

LAWYERS TITLE CO.

GF# 344189

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF CARTER HEIGHTS HOA**

THE STATE OF TEXAS

COUNTY OF BRAZOS

WHEREAS, TDG Management, LP, a Texas limited partnership, hereinafter sometimes referred to as "Developer", is the owner in fee simple of certain real estate situated in the City of Bryan, County of Brazos and State of Texas more particularly described in a deed recorded in Volume 13965, Page 155, Official Records of Brazos County, Texas, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate (the "Property");

WHEREAS, Developer desires to create and carry out a uniform plan for the improvement and development and sale of the Property for the benefit of the present and future owners of the Property;

WHEREAS, Developer has filed a Final Plat of said development with the City of Bryan ("City") which has been accepted and approved by said City, and filed in Volume 15795, Page 276 of the Official Records of Brazos County, Texas; and

WHEREAS, Developer desires to impose upon said Property certain protective covenants, conditions, restrictions, liens and charges deemed appropriate and to retain the right to modify said covenants, conditions, restrictions and charges from phase to phase as appropriate to be commensurate with Developer's purposes and to comply with the planning and zoning set forth by the City.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, liens, and charges, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and which 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 which shall inure to the benefit of each owner thereof; and (ii) that each contract or deed that 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.

**ARTICLE I  
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified. Said terms may further be utilized in one, two or more Associations within the Development.

1.01 Architectural Committee. "Architectural Committee" shall mean the committee or committees created pursuant to this Declaration to review and approve plans for the construction of Improvements on the Property or a portion of the Property governed by an Association. No Architectural Committee shall have authority beyond the area set forth for the Association, which it serves.

1.02 Architectural Committee Rules. "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.

1.03 Articles. "Articles" shall mean the Articles of Incorporation of the one or more Owners or Homeowners Association Corporations which shall be filed in the office of the Secretary of State of the State of Texas relating to all or part of the Property. Said Associations shall be created by Developer and contain the provisions Developer deems appropriate for that portion of the Property.

1.04 Association. "Association" shall mean the HOA of CARTER HEIGHTS HOA and each other Association created by the Developer relating to the portion of the Property described in the Articles.

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

1.06 Restrictions. "Restrictions" shall mean the provisions of this Declaration, as the same may be amended from time to time, together with the Architectural Committee Rules and the Articles and Bylaws of each of the Associations as the same are in effect from time to time.

1.07 Rules. "Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

1.08 By-Laws. "By-Laws" shall mean the By-Laws of the Association as adopted by the Board, and as from time to time amended.

1.09 Common Areas. "Common Areas" shall mean any land conveyed, leased, dedicated or assigned by Developer, or by a third party with the Association's consent to the Association for maintenance and operation, including, but not limited to, detention ponds and mail box areas within the Property.

1.10 Developer. "Developer" shall mean TDG Management, LP, a Texas limited partnership, its duly authorized representatives or their respective successors or assigns.

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

1.12 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to: buildings, outbuildings, storage sheds,

patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

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

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

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

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

1.17 Owner. "Owner" or "Owners" shall mean a person or person, entity or entities, including Developer, holding a fee simple interest in any Lot on the Property, but shall not include a Mortgagee.

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

1.19 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavations and grading plans, foundational plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such improvement.

1.20 Regular Assessment. "Regular Assessment" means an assessment, charge, fee, or dues set annually by the Board of Directors that each owner of property within the Subdivision is required to pay to the Association on a regular basis and that are to be used by the Association for the benefit of the Subdivision in accordance with the original, extended, added, or modified Restrictions.

1.21. Special Assessment. "Special Assessment" means an assessment, charge, fee, or dues that each owner of property within the Subdivision is required to pay to the Association, after a vote of the membership, for the purpose of paying for the costs of capital improvements in the common areas that are incurred or will be incurred by the Association during the fiscal year. A Special Assessment may be assessed before or after the Association incurs the capital improvement costs.

ARTICLE II  
DEVELOPMENT OF THE PROPERTY

2.01 Development by Developer. Developer may divide or subdivide the Property into several areas, develop some of the Property, and, at Developer's option, sell any portion of the Property free of or with modification of the restrictions set forth in this Declaration.

ARTICLE III  
GENERAL RESTRICTIONS

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

3.01 Residential Use. Excluding Common Areas or pavilion or clubhouse areas reserved or owned by the Declarant, or its assigns, all Lots shall be improved and used solely for residential purposes inclusive of a garage, fencing, and other such improvements as are necessary or customarily incident to residential use. No Owner shall occupy or use his Lot or any Improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than a private residence for members of the Occupant Group. All Lots within the Property shall be used and improved for single-family residential structures, with no more than one (1) residential dwelling unit per Lot. Anything herein to the contrary notwithstanding, any Lot may be used or improved for a greenbelt, open space or drain field purposes. No Improvement may be constructed upon any Lot that would unreasonably obstruct the view from any other portions of the Property, and the positioning of all Improvements upon Lots within the Property is hereby expressly made subject to Architectural Committee review. The Architectural Committee may, but shall not be required to, prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular Lot. The Architectural Committee may consider the effect the Improvement will have on the Property as a whole, it being expressly understood that neither the Architectural Committee nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the constructions of any Improvement within the Property or the creating thereby of an obstruction to the view from Owner's Lot or Lots.

3.02 Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Property without the prior written approval of the Architectural Committee. The use of prefabricated homes, including antique homes moved from other locations, shall not be allowed.

3.03 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon without the prior written approval of the Board.

3.04 Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Developer is the Owner thereof, Developer may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee.

3.05 Signs. No sign of any kind shall be displayed to the public view on the Property without the prior written approval of the Architectural Committee, except for signs which are part of Developer's overall marketing plan for the Property. The Architectural Committee may permit signs of any type advertising a portion of the Property for sale or lease or it may set standards for the same.

3.06 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise there from so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. Except on the day the City of Bryan collects trash, all such trash containers must be removed from the street prior to 7:00 pm on the day the contained trash is collected. In the event the trash containers remain in view after the day the City of Bryan, Texas collects such trash containers, the Architectural Control Committee may fine the owner \$25.00 per day for each day the trash container remains in excess of the day of pick up.

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

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

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

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

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

3.12 Roofing Materials. The surface of all roofs or principal and secondary structures shall be wood shingle, tile shakes or laminated shingles of 240 pounds per square or greater, sometimes referred to as "architectural" or "dimensional". The Architectural Committee shall have authority to approve other roof treatments and materials when in its determination such treatments and materials in the form utilized will not be a detriment to the quality of the neighborhood.

3.13 Solar Equipment. In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall be submitted to the Architectural Committee and approval of such design, including the aesthetics thereof, shall be required before construction may begin.

3.14 Driveway. The Architectural Committee shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways within the Property.

3.15 Tanks. The Architectural Committee shall have the right to approve the location of any tank used or proposed in connection with a structure, including tanks for storage of fuel, water, oil or LPG and including swimming pool filter tanks. (No elevated tanks of any kind shall be erected, placed, or permitted on any Lot). All tanks shall be screened so as to not be visible from any portion of the Property.

3.16 Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on Improvements as approved in writing by the Architectural Committee, except what is constructed by the City of Bryan; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the Architectural Committee. The installation method, including but not limited to location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the Architectural Committee.

3.17 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Developer, unless adequate provision is made for property drainage and approved by the Architectural Committee. There shall be a Detention Pond constructed on the property in order to aide with drainage on the Property. It shall be the responsibility of the Homeowner's Association to maintain, service, and repair the Detention Pond. Upon completion of the Detention Pond, the Homeowner's Association shall take title to the Detention Pond and become the record owner of the Detention Pond.

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

3.19 Mining and Drilling. No oil drilling, oil development operations, oil refining, quarrying, or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts shall be permitted upon any Lot. No derrick

or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. This does not prohibit the owner of the minerals from slant or horizontal drilling provided there is no disturbance of the surface.

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

3.21 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Committee; provided however, that the Developer may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen on the Property during any period of actual construction, which authorization, if given, shall include the nature, size, duration, and location of such structure or structures.

3.22 Unsightly Articles; Vehicles.

A) No trailer, recreational vehicle, tent, boat, or stripped down, wrecked, junked, dismantled, or inoperable vehicle shall be kept, parked, stored, or maintained on any portion of a Lot other than in an enclosed garage or storage building which has been approved by the Architectural Committee. However, construction, service and delivery vehicles are exempt from this requirement for such period of time as is reasonably necessary to complete construction, provide service or to make delivery to a residence.

B) The total number of vehicles associated with the residence located on any Lot which are parked outside the garage on said Lot, including both the driveway and the street adjoining the lot, shall not exceed the total number of bedrooms in the residence during any overnight period. A vehicle is considered to be associated with the residence on a Lot if the vehicle is owned or leased by an Owner or the Owner's tenants or guests. The Board may assess fines or penalties for violation of the parking restrictions of this paragraph 3.21(B), with graduated fees or penalties for multiple offenses, as the Board in its discretion may declare.

C) Parking of any type of vehicle (including, without limitation, motorcycles or off road vehicles) is not allowed on sidewalks, lawns or areas other than garages and driveways.

3.23 Mobile Homes, Travel Trailers. No mobile homes shall be parked or placed on any Lot at any time. No travel or camper trailers, recreational vehicle or similar items shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours. No prefabricated building may be moved from other locations

on to a Lot without the permission of the Architectural Committee.

### 3.24 Fences.

A) Except as provided in Section 3.23 (B) below, no fence, wall, or hedge shall be built or maintained forward of the front wall line of the main structure, and which are not to be built or maintained nearer than the building setback line of any Lot. An exception shall be made in the case of retaining walls not to exceed twenty-four inches (24") above the ground. Notwithstanding the foregoing, the Architectural Committee is empowered to waive the aforesaid height or setback limitation in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material, and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the neighborhood. No chain-link fences may be built or maintained on any Lot.

B) Subject only to Section 3.31 below, all Owners shall be required to build a six foot (6') privacy fence, made of standard grade cedar or fir and of a design approved by the Architectural Committee, within six (6) months of completion of the home on such Owner's Lot. Completion of the home shall be defined as the date of issuance of the Certificate of Occupancy for such home. Any fence built in accordance with the terms of this Section shall thereafter be maintained by the Owner of the Lot upon which it is situated.

3.25 Animals. Household Pets. No animals, including pigs, hogs, swine, poultry, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property. No more than three (3) adult dogs and three (3) adult cats may be kept on a single Lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances.

3.26 Sports Equipment. No basketball goals or backboards or any other similar sports equipment of either a permanent or temporary nature shall be placed within thirty feet of the front property line of any Lot without the prior written consent of the Architectural Committee.

3.27 Maintenance of Plantings. Each Owner shall keep all shrubs, trees, and plantings of every kind on such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. Trees, shrubs, vines and plants that die shall be promptly removed. Developer, the Association, and the Architectural Committee shall have the right at any reasonable time after not



less than ten days' notice to Owner and an opportunity to cure any violation of this provision, to enter upon any Lot to replace, maintain and cultivate shrubs, trees, or other plantings located thereon, and to charge the cost thereof to the Owner of the Lot as provided in Section 5.04 (E) below.

3.28 Landscape Design. All landscaping shall be designed so as to protect and promote, as far as practicable, the natural local landscape environment through use of native materials, natural drainage, indigenous plant selection and site design. All landscaping designs shall:

A) Wherever possible, save and incorporate into the Plans and Specifications existing trees with trunk diameters of four (4) or more inches. To insure the viability of these trees, soil compacting, trenching and/or cut and fill shall be avoided to the greatest extent possible; in the area defined by the trees drip line.

B) Maintain or enhance, wherever possible, existing vegetation within drainage easements to prevent erosion, siltation, or impediment of runoff augmented by development.

3.29 Constructions and Sales Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an owner (including Developer) upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence Improvements, and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other party of the Property. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction. At such time as the Developer ceases using any portion of the property as a model home or sales office, the affected property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.

3.30 Mailbox. A community mailbox shall be erected for all Lots by the Developer, and shall be fixed in accordance with the postal authority approval. The mailbox shall be new when installed, constructed of durable steel or aluminum, and of a size and shape conforming to postal authority standards for single family residential postal depositories. The mailbox shall be located on the curb in accordance with postal regulations.

3.31 Dwelling Size. All single family dwellings constructed in the Property shall contain no less than 2200 square feet of enclosed living space, exclusive of all porches (open or covered), decks and garages

3.32 Building Materials. All single family dwellings constructed on the Property shall be of recognized standard construction quality. The front exterior (exclusive of doors, windows and similar openings) of all single family dwellings constructed on the Property shall be constructed of masonry or other material specifically approved in writing by the Architectural Committee. Masonry includes stucco, brick, rock and all other materials commonly referred to in the Bryan, Texas area as masonry. Masonry does not include hardy-board siding. The side and rear exteriors of all single family dwellings constructed on the Property may be constructed of hardy-board siding with a minimum of 75% of the total exterior being constructed of masonry and no more than 25% being constructed of smart-board siding.

3.33 Sight lines. No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot within the area defined by a line drawn between two points located forty feet (40') from the point of intersection of the street right-of-way property lines immediately adjacent to the Lot, as reasonable located by the Architectural Committee. Measurement shall be by chord, not by arc. No tree shall be permitted to remain within such areas, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

3.34 Garages. No Lot shall have Improvements erected which do not provide for a minimum of a two-vehicle garage. All garage doors shall have additional detail above and beyond standard panel garage doors, in accordance with standards to be established from time to time by the Architectural Committee. No garage doors shall open or face Bennett's Tract unless the garage door is at least four feet (4') from the front porch of the house.

3.35 Garage Conversions. No garage or any portion thereof, may be constructed into enclosed living space unless an alternative garage of at least equal size is constructed and the Architectural Committee first approves the Plans and Specifications for conversion and construction in writing. No carports may be erected on driveways.

3.36 Parking and Prohibited Vehicles.

- A) Parking. Vehicles shall be parked only in the garage or driveway serving a particular Lot, or in such other paved areas as have been approved by the Board for parking vehicles. A maximum of two (2) occupant vehicles may be parked outside of the garage, if any, serving a Lot. For purposes of this provision, a vehicle shall be considered an "occupant's vehicle" if it is parked on a Lot four (4) or more hours a day, four (4) or more days in any seven (7) day period. The Board may authorize on-street parking on a temporary basis for visitors and guests, subject to reasonable rules and regulations. No garage shall be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the Architectural Committee unless alternative parking arrangements for enclosed parking are approved by the Architectural Committee; however, a builder may temporarily convert a garage into a sales or construction office, provided that it is converted back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Properties by

such builder. Garage doors visible from any street within the Properties shall remain closed except during ingress and egress and when the garage is actively being used by the Owner or occupant.

- B) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors (excluding vehicles with lettering or logos confined to the front door on each side), vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats, and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. Vehicles that become inoperable while on the Properties must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed by the Association.

3.37 Doors and Windows. No "burglar bars," steel or wrought iron bars, or similar fixtures, whether designated to be decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any dwelling. No signs, numerals or other writing shall be written on or placed in the doors, windows or exterior walls of any dwelling, either temporarily or permanently, except that the Board may, in its discretion, permit house numbers to be written temporarily on a single window of a dwelling while occupants are moving in, provided such numbers are removed within seventy-two (72) hours after the occupants have taken occupancy. Sheets or similar temporary window treatments may be used for a short time after taking occupancy of a dwelling, provided they are removed and replaced with permanent window treatments within a reasonable time, not to exceed fourteen (14) days, after taking occupancy of the dwelling, as determined in the sole discretion of the Board. Foil shall not be used as window coverings at any time.

3.38 Registered Sex Offenders. No Lot shall be occupied in whole or in part by any person who is a registered sex offender on the Texas Public Sex Offender Registry, or any similar registry in another state.

3.39 Compliance with Provisions of Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggrieved individual owner, the Developer, for itself, its successors or assigns, reserves the right to enforce these restrictive covenants, though it may

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

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

#### ARTICLE IV MAINTENANCE AND SET BACK REQUIREMENTS

4.01 Outbuildings. Every outbuilding, inclusive of such structures as a detached garage, storage building or greenhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. All such buildings shall be subject to approval by the Architectural Committee. In no instance shall an outbuilding, other than a detached garage, exceed one (1) story in height or have total floor area in excess of ten percent (10%) of the floor area of the main dwelling.

4.02 Building Height. No Improvement greater than thirty-two feet (32') in height may be constructed on any Lot without the prior written approval of the Architectural Committee. 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.

4.03 Set-Back Requirements. No building shall be located or erected in violation of or encroaching upon the standards set by the City Ordinances of the City of Bryan for the lot or tract concerned or as shown on the Plat, notwithstanding, the above language no building shall be located closer than thirty feet (30') from Bennett Street, seven and one-half feet (7.5') from the side lot lines, and fifteen feet (15') from the rear property lines. Developer reserves the right to modify or enhance said City requirements through the recorded plat and additional restrictions set forth on such plat of each Phase of Property as it is developed.

4.04 Garages. No Lot shall have Improvements erected that do not provide for a minimum of a two (2) car garage. All garages must have side entrances.

4.05 Structure Maintenance. Developer further reserves the right to require the Association created pursuant to Article V hereof to maintain structures required by the City of Bryan in the development of the Property, and all members of said Association shall be bound by said requirements whether constructed before or after becoming a member.

ARTICLE V  
HOA OF CARTER HEIGHTS HOA

5.01 Organization. The Developer has caused or will cause the formation and incorporation of one or more Associations, each as a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and By-Laws or in this Declaration. Neither the Articles nor By-Laws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration

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

5.03 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of directors to the Board and on all other matters to be voted on by the Members shall be calculated as follows:

A) The Owner, whether one or more (including Developer of each Lot within the Property), shall have one vote for each Lot so owned.

B) In addition to the votes to which Developer is entitled by reason of Subparagraph (A) of this Section, for every such vote Developer shall have three (3) additional votes, until such time as the votes, described in Subparagraph (A) of this Section, owned by Owners other than Developer total in the aggregate sixty-six and two thirds percent (66.2/3%) of the total number of votes outstanding under Subparagraph (A). Thereafter Developer shall have only the votes, if any, to which it is entitled under Subparagraph (A) of this Section.

5.04 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation subject only to any limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper or incidental to the exercise of any of the express powers granted to it by the law of Texas or by the Declaration. Without in any way limiting the generality of the two preceding sentences the Association, and the Board acting on behalf of the Association, shall have the following powers and authority at all times:

A) Rules and By-Laws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Rules and By-Laws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions.

B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry our Association

functions.

- C) Records. To keep books and records of the Association's affairs.
- D) Assessments. To levy Assessments as provided by Article VII below.

E) Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency, after ten (10) days written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of erecting, maintaining or repairing any Improvement to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce licenses and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Developer, its successors or assigns.

F) Legal and Accounting Services. To retain and pay for Legal and Accounting services necessary or proper for the operation of the Association.

G) Delegation to Committees. To set up one or more committees as authorized by the Texas Non-Profit Corporation Act, as the same is amended from time to time.

H) Employees. To engage such employees as may be reasonably necessary in the management of the Association and the performance of its duties.

5.05 Maintenance. The Association shall be authorized to landscape, maintain and repair easements, grass in front of lots, rights-of-way, sidewalks, paths, trails, drainage facilities, detention ponds, lakes and other areas of the Property as it deems appropriate.

#### 5.06 Common Areas.

A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

- 1) To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Developer, together with any Improvements of any kind or purpose located in said areas; and to accept, own, operate and maintain all other property, real and personal, conveyed or leased to the

Association by Developer; and to maintain in good repair and condition all lands, Improvements, and other Association property owned by or leased to the Association, whether by Developer or by other Person, including the Association's obligations with the Cloisters of Bryan Texas Home Owners Association.

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

3) To execute mortgages, both construction and permanent, for construction of Improvements or property owned by or leased to the Association and to accept land in Common Areas, whether or not improved, from Developer subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development of other bonds, or in any other form or manner deemed appropriate by the borrower, whether Developer or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien, as deemed appropriate by borrower, whether Developer or the Association, on the Improvement to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of Members, or otherwise or any combination thereof, as may be deemed appropriate by Developer or the Association, as the case may be, but subject to the limitations imposed by the Declaration.

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

1) To grant and convey portions of Association property, including fee title, leasehold estates easements, rights-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating or maintaining the following:

a. Parks, parkways or other recreation facilities or structures;

b. Roads, streets, walks, driveways, trails and paths;

c. Lines, cables, wires, conduits, pipelines or other means of providing utilities;

d. Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

e. Any similar public, quasi-public or private Improvements;

f. The Storm Water Management Facility Maintenance Agreement between Carter Heights HOA and The Cloisters of Bryan Texas Homeowners Association.

Nothing contained in this Subparagraph, however shall be construed to permit use or occupancy of any Common Area or Improvement in a way that would violate applicable use and occupancy restrictions imposed by other provisions of this Declaration by any statute, rule, regulation, ordinance, other law of any governmental entity, including but not limited to rules and orders of the Texas Water Development Board, Texas Water Commission, and any flood plain, industrial waste or other ordinance of the City of Bryan, Texas.

2) To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association.

3) To pay for any other services necessary or proper in the performance of Association functions, and to pay for any other taxes or assessments that the Association or the Board is required to secure or to pay for pursuant to applicable law, terms of this Declaration, or the Articles of Bylaws of the Association.

4) To own and operate any and all types of facilities for both active and passive recreation.

5) To construct new Improvements or additions to Association properties subject to the approval of the Architectural Committee as required in this Declaration.

6) To enter into contracts with Developer and other persons, on such terms and provisions as the Board shall determine, to operate and maintain any of the Common Areas, or to provide any service or perform any function on behalf of Developer or the Association in connection with the purposes of the Association.

7) To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.

5.08 Agreements with City of Bryan, Texas. The Association may enter into one or more



agreements with the City of Bryan, Texas and/or The Cloisters of Bryan, Texas Homeowners Association. with respect to the dedication of any drainage basin, park or other common area within the Property for municipal maintenance.

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

## ARTICLE VI ARCHITECTURAL COMMITTEE

6.01 Membership of the Architectural Committee. The Architectural Committee shall consist of not more than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. The following persons are hereby designated the Initial Voting Members of the Architectural Committee: Alton E. Ofczarzak, II, Mark Ofczarzak, and Teresa Shivener. Any one or more of said members may appoint another person (including another member of said Committee) to act as his Agent on said Committee with full authority. Said Committee shall maintain records of said appointment and its actions as a Committee. In the event a member resigns or no longer serves for any reason, the remaining members shall select a replacement. Any vacancy in the Architectural Committee may be filled by the affirmative vote of the remaining Voting Member(s).

6.02 Action of Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

6.03 Advisory Members. The Voting Members may from time to time designate Advisory Members.

6.04 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed as provided herein.

6.05 Developer's Rights of Appointment. Until Developer no longer owns any portion of the Property, the Developer or its successors or assigns shall have the right to appoint and/or

remove all Voting Members of the Architectural Committee(s), which persons need not be drawn from Association Members. Notwithstanding the preceding sentence, Developer may delegate its right of appointment, or any portion thereof, to the Board by written instrument before such date. Voting Members. At such time as the Board gains the right to appoint and remove Voting Members of the Architectural Committee, or any portion of this right, a majority of the Voting Members so appointed shall be drawn from Members of the Association. Advisory members shall, when reasonably possible, be drawn from Members of the Association.

6.06 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it deems necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, and other similar codes.

6.07 Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefore shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved in writing such Plans and Specifications. Until receipt by the Architectural Committee of any information or document deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. Upon receipt of all necessary information, the Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other related duties assigned or authorized by this Declaration, including at its option inspection of construction in progress to assure its conformance with previously approved Plans and Specifications. The Architectural Committee shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one construction. The Architectural Committee may, in its review of Plans and Specifications and such other information as it deems proper, consider whether any proposed Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The Architectural Committee may, but shall not be required to, disapprove any Improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and material and similar features as to be incompatible with residential development within the Property and the surrounding area. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans and Specifications be deemed an endorsement, from the standpoint of structural safety, engineering soundness or conformance with building or other codes not of its authorship.

6.08 Actions of the Architectural Committee. The Architectural Committee may, by

resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all of the members of the Architectural Committee taken without a meeting shall constitute an act of the Architectural Committee.

6.09 No Waiver of Future Approvals. The approval or consent of the Architectural Committee of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

6.10 Work in Progress. The Architectural Committee may at its option inspect all work in progress to insure compliance with approved Plans and Specifications.

6.11 Non-liability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner or to any person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its members, as the case may be. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of an obstruction of the view from such Owner's Lot or Lots.

6.12 Address. Plans and Specifications shall be submitted to the Architectural Committee in care of Alton E. Ofczarzak, II, 4060 Highway 6, College Station, Texas 77845, or in care of such other person at such other address as may be designated by Developer or the Board, as the case may be, from time to time.

6.13 Certificate of Compliance. Upon completion of any Improvement approved by the Architectural Committee and upon written request by the Owner of the Lot, the Architectural Committee shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot, the Plans and Specifications pursuant to which the Improvements were made, the use or uses to be conducted with respect to the Improvements, and shall further specify that the Improvements comply with the approved Plans and Specifications and that said Plans and Specifications are on file with the Architectural Committee. The Certificate shall not be construed to certify acceptability or sufficiency of, or endorsement by, the Architectural Committee of the actual construction of the Improvements or of the structural integrity, workmanship or materials thereof. The Owner is hereby notified that the Certificate in no way warrants, except as set forth above, sufficiency or acceptability workmanship or materials of the Improvements. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the Improved Lot.

6.14 Failure to Act. In the event the Architectural Committee or its designated representative fails to approve or disapprove any Plans and Specifications, within fifteen (15) days

after the same have been submitted to it, complete with all other information requested by the Architectural Committee in connection with such submission, approval shall be assumed and, upon construction completion, the Owner of the Improvements so completed may obtain a Certificate of Compliance as set forth in Section 6.13 above.

6.15 Variances. Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots upon the Property, variance from any restrictions set out in this Declaration may be granted by a unanimous decision of the Architectural Committee in a written instrument to be duly acknowledged and recorded in the Official Records of Brazos County, Texas, if and when such a variance shall ever be granted.

6.16 Governmental Agency Approval. Nothing in this Declaration shall be construed to relieve any Owner from securing such approvals, certificates and/or permits as may be required by law in connection with the construction of any Improvement on any Lot.

6.17 Relationship with Association. The Architectural Committee has been created pursuant to this Declaration to perform certain functions specified herein relating to the review and approval of Plans and Specifications for Improvements built on the Property. The Architectural Committee does not exercise the authority of the Board, and shall not do so unless and until (i) the Board shall have duly appointed a majority of Board members to the Architectural Committee, and (ii) the Board shall by unanimous resolution, duly recorded in the records of the Association, make the Architectural Committee a committee of the Board in accordance with the Texas Non-Profit Corporation Act. Notwithstanding the foregoing, at Developer's option, the Architectural Committee may be combined with the Board.

## ARTICLE VII FUNDS AND ASSESSMENTS

### 7.01 Assessments.

A) The Association, by and through a majority vote of its Board of Directors, may from time to time levy Assessments against each Lot whether or not improved. The level of Assessments shall be equal and uniform between all Lots, provided, however, that no Assessments hereunder shall be levied against Developer on any lot owned by the Developer.

B) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

C) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment falls due and shall become a lien against each such Lot and all Improvements thereon. The Association may enforce payment of such

Assessments in accordance with the provisions of this Article.

D) Transfer of Title and Resale Certificate

1. Transfer of Title: Any Owner, other than the Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The person, other than the Declarant, transferring title shall continue to be jointly and severally responsible with the person accepting title for all obligations of the Owner, including Assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

Upon acceptance of title to a Lot, the new Owner of the Lot shall pay to the Association an administrative transfer fee to cover the administrative expenses associated with updating the Association's records, which transfer fee is supported by the lien created herein. Such fees shall be in such amount as the Board may reasonably determine necessary to cover its costs, including but not limited to, and fees charged by a management company retained by the Association for updating its records.

2. Resale Certificate: No Owner, other than the Declarant, shall transfer title to a Lot, together with the improvements thereon, unless and until he or she has requested and obtained a resale certificate signed by a representative of the Association as described in Chapter 207 of the Texas Property Code, or its successor statute ("Resale Certificate") indicating, in addition to all other matters described in Chapter 207, the information required in Section 5.012 of the Texas Property Code.

3. The Association may charge a reasonable fee to prepare, assemble, copy and deliver a Resale Certificate and accompanying information and any update to the Resale Certificate. The fees for any Resale Certificates and any updates to a Resale Certificate which has to change are supported by the lien created there. The original transfer fee is \$100.00 per certificate.

7.02 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

7.03 Regular, Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Restrictions, including but not limited to the cost of all roadway, median strip and right-of-way maintenance, the cost of enforcing the Restrictions, shortage of revenue from the previous year and a reasonable provision for contingencies and appropriate replacement reserves,

less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the majority vote of the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Individual Assessment, the Association, by and through a majority vote of its Board, may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. The initial Annual Assessment shall be Three Hundred Fifty Dollars (\$350.00) per year. No assessment shall be made on any lot owned by the Developer.

7.04 Special Assessments. In addition to the regular annual Assessments provided for above, the Association may, by vote of the membership, levy Special Assessments from time to time, for the purpose of paying for the costs of capital improvements in the common areas that are incurred or will be incurred by the Association during the fiscal year. A Special Assessment may be assessed before or after the Association incurs the capital improvement costs.

A) By Vote At Meeting of Members. Special Assessments may only be voted on at a meeting of Members if at least ten percent (10%) of the total votes entitled to be cast at a meeting of Members is present in person or by proxy (hereinafter referred to as "Quorum") and can only be approved by a majority vote of the Quorum.

B) By Vote Without A Meeting of Members. Special Assessments may also be approved without a meeting of Members, but only by the affirmative written consent of at least fifty-one percent (51%) of the total membership. Consent to levy the Special Assessment without a meeting must be in writing, dated, signed by the Member and delivered back to the Association within sixty (60) days from the date the consent form was originally delivered to the Member. Delivery of the Consent Form to the Member may be by deposit in the United States mail with postage paid in an envelope addressed to the Member at the Member's address as it appears on the ownership or membership records of the Association or on the date the Consent Form is transmitted by electronic message to the Member's electronic message address provided by the Member, or to which the Member consents, for the purpose of receiving notice of meetings. The Consent Form shall include a place for the Member to date and sign the consent and a description of and purpose of the Special Assessment.

7.05 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such assessments. Except as otherwise provided in Section 7.01(A) hereof, no Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from due date thereof (or if there is no such highest rate, then at the rate of 1½% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

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

## ARTICLE VIII EASEMENTS

8.01 Reserved Easements. All dedications, limitations, restrictions and reservations shown on any plat covering all or any portion of the Property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Developer prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of developer conveying any part of the Property. Developer reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently and economically developing and marketing the Property. Further, Developer reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone, and drainage), in favor of, any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of seven and one-half feet (7 1/2') on each side of such Lot line.

8.02 Installation and Maintenance. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plan. Within these easements, if any, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction of or impede the flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all Improvements in such area shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. Neither Developer nor any utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

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

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

8.05 Encroachment Easement. If any Improvement erected or reconstructed by Developer, a builder or by an Owner, with the approval of the Architectural Committee, shall encroach on the Lot of the adjoining Owner, the latter grants to the Owner of the Improvement an easement permitting the persistence of such encroachment.

8.06 Blanket Easement. An easement is hereby retained in favor of the Association over all Lots and the Common Area for the purpose of enforcing the Restrictions in accordance with Section 5.04(E) hereof, and for the construction of a common cable television system, a common sprinkler system, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the Common Areas to effectuate the foregoing purposes shall not be deemed a trespass.

## ARTICLE IX MISCELLANEOUS

9.01 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2042, unless amended as herein provided. After December 31, 2042, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended as provided



in Section 9.03 below or terminated by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots within the Property then subject to this Declaration, filed of record in the Official Records of Brazos County, Texas.

9.02 Dissolution. Upon termination of this Declaration in accordance with Section 9.01 above, the Association shall be dissolved. In the event of any such dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those of the Association with respect to the Common Areas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

9.03 Amendment.

A) By Developer. This Declaration may be amended by the Developer, acting alone, until Developer no longer owns any portion of the Property. No amendment by Developer shall be effective until there has been recorded in the Official Records of Brazos County, Texas, an instrument executed and acknowledged by Developer and setting forth the amendment.

B) By Owners. In addition to the method in Section 9.03(A), after Developer no longer owns any portion of the Property, this Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least fifty-one percent (51%) of the number of votes entitled to be cast pursuant to Section 5.03 hereof.

9.04 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally, by mail or by electronic message.

A) If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

B) If delivery is made by electronic message, it shall be deemed delivered when the electronic message is transmitted to an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice.

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

9.06 Exemption of Developer. Notwithstanding any provision in this Declaration to the contrary, neither Developer nor any of Developer's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Developer

to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of Improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property.

9.07 Assignment of Developer. Notwithstanding any provision in this Declaration to the contrary, Developer may assign, in whole or in part, any of its privileges, exemptions; rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

9.08 Enforcement and Non-waiver.

A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Developer, and/or Board shall have the right to enforce any and all of the provisions of the Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

B) Non-waiver. The failure to enforce any provision of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

C) Liens. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

9.09 Construction.

A) Restrictions Severable. The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.

C) Captions. All captions and titles used in this Declaration are intended solely for convenience or reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles.

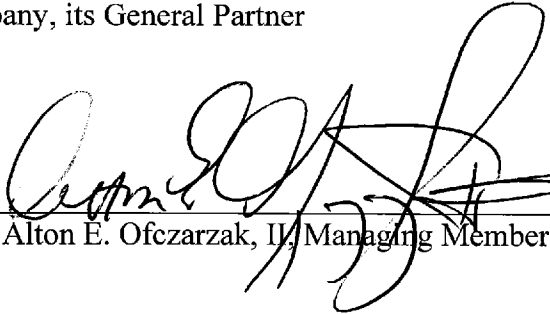
D) Deadlines on Business Day. If any deadline in this Declaration should fall on a Saturday, Sunday or a Texas or Federal Holiday, such deadline shall automatically be extended to the next business day.

E) Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, Developer has executed this Declaration as of this the 21<sup>st</sup> day of September, 2021.

TDG MANAGEMENT, L.P., a Texas limited partnership

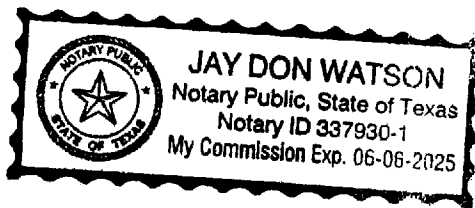
By: TDG MANAGER, L.L.C., a Texas limited liability company, its General Partner

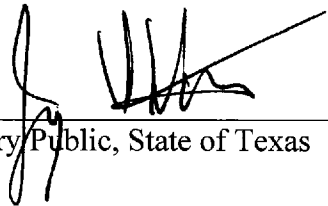
By:   
Alton E. Ofczarzak, II, Managing Member

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on this 21<sup>st</sup> day of September, 2021 by Alton E. Ofczarzak, II, Managing Member of TDG Manager, L.L.C., a Texas limited liability company, acting in its capacity as General Partner of TDG Management, L.P., a Texas limited partnership, on behalf of said partnership.



  
Notary Public, State of Texas

**Brazos County  
Karen McQueen  
County Clerk**

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**Instrument Number:** 1446747  
Volume : 17369  
ERecordings - Real Property

Recorded On: September 21, 2021 01:11 PM

Number of Pages: 28

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**" Examined and Charged as Follows: "**

Total Recording: \$134.00

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**\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\***

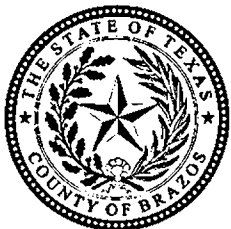
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 1446747  
Receipt Number: 20210921000068  
Recorded Date/Time: September 21, 2021 01:11 PM  
User: Susie C  
Station: CCLERK09

**Record and Return To:**

Simplifile  
5072 NORTH 300 WEST  
PROVO UT 84604



STATE OF TEXAS  
COUNTY OF BRAZOS

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Public Records of Brazos County, Texas.

Karen McQueen  
County Clerk  
Brazos County, TX