

AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
Carriage Hills

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

WHEREAS Web/Con, Inc., a Texas corporation acting in the capacity of Trustee, hereinafter called the Declarant, was the owner of that real property in Brazos County, Texas, which is more fully described on Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Declarant conveyed the Property subject to certain protective covenants, conditions, restrictions, liens and charges set forth in the Declaration of Covenants, Conditions and Restrictions recorded at Volume ____, Page ____, in the Official Records of Brazos County, Texas; and

WHEREAS, the Owners desire to enact these Amended and Restated Declaration of Covenants, Conditions and Restrictions in order to carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property;

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

ARTICLE 1.
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01 Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements on the Property.

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

1.03 Articles. "Articles" shall mean Articles of Incorporation of Carriage Hills Owners Association, Inc., as that instrument may be amended from time to time, which instrument is or shall be filed in the office of the Secretary of State of the State of Texas.

1.04 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

1.05 Association. "Association" shall mean Carriage Hills Owners Association, Inc., a Texas non-profit corporation, which shall have authority and responsibility for all of the communities and subdivisions of Carriage Hills, as hereafter defined.

1.06 Board. "Board" shall mean the Board of Directors of the Association. Board members may, but need not be Members of the Association.

10.7 Bylaws. "Bylaws" shall mean the Bylaws of the Association as adopted by the Board, and from time to time amended.

1.08 Common Areas. "Common Areas" shall mean any land conveyed, leased, dedicated or assigned by Declarant, or by a third party with the Association's consent, to the Association for maintenance and operation, including, but not limited to, easements, roads, entry ways, roadways, rights-of-way, parkways, median strips, sidewalks, parks, trails, paths, ponds, creeks and lakes within the Property.

1.09 Declarant. "Declarant" shall mean Web/Con, Inc., its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Web/Con, Inc. as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

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

1.11 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

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

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

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

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

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

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

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

1.19 Carriage Hills Residential Restrictions. "Carriage Hills Residential Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Carriage Hills Rules, Architectural Committee Rules and the Articles and Bylaws of the Association as the same are in effect from time to time.

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

ARTICLE 2. DEVELOPMENT OF THE PROPERTY

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

2.02 Addition of Land. Declarant may, at any time and from time to time, add any other lands to the Property, and upon such addition, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as they are with respect to the lands originally covered by this Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a notice of addition of land containing the following provisions:

- (1) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
- (2) A statement that the provisions of this Declaration shall apply to the added land; and
- (3) A legal description of the added land.

2.03 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw areas from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a notice of withdrawal of land containing the following provisions:

- (1) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
- (2) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- (3) A legal description of the withdrawn land.

ARTICLE 3. GENERAL RESTRICTIONS

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

3.01 Construction of Improvements. No Improvements (as defined in Section 1.11) shall hereafter be constructed upon any of the Property without the prior approval of the Architectural Committee.

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

3.03 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the

Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot.

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

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

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

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

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

3.09 Roofing Materials. The surface of all roofs of principal and secondary structures shall be quality composition shingle and shall be of the same color scheme as existing roofs in the subdivision. The Architectural Committee shall have authority to approve other roof treatments and materials when in its determination such treatments and materials in the form utilized will not be a detriment to the quality of the neighborhood.

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

3.11 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for property drainage and approved by the Architectural Committee.

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

3.13 Mining and Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

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

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

3.16 Unsightly Articles: Vehicles; Number of Occupants. No trailer, recreational vehicle, tent, boat, or stripped down, wrecked, junked, or wholly inoperable vehicle shall be kept, parked, stored, or maintained on any portion of the driveway or front yard in front of the building line of the permanent structure, and same shall be kept, parked, stored or maintained on other portions of a Lot only within an enclosed structure or a screened area which prevents the view thereof from adjacent Lots or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. No more than three vehicles may be stored or maintained on any portion of the driveway or front yard in front of the building line of the permanent structure on any Lot, and overnight on street parking shall not be allowed without prior approval from the Association. All occupants of any Improvement except for one (1) shall be related within the second degree of consanguinity or affinity.

3.17 Mobile Homes, Travel Trailers. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than 14 days.

3.18 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than on the Lot of its Owner, except when confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property. No more than four (4) adult dogs and four (4) adult cats may be kept on a single lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances.

3.19 Maintenance of Lawns and Plantings. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. Subject to Section 3.29 below, trees, shrubs, vines and plants that die shall be promptly removed. Declarant, the Association and the Architectural Committee shall have the right at any reasonable time after not less than four (4) days notice to Owner to cure any violation of this provision within such 10-day period, to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, and to charge the cost thereof to the Owner of the Lot as provided in Section 5.04(E) below.

3.20 Construction and Sales Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to

commence Improvements, and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other part of the Property. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction. At such time as the Declarant ceases using any portion of the Property as a model home or sales office, the affected Property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.

3.21 Compliance with Provisions of Carriage Hills Residential Restrictions. Each Owner shall comply strictly with the provisions of the Carriage Hills Residential Restrictions as the same may be amended from time to time. Failure to comply with any of the Carriage Hills Residential Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggrieved Owner. Declarant, for itself, its successors or assigns, reserves the right to enforce these restrictive covenants, though it may have previously sold and conveyed all subdivided Lots controlled by these covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.

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

3.23 Fencing Materials. Subject to review by the Architectural Committee pursuant to Section 6.06, all fences should be built with quality materials and good workmanship substantially similar to the fences constructed in the existing neighborhood. The Architectural Committee shall have authority to approve other types of fences, which it determines, will not be a detriment to the aesthetic quality of the neighborhood.

ARTICLE 4. RESIDENTIAL RESTRICTIONS

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

4.02 Outbuildings. Every outbuilding, inclusive of such structures as a detached garage, storage building or greenhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. All such buildings shall be subject to approval by the Architectural

Committee. In no instance shall an outbuilding, other than a detached garage, exceed one (1) story in height or have total floor area in excess of ten percent (10%) of the floor area of the main dwelling.

4.03 Building Height. No Improvement greater than thirty-two (32) feet in height may be constructed on any Lot without the prior written approval of the Architectural Committee. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

4.04 Building Materials: Dwelling Size. All single family dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows, and similar openings) shall be constructed of at least ninety percent (90%) masonry or other material specifically approved in writing by the Architectural Committee. Masonry includes ceramic tile, brick, rock and all other materials commonly referred to in the Brazos County, Texas area as masonry. Unless an exception is granted by the Architectural Committee, all single family multi-family dwellings shall contain not less than one thousand four hundred (1,400) square feet of enclosed living space, exclusive of porches (open or covered), decks, garages and carports.

4.05 Construction in Place. The use of prefabricated materials, including antique homes moved from other locations, shall be allowed only with the prior written approval of the Architectural Committee.

4.06 Set-back Requirements. No building shall be located or erected nearer to any Lot line bordering a street right-of-way than the building line shown on the recorded plat of the Property subdivision section which includes such Lot. No eave overhang on any building shall be located nearer than five (5) feet to any interior side Lot lines. No building shall be located nearer than twenty (20) feet from any rear Lot line. For purposes of these covenants, the eaves of buildings shall not be deemed to be part of a building or structure, but steps and porches shall be deemed to be a part of a building or structure. This Section shall not be construed to allow any building or structure to encroach upon another Lot.

ARTICLE 5. CARRIAGE HILLS OWNERS ASSOCIATION

5.01 Organization. The Declarant has caused the formation and incorporation of the Association as a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

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

5.03 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of directors to the Board on all other matters to be voted on by the Members shall be calculated as follows: The Owner, whether one or more (including Declarant) of each Lot within the Property shall have one vote for each dwelling unit located on the Lot so owned.

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

- (A) Carriage Hills Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Carriage Hills Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions.
- (B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.
- (C) Records. To keep books and records of the Association's affairs.
- (D) Assessments. To levy Assessments as provided in Article VII below.
- (E) Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency, after ten (10) days written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Carriage Hills Residential Restrictions or for the purpose of erecting, maintaining or repairing any Improvement to conform to the Carriage Hills Residential Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered on and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of an on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Carriage Hills Residential Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Carriage Hills Residential Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.
- (F) Legal and Accounting Services. To retain and pay for Legal and accounting services necessary or proper for the operation of the Association.
- (G) Delegation to Committees. To set up one or more committees as authorized by the Texas Non-Profit Corporation Act, as the same is amended from time to time.
- (H) Employees. To engage such employees as may be reasonably necessary in the management of the Association and the performance of its duties.

5.05 Landscape and Maintenance. The Association shall be authorized to landscape, maintain and repair easements, rights-of-way, common areas, entry ways, sidewalks, paths, trails, detention ponds, lakes, and other areas of the Property, as appropriate.

5.06 Common Areas.

- (A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:
 - (1) To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with any Improvements of any kind or purpose located in said areas; and to accept, own, operate and maintain all other property, real and personal, conveyed or leased to the Association by Declarant; and to maintain in good repair and condition all lands, Improvements, and other Association property owned by or leased to the Association, whether by Declarant or by other Persons.
 - (2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon individual Members of the

Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

- (3) To execute mortgages, both construction and permanent, for construction of Improvements on property owned by or leased to the Association, and to accept lands in Common Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien, as deemed appropriate by borrower, whether Declarant or the Association, on the Improvement to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of Members, or otherwise, or any combination thereof, as may be deemed appropriate by Declarant or the Association, as the case may be, but subject to the limitations imposed by this Declaration.
- (B) In addition to, and not in limitation of, the power and authority of the Association as set forth in Section 5.04 of this Declaration, the Association, acting through the Board, shall have the power and authority:
 - (1) To grant and convey portions of Association property, including fee title, leasehold estates, easements, right-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating or maintaining the following:
 - (a) Parks, parkways or other recreational facilities or structures;
 - (b) Roads, street, walks, driveways, trails and paths;
 - (c) Lines, cables, wires, conduits, pipelines or other means of providing utilities;
 - (d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
 - (e) Any similar public, quasi-public or private Improvements.

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

- (2) To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association.
- (3) To pay for any other services necessary or proper in the performance of Association functions, and to pay for any other taxes or assessments that the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.
- (4) To own and operate any and all types of facilities for both active and passive recreation.
- (5) To construct new Improvements or additions to Association properties, subject to the approval of the Architectural Committee as required in this Declaration.

- (6) To enter into contracts with Declarant and other persons, on such terms and provisions as the Board shall determine, to operate and maintain any of the Common Areas or to provide any service or perform any function on behalf of Declarant or the Association in connection with the purposes of the Association.
- (7) To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.

5.07 Agreement with City of Bryan and County of Brazos. The Declarant, as the agent of the Association, or the Association, may enter into one or more agreements with the City of Bryan or County of Brazos or both, with respect to the landscaping and maintenance of portions of street right of way, or the dedication of any drainage basin, park or other common area within the property for municipal maintenance. The Association shall accept, without further requirement or documentation, said agreement and the requirements and benefits associated therewith, for any agreement reached by the Declarant.

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

ARTICLE 6. ARCHITECTURAL COMMITTEE

6.01 Membership of Architectural Committee. The Architectural Committee shall consist of not more than five (5) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. Voting Members of the Architectural Committee shall be comprised of three (3) current officers of the Association and two (2) non-officer Members of the Association. The Board of Directors of the Association will appoint one of the two non-officers as chair of the Architectural Committee. Each Committee member shall serve a minimum term of one-year. There are no limits on re-election of Committee members to subsequent one-year terms.

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

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

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

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

6.06 Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the

6.12 Failure to Act. In the event the Architectural Committee or its designated representative fails to approve or disapprove any Plans and Specifications within ten (10) days after the same have been submitted to it, complete with all other information requested by the Architectural Committee in connection with such submission, approval shall be assumed.

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

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

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

ARTICLE 7. FUNDS AND ASSESSMENTS

7.01 Assessments.

(A) The Association may from time to time levy Assessments against each Lot whether or not improved. The level of Assessments shall be equal and uniform between all Lots, provided, however, that no Assessments hereunder shall be levied against Declarant.

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

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

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

7.03 Regular Annual Assessments. Prior to the beginning of each calendar year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Carriage Hills Residential Restrictions, including but not limited to the cost of all entry ways, landscaping, greenbelts, common areas, median strip, and right-of-way maintenance, the cost of enforcing the Carriage Hills Residential Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's funds. Assessments sufficient to pay such estimated note expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time levy further Assessments in the same manner as

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aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the calendar year or in such other manner as the Board may designate in its sole and absolute discretion.

7.04 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under the Carriage Hills Residential Restrictions. The amount and due date of any special Assessments shall be at the reasonable discretion of the Board.

7.05 Owner's Personal Obligation for Payment of Assessments; Late fees. The regular and special Assessments provided for herein shall be the personal and individual debt of the owner of the Lot covered by such assessments. Except as otherwise provided in Section 7.01(A) hereof, no Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from due date thereof (or if there is no such highest rate, then at the rate of 1-1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees. For any Assessment not paid by the due date established in Section 7.03 above, the Owner shall be assessed a late fee of \$20.00 which shall be added to the amount of the Assessment due.

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

ARTICLE 8. EASEMENTS

8.01 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently and economically developing and marketing the property.

Further, Declarant reserves the right, without the necessity of the joinder of any owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, common areas, rights-of-way and easements for public utility purposes (including, without limitation, gas, cable, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of seven and one-half (7-1/2) feet on each side of such Lot line.

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

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

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

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

ARTICLE 9. MISCELLANEOUS

9.01 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2023, unless amended as herein provided. After December 31, 2023, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive period of ten (10) years each, unless amended as provided in Section 9.03 below or terminated by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots within the property then subject to this Declaration, filed of record in the Official Records of Brazos County, Texas.

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

assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

9.03 Amendment.

- (A) By Declarant. This Declaration may be amended by the Declarant, acting alone, until December 1, 1995, and thereafter for so long as Declarant holds a majority of the votes of the Association. No amendment by Declarant shall be effective until there has been recorded in the Official Records of Brazos County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the Secretary of the Association, certifying that the Declarant had the requisite number of votes.
- (B) By Owners. In addition to the method in Section 9.03 (A), after December 1, 1995, this Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty percent (60%) of the number of votes entitled to be cast pursuant to Section 5.03 hereof.

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

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

9.06 Enforcement and Nonwaiver.

- (A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce any and all of the provisions of the Carriage Hills Residential Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.
- (B) Nonwaiver. The failure to enforce any provision of the Carriage Hills Residential Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.
- (C) Liens. The Association shall have the right, when appropriate in this judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

9.07 Construction.

- (A) Restrictions Severable. The provisions of the Carriage Hills Residential Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
- (B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.

- (C) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles.
- (D) Deadlines on Business Day. If any deadline in this Declaration should fall on a Saturday, Sunday or a Texas or federal holiday, such deadline shall automatically be extended to the next business day.
- (E) Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

9.08 Certification of Association Officers. The undersigned President and Secretary of the Association hereby certify that these Amended and Restated Declaration of Covenants, Conditions and Restrictions have been approved by Owners entitled to cast at least sixty percent (60%) of the number of votes entitled to be cast pursuant to Section 5.03 of the Declaration of Covenants, Conditions and Restrictions recorded at Volume _____, Page _____, Official Records of Brazos County, Texas.

IN WITNESS WHEREOF, the undersigned officers of the Association have executed this Amended and Restated Declaration as of this _____ day of September, 2001.

CARRIAGE HILLS OWNERS ASSOCIATION

BY: Bill Gutierrez 8/21/02
Bill Gutierrez, President

Attest: Jacob Wilson 8/21/02
Jacob Wilson, Treasurer

STATE OF TEXAS

COUNTY OF BRAZOS

This instrument was acknowledged before me on the 21st day of Aug, 2002 by Bill Gutierrez
Jacob R. Wilson
President and ~~Lawrence Smith~~, Secretary/Treasurer of Carriage Hills Owners Association, Inc., a Texas
corporation, on behalf of said corporation, in the capacity therein stated.

Beatriz D. Green
NOTARY PUBLIC, State of Texas



EXHIBIT "A"
to
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
CARRIAGE HILLS

TRACT ONE:

All that certain lot, tract or parcel of land, more or less, lying and being situated in Brazos County, Texas, and being Lots One (1) through Sixteen (16), inclusive, Block One (1), Lots Nineteen (19) through Twenty-one (21), inclusive, Block Two (2), and Lots One (1) through Three (3), inclusive, Block Three (3), Phase One CARRIAGE HILLS SUBDIVISION, an addition to the City of Bryan, Brazos County, Texas, according to the plat recorded under Brazos County Clerk's File Number 617811, Official Records, Brazos County, Texas, and the streets and common areas within said subdivision indicated on said plat.

TRACT TWO:

All that certain lot, tract or parcel of land, more or less, lying and being situated in Brazos County, Texas, and being Lots Seven (7) through Thirty (30), inclusive, Block One (1), Lots One (1) through Nine (9), inclusive, Block Two (2), and Lots Twelve (12) through Eighteen (18), inclusive, Block Two (2), and Lots Four (4) through Eleven (11), inclusive, Block Three (3), Phase TWO and THREE CARRIAGE HILLS SUBDIVISION, an addition to the City of Bryan, Brazos County, Texas, according to the plat recorded under Brazos County Clerk's File Number 617811, Official Records, Brazos County, Texas, and the streets and common areas within said subdivision indicated on said plat.

Filed for Record in:
BRAZOS COUNTY

On: Aug 21, 2002 at 01:21P

As a
Recordings

Document Number: 00786525

Amount 48.00

Receipt Number - 201151

By,
Mary Garcia

STATE OF TEXAS COUNTY OF

I hereby certify that this instrument was
filed on the date and time stamped hereon by me
and was duly recorded in the volume and page
of the named records of:

BRAZOS COUNTY

as stamped hereon by me.

Aug 21, 2002

HONORABLE KAREN MCQUEEN, COUNTY CLERK
BRAZOS COUNTY

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
CARRIAGE HILLS