



inure to the benefit of each owner thereof and the CANYON GATE AT THE BRAZOS ASSOCIATION, INC.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to CANYON GATE AT THE BRAZOS OWNERS ASSOCIATION, INC., a Texas non-profit corporation, and its successors and assigns. The Association has the power to collect and disburse those maintenance assessments as described in Article IV.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to: (a) that certain real property first hereinabove described, and (b) such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Subdivision" shall mean and refer to CANYON GATE AT THE BRAZOS and any additional Sections which may hereafter be brought within the scheme of this Declaration pursuant to the provisions set forth herein and hereafter brought within the jurisdiction of the Association.

Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties, with the exception of property designated hereon as "Private Streets", "Reserves", "Common Area", or "Recreational Facilities", if any.

Section 6. "Common Area" shall mean all property owned by or under the jurisdiction of the Association for the common use and benefit of the owners, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof, and/or by virtue of the Subdivision Plat, and/or by virtue of prior grants or dedications. References herein to the "Common Area" shall mean and refer to Common Area as defined respectively in this Declaration and all supplemental Declarations.

"Common Area" shall also mean and refer to all existing and subsequently provided improvements upon or within the Common Area, except those as may be expressly excluded herein. Common Area may include, but not necessarily be limited to, the following: structures for recreation,

swimming pools, playgrounds, structures for storage or protection of equipment, fountains, statuary, sidewalks, gates, streets, fences, landscaping, and other similar and appurtenant improvements.

Section 7. "Developer" shall mean and refer to not only LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., but also to each of its successors or assigns (whether immediate or remote), as successor developer of all or a substantial portion of the Lots in the undeveloped state, but shall not include any purchaser of one (1) or more developed Lots. For the purposes of this Declaration, "developed Lot" shall mean a Lot with the street on which it faces opened and improved and with utilities installed and ready to furnish utility service to such Lot, and "undeveloped Lot" is any Lot which is not a developed Lot.

Section 8. "Architectural Control Committee" shall mean and refer to the CANYON GATE AT THE BRAZOS Architectural Control Committee or any person or persons to whom the Architectural Control Committee delegates such responsibility provided for in Article II hereof.

Section 9. "Reserve(s)" shall mean any property in the subdivision owned by the Developer or the Association, which is designated for Recreation Area or Common Area or Greenspace/Landscaping/Subdivision identification signage.

Section 10. "Private Streets" shall mean any street, drive or right of way owned by the Developer or the Association and used for ingress and egress into and/or around the subdivision.

Section 11. "Builder" shall mean any person, firm or entity which owns a developed lot for the purpose of constructing a new dwelling for resale to the public.

Section 12. "Landscape Maintenance Association" or "LMA" shall mean that entity established to landscape and maintain landscaping on public and private boulevards, streets, esplanades, Reserves, recreational areas and entries in the subdivision and neighboring subdivisions.

## ARTICLE II

### ARCHITECTURAL CONTROL

Section 1. Architectural Control. Any construction plans, detailed specifications, survey (or original plat plan) for any of the following must be submitted to and approved in writing by the Architectural Control Committee, or its duly authorized representative: the erection of any buildings or improvements of any character; changes to the exterior of any improvement on any Lot which would modify the design, color, materials, or size; any change to the exterior of any Lot which would include additions, remodeling, renovations and redecorations; and any substantial change in landscaping or irrigation after original construction. All construction shall be in accordance with CANYON GATE AT BRAZOS design guidelines and this Declaration.

The Architectural Control Committee shall initially be comprised of three (3) members. The initial members of the Architectural Control Committee shall be appointed by LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., and DEVTEX LAND, L.P. If the Association Board of Directors becomes responsible for Architectural Control, the entire Board of Directors shall comprise the Architectural Control Committee. If there exists at any time one (1) or more vacancies in the Architectural Control Committee, the remaining member or members of such Committee may designate successor member(s) to fill such vacancy or vacancies provided that LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., and DEVTEX LAND, L.P. may, from time to time, without liability of any character for so doing, remove and replace any such members of the Architectural Control Committee as it may in its sole discretion determine. The Architectural Control Committee and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. The Association shall indemnify and hold the members of the Architectural Control Committee harmless for any claims and shall insure them under the Association Directors' and Officers' Liability insurance policy. In the event the Committee fails to indicate its approval or disapproval within forty five (45) days after the receipt of the required documents, approval, shall not be required and the related covenants set out herein shall be deemed to have been fully satisfied. Approval by Architectural Control Committee shall not apply to any request which would (1) violate any setback or easement set out in this Declaration or recorded Plat, or (2) violate any express provision of this Declaration, and such requests shall be deemed to be automatically disapproved without the specific approval of the Architectural Control Committee. LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C. and DEVTEX LAND, L.P. hereby retain their rights to assign modification requests, duties, powers and responsibilities of the Architectural Control Committee to the Association when one hundred (100%) percent of all Lots in CANYON GATE AT THE BRAZOS are occupied by residents, and the term "Architectural Control Committee" herein shall include the Association, as such assignee. The Developer shall retain architectural control rights to all new construction until all lots have completed construction and have been sold to Owners; thereafter, all Committee functions shall belong to the Board of Directors of the Association.

Anything contained in this paragraph or elsewhere in this Declaration to the contrary notwithstanding, the Architectural Control Committee, and its duly authorized representatives, are hereby authorized and empowered, at its sole and absolute discretion, to make and permit reasonable modifications of and deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Subdivision Lot and of the size and location of any such building or

improvement when, in the sole and final judgment and opinion of the Architectural Control Committee, or its duly authorized representatives, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as a whole.

The Architectural Control Committee may require the submission to it of such documents and items (including as examples, but without limitation, written request for and description of the construction modification or variance requested, plans, specifications, plot plans, surveys, and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for an approval, modification, or a variance. If the Architectural Control Committee shall approve such request, the Architectural Control Committee may evidence such approval, and grant its permission, only by written instrument, addressed to the Owner of the Lot(s), expressing the decision of the Architectural Control Committee describing (when applicable) the conditions on which the application has been approved (including as examples, but without limitation, the type of alternate materials to be permitted, and alternate fence height approved, or specifying the location, plans and specifications applicable to an approved out building), and signed by a majority of the then members of the Architectural Control Committee (or by its duly authorized representative).

Any request for a variance from the express provisions of this Declaration shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from the Architectural Control Committee; or (b) failure by the Architectural Control Committee to respond to the request for variance. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning, and/or the term of the Architectural Control Committee shall have expired, and the Board of Directors of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this Declaration shall be permitted because it is the intention of LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., and DEVTEX LAND, L.P. that no variances be available except at the discretion of the Architectural Control Committee, or if it shall have succeeded to the authority of the Architectural Control Committee in the manner provided herein, the Board of Directors of the Association. The Architectural Control Committee shall have no authority to approve any variance except as expressly provided in this Declaration.

Section 2. Minimum Construction Standards. The Architectural Control Committee may from time to time promulgate an outline of the minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline, and the Architectural Control Committee shall not be bound thereby.

Section 3. No Liability. Neither the Architectural Control Committee or the Association, nor the respective agents, employees and architects of each, shall be liable to any Owner or any other party for any loss, claim or demand asserted on account of the administration of this Declaration or the performance of the duties hereunder, or any failure or defect in such administration and performance. This Declaration can be altered or amended only as provided herein and no person is authorized to grant exceptions or make representations contrary to the intent of this Declaration. No approval of plans and specifications and no publication of minimum construction standards shall ever be construed as representing that such plans, specifications or standards will, if followed, result in a properly designed residential structure. Such approvals and standards shall in no event be construed as representing or guaranteeing any residence will be built in a good, workmanlike manner. The approval or lack of disapproval by the Architectural Control Committee shall not be deemed to constitute any warranty or representation by the Architectural Control Committee including, without limitation, any warranty or representation relating to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations. The acceptance of a deed to a residential Lot by the Owner in the Subdivision shall be deemed a covenant and agreement on the part of the Owner, and the Owner's heirs, successors and assigns, that the Board of Directors of the Association, as well as their agents, employees and architects, shall have no liability under this Declaration except for willful misdeeds.

Section 4. Single Family Residential Construction. No building shall be erected, altered or permitted to remain on any Lot other than one (1) detached single-family residential dwelling not to exceed two and one-half (2-1/2) stories in height, with a private garage for not more than three (3) cars and bona fide servants' quarters, which structures shall not exceed the main dwelling in height and which structures may be occupied only by (i) a member of the family occupying the main residence on the building site or (ii) domestic servants employed on the premise. No room(s) in the dwelling and no space in any other structure shall be let or rented. This shall not preclude the main residential structure from being leased or rented in its entirety as a single residence to one (1) family or person.

Section 5. Minimum Square Footage within Improvements. The living area on the ground floor of the main residential structure for a one-story dwelling (exclusive of porches, garages and servants' quarters) shall be not less than fourteen hundred (1,400) square feet for one-story dwellings. The total living area of the main residential structure for a multi-story dwelling shall be not less than sixteen hundred (1,600) square feet in Section Four (4). The Architectural Control Committee, at its sole discretion, is hereby permitted to approve deviations in any building area herein prescribed in instances which in its sole judgment such deviation would result in a more

common beneficial use. Such approvals must be granted in writing and, when given will become, part of this Declaration to the extent of the particular lot involved.

**Section 6. Exterior Materials.** The exterior materials of the main residential structure and any attached garage and servants' quarters shall be not less than sixty percent (60%) brick on the ground floor, with the remainder being either brick, masonry or "hardiplank" siding, unless otherwise approved by the Architectural Control Committee.

**Section 7. New Construction Only.** Because it is the intention that only new construction shall be placed and erected on the Lots, no building of any kind (with the exception of lawn storage or children's playhouses) shall ever be moved onto any Lot within said Subdivision, except with the prior written consent of the Architectural Control Committee.

**Section 8. Roofs and Roofing Materials.** The roofs of all buildings on the property shall be constructed or covered with asphalt on fiberglass architectural composition shingles, with a minimum manufacturer guarantee of twenty-five (25) years, which shingles shall have weatherwood color. The color of any replacement shingles, if the original color shall become unavailable, shall be subject to written approval by the Architectural Control Committee prior to installation.

The roofs of all buildings shall contain a roof pitch of not less than five inches (5") per each lateral twelve inches (12") of roof. Roofs on attached porches may have a lesser pitch as may be determined by the Architectural Control Committee.

**Section 9. Location of the Improvements Upon the Lot.** No building, structure, or other improvements shall be located on any Lot nearer to the front Lot line or nearer to the street sideline than the minimum building setback line shown on the recorded plat. No building, structure, or other improvement shall be located on any Lot nearer than ten feet (10') to any side street line. No building shall be located nearer than five feet (5') to any interior Lot line, except for detached garages which may be located three feet (3') from side lot line. No Lot adjacent to any Reserve shall have any improvements within twenty feet (20') of the rear property line. For the purposes of this covenant or restriction, eaves, steps and unroofed/unwalled and unfenced terraces shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot.

**Section 10. Composite Building Site.** Any Owner of one (1) or more adjoining Lots (or portions thereof) may consolidate such Lots or portions into one single-family residence building site, with the privilege of placing or constructing improvements on such site, in which case setback lines shall be measured from the resulting side property lines rather than from the Lot lines shown on the recorded plat. Any such proposed composite building site(s) and the improvements thereon must be approved by the Architectural Control Committee.

**Section 11. Utility Easements.** Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded plat, and no structure of any land shall be erected upon any of said easements. Utility easements are for the distribution of electrical, telephone, gas and cable television service. In some instances, sanitary sewer lines are also placed within the utility easement. Utility easements are typically located along the rear Lot line, although selected Lots may contain a side Lot utility easement for the purpose of completing circuits or distribution systems. Both the recorded subdivision plat and the individual Lot survey should be consulted to determine the size and location of utility easements on a specified lot.

Interior Lots typically contain a utility easement along the rear line. Perimeter Lots or Lots that back up to drainage facilities, pipeline easements, property boundaries and non-residential tracts typically contain a utility easement. Encroachment of structures upon the utility easement is prohibited.

Neither LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C. and DEVTEX LAND, L.P. nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants to shrubbery, trees, flowers or improvements of the owner located on the land within or affected by said easements.

**Section 12. Garages.** No garage shall ever be changed, altered or otherwise converted for any purpose inconsistent with the housing of a minimum of two (2) automobiles at all times. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

When a Lot sides onto a neighborhood entry street or collector/hoop street, driveways and garages are to be placed near the property line farthest from the entry street.

Detached garages are not permitted on Lots that back onto a Reserve.

When the side of a Lot is exposed to a Reserve, a detached garage may be allowed provided that the garage is on the side of the Lot opposite the Reserve.

Lots that back onto or have a side exposed to a Reserve may have detached garages positioned on either side of the Lot.

On corner Lots, detached and attached garages may not face the side street and must be placed on the opposite Lot side from the side street.

**Section 13. Sidewalks.** Before the dwelling house is completed and occupied, the Lot Builder shall construct a concrete sidewalk four feet (4') in width parallel to the street curb two inches (2") back from the property lines of the Lot into the street right-of-way and/or to street curbs in the case of corner Lots. Builders on corner Lots shall install such a sidewalk both parallel to the front Lot line and parallel to the side street Lot Line. Such sidewalks shall comply with all federal,

state and county regulations respecting construction and/or specifications, if any. Locations of sidewalks are not to be varied except when required to avoid existing trees.

**Section 13A. Street Trees.** Street trees shall be planted and maintained in the green space located between the back of the curb and the sidewalk on all Lots. Street trees shall be only Live Oak variety and shall be planted with a minimum two inch (2") trunk calliper.

One (1) street tree per lot per sidewalk shall be planted on Lots having street frontage of sixty five feet (65') or less and two (2) street trees per sidewalk side shall be planted on Lots having frontage more than sixty (65) feet. Lots shall have street trees on all sides with sidewalks. Street trees shall be situated so as not to obstruct vision at street corners and intersections.

The street trees requirement shall be in addition to, and not a substitute for, yard tree requirements set out elsewhere in this Declaration.

Street trees shall be planted by the builder before any house is sold to an Owner and thereafter shall be maintained by the Owner of the Lot.

**Section 14. Housing Plan and Elevation Repetition.** The following three scenarios represent CANYON GATE AT THE BRAZOS's guidelines for determining when a plan and elevation can be repeated within a subdivision:

- (1) When building the same plan, different elevation, on the same side of the street, two (2) full Lots must be skipped;
- (2) When building same plan, different elevation, on both sides of the street, two (2) full Lots must be skipped;
- (3) When building the same plan, same elevation, on the same side of the street or on both sides of the street, four (4) full Lots must be skipped.

**Section 15. Lot Coverage.** Total Lot coverage of buildings, driveways, walks and other structures shall not exceed sixty percent (60%) of the total Lot area for standard single-family residential developments. Pools, spas and decks are not considered structures for the purpose of calculating the Lot coverage.

**Section 16. Landscaping.** The residential Lot builder is responsible for landscaping all front yards, including (i) the portion of the street right-of-way between the property line and the street curb and (ii) the rear yards of Reserve Lots. Installation of all landscaping must occur immediately upon occupancy of the house or within thirty (30) days after completion of construction, whichever occurs first. Installation of landscaping, including materials and workmanship, must be in conformance with acceptable industry standards.

**FRONT YARDS - ALL LOTS**

Minimum planting bed specifications include:

- a. Minimum planting bed width of five feet (5') from the house foundation. Curvilinear planting beds are encouraged;
- b. Shrubs are to be planted in a pleasing, organized design; and
- c. The number of plants utilized shall be appropriate for the size of the planting bed. A maximum of seven (7) different species of planting may be utilized within a front yard.

Planting bed edging is not required, but is encouraged to maintain and define the shape of planting beds. Loose brick, plastic, concrete scallop, corrugated aluminum, wire, picket, vertical timbers and railroad ties are not in character with the desired landscape effect and are prohibited. Acceptable edging is reyerson steel, brick set in mortar, horizontal timber (2 inches by 4 inches, 2 inches by 6 inches, 4 inches by 4 inches, and 4 inches by 6 inches), stone laid horizontally and continuous, and concrete bands.

All planting beds are to be mulched with shredded pine bark or shredded hardwood.

The use of gravel or rock in front yard planting beds is prohibited, except as a border when set in and laid horizontally as quarried or utilized for drainage purposes. Specimen boulders are permitted.

Tree stakes must be made of wood, two inches (2") in diameter by six feet (6') long. The front lawn of each completed residence shall be completely sodded with St. Augustine grass or any hybrid thereof. Seeding and/or sprigging is prohibited.

All landscaping is required to be maintained in a healthy and attractive appearance. Proper maintenance includes:

- a. Adequate irrigation, automatic irrigation systems are encouraged;
- b. Appropriate fertilization;
- c. Pruning;
- d. Mowing;
- e. Weed control in lawns and planting beds;
- f. Seasonal mulching of planting beds;
- g. Insect and disease control;
- h. Replacement of diseased or dead plant materials; and
- i. Warranty of all planting materials.

In addition to the standard front yard landscaping requirements, the Lot types listed below require the following minimum landscape material and trees:

LOTS 65' WIDE AND UNDER

A minimum of two (2) trees must be planted in the front yard, if there are not at least two (2) existing trees in the front yard after lot clearing and construction has been completed. This rule shall not apply to street trees. One tree must have a minimum six inch (6") caliper when measured six inches (6") above grade and the other tree must have a minimum four inch (4") caliper. Minimum tree height for the four inch caliper tree is ten feet (10'), and minimum for the six inch caliper tree is fifteen feet (15').

Trees must be planted in an informal manner with one (1) tree on every other Lot, planted within twelve feet (12') of the back of curb, to promote a street tree program. The same number of tree species and the tree planting plan should not be repeated on adjacent Lots.

Shrubs shall include a minimum of ten (10) large species (minimum five (5) gallon), fifteen (15) small species (minimum of one (1) gallon) and two (2) fifteen (15) gallon species.

#### LOTS OVER 65' WIDE

A minimum of three (3) trees must be planted in the front yards. One (1) of the three (3) trees must be a pine. One (1) tree must be a minimum six inch (6") caliper when measured six inches (6") above grade, and the remaining two (2) trees must be four inches (4") in caliper. Minimum tree height for the four inch (4") caliper tree is ten feet (10'), and for the six inch (6") caliper tree is fifteen feet (15').

Trees must be planted in an informal manner, although one (1) tree (either pine or hardwood) must be located within twelve (12) feet of the back of curb to promote a street tree program. The same number of tree species and the tree planting plan should not be repeated on adjacent Lots.

Front yard planting shall consist of a minimum of twenty (20) larger species (five (5) gallon), twenty-five (25) gallon, smaller (one (1) gallon), and two (2) fifteen (15) gallon species.

#### CORNER LOTS

Supplemental landscaping specifications for all corner Lots include the following:

Three (3) trees selected from the front yard trees are to be planted along the side street portion of corner Lots, if there are not at least three (3) existing trees on side of the lot after lot clearing and construction has been completed.

Two (2) of the trees must be a minimum of six inches (6") in caliper, and the remaining tree must be a minimum four inch (4") caliper, measured as noted above.

A minimum of two (2) pines is required.

The three (3) trees are to be planted informally and not aligned in a straight row.

#### MASTER PLANT LIST

The Architectural Control Committee will establish a Master Plant List to be used by builders and owners.

A Plot plan showing all fence locations, all required trees with size, location, and species noted shall be submitted on the Architectural Control Plot plan submitted for all Lots before installation.

**Section 17. Underground Electric Service.** An underground electric distribution system will be installed in that part of CANYON GATE AT THE BRAZOS designated "Underground Residential Subdivision," which underground service area shall embrace all Lots in CANYON GATE AT THE BRAZOS. The Owner of each Lot in the Underground Residential Subdivision shall at his own cost, furnish, install, own and maintain (all in accordance with the requirement of local governing authorities and the National Electrical Code [N.E.C.]) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each such Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 110/220 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Underground Residential Subdivision at no cost to Developer (except for certain conduits, where applicable) upon Developer's representation that the Underground Residential Subdivision is being developed for single-family dwellings of the usual and customary type, constructed upon the premises, designed to be permanently located upon the Lot where originally constructed and built for sale to bona fide purchasers (such category of dwelling expressly excludes, without limitation, mobile homes and duplexes). Therefore, should the plans of Lot Owners in the Underground Residential Subdivision be changed so that dwellings of a different type will be permitted in such Subdivision, the company shall not be obligated to provide electric service to a Lot where a dwelling of a different type is located unless (a) Developer has paid to the company (1) an amount representing the excess in cost, for the entire Underground Residential Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision, or (b) the Owner of such Lot, or the applicant for service, shall pay to the electric company for the additional service, it having been agreed that such amount reasonably represents

the excess in cost of the underground distribution system to serve such Lot, plus (2) the cost of rearranging and adding any electric facilities serving such Lot, which rearrangement and/or addition is determined by the company to be necessary.

**Section 18. Structured In-House Wiring.** Each house built in the subdivision shall include among its components structured in-house wiring and cabling to support multiple telephone lines, internet/modem connections, satellite and cable TV service and in-house local area networks. In each home, a central location or Main Distribution Facility (MDF) must be identified to which ALL wiring must be run. The MDF is the location where all wiring is terminated and interconnected, and where the electrical controllers, shall be mounted.

The MDF will be the central location for all wiring of all types including security, data, video, and telephone wiring. The wiring room must be a clean interior space, preferably temperature controlled and secure. The components must be installed only in a dim location as described in the N.E.C.

The following are acceptable locations:

- (1) A dedicated wiring closet (ideal installation);
- (2) A storage closet (if appropriate space is available);
- (3) A utility room which is considered dry as described in the N.E.C.

DO NOT install the components in a garage, crawl space, or exterior enclosure. These are not approved installation locations. DO NOT install the components in a fire rated wall.

The volume and ventilation characteristics of the MDF must allow for 70W heat dissipation without exceeding the ambient temperature and humidity requirements.

The specific requirements, specifications, and locations for each MDF shall be subject to Architectural Control Committee approval in each case. The Architectural Control Committee may promulgate rules and/or specifications for the MDFs.

**Section 18A. BULK COMMUNICATION SERVICES.** IN THE SOLE DISCRETION OF THE DEVELOPER, AS LONG AS DEVELOPER IS IN CONTROL, AND THEREAFTER, IN THE SOLE DISCRETION OF THE BOARD OF DIRECTORS, THE ASSOCIATION SHALL HAVE THE EXCLUSIVE RIGHT AND OPTION TO PROVIDE AND BILL EACH LOT OWNER FOR THE FOLLOWING COMMUNICATION SERVICES EITHER INDIVIDUALLY OR IN BUNDLED PACKAGES:

- a. TELEPHONE SERVICES (LOCAL AND LONG DISTANCE)
- b. CLOSED CIRCUIT TELEVISION
- c. CABLE TELEVISION
- d. SATELLITE TELEVISION

- e. INTERNET CONNECTION
- f. COMMUNITY INTERNET
- g. FIRE OR BURGLAR ALARM MONITORING
- h. ON DEMAND VIDEO
- i. VOICE MAIL

THESE SERVICES SHALL BE BILLED IN ACCORDANCE WITH ARTICLE VI, SECTION 7b.

Section 19. Grading and Drainage. Each Lot shall be graded so that storm water will drain to the abutting street(s) and not across adjacent Lots. Minimum grade shall meet Federal Housing Administration ("FHA") requirements. Exceptions will be made in those instances when existing topography dictates an alternate Lot grading plan. The Architectural Control Committee must approve all exceptions.

Section 20. Driveways. The builder is required to build driveways into the street right-of-way. All driveway locations must be approved by the Architectural Control Committee. To the extent possible, driveways are to be de-emphasized, highlighting instead the landscape and pedestrian environment.

Concrete driveways are to be a minimum four inches (4") thick over a sand base. A #6, six inch (6") by six inch (6") inch woven wire mesh shall be installed within the "drive-in" portion of the driveway between the curb and sidewalk. County specifications regarding driveway cuts and curb returns at driveway openings shall be adhered to.

Driveways may be paved with concrete or unit masonry, although use of materials should be consistent with the architectural character of the entire neighborhood. The use of stamped or colored concrete, interlocking pavers, brick pavers and brick borders are encouraged, but must be approved by the Architectural Control Committee. Asphalt paving is prohibited.

Driveways should not be constructed over inlets or manholes. In instances when this is unavoidable, compliance with county regulations, which may require inlet adjustment and/or elevation, will be necessary.

Driveways shall be located no closer than two feet (2') from the side property line.

Driveways serving residences with attached side or rear loaded garages and/or detached garages shall be a minimum of ten feet (10') in width.

Driveways serving attached two car garages facing the street shall be eighteen feet (18') in width.

Driveway slopes should be uniform with smooth transitions between areas of varying pitch.

The use of circular drives is discouraged and will only be allowed by the Architectural Control Committee in instances when the width of the Lot is sufficient to accommodate such driveways while leaving a significant amount of green space. Under no circumstances may an entire front yard be paved as a driveway.

Section 21. Outdoor Lighting. All outdoor lighting must conform to the following standards and be approved by the Architectural Control Committee.

Floodlighting fixtures shall be attached to the house or an architectural extension.

Floodlighting shall not illuminate areas beyond the limits of the property line.

Ornamental or accent lighting is allowed, but should be used in moderation and compliment the associated architectural elements.

Moonlighting or uplighting of trees is allowed, but the light source must be hidden.

Colored lenses on low voltage lights, colored light bulbs, fluorescent and neon lighting is prohibited.

Mercury vapor security lights, when the fixture is visible from public view or from other Lots, is prohibited. Mercury vapor lights, when used for special landscape lighting affect (such as hung in trees as up and down lights) is permissible.

Section 22. Screening. Mechanical and electrical devices, garbage containers and other similar objects (i) visible from a public street, Reserves, or common area, or (ii) located on property boundaries, must be screened from view by either fences, walls, plantings, or a combination thereof. Screening with plants is to be accomplished with initial installation, not assumed growth at maturity.

Section 23. Walls, Fences and Hedges. No wall, fence or hedge shall be erected or maintained nearer to the front Lot line than ten feet (10') behind the front building line on such Lot, nor on corner Lots nearer to the side Lot line than the property line parallel to the side street. No side or rear fence, wall or hedge shall be more than six feet (6') in height from the FHA Grading Plan for the Lot, except for entry and Reserve fences erected by the Developer or the Association which may be eight feet (8') in height. All fences must be constructed of concrete or masonry. No chain link fence type construction will be permitted on any Lot. Any wall, fence or hedge, except for entry area walls, and Reserve fences erected on a Lot by LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C, and DEVTEX LAND, L.P. or its assigns, shall pass ownership with title to the Lot and it shall be owner's responsibility to maintain said wall, fence or hedge thereafter. Association owned fences may sit on the lot line or boundary of a Lot and Common Area or easements.

All fences and walls adjacent to any Reserve or entry gate shall be entirely of Association, designated masonry/brick construction. The (i) brick or masonry color, manufacturer,

and type, (ii) column design, and (iii) fence specifications shall be promulgated by rules set by the Architectural Control Committee.

**Section 24. Fences on Reserve Lots.** Fences are to be constructed and maintained on all Reserve Lots. The fences shall enclose the rear Lot yard and/or side Lot and shall be built on the property line as otherwise herein required. These fences shall be four feet (4'): ornamental iron fences set on a two foot (2') high concrete panel at the base, for a total fence height of six (6) feet, or a masonry or brick wall as specified by the Developer. The Lots required to have such walls are as listed on Exhibit "C" hereto.

**Section 25. Lot Privacy Fences.** Six foot (6') high wood fences shall be installed between all Lots and enclosing the rear yard on all Lots, except where Association boulevard wall(s) have been constructed or where this Declaration require a different fence material. Wood fences shall be constructed "good neighbor style", (alternating panels) using six foot (6') notched cedar pickets with a minimum of two (2) rails of two inch (2") treated wood posts at a maximum spacing of eight feet (8') on center. All wood fences shall be constructed using galvanized nails, four (4) per picket minimum. Wood fences that face any street shall have all pickets facing the street. The Architectural Control Committee may specify that wood fences facing a street or any type of Reserve be stained a particular color, and/or treated with a wood preservation coating.

All wood fences shall be subject to Architectural Control Committee approval prior to construction.

**Section 26. Fence Maintenance.** All fences (except masonry boulevard fences and the subdivision entry walls and fences, and as specifically required elsewhere, herein to be maintained by the Association) shall be maintained in good condition at all times by the Owner of the Lot. For the purpose of maintenance and replacement, the Association is granted an easement over and access to any lot upon which a fence owned by the Association is constructed.

### **ARTICLE III**

#### **USE RESTRICTIONS**

**Section 1. Prohibition of Offensive Activities.** No activity which is not related to single family residential purposes, whether for profit or not, shall be carried on any Lot. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be, or may become, an annoyance or a nuisance to the neighborhood. No loud noises or noxious odors shall be permitted on the Property, and the Board of Directors shall have the right to determine if any such noise, odor or activity constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other

than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Lot Owner in the Property, shall be located, used or placed on any portion of the Property or exposed to the view of other Lot Owners without the prior written approval of the Board. No television, sound or amplification system or other such equipment shall be operated at a level that can be heard outside of the building in which it is housed. This restriction is waived in regard to the normal sales activities required to sell homes in the subdivision and the lighting effects utilized to display the model homes.

**Section 2. Use of Temporary Structures or Outbuildings.** No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding, shall be maintained or used on any Lot at any time as a residence, or for any other purpose, with the exception of lawn storage or children's playhouses which have received the prior written approval of the Architectural Control Committee, except that sales trailers and construction trailers are permitted during the initial construction phase and sales phase of the Subdivision development.

Provided the express written consent of the Architectural Control Committee is secured prior to installation and placement on a Lot, one (1) lawn storage building and/or one (1) children's playhouse, each limited in maximum height to eight feet (8') from ground to highest point of structure and not exceeding one hundred (100) square feet at its base, may be placed on a Lot behind the main residential structure. In no case can the outbuilding be placed in a utility easement; within five feet (5') of side property line; or within ten feet of the back property line. Additionally, no outbuilding structure of any type is permitted unless the specific Lot involved is completely enclosed by fencing. Otherwise, no outbuilding or temporary structure of any kind shall ever be moved onto or erected on any Lot. It is intended hereby that, unless otherwise specifically approved, only new construction shall be placed and erected on any Lot within the Property.

**Section 3. Automobiles, Boats, Trailers, Recreational Vehicles and Other Vehicles.** No motor vehicle may be parked or stored on any part of any Lot, easement, street right-of-way or common area or in the street adjacent to any Lot, easement, right-of-way or common area unless:

- a. Such vehicle does not exceed either six feet six inches (6' 6") in height, and/or seven feet six inches (7' 6") in width, and/or twenty-one feet (21') in length; and
- b. Such vehicle is concealed from public view inside a garage or other approved enclosure (on the Owner's Lot).

Only passenger automobiles, passenger vans (the term "passenger vans" specifically excludes motor homes and recreation vehicles), motorcycles, pick-up trucks, or pick-up trucks with attached bed covers are permitted that are

- (i) in operating condition,
- (ii) have current license plates and inspection stickers,
- (iii) are in daily use as motor vehicles on the streets and highways of the State of Texas and,
- (iv) which do not exceed either six feet six inches (6' 6") in height, and/or seven feet six inches (7' 6") in width, and/or twenty-one feet (21') in length.

No non-motorized vehicle, trailer, boat, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement, street right-of-way, or common area or in the street adjacent to such Lot, easement, street right-of-way, or common area unless such object is concealed from public view inside a garage or other approved enclosure (on the owner's Lot). The phrase "approved enclosure" as used in this paragraph shall mean any fence, structure or other improvement approved by the Architectural Control Committee. No one shall park, store or keep within or adjoining the Property any large commercial-type vehicle (including, without limitation, any dump truck, cement-mixer truck, oil or gas truck, delivery truck, tractor or tractor trailer, and any other vehicle equipment, mobile or otherwise, deemed to be a nuisance by the Board), or any recreational vehicle (including, without limitation, any camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle deemed to be a nuisance by the Board).

No one shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any street, driveway, Lot or portion of the Common Area, except for repairs to the personal vehicles of the residents conducted exclusively in their respective enclosed garages, and provided such personal vehicle repairs do not cause excessive noise or disturb the neighbors at unreasonable hours of the night.

This restriction shall not apply to any vehicle, machinery, or maintenance equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity.

No vehicle shall be parked on streets or driveways so as to obstruct ingress or egress by other owners, their families, guests and invitees or the general public using the streets for ingress and egress in the Subdivision. The Board of Directors may designate areas as fire zones, no parking zones or guest parking only zones. The Association shall have the authority to tow any vehicle

parked or situated in violation of this Declaration or Association Rules, which cost shall be at the vehicle owner's expense.

No motor bikes, motorcycles, motor scooters, "go-carts" or other similar vehicles shall be permitted to be operated in the Subdivision, if, in the sole judgment of the Board of Directors of the Association, such operation, by reason of noise or fumes emitted or by reason of manner of use, shall constitute a nuisance or jeopardize the safety of any Owner, the tenants, and their families. The Board of Directors of the Association may adopt rules for the regulation of the admission and parking of vehicles within the subdivision, the Common Areas, and adjacent street right-of-ways, including the assessment of charges to Owners who violate, or whose invitees violate, such rules. If a complaint is received about a violation of any part of this section, the Board of Directors of the Association will be the final authority on the handling of the matter.

Section 4. Advertisement and Garage Sales. The Board of Directors of the Association shall have the right to prohibit or to make rules and regulations governing and limiting the advertisement of and holding of garage sales.

Section 5. Air Conditioners. No window or wall type air conditioner shall be installed, erected, placed, or maintained on or in any building without prior written consent of the Architectural Control Committee.

Section 6. Window and Door Coverings. No aluminum foil or other reflective material shall be used or placed over doors or on windows.

Section 7. Unsightly Objects. No unsightly objects which might reasonably be considered to give annoyance to neighbors of ordinary sensibility shall be placed or allowed to remain on any yard, street or driveway. The Association shall have the sole and exclusive discretion to determine what constitutes an unsightly object.

Section 8. Pools and Playground Equipment. No above ground pools are permitted at all on any Lots. Playhouse or fort-style structures or pool ancillary structures are limited to a maximum overall height of eight feet (8) and an above ground grade deck maximum height of forty-two inches (42"). The intent of this provision is to offer optimum private enjoyment of adjacent properties. Additionally, playground equipment of any type or amenity structures of any type are permitted only when the specific Lot involved is completely enclosed by fences.

Section 9. Mineral Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot or Common Areas, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot or Common Area. No derrick or other structures designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or Common Area.

Section 10. Animal Husbandry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No Owner shall allow any pets to become a nuisance by virtue of noise, odor, dangerous proclivities, excessive pet debris or unreasonable numbers of animals. If common household pets are kept, they must be confined to a fenced backyard (such fence shall encompass the entire backyard) or within the house. When away from Lot, pets must be on a leash at all times. It is the pet owner's responsibility to keep the Lot clean and free of pet debris and to keep pets from making noise which disturbs neighbors. Pet owners shall not permit their pets to defecate on other owners' Lots, on the Common Areas, recreational areas or on the streets, curbs, or sidewalks.

Section 11. Visual Obstruction at the Intersection of Public Streets. No object or thing which obstructs site lines at elevations between two feet (2') and six feet (6') above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty five feet (25") from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner Lots.

Section 12. Lot and Building Maintenance. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereof cut in a sanitary, healthful and attractive manner, edge curbs that run along the property lines, and shall in no event use a Lot for storage of materials and equipment except for normal residential requirements or incident to construction of any improvements thereon as herein permitted. All fences and buildings (including but not limited to the main residence and garage, if any, which have been erected on any Lot) shall be maintained in good repair and condition by Owner, and Owner shall promptly repair or replace the same in the event of partial or total destruction or ordinary deterioration, wear and tear. Each Owner shall maintain in good condition and repair all structures on the Lot including, but not limited to, all windows, doors, garage doors, roofs, siding, brickwork, stucco, masonry, concrete, driveways and walks, fences, trim, plumbing, gas and electrical. By way of example, not of limitation, wood rot, damaged brick, fading, peeling or aged paint or stain, mildew, broken doors or windows, and rotting or falling fences shall be considered violations of these Declarations, which the owner of a Lot shall repair or replace upon Association demand. The drying of clothes, within public view is prohibited. All walks, driveways, carports and other areas shall be kept clean and free of debris, oil or other unsightly matter. The Board of Directors shall be the final authority of the need for maintenance or repair.

No Lot shall be used or maintained as a dumping ground for rubbish or trash, nor will the accumulation of garbage, trash or rubbish of any kind thereon be permitted. Trash, garbage or

other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Containers for the storage of trash, garbage and other waste materials must be stored out of public view, except on trash collection days when they may be placed at the curb not earlier than 6:00 p.m. of the night prior to the day of scheduled collections. No Lot shall be used or maintained as a dumping ground for the burning of trash, garbage, leaves, grass or anything else will not be permitted. Equipment for storage or disposal of such waste materials shall be kept in a clean and sanitary condition and shall be stored out of public view.

New building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time so long as the construction progresses without undue delay and until the completion of the improvements, after which time such materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

In the event of default on the part of the Owner or Occupant of any Lot in observing the above requirements or any of them, such default continuing after the Association has served ten (10) days written notice thereof, which notice shall be placed in the U.S. Mail without the requirement of certification, then the Association, by and through its duly authorized agent may, without liability to the Owner or Occupant in trespass or otherwise, enter upon said Lot and cut the weeds and grass, edge the lawn around the curb, cause to be removed garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration so as to place said Lot in a neat, attractive, healthful and sanitary condition. The Association may charge the Owner or Occupant of such Lot for the cost of such work. The Owner or Occupant, as the case may be, agrees by the purchase or occupancy of a Lot to pay for such work immediately upon receipt of a statement thereof. In the event of failure by the Owner or Occupant to pay such statement within fifteen (15) days from the date mailed, the amount thereof may be added to the annual maintenance charge provided for herein, and the collection of such additional maintenance charge shall be governed by Article VI of this Declaration.

Section 13. Signs, Advertisements, Billboards. Except for signs owned by builders advertising their model homes during the period of original construction and home sales, no sign, poster, advertisement, billboard or advertising structure of any kind other than a normal "For Sale" sign, which shall not exceed five (5) square feet in total size, may be erected or maintained on any Lot in said Subdivision. Owner shall also have the right to maintain on their Lot not more than two (2) signs not to exceed five (5) square feet each advertising a political candidate in any local, state, or federal election. These political advertisement signs may be maintained for three (3) weeks prior to the election and must be removed within two (2) days after the election. The Association shall

have the right to remove any sign, advertisement, billboard, or advertising structure that does not comply with the above and, in so doing, shall not be subject to any liability of trespass or other tort in the connection therewith or arising with such removal.

**Section 14. No Business or Commercial Use.**

a. Subject to the provisions of this Declaration and the Association By-Laws, no part of the Property may be used for purposes other than single family residential housing and the related common purposes for which the Property was designed. Each Lot and structure shall be used for single family residential purposes or such other uses permitted by this Declaration and for no other purposes. No Lot or structure shall be used or occupied for any business, commercial, trade or professional purpose (or as a church) either apart from, or in connection with, the use thereof as a residence, whether for profit or not. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit an Owner from:

- (1) Maintaining a personal professional library;
- (2) Keeping personal business or professional records or accounts; or
- (3) Handling personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions, provided that such permitted use does not attract business traffic or invitees to the residence or allow business employees to work at the residence.

**Section 15. Holiday Decorations.** Exterior Thanksgiving decorations may be installed November 10 of each year and must be removed by December 1 of each year. Exterior Christmas decorations may be installed the day after Thanksgiving each year and must be removed by January 5 of the new year. Easter and Halloween decorations may be installed three (3) weeks prior to and must be removed by one (1) week after each respective holiday. Holiday decorations shall not be so excessive as to cause a nuisance to neighboring homes. The Board of Directors shall have the sole and absolute authority to decide if holiday decorations are causing a nuisance.

**Section 16. Visual Screening on Lots.** The drying of clothes in public view is prohibited, and the Owner or occupant of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen clothes from public view. Similarly, all yard equipment, woodpiles or storage piles shall be kept screened by a service yard or other similar facility so as to conceal them from view of neighboring Lots, streets or other property.

**Section 17. Dishes and Antennae.** No electronic antenna or device of any type other than an antenna or dish for receiving normal television or satellite signals shall be erected, constructed, placed or permitted to remain on any Lot, houses or buildings. Television antennae must be located to the rear of the roof ridge line, gable or center line of the principal dwelling. Freestanding antennae and dishes must be located behind the rear wall of the main residential structure and dishes shall not be larger than one (1) meter in diameter. No antennae, either freestanding or attached, (i) shall be permitted to extend more than five feet (5) above the roof of the main residential structure on the Lot or (ii) shall be erected on a wooden pole. No dish shall be permitted to extend above the roof of the main residential structure on the Lot. These rules are subject to variance by the Architectural Control Committee, provided that any variance granted provides for screening deemed sufficient by the Architectural Control Committee to insure that no such antennae or dish shall be visible from the street which runs in front of said Lot or the street which runs on the side of any corner Lot. All satellite dish regulations shall be subject to the Federal Telecommunications Act, the regulations of the Federal Communications Commission and all revisions or Amendments thereto.

**Section 18. Roads.** All roads and esplanades within the Subdivision are private roads and esplanades and shall be maintained and regulated by the Association. The Association shall have the right to establish rules and regulations concerning all such streets and roads including, but not limited to, speed limits, curb parking, fire lanes, alleys, stop signs, traffic directional signals and signs, speed bumps, crosswalks, traffic directional flow, striping, signage, curb requirements, and other matters regarding the roads, streets, curbs, esplanades and their usage by Lot owners, guests, and invitees.

**Section 19. Firearms.** The discharge of firearms within the Properties is prohibited. The terms "firearms" includes B-B guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

**Section 20. On-Site Fuel Storage.** No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties except that up to five (5) gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment and that the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

**Section 21. Drainage and Septic Systems.** Basins and drainage areas are for the purposes of natural flow of water only, and no obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swages, storm sewers, or storm drains. Declarant hereby reserves for itself and the

Association a perpetual easement across the Properties for the purpose of altering drainage and water flow, provided that the exercise of such easement shall not materially diminish the value or interfere with the use of any adjacent property without the consent of the Owner thereof. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited within the Properties. No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any drainage ditch, storm sewer or storm drain within the Properties.

#### **ARTICLE IV**

#### **CANYON GATE AT THE BRAZOS OWNERS ASSOCIATION, INC.**

**Section 1. Purpose.** The purpose of the CANYON GATE AT THE BRAZOS Owners Association, Inc. shall be to provide for maintenance, preservation and architectural control of the residential Lots within its subdivision, the private streets, and the Common Area, if any.

**Section 2. Membership and Voting Rights.** Every owner of a Lot in Canyon Gate whose Lot is subject to a maintenance charge assessment by the Association shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership.

**Section 3. Non-Profit Corporation.** CANYON GATE AT THE BRAZOS OWNERS Association, Inc, a non-profit corporation, has been duly organized, and it shall be governed by the Articles of Incorporation of said Association, and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

**Section 4. By-Laws.** The Association may make whatever rules or by-laws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof.

**Section 5. Ownership Information.** The property owner is required at all times to provide the Association with written notice of proper mailing information should it differ from the property address relative to ownership. Further, when an alternate address exists, Owner is required to render notice of tenant, if any, or agency, if any, involved in the management of said property. The Owner is required and obligated to maintain current information with the Association or its designated management company at all times.

**Section 6. Inspection of Records.** The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours for proper purposes, in accordance with the requirements of the Texas Non-Profit Corporation Act.

## ARTICLE V

### MEMBERSHIP AND VOTING RIGHTS FOR CANYON GATE AT THE BRAZOS OWNERS ASSOCIATION, INC.

**Section 1. Assessment.** Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2. Voting Clauses.** The Association shall have No classes of voting membership;

**Class A.** Class A members shall be all Owners, with the exception of LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., and DEVTEX LAND, L.P., and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot holders of future interests not entitled to present possession shall not be considered as Owners for the purposes of voting hereunder.

**Class B.** The Class B member(s) shall be LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., and DEVTEX LAND, L.P. or their successors or assigns and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership (including duly annexed areas).
- (2) on January 1, 2027.

## ARTICLE VI

### MAINTENANCE ASSESSMENTS

**Section 1. The Maintenance Fund.** All funds collected as hereinafter provided, for the benefit of the Association from the regular and/or special maintenance charges or for capital

improvements, shall constitute and be known as the "Maintenance Fund". The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance and acquisition of Common Areas, reserves, the storm water detention area/easement and Private Streets. The responsibilities of the Association may include, by way of example, but without limitation, at its sole discretion, any and all of the following: maintaining, repairing or replacing parkways, streets, curbs, perimeter fences, and esplanades; maintaining, repairing or replacing of the walkways, steps, entry gates, or fountain areas; landscaping, if any; maintaining rights-of-way, easements, esplanades and other public areas, if any; construction, installation, and operation of street lights; the expense of purchasing and/or operating recreation areas, pools, playgrounds, clubhouses, tennis courts, jogging tracks and parks, if any; collecting garbage; insecticide services; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the Properties to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; contracting for policemen and watchmen; CPAs and property management firms, attorneys, porters, lifeguards, or any type of service deemed necessary or advisable by the Association; caring for vacant Lots and doing any other thing necessary or desirable in the opinion of the Association to keep the properties in the subdivision neat and orderly, or to which is considered of general benefit to the Owners or occupants of the Properties. It is understood that the judgment of the Association, when deciding the expenditure of said funds, shall be final and conclusive so long as such judgment is exercised in good faith.

The Board of Directors shall also prepare annually a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual base assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments.

**Section 2. Entry and Boulevard Landscape Maintenance.** All landscaping installed in the following areas is not part of the area to be maintained by the LMA and shall be maintained by the Association:

- (1) Subdivision Designation sign areas.
- (2) Entry Gate and Fences.
- (3) Boulevard Street Landscaping.

- (4) Boulevard Median landscaping.
- (5) Recreation facility areas.

The mandatory landscaping shall include maintenance and replacement of all:

- (1) Trees
- (2) Shrubs
- (3) Grass
- (4) Seasonal planting of flowers
- (5) Signage
- (6) Mulch, fertilizer and weed control
- (7) Landscape design elements such as borders
- (8) Irrigation systems
- (9) Water usage of Irrigation systems
- (10) Mowing
- (11) Insect and disease control

The Association shall not have the authority to remove the landscaping and shall not or fail to maintain such landscaping in a healthy and attractive condition.

**Section 3. Creation of the Lien Personal Obligation of Assessments.** Each Lot in the Properties is hereby subjected to the annual maintenance charges as set out in Section 1, Subparagraphs (a) and (b), and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) maintenance assessments or charges; (2) special assessments to be established and collected as hereinafter provided; and (3) any chargeback for costs, fees, expenses, attorneys' fees or other charges incurred by the Association in connection with enforcement of this Declaration, the Association By-Laws, or Rules and Regulations. The maintenance assessments and special assessments and chargebacks, together with the interests, costs, late charges, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which such assessments are made. All such assessments as to a particular property, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by such successor.

**Section 4. Assessments.** The maintenance assessments shall be paid by the Owner(s) of each Lot in the Association in annual installments. The annual periods for which maintenance charges shall be levied shall be January 1 through December 31, with payment being due by January

1 of each year. The rate at which each Lot shall be assessed as to the maintenance assessment shall be determined annually, shall be billed in advance, shall be due and payable in advance and may be adjusted from year to year by the Board of Directors of the Association as the needs of the subdivision may, in the judgment of the Board of Directors of the Association, require; provided, however, that such assessments shall be uniform. The Association's assessments, annual and special herein above-described, may be increased by majority vote of its members at a meeting duly called for that purpose.

Section 5. Maximum Annual Assessment. Until January 1, 2001, the maximum annual Association maintenance assessment shall be SIX HUNDRED DOLLARS (\$600.00) per Lot per annum. From and after January 1, 2001, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership. The Association may, at its discretion, accumulate and assess the increase in a later year. The maximum annual assessment may be increased above the twenty percent (20%) increase described above only by approval of two-thirds (2/3) of each class of the Members in the Association present and voting in person or by proxy, at a meeting duly called for this purpose at which a quorum is present. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

Section 5A. Transfer Fees. The Association may charge a fee for transfer of ownership of a lot. The fee shall be set by the Board of Directors, but shall not exceed one third (1/3) of the Annual Assessment

Section 5B. Adopt a School Program. In addition to the annual and special assessments required to be paid by an Owner, each purchaser of a lot upon acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association upon the transfer of title of a lot to the purchaser: (a) upon first transfer of a Lot from a builder to a purchaser, a \$50.00 contribution by the builder/seller and an additional \$50.00 contribution by the purchaser; and (b) on subsequent transfers, the purchasers shall pay a contribution equal to one tenth (1/10) of the annual assessment for each lot purchased. The transfer assessments received by the Association under this section shall be held in a separate account and shall be used by the Association to foster support for local school programs and activities or for such other similar purpose as the Board in its absolute discretion may approve. This fee is in addition to the transfer fee imposed by Section 4 above.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to the current year only for the purpose of defraying, in whole or in part, the cost of any construction,

reconstruction, repair or replacement of a capital improvement upon the Common Areas, streets, curbs, storm sewers, sidewalks, and recreational facilities, including fixtures and personal property related thereto, or for any other purpose approved by the membership, provided any such assessment shall have the approval of two-thirds (2/3) of the votes of those members of each class who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present.

Section 7. Notice and Quorum. Written notice of any membership meeting called for the purpose of increasing the cap or raising any annual or special assessment shall be mailed (by U.S. first class mail) to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting, the presence of members or of proxies entitled to cast at least two thirds (2/3) of all the votes of each class of membership shall constitute a quorum.

Section 8. Rate of Assessment. All developed Lots in CANYON GATE AT THE BRAZOS shall commence to bear their applicable maintenance fund assessment simultaneously and Lots in CANYON GATE AT THE BRAZOS, owned by LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., and DEVTEX LAND, L.P. are not exempt from assessment. Lots which are occupied by residents shall be subject to the annual assessment determined by the Board of Directors in accordance with the provisions hereof. Developed Lots in CANYON GATE AT THE BRAZOS which are not occupied by a resident and which are owned by LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., and DEVTEX LAND, L.P. shall be assessed at one-quarter (1/4) of the annual assessment for a period limited to two (2) years from that date when a Lot is considered "developed" and thereafter shall be assessed the full assessment. Developed Lots owned by a builder or a building company for the business purpose of constructing a residential dwelling on the Lot for resale shall be assessed at the rate of one-half (1/2) of the annual assessment above for a period limited to one (1) year from the date the Lot is considered "Developed" or from the date the Lot was purchased from LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C, and DEVTEX LAND, L.P., whichever is later, and thereafter shall be assessed the full assessment. The rate of assessment for an individual Lot, within a calendar year, can change as the character of ownership and the status of occupancy by a resident changes, and the applicable assessment for such Lot shall be prorated according to the rate required during each type of ownership.

Section 9. Effect of Nonpayment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum. The Association may in addition charge a late charge for assessments paid more than fifteen (15) days after the due date. The Association may bring an action at law against the owner personally obligated to pay same or foreclose the liens against the property. Interest, costs, late charges and

attorneys' fees incurred in any such collection action shall be added to the amount of such assessment or charge. An owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association and its agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for enforcement of such liens, including, specifically, non judicial foreclosure pursuant to Article 51.002 of the Texas Property Code (or any amendment or successor statute), and each such owner expressly grants to the association a Power of Sale in connection with said lien.

The association shall have the right and power to appoint a Trustee to act for and in behalf of the Association to enforce the lien. The lien provided for in this Section shall be in favor of the Association for the benefit of all Lot owners. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Harris County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Article 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Harris County, Texas.

Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and, third, the remaining balance, if any, shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder. The Association shall also have the right to maintain a deficiency suit in the event the sale proceeds are less than the amount of assessments, interest, late fees, attorneys' fees, and costs incurred by or owed to the Association.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through the Board, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the right of such nonpaying Owner to use the Common Areas, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such Owner so long as such default exists.

It is the intent of the provisions of this Section to comply with the provisions of said Article 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or Vice President of the Association, acting without joinder of any other Owner, mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Harris County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No owner may waive or otherwise escape liability for the assessments provided herein by the non-use of the facilities or services provided by the Association or by abandonment of his Lot.

**Section 10. Subordination of the Lien to Mortgages.** To secure the payment of the Maintenance Fund all annual and special assessments established hereby and to be levied on individual residential Lots, there is hereby reserved in each Deed (whether specifically stated therein or not) a Vendor's Lien and a Contract Lien for benefit of the Association, said liens to be enforceable as set forth in Article VI hereof by the Association on behalf of such beneficiary; provided, however, that each such lien shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the request of the Owner of any such Lot to secure the payment of monies advanced on account of the purchase price and/or the construction of improvements on any such Lot to the extent of any such maintenance fund charge or annual or special assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further provided that as a condition precedent to any proceeding by the Association to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer.

Mortgages are not required to collect assessments.

Failure to pay assessments does not constitute a default under an insured mortgage.

**Section 11. Date of Commencement of Annual Assessments Due Dates.** The annual assessments provided for herein shall commence as to all developed Lots in CANYON GATE AT

THE BRAZOS on the first day the first lot is sold to a builder or July 1, 2000 whichever is later. The annual assessment shall be adjusted according to the number of months remaining in the then current calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed (by U.S. First Class Mail to every Owner subject thereto. The payment dates shall be established by the Board of Directors. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

## ARTICLE VII

### LANDSCAPE MAINTENANCE ASSOCIATION

Section 1. General. Every Owner, by acceptance of the deed to a Lot within the subdivision, acknowledges that such Lot is subject to the Landscape Restrictions of the LMA ("Landscape Restrictions") recorded in the real estate records of Harris County, Texas, in addition to this Declaration.

Section 2. Jurisdiction and Cooperation. Each Owner shall be a member of the LMA and shall have all of the rights and obligations conferred and imposed upon it pursuant to the Landscape Restrictions, LMA By-Laws and the Articles of Incorporation, including the obligation to pay a portion of the common expenses of the LMA through the budget of the CANYON GATE AT THE BRAZOS Owners Association, Inc. The Association shall cooperate with the LMA in performing its responsibilities under this Declaration and the Landscape Restrictions.

Section 3. Association to Pay Fees. The Association shall pay the LMA Assessment fees and shall include the amount of such fees in its annual budget.

Section 4. Easements to LMA. The officers, agents, employees, and contractors of the LMA shall have a non-exclusive easement over and upon the Common Areas for the purpose of performing and satisfying the LMA's duties and obligations as set forth in the Landscape Restrictions.

Section 5. Amendment. No Amendment to this Declaration which materially affects the rights or interests of the LMA shall be valid or effective unless approved in writing by the Board of Directors of the LMA.

**Section 6. Superiority of Landscape Restrictions.** The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of the Landscape Restrictions; provided, however, in the event of conflict between or among the provisions of this Declaration, the By-Laws, Articles of Incorporation, or rules and regulations of the Association and the Landscape Restrictions, LMA By-Laws, or the Articles of Incorporation of the LMA, the latter shall control. The foregoing priorities shall not prevent enforcement by the Association of provisions or rules which are more restrictive than those contained in the Landscape.

## **ARTICLE VIII**

### **SUBDIVISION ACCESS**

The Subdivision shall at all times maintain a limited/controlled access entry and shall not open any free access roads or paths into the Subdivision unless mandated by state, county, or municipal laws.

The Association shall at all times maintain an access control station and limited access gate system at the Subdivision main access. The Developer or Board of Directors shall have the right to relocate the gates or control station at any time. The remainder of the Subdivision shall be surrounded by perimeter masonry or wood fences at least at least six feet (6) in height which shall be constructed by the builder during the construction phase of any dwelling on a Lot and shall be maintained by the Owner of the Lot, which walls shall be maintained by the Association.

The subdivision shall not be fully surrounded by perimeter fencing until all perimeter Lots are sold and residential dwellings constructed on them.

After at least eighty percent (80%) of the Lots in the Subdivision are sold and occupied by a resident, the Access Control Station shall be manned twenty-four (24) hours per day, seven (7) days per week by an individual with the following qualifications:

1. Off duty police officers of a local municipality; or
2. A contract Deputy Sheriff of Harris County, Texas; or
3. A contract Deputy Constable of Harris County, Texas; or
4. A guard service licensed by the State of Texas to perform such services; or
5. Peace Officers licensed by the State of Texas to perform such services

The Access Control Station shall be manned twelve (12) hours per day seven (7) days per week after sixty percent (60%) of the Lots in the Subdivision are sold and occupied by a resident. Prior to sixty percent (60%) of the Lots in the Subdivision being sold, the hours and days of the Access Control Station operation shall be determined solely by the developer.

The Access Control Station, access gates, and manpower shall be paid for by the Association out of assessments revenue. Gate access cards, EZ Tags, remotes, or other automatic gate devices shall be paid for by each Lot Owner, at a rate determined by the Board of Directors.

The Association may require all owners and their family members, tenants, and other permanent residents to main in identification stickers on each of their vehicles.

Each Owner shall provide the Association with their residential and emergency telephone numbers for use at the Access Control Station.

THE GUARDS, PATROLS, MONITORING SERVICES, ACCESS CONTROL GATES AND WALLS ARE PROVIDED AS A COURTESY ONLY AND THEIR EXISTENCE SHALL NOT BE CONSTRUED AS ANY PROMISE, WARRANTY, GUARANTEE OR REPRESENTATION OF ANY TYPE OR NATURE OF THE SECURITY OF THE SUBDIVISION, OR THAT SUCH SERVICE WILL PREVENT, DETER OR OTHERWISE STOP ANY CRIME, VANDALISM, UNAUTHORIZED ACCESS OR OTHER UNWANTED CIRCUMSTANCE OR EVENT.

BY ACCEPTING TITLE TO HIS LOT, EACH OWNER FOR HIMSELF, HIS FAMILY, GUESTS, INVITEES, TENANTS, SUCCESSORS, AND ASSIGNS HEREBY RELEASES THE DEVELOPER, THE ASSOCIATION, THE ASSOCIATION BOARD OF DIRECTORS, ALL MANAGEMENT COMPANIES, ALL GUARD, PATROL, AND MONITORING SERVICES AND ALL BUILDERS OF ANY AND ALL LIABILITY AND ANY AND ALL CLAIMS OF WHATSOEVER NATURE, HOWSOEVER OCCURRING, KNOWN OR UNKNOWN, FORESEEABLE OR UNFORESEEABLE, NEGLIGENCE, GROSS NEGLIGENCE, OR INTENTIONAL CONDUCT, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR DAMAGE, INJURY OR LOSS TO PERSONS OR PROPERTY RESULTING FROM CRIMINAL ACTIVITY, VANDALISM, UNAUTHORIZED ACCESS OR ANY OTHER EVENT GUARDS OR ACCESS CONTROL GATES ARE DESIGNED TO DETER, IT BEING AGREED THAT THE ASSOCIATION AND ITS DEVELOPER AND VENDORS CANNOT PREVENT SUCH OCCURRENCES AND THAT EACH LOT OWNER, THEIR FAMILY, GUESTS, INVITEES, AND TENANTS SHALL BE RESPONSIBLE FOR THEIR OWN SAFETY OF THEIR PROPERTY AND HAS THE OPTION OF OBTAINING THIRD PARTY INSURANCE FOR SAME.

## ARTICLE IX

### INSURANCE AND CASUALTY LOSSES

Section 1.     Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for an insurable improvements to the Common Area. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Association shall have no insurance responsibility for any part of any Lot or private amenity.

The Board shall also obtain a general liability policy covering the Common Areas, insuring the Association and its Members for all damage or injury caused by the negligence of the Association or any person for whose acts the Association is held responsible. The public liability policy shall have at least a one million dollar (\$1,000,000.00) single person limit with respect to bodily injury and property damage, at least a three million dollar (\$3,000,000.00) input per occurrence, if reasonably available, and at least a five hundred thousand dollar (\$500,000.00) minimum property damage limit.

Premiums for all insurance on the Common Areas shall be common expenses, subject to the right of the Association to seek reimbursement for all or a portion of such expenses pursuant to the landscape restrictions or other covenants or agreements relating thereto.

Insurance policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total. All insurance coverage obtained by the Board of Directors shall be governed by the following provisions:

a. All policies shall be written with a company authorized to do business in Texas which holds a Best's rating of "A" or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

b. All policies on the Common Areas shall be for the benefit of the Association and its Members and shall be written in the name of the Association.

c. Exclusive authority to adjust losses under policies obtained on the Common Area shall be vested in the Association's Board of Directors.

d. In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgages.

e. All property insurance policies shall have an inflation guard endorsement, if reasonably available, and, if the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Harris County, Texas area.

f. The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees and manager, the Owner and occupants of Lots and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, invalidated suspended, or subject to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) a statement that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal;

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, and flood insurance, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business

judgment, but, if reasonably available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver or all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

**Section 2. Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry homeowners insurance on the Lot(s) and structures constructed thereon. Each Owner further covenants and agrees that in the event of loss or damage to the structures comprising his Lot, the Owner shall either: (a) proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the Architectural Control Committee; or (b) clear the Lot of all damaged structures, debris and ruins and thereafter maintain the Lot in a neat and attractive landscaped condition consistent with the requirements of the Architectural Control Committee and the Association's Board of Directors.

**Section 3. Damage and Destruction.**

a. Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment or all claims arising under such insurance and obtain reliable and detailed estimates of the cost or repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

b. Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five percent (75%) of the total Class "A" vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however such extension shall not exceed sixty (60) additional days. Except as expressly provided herein, no Mortgagee shall have the right

to participate in the determination of whether the damage or destruction to Common Area or common property of a the Association shall be repaired or reconstructed.

c. In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized then and in that event the affected portion of the Properties shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive landscaped condition.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purposes, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds shall be retained by and for the benefit of the Association.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against the Owners of Lots sufficient to raise the additional funds necessary to restore the Common amenity. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## **ARTICLE X**

### **NO PARTITION**

Except as is permitted in this Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provisions which shall remain in full force and effect.

Section 3. Texas Property Code. The Association shall have all of the rights provided under Texas Property Code Section 204.010 or any amended or successor statute.

Section 4. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas.
- b. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations.
- c. The right of the Association or the Developer to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members.
- d. The right of the Association to collect and disburse those funds as set forth in Article IV.

Section 5. Delegation of Use. Any Owner may delegate in accordance with the By-Laws of the CANYON GATE AT THE BRAZOS OWNERS ASSOCIATION, INC. his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This

Declaration may be amended during the first twenty (20) year period by an instrument signed by those Owners owning not less than seventy five percent (75%) of the Lots within CANYON GATE AT THE BRAZOS, and thereafter by an instrument signed by those Owners owning not less than sixty-seven percent (67%) of the Lots within CANYON GATE AT THE BRAZOS. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Harris County, Texas.

Section 7. Dissolution. If the Association is dissolved, the assets shall be dedicated to a public body, or conveyed to a nonprofit organization with similar purposes.

Section 8. Common Area Mortgages or Conveyance. The common area cannot be mortgaged or conveyed without the consent of seventy five percent (75%) of the Lot owners (excluding the developer).

If the ingress or egress to any residence is through the common area, any conveyance or encumbrance of such area shall be subject to the Lot Owner's easement.

Section 9. Books and Records. The books, records and papers of the Association shall, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation, By-Laws of the Association, and Restrictive Covenants shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost

Section 10. Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 11. Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

Section 12. Lienholder. Lienholder joins herein solely for the purpose of subordinating the Hens held by it of record upon the Properties to the covenants, conditions and restrictions hereby imposed by LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., and DEVTEX LAND, L.P., with, however, the stipulation that such subordination does not extend to any lien or charge imposed by or provided for in this Declaration.

Section 13. Amendment. While the developer is still in control of the association in terms of voting rights, HUD or VA approval is required prior to the following: amendment of the Articles

of Incorporation; annexation of additional properties; mortgaging or dedication of the common area; and dissolution of the Association.

Section 14. Additional Requirements. So long as required by the Federal Home Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or Members representing at least sixty-seven percent (67%) of the total Association vote entitled to be cast thereon consent, the Association shall not:

a. by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

b. change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments annexed or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this declaration.);

c. by act or omission change, waive, or abandon any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Areas (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

d. fail to maintain insurance, as required by this Declaration; or

e. use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property, or to add to reserves.

First Mortgagees may, jointly or singly, after thirty (30) days written notice to the Association, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 15. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any

Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

Section 16. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 17. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 18. Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, By-Laws, or Texas law for any of the acts set out in this Article.

Section 19. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 20. FHA/VA Approval/Annexation. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Federal Housing Administration or the Veterans Administration, if either such agency is insuring or guaranteeing the mortgage on any Lot: (1) annexation of additional property, other than that described on Exhibit "B", (2) dedication of Common Area, (3) mortgaging of Common Area, or (4) material amendment of this Declaration.

ADDITIONAL RESIDENTIAL PROPERTY AND COMMON AREA MAY BE ANNEXED TO THE PROPERTIES OR INCORPORATED INTO THE ASSOCIATION WITH THE CONSENT OF CANYON GATE AT THE BRAZOS OWNERS ASSOCIATION, INC., BOARD OF DIRECTORS OR BY LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., AND DEVTEX LAND, L.P. WITHOUT APPROVAL BY THE MEMBERSHIP.

EXECUTED as of the 4 day of April, 2000.

CORPORATION:

LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., a Nevada limited liability company

By: Courtney P. Grover III  
Courtney P. Grover III, Co-Manager

By: L.T. Management, Inc., Co-Manager

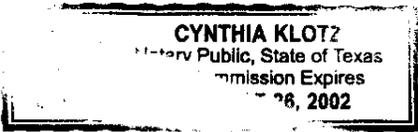
By: Al Brende  
Al Brende, President

STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared COURTNEY P. GROVER III, Co-Manager of LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., a Nevada limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 4 day of April, 2000.

AS PER ORIGINAL



Cynthia Klotz  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

BEFORE ME, the undersigned authority, on this day personally appeared AL BRENDE, President of L.T. MANAGEMENT, INC., Co-Manager of LAND TEJAS DEVELOPMENT AT THE BRAZOS NORTH, L.L.C., a Nevada limited liability company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 4 day of April, 2000.

Cynthia Klotz  
Notary Public, State of Texas



EXECUTED as of the 3 day of April, 2000.

CORPORATION:

DEVTEX LAND, L.P., a Texas limited partnership

By: PNII, Inc., a Nevada corporation, general partner

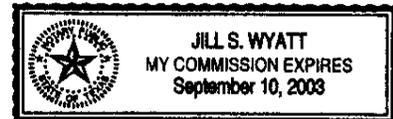
By: Tom Caution  
Name: Tom Caution  
Title: ATTORNEY-IN-FACT

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned authority, on this day personally appeared Tom Caution, Attorney in fact of PNII, Inc., a Nevada corporation, general partner of DEVTEX LAND, L.P., a Texas limited partnership, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation and in the capacity therein stated. therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 3 day of April, 2000.

Jill S. Wyatt  
Notary Public, State of Texas



RET

GARDERE WYNNE SEWELL + Riggs L.L.P  
1000 Louisiana Suite 3400  
Houston, Texas 77002-5007

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

*Dianne Wilson*

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DIANNE WILSON, COUNTY CLERK  
FORT BEND COUNTY, TEXAS