Travis County, Texas; and

WHEREAS, the Property shall be subject to certain conditions, restrictions, liens and charges hereinafter set forth.

NOW, THEREFORE, it is hereby declared: (i) that all of the Property shall be held, sold conveyed, and occupied subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract or deed. All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Declaration.

Article I
THE ASSOCIATION

1.01 **Powers and Authority of the Association.** In addition to the powers and authority set forth in Section 6.04 of the Declaration, the Association shall further have the obligation, power and authority at all times as follows:

(a) **Payment to Travis County.** To pay directly to Travis County, on or before May 1 of each calendar year, for each residential lot owned and occupied by a Lot Owner other than Declarant a sum equal to one-half the cost that Travis County charges to the general public for an annual membership for use of the swimming pool in East Metro Park Swimming Pool Facility for the upcoming year (the "Pool membership Payment"), at the address set forth below. The sum to be paid to Travis County per lot shall be \$75.00 for the year 2005, which shall be paid no later than June 1, 2005. Thereafter, by April 1 of each year, Travis County shall notify the Association in writing of the amount to be paid per lot.

(b) **Membership List.** To compile and maintain a list of all Lot Owners who have paid the Swimming Pool Assessment described below (the "Membership List"), for the purpose of allowing Travis County to issue seasonal membership passes as described below; and to update the Membership List a minimum of four (4) times each calendar year.

(c) **Collection of Swimming Pool Assessments.** To levy and collect from each Lot Owner (other than Declarant) a Swimming Pool Assessment that shall entitle each occupied household – defined as each Lot Owner (other than Declarant) and residents of the Lot but not including the guests, invitees or licensees of the preceding – to one seasonal membership pass to the East Metro Park Swimming Pool Facility located in the Travis County East Metro Park. The Association may notify Travis County of any Lot Owner who has not paid the Swimming Pool Assessment and direct Travis County to deny that Lot Owner's household use of the East Metro Park Swimming Pool Facility, by non-payment by a Lot Owner shall not relieve the Association of its obligation to pay Travis County the full amount of the Pool Membership Payment under subsection (a) above.

1.02 **Rights of Lot Owners.** A seasonal membership pass shall permit the Lot Owners to free entry on all days on which the East Metro Park Swimming Pool Facility is open to the general public each calendar year. The Association may collect the Swimming Pool Assessment on a monthly basis or annually at its option.

1.03 **Association Obligations.** The Association shall have the right to exercise all powers under Sections 3.015, 8.01, 8.05, 8.06 of the Declaration to collect the Swimming Pool Assessment. However, the Association shall have the obligation to pay the Pool membership Payment and provide the Membership List to Travis County, as set forth in subsections 1.01 (a) and 1.01 (b), on or before May 1 of each calendar year, notwithstanding the Association's exercise or failure to exercise its rights to levy and collect the Swimming Pool Assessment as set forth above.

1.04 **Payment.** The Pool Membership Payment shall be made by check payable to "Travis County" and shall be delivered to County at the following address: Travis County, c/o Joe Gieselman (or successor), Executive Manager, Transportation and Natural Resources Department, P.O. Box 1748, 411 W. 13th Street, Austin, Texas 78767.

1.05 **Dissolution of Mandatory Homeowners Association.** If a PID or CDD is established as described in Section 6.06 of the Declaration, Declarant shall not exercise its option to dissolve the mandatory Association unless the acquiring entity agrees to assume the Pool Membership Payment obligation according to the terms set forth in this Supplemental Declaration.

Article II
MISCELLANEOUS

2.01 **Term.** This Supplemental Declaration, including all of the covenants, conditions and restrictions hereof, shall run as long as the East Metro Park Swimming Pool Facility in the Travis County East Metro Park is operational. For purposes of this Supplemental Declaration, "operational" means the East Metro Park Swimming Pool Facility is open and operating during the posted days and hours of operation throughout the summer season (generally, Memorial Day through Labor Day) of any given calendar year, including any periods during which necessary maintenance, repairs or other circumstances require temporary closure of the East Metro Park Swimming Pool Facility.

2.02 **Amendment/Extinguishment.** Neither this Supplemental Declaration nor any provision of the Declaration affecting the validity, content, or enforceability of this Supplemental and Amendatory Declaration shall be amended or extinguished, as provided in Section 10.02 of the Declaration or otherwise, without the prior written approval of Travis County.

2.03 **Limitations on Assessments.** The Swimming Pool Assessment shall not be subject to the 5% limit on annual increases to regular annual assessments under Section 8.03 of the Declaration, nor shall it be considered a special assessment under Section 8.04 of the Declaration.

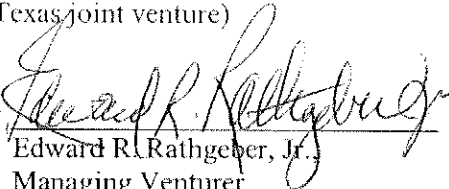
2.04 **Defined.** Unless otherwise indicated, all terms used in this Supplementary and Amendatory Declaration shall have the same meaning assigned in the Amended and Restated Declaration.

IN WITNESS WHEREOF, Declarant has executed this Supplemental Declaration to be effective on the 2nd day of May, 2005.

DECLARANT

Bell-Nash Joint Venture
(a Texas joint venture)

By:


Edward R. Rathgeber, Jr.
Managing Venturer

CERTIFICATION

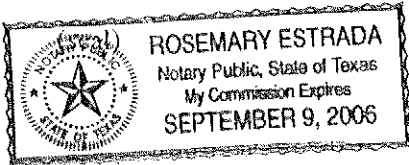
This Supplement and Amendment to Declaration of Covenants, Conditions and Restrictions for Briarcreek has been approved by the Board of Directors of the Briarcreek Owners Association, Inc.

Briarcreek Owner's Association, Inc.
(a Texas non-profit corporation)

By: *Edward R. Rathgeber*
Name: _____
Title: _____

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

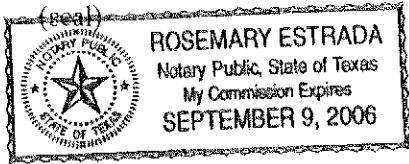
This instrument was acknowledged before me on the 2nd day of May, 2005, by Edward R. Rathgeber, Jr., Managing Venturer of Bell-Nash/Rathgeber Joint Venture, a Texas joint venture, on behalf of said joint venture.



Rosemary Estrada
Notary Public - State of Texas
Print Name: Rosemary Estrada
My Commission Expires: Sept. 9, 2006

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This instrument was acknowledged before me, the undersigned authority, this 2nd day of May, 2005, by Edward F. Rathgeber, President, of the Briarcreek Owners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



Rosemary Estrada
Notary Public - State of Texas
Print Name: Rosemary Estrada
My Commission Expires: Sept. 9, 2006

After recording, Please return to:
D.R. Horton
Attn. Kathy Taylor
12554 Riata Vista Circle, 2nd Floor
Austin, Texas 78727

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

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BENAVIDESV \$20.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS