

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR STONEBRIER SUBDIVISION, PHASE 1

THIS DECLARATION, made this ____ day of April, 2016, by 1179 JOINT VENTURE, L.P., a Texas limited partnership, hereinafter referred to as "Developer";

WITNESSETH:

WHEREAS, Developer is the Owner of that certain real property (the "Properties") located in the City of Bryan, Brazos County, Texas, known as "Stonebrier Subdivision" as shown on the plat of Stonebrier Subdivision, Phase 1 recorded in Volume 13398, Page 00133 of the Official Records of Brazos County, Texas; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities and for enhancing the desirability and attractiveness of the Properties and for the maintenance of open space and other common facilities, and to this end, desires to subject said Properties to the covenants, restrictions, conditions, easements, charges, and liens, hereinafter set forth, each and all of which is and are for the benefit of said Properties, each of the Owners thereof, and the community; and

WHEREAS, Developer has deemed it desirable to create an association to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants, conditions, and restrictions and collecting and disbursing the assessments and charges as hereinafter created.

WHEREAS, Developer further declares that it desires that the Property, together with other real property in the same general area which may subsequently be purchased, bought or acquired by Developer for a similar purpose, be owned, held, sold, conveyed, transferred, leased, mortgaged, occupied, maintained, altered and improved subject to certain reservations, servitude, restrictions, covenants, charges, liens, easements and conditions as part of a general scheme of development of such property as a balanced, planned community accommodating residential, and other land uses, and pursuant to a common and general plan for the benefit of Developer and subsequent owners and occupants of such property in order to protect and enhance the quality, value and desirability thereof.

NOW, THEREFORE, the Developer hereby declares that the Properties, as shown on the plat of Stonebrier Subdivision, Phase 1, recorded in Volume _____, Page _____ of the Official Records of Brazos County, Texas (hereinafter referred to as the "Plat"), shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the above described Properties, or any part thereof, their heirs, executors, successors, and assigns, and shall insure the benefit of each Owner hereof.

ARTICLE I
DEFINITIONS

1.01. The following words when used in this Declaration or any Supplemental Declaration (Unless the context shall prohibit) shall have the following meanings:

- (a.) "Additional Land" shall mean any real property now or hereafter owned by Developer that is contiguous with or in the general vicinity of the Property, all or any portion of which may from time to time be made subject to this Declaration by Developer pursuant to the provisions of Section 2.02 of this Declaration. Notwithstanding anything contained in this Declaration to the contrary, the provisions of this Declaration shall not constitute an encumbrance upon or restrict the use of any portion of the Additional Land prior to the recording of an amendment to this Declaration by which such portion of the Additional Land is made subject to this Declaration pursuant to the provisions of Section 2.02 of this Declaration.
- (b.) "Annexation" shall mean the act by which Additional Land is made subject to the terms of this Declaration.
- (c.) "Association" shall mean and refer to Stonebrier Homeowners' Association, Inc., its successors and assigns.
- (d.) "Common Areas" shall mean that real property identified on the Plat as Common Areas, and designated as "Common Areas", all of which shall be intended to be devoted to enhancing the value and attractiveness of the Properties and any additional Properties annexed hereto and for the common use and enjoyment of the Owners of the Properties or Owners of any additional land annexed hereto and the Members of the Association.
- (e.) "Construction and Sale Period" shall mean that period of time during which Developer is developing the Properties and selling the same, which time period shall extend from the date hereof until such time as Developer transfers title to all of the Lots.
- (f.) "Dwelling" shall mean or refer to any building or portion thereof which is designed or used exclusively for residential purposes.
- (g.) "Lienholder or Mortgagee" shall mean the holder of a mortgage lien on any Lot or Living Unit of the Properties.
- (h.) "Living Unit" shall mean and refer to any portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.
- (i.) "Lot" shall mean and refer to those certain tracts or parcels of land, being nineteen (19) in number, shown on the Plat and designated with a numerical number thereon. Developer shall be the Owner of all said Lots, save and except only those particular

Lots which Developer conveys in fee simple title by recordable deed from and after the date hereof.

- (j.) "Member" shall mean or refer to all those Owners who are Members of the Association as provided in Article III, Section 3.01, hereof.
- (k.) "Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of the fee simple title to any Lot situated within the Properties but shall not mean or refer to any mortgagee or lienholder unless and until such mortgagee or lienholder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (l.) "Patio Homes" shall mean and refer to any building which is designed and used exclusively for single family residential purposes, which may extend from a side property line of a Lot.
- (m.) "Principal Dwelling or Structure" shall mean and refer to the principal structure or dwelling which fulfills the use and purpose for which the Lot is intended.
- (n.) "Properties" or "Property" shall mean and refer to all that certain real property which is the subject of the Plat.
- (o.) "Supplementary Declaration" shall mean a recordable instrument, complying with the terms of this Declaration, by which Additional Land is annexed into the Subdivision; or by which the covenants, conditions, restrictions of this Declaration are amended as provided for herein; or by which any other legal purpose is accomplished as it relates to the imposition, enforcement or modification of this Declaration.
- (p.) "Structure" shall mean and refer to anything constructed, the use of which requires permanent location on the ground or being attached to something having a permanent location on the ground.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.01. **Existing Property.** The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the City of Bryan, Brazos County, Texas, and is the property the subject of the Plat.

2.02. **Annexation by Supplementary Declaration.** Developer may, but shall in no way be required to, from time to time, within ten (10) years of the date of this Declaration, unilaterally make subject to this Declaration all or any portion of the Additional Land designated by the Developer and specifically made subject to the terms of this Declaration by a Supplementary Declaration filed of record in the Office of the County Clerk of Brazos County, Texas, said Supplementary Declaration to be in conformity with the provisions of this Section 2.02 as set forth below:

- (a) Real Property within the Additional Land shall become part of the Stonebrier Subdivision, effective upon the recording in the Office of the County Clerk of Brazos County, Texas, a Supplementary Declaration meeting the requirements hereinafter set forth.
- (b) A Supplementary Declaration (i) shall be executed and acknowledged by the owner of the Additional Land described therein; (ii) shall, if the Additional Land is not then owned by Developer, contain the executed and acknowledged written consent of the Developer for so long as the Developer owns any property within the Additional Land and has the power to annex additional property into the Stonebrier Subdivision; (iii) shall contain an adequate legal description of such Additional Land; (iv) shall contain a reference to this Declaration (and any amendments thereto) which shall state its date of recording and recording information; (v) shall state the land classification (residential, commercial or other classification) of such Additional Land; (vi) shall contain a statement that such Additional Land is declared to be part of the Stonebrier Subdivision under this Declaration and that such Additional Land shall be subject to this Declaration; and (vii) with respect to the Additional Land, shall describe any additional, supplementary or modified restrictions, covenants, conditions, easements, encumbrances or other matters affecting the Additional Land.
- (c) The Developer may record multiple Supplementary Declarations in compliance with this Section 2.02 for so long as the Developer has authority hereunder to annex Additional Land.
- (d) Notwithstanding any provision of this Declaration, or any Supplementary Declaration to the contrary, the Declarant may provide as a part of any Supplementary Declaration that the Additional Land thereby annexed may be benefitted by improvements, amenities or other common area facilities to the exclusion of the then existing Owners of property in Stonebrier Subdivision; and further, that the Additional Land thereby annexed may be subject to additional or supplementary assessments, charges and fees collected solely for the use and benefit of the Additional Land thereby annexed.
- (e) A Supplementary Declaration may impose upon such Additional Land described therein covenants, conditions, restrictions, limitations, reservations, exceptions and equitable servitude in addition to the provisions set forth in this Declaration, taking into account the unique and particular aspects of the proposed development of such Additional Land; provided, however, unless in compliance with the provisions of this Declaration concerning amendments and modifications, in no event shall any Supplementary Declaration revoke, modify or amend the covenants or restrictions established by this Declaration or any other Supplementary Declaration for any other property then comprising a part of the Stonebrier Subdivision or revoke (so as to terminate) the provisions of the covenants or restrictions established by this Declaration as to such Additional Land.
- (f) A deed by which Developer conveys a Lot, including property comprising Common Area, to another Person, may constitute a Supplementary Declaration if it meets the foregoing requirements, as applicable.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01. **Membership.** Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants herein or any other covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of any obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from any Ownership of any Lot which is subject to assessment by the Association. No Owner shall have more than one (1) membership.

3.02. **Voting Rights.** The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 3.01 with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 3.01. When more than one (1) person hold such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B member(s) shall be the Developer and its successors. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Section 3.01. Provided however, that the Class B Membership shall cease and become converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or
- (b) April ____, 2026.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to the votes as above provided for Class A Members in the Lots in which it holds the interests required for membership under Section 3.01.

At all meetings of the Association, there shall be no cumulative voting.

3.03 **Members' Meeting.**

- (a) There shall be an annual meeting of the Members of the Association. The first meeting will be held on the third Tuesday in April, 2017, and Developer or its' designee will notify all Members at least one (1) week in advance of the exact time and place. Subsequent annual meetings will be determined by the Board of Directors and provided for in the Bylaws.
- (b) The initial Board of Directors shall serve until said annual meeting, at which time a new Board will be elected by a majority vote of Members voting. The Board of Directors will consist of at least three (3) persons and not more than nine (9), as will

be determined by Members voting at the first annual meeting, and subsequently, as will be provided in the Bylaws.

- (c) The Board of Directors shall be responsible for the affairs of the Association and shall adopt such Bylaws and regulations as necessary to carry out its functions, but cannot adopt Bylaws or regulations which are contrary to provisions as set out herein.

3.04. Non-Profit Corporation. Stonebrier Homeowners' Association, Inc. shall be a non-profit corporation, and all duties, obligations, authority, benefits, liens and rights hereunder in favor of the Association shall vest in said Corporation.

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

3.06. 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 the normal business hours.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREAS

4.01. Members' Easements of Enjoyment. Subject to the provisions of Section 4.03 of this Article IV, every member of the Association shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot. This applies to existing Common Areas as herein described in that all the Common Areas are for the use of all Members when and if said land is developed in accordance with the provisions contained herein.

4.02. Title to Common Areas. The Developer may retain the legal title to the Common Areas until such time as it has completed improvements and/or landscaping thereon, if any, and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but not withstanding any provision herein, the Developer hereby covenants for itself, its successors and assigns that it shall convey all right, title and interest it has in the Common Areas to the Association not later than the 1st day of May, 2017. Upon conveyance, the Common Areas shall remain undivided and shall, at all times, be owned by the Association or its successor and assigns.

4.03. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Developer and/or of the Association (in accordance with its Articles and Bylaws) to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said Common Areas; and
- (b) The right of the Association, as provided herein and in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any

assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

- (c) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas and recreational or other facilities located thereon; and
- (d) The right of the Association to limit the number of guests of Members and to limit or prohibit Members who do not occupy dwellings existing on their Lot from using the Common Areas when the same is occupied by tenant or tenants other than the Owner; and
- (e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority, subject to such conditions as may be agreed to by the Members of the Association. No such transfer or dedication shall be effective unless:
 - (i) An instrument of agreement to such dedication or transfer, signed by two-thirds (2/3) of each class of Members entitled to vote is properly recorded in the Official Records of Brazos County, Texas, and
 - (ii) Written notice of proposed action under this provision is sent to every Owner and Lienholder not fewer than fifteen (15) days nor more than sixty (60) days in advance of said action.

4.04 Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants or contract purchasers who reside on the Property. The Owners hereby covenant that any lease executed on a Lot or any Living Unit thereon shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration, rules and regulations applicable to the Property, and the Common Areas and further providing that non-compliance with the terms of the covenants, conditions and restrictions shall be a default thereunder.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

5.01. Creation of the Lien and Personal Obligation for Assessments. The Developer, for each Lot owned by it within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association; (1) annual assessments or charges; and (2) special assessments for capital improvements; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

5.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of; (1) promoting the recreation, health, safety, and welfare of the residents in the Properties; (2) for enhancing the desirability and attractiveness of the Properties; (3) for the improvement and maintenance of Common Areas and for services and facilities relating to the use, benefit and enjoyment thereof; (4) paying a portion of the cost of maintaining the Common Areas of Stonebrier; and (5) if authorized by the Board of Directors of the Association, for the maintenance of any portion of the Properties which has been dedicated to the city or the public. Assessments shall include, but are not limited to, funds to cover the actual cost of operation of the Association; all taxes; management fees, accounting or legal fees; insurance costs; the costs of maintenance, care and improvement of the Common Areas; the care, maintenance and repair of the entranceway to the Stonebrier Subdivision, including the "Stonebrier" entrance sign, the lighting incidental thereto, and the grounds appurtenant thereto, the maintenance, landscaping, improving and care of grounds that are dedicated to the public lying within the Properties and/or Common Areas, drainage lakes, ponds, walkways, or other publicly dedicated easements, rights-of-way or drainageways; and the cost of constructing, maintaining and repairing other facilities and cost of other service activities, including mowing grass, landscaping, and maintaining sprinkler systems, street lighting or other necessary lighting, construction and maintenance of swimming pools, tennis courts, jogging paths, recreational buildings and facilities, and purchasing, operating and paying for equipment, utility charges and for such other things necessary or desirable in the opinion of the Association to keep the Properties and the Common Areas neat and in good order or which, in the opinion of the Association, shall be of general benefit to the Owners and occupants of the Lots and the Properties. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive as long as such judgment is exercised in good faith.

5.03. Basis and Maximum of Annual Assessments.

- (a) Until January 1 of the year immediately following the conveyance of the first Lot within the Properties to an Owner, the Board of Directors of the Association shall fix the annual assessment rate per Lot.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot within the properties to an Owner, the maximum annual assessment may be set effective January 1 of each year, by the Board of Directors of the Association, without a vote of the membership, by an amount not to exceed one hundred twenty (120%) of the budget of the preceding year, provided, however, that the maximum annual assessment may be set effective January 1 of each year in excess of one hundred twenty percent (120%) of the preceding year upon a vote of the Members as hereinafter provided.
- (c) The Board of Directors of the Association may, after consideration of current maintenance costs and further needs of the Association, fix the actual assessment for any period year at a lesser amount.
- (d) For the purpose of figuring the amount of assessment where a single family residential dwelling is constructed on more than one Lot, (as such Lot is shown by recorded plat), then and in that event, such dwelling shall be, for the purpose of

assessment, considered as one Lot, and the Owner of such dwelling shall not be entitled to more than one vote.

5.04. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 4.03 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas, including, but not limited to, jogging paths and other recreational facilities, together with fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

5.05. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 5.03 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 5.03 hereof (prospectively) for any such period provided that the assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

5.06. Quorum for Any Action Authorized Under Section 5.04 and 5.05. The quorum required for any action authorized by Sections 5.04 and 5.05 hereof, shall be as follows:

At the first meeting called, as provided in Section 5.04 and 5.05 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty-seven percent (67%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 5.04 and 5.05 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

5.07. Date of Commencement of Special Assessment.

- (a) As to each Lot owned by any Owner other than Developer, the annual assessment shall commence on the date that such Lot is conveyed by Developer to Owner.
- (b) Any provision contained in this instrument to the contrary notwithstanding, as long as Developer owns any Class B voting rights, as set out in Article III, Section 3.02 herein, Developer shall not be liable for annual or special assessments as set out in Article V, provided however, the Developer shall be responsible for the difference in the cost borne by the Association and the assessments received from the Lot Owners holding Class A votes. Provided further, any Owner who is a bona-fide builder and/or contractor who has purchased five (5) or more Lots from the Developer for purposes of constructing dwellings thereon and selling the same to

subsequent purchasers, shall not be liable for the annual assessments as set out in Section 5.03 of this Article in the event the Developer notifies the Association in writing that said Owner is a bona-fide builder and/or contractor and that the Developer shall continue to be responsible for the difference in the cost borne by the Association and the assessments received from all of the other Lot Owners holding Class A Votes who do not qualify hereunder as a bona-fide builder and/or contractor. Such exemption shall terminate as to any Lot or Lots which said builder leases or sells or at any time the Developer should notify the Association of the Developer's desire to terminate its responsibility to pay for the costs as above described for the benefit of such builder and/or contractor. The builder shall then be assessed and pay assessments on the same basis as any other Class A Member.

- (c) The annual assessment shall be due and payable in advance by each Owner to the Association, on or before January 31 of each year.
- (d) The annual assessment for the first year shall be fixed by the Association prior to the sale of the first Lot to an Owner. Except for the first year, the Association shall fix the amount of the assessment at least thirty (30) days in advance of each assessment year, which shall be the calendar year; provided, however, that the Association shall have the right to adjust the assessment upon thirty (30) days written notice given to each Owner, as long as any such adjustment does not exceed the maximum permitted hereunder. Written notice of the assessment shall be sent as soon as is practicable to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the annual and special assessments on a specified Lot have been paid and the amount of any delinquency. Reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

5.08 Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; The Lien; Remedies of the Association.

- (a) Payment of the assessments shall be both a continuing, and affirmative covenant, personal to the Owner, (other than the Developer and as provided in Section 5.07 (b)) and a continuing covenant of the land. Each Owner and each prospective Owner is hereby placed on notice that such provision may operate to place him in the responsibility of payment of the assessment attributable to the period prior to the date of his purchase of a Lot. Payment of said assessment shall be made to said Association at the principal place of business or such other place the Association may otherwise direct or permit.
- (b) Any assessment which is not paid when due shall be delinquent and any such assessment which is not paid within thirty (30) days after the date of delinquency, shall bear interest from the date of delinquency until paid, at the rate of ten (10%) percent per annum or at such other rate of interest as may be set by the Association not exceeding the maximum interest rate permitted under applicable law.

- (c) The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same; or upon compliance with notice provision as hereinafter set forth, foreclose the lien against the Lot as hereinafter provided. Expenses incurred in connection therewith, including interest, costs and reasonable attorney's fees shall be chargeable to the Owner in default and recoverable in such action. Each Owner vests in the Association or its assigns the right and power to bring all actions at law against such Owner for the collection of such delinquent assessments and to foreclose such lien against such Owner of the Lot or Lots. Provided, however, under no circumstance shall the Developer or the Association be liable to any Owner or any other person or entity for failure or inability to enforce or attempt to enforce any assessments. In addition, to the extent permitted by law, Developer reserves and assigns to the Association, without recourse, a vendor's lien against these Lots to secure payment of an annual assessment and a special assessment which is levied pursuant to the terms hereof.
- (d) No action shall be brought to foreclosure said assessment lien under the power of sale herein provided less than thirty (30) days after the date a notice of claim of lien is deposited with the U.S. Postal Service, Certified or Registered, Postage Prepaid, to the Owner of said Lot, and a copy thereof recorded by the Association in the office of the County Clerk of Brazos County, Texas; said notice and claim must cite a good and sufficient legal description of any such Lot, record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Claimant.
- (e) Any such sale provided for above, is to be conducted in accordance with the provisions applicable to the exercise of power of sale in mortgages and deeds of trusts, as set forth in Article 3810 of the Revised Civil Statutes of the State of Texas, or in any other manner provided by law. Each Owner, by accepting a deed to his Lot, expressly grants to the Association a power of sale/as set forth in said Article 3810, in connection with the assessment lien. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.
- (f) The assessment lien and the right to foreclosure sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association, and its successors and assigns, may have hereunder and by law, including a suit to recover money judgment for unpaid assessments, as above provided. The officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release when any default has been cured for which a notice of claim of lien was filed by the Association. The Association may charge such fees as it deems appropriate to cover the costs of preparing and filing and recording such release.

5.09 Subordination of Lien to the Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any duly recorded purchase money or first mortgage note upon the Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Property pursuant to a decree of foreclosure or non-judicial foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

5.10. Exempt Property. The following Property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

- (a) All Properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) All Common Areas as defined in Article I, Section 1.01 (b) hereof;
- (c) All Properties exempted from taxation by the laws of the State of Texas upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens.

5.11. Insurance Requirements. The Association, through its Board of Directors, or duly authorized agent, may obtain a comprehensive policy of public liability insurance covering all of the Common Areas, insuring the Association, with such limits as it may consider acceptable, such coverage to include protection against liability for property of others and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use. The Association may, if it deems proper and necessary, obtain property insurance on the Common Areas and facilities owned by the Association affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and any such other risks as shall be customarily covered with respect to projects similar in construction, location and use.

5.12. Management Agreements. Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association relative to performing the duties, responsibilities and authorities of the Association.

5.13 Properties and Common Areas. The Association shall use proceeds of the assessments for the use and benefit of all of Owners of the Properties.

ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

6.01 Approval of Plans. No building, structure, fence, wall, or other improvement shall be commenced, erected, constructed, placed or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the detailed plans and specifications,

showing the nature, kind, shape, height, materials, grades, elevations, topography (including the orientation of the front and rear of any such structure with respect to Lot lines) , and landscaping, are submitted to and approved by the Architectural Control Committee. Although the Architectural Control Committee must finally approve designs through the review of a complete set of construction documents, the applicant is required to submit a preliminary design for review and comment.

The preliminary submission should include a site plan, floor plan(s), and at least front and rear elevations. Preliminary submissions may be sketchy, but should be accurate enough so that they may reliably be scaled.

The final submission must clearly depict all proposed improvements and shall consist of complete construction documents including:

- (a) Site plan (1" = 20' preferred)
- (b) Clearing plan (may be combined with landscape plan)
- (c) Landscape plan
- (d) Foundation plan
- (e) Floor plan(s)
- (f) All exterior elevations
- (g) Roof plan
- (h) Building section(s)
- (i) Floor and roof framing plans (may be combined with floor plans)
- (j) Exterior lighting plan

The final submission must also include samples of all materials and colors to be used on the building exterior together with specifications which shall positively identify all such materials and colors. Paint and stain colors should be presented by means of an actual sample.

All plans must be stamped, signed, and dated by the Architectural Control Committee prior to Owner obtaining building permits. In the event said Architectural Control Committee fails to approve or disapprove such plans and specifications within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and the provisions of this section will be deemed to have been fully complied with; provided, however, that the failure of the of Architectural Control Committee to approve or disapprove such plans and specifications within the forty-five (45) day period shall not operate to permit any structure to be commenced, erected, placed, constructed, or maintained on any Lot in a manner inconsistent with any of the provisions of this Declaration. Without limitation of the powers herein granted, the Architectural Control Committee shall have the right to specify requirements (as set forth herein) for each Lot as follows: the front yard set back, side and rear yard set back; the location, height, materials and extent of fences, walls or other screening devices; materials and color for exterior walls and roofs; building elevations, and repetition of floor plans to be used in constructing dwellings on the Lots within the Properties; parking and garage access and entrances and their size and height; and landscaping of Lots. The Architectural Control Committee shall also have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet minimum construction requirements or architectural design requirements or that may not be compatible or in

harmony, in the sole discretion of the Architectural Control Committee, with, the design and overall character, aesthetics, and development scheme of the Properties.

6.02 The Architectural Control Committee shall be initially composed of:

GRANT CARRABBA
MARK CARRABBA
GREG COURT

who by majority vote may designate a representative or representatives to act for them (the term "Architectural Control Committee" as used herein shall refer to the individuals named above, their assigns, as permitted herein, or the Committee's designated representatives). Any two members will constitute a quorum and the vote of any two will control the action of the Architectural Control Committee. In the event of death or resignation of any member of the Architectural Control Committee, the remaining members shall have full power to designate a successor and until such successor member or members have been so appointed, the remaining member or members shall have the full right, power and authority to carry out the functions of the Architectural Control Committee as provided herein. At any time, a majority of the Members of the Association shall have the power by resolution at a meeting of the Members called for that purpose, to change, replace, or elect a new member or members to the Committee.

ARTICLE VII ADDITIONAL COVENANTS AND RESTRICTIONS

7.01. Land Use. Except for Common Areas and facilities, the Properties are hereby restricted to residential dwellings for residential use only and any land use designations or other provisions stated on the Plat to the contrary notwithstanding, no Lot within the Properties shall be used for purposes other than residential.

7.02 Set Back Restrictions. Lots subject to this Declaration shall have the following set back restrictions, the same being reflected on the Plat, prohibiting the construction of buildings or other improvements except as authorized herein.

- | | |
|-------|--|
| Front | (a) 20 feet;
(b) Lot 19 in Phase 1 - 25 feet;
(c) Lots 13 and 18 in Phase 1 - 15 feet. |
| Side | (a) 10 feet (non-zero side);
(b) Lot 19 in Phase 1 - 15 feet from Northwestern side property line;
(c) Lots where side lot line adjoins River Stone Drive - 16 feet; and
(d) Lot 12 in Phase 1 - 5 feet from Northwestern side property line. |
| Back | (a) 10 feet;
(b) Lots where rear lot line adjoins River Stone Drive - 16 feet. |

See Exhibit "A" for the designation of zero set back side for each Lot.

7.03 Patio Homes Construction and Maintenance Easement and Additional Restrictions.

- (a) Each Patio Home constructed on the Properties shall have a five (5) foot construction and maintenance easement on the non-zero side of each Lot for the use of the adjacent Owner. Any improvements in this area which would hinder the construction or maintenance of the neighboring Dwelling or which would restrict surface drainage are prohibited.
- (b) No structure or improvements shall be located on any Lot between the building setback lines shown on the plat pertaining to such Lot and the street right-of-way on which such Lot fronts or which are adjacent to any side Lot line of such Lot. Developer shall have absolute discretion in determining the zero lot line location for each Lot. Provided, however, that an open court or patio may be built adjacent and abutting the aforementioned zero lot line but said open court or patio must be enclosed by a masonry wall having a minimum height of eight (8) feet. This wall must, as in the case with the Dwelling wall, be constructed adjacent to and abutting the zero lot line and enclose the court or patio in such a manner as to appear to be an extension of the Dwelling. In addition, a wall shall be constructed adjacent and abutting the zero lot line and extend from the rear of the Dwelling or court/patio wall to the rear of the setback or building line as shown on the plat. This wall must be a minimum of 6 feet in height and of brick construction unless approved in writing by the Architectural Control Committee as described in this Declaration. The zero lot line walls or any walls located within 2 feet of a side lot line shall have no exterior objects or appurtenances such as, for example, electric panels, vents, plumbing clean out, hose bibs, windows or openings of any kind.

7.04 Driveway Access. All driveways shall have access from the street facing the front of the Lot or Lots.

7.05 Dwelling Size. Every dwelling to be constructed on any Lot or Lots shall be restricted to the following minimum square footage, exclusive of screened porches, open porches and garages:

2200 square feet

7.06 Minimum Materials Required. Only new construction material shall be used and utilized in the construction of any dwelling situated on any Lot and all main Dwelling structures situated on any Lot shall be constructed by a combination of brick, rock and/or stucco, which has been presented to and approved by the Architectural Control Committee.

7.07 Floor Plans. Structural Elevations. Color Combinations. The Architectural Control Committee shall have the authority to limit the repetitious use of identical floor plans, structural elevations, exterior color combinations of dwellings and structures to be constructed and used on any Lot or Lots within the Properties.

7.08 Garages and Carports. Each residential Dwelling shall have a fully enclosed garage to be constructed at the time of the main residence, and the garage shall be constructed to house not fewer than two automobiles. All garages shall be constructed as a single family attached garage. No Owner shall be entitled to enclose a garage for residential use. All garages must be constructed of materials that are compatible with the construction materials used in the primary Dwelling and shall be installed with electric opening and closing devices, which devices shall at all times be kept in serviceable condition. All roof materials must be of the same nature as the materials used on the main Dwelling, and all exterior garage walls must be constructed of the same or similar material as the exterior of the main Dwelling. All garages must be finished with sheetrock, taped and painted or such other finish as may be approved by the Architectural Control Committee. Garage doors visible from any street shall be kept in the closed position when the garage is not being used by the Owner or occupant.

7.09 Fences.

- (a) No chain link fences shall be constructed on any Lot.
- (b) All privacy fences must be capped cedar built according to Exhibit "B".
- (c) No fence or wall shall be erected, placed, or altered on any Lot:
 - (i) nearer to any street than the side property lines as shown on the Plat for corner lots, which shall be designated by the Architectural Control Committee; or
 - (ii) nearer to the front property line than the place of the front exterior wall of the residence on the Lot, and no closer than the front building setback line as shown on the plat; and
 - (iii) all fences shall be built to rear and side property lines.

7.10 Landscaping. The Architectural Control Committee shall approve the landscaping plans and specifications for each Lot and shall have the authority to require such landscaping features as it determines in its judgment reasonably necessary to protect the development scheme, harmony and the aesthetics of the Properties. Any Lot at the completion of the construction of a Dwelling thereon shall be sodded with grass, unless otherwise approved by the Architectural Control Committee. Landscaping shall be completed on each Lot or Lots within thirty (30) days from the date of the completion of the construction of a Dwelling thereon in accordance with such approved plans and specifications, except in cases where inclement weather prohibits the same, in which event such thirty (30) day period shall be continued for the number of days that weather conditions prohibited the completion of such landscaping.

7.11 Signs. No Signs, billboards, posters, or advertising devices of any character shall be erected or displayed by any Owner (excluding, however, builders' signs approved by the Architectural Control Committee as hereinafter set forth) to the public view on any Lot except for one (1) sign

advertising the Lot is for sale, which sign must not exceed five (5) square feet in area or be less than two (2) square feet in area and must be professionally manufactured exclusively for the purpose of advertising sale of real property. During the Construction and Sale Period, as the Architectural Control Committee may reasonably deem necessary or proper in connection with an approved builder's promotion, development and marketing of Lots and Dwellings within the Subdivision, the Architectural Control Committee may allow such builder to erect and maintain signs, billboards, or advertising devices on Lots owned by such builder or the Declarant (provided builder has first obtained Declarant's approval to use Declarant's Lot). Such approval granted by the Architectural Control Committee is discretionary and temporary in nature, meaning that any sign, billboards, or advertising devices must be removed within ten (10) days following notice to that effect from the Architectural Control Committee. No distress sale or foreclosure signs may be posted by builders, owners, savings and loan associations, mortgage companies or any other parties whatsoever.

7.12 Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot or Common Areas, except that an Owner may have three (3) dogs or cats, or other household pets, provided they do not constitute a nuisance and are not kept, bred or maintained for any commercial purpose.

7.13 Illegal Purposes. No Lot or any part thereof shall be used for illegal or immoral purposes.

7.14 Other Buildings. No house, trailer, mobile home, van, tent, shack, garage, barn or other outbuilding shall at any time be used as a residence, temporarily or otherwise. No mobile home or house trailer shall be placed or parked on any Lot at any time for any purpose. A storage building is permitted on a Lot, so long as it does not exceed seven (7) feet in height, eight (8) feet in width, and ten (10) feet in length or such other dimensions and size as approved by the Architectural Control Committee. The storage building must be located on the Lot so that its lower 5-1/2 feet are screened from view from any street in the subdivision by a fence duly approved by the Architectural Control Committee as provided herein, it is located at or near the perimeter of the Lot, and it is constructed and maintained in a manner consistent with these restrictions. Other storage buildings may be considered as long as they are constructed from the same or comparable quality materials as the house on the Lot. All plans showing materials, elevations, and location must be submitted to the Architectural Control Committee for approval prior to commencement of construction.

7.15 Rentals. No Dwelling located within the Properties shall be used as a rental property for purposes of providing a residence to students or unrelated parties. It is the intention of the Declarant that all Dwellings are for single family residences and not for purposes of transient rental use by students or other unrelated parties. It is the further intention of Declarant that this restriction on rentals be interpreted and enforced in the most restrictive manner allowed by law.

7.16 Antennae. No television or radio antennae shall be erected or maintained anywhere on a Lot without the prior approval of the Architectural Control Committee. Any satellite dish must be approved in writing by the Architectural Control Committee prior to installation.

7.17 Maintenance of Property. No Owner of any Lot, either vacant or improved, shall be permitted to let such Lot and improvements thereon go unmaintained, and he shall keep the same in a neat and orderly manner. The Owner of any Lot or Lots shall maintain all creeks, drainage

areas, drainage detention areas, utility easements, and other easements located on such Owner's Lot or Lots and shall keep the same neat, clean and in good order. In the event an Owner shall fail to maintain such premises and improvements situated thereon in a neat and orderly manner, the Architectural Control Committee or the Association shall have the right through its agents and employees, to enter upon said property and to repair, maintain, clean and restore said property and any improvements thereon, all at the expense of Owner.

7.18 Storage of Materials. No building material of any kind or character shall be placed or stored upon any Lot except when the Owner is ready to commence improvements thereon, and then such material shall be placed within the property lines. No stumps, trees, underbrush or any refuse of any kind, or scrap metal from the improvements being erected on any Lot shall be placed on any adjoining Lots, streets or easements. All such material, if not disposed of immediately, must remain on the property upon which construction work is in progress, and at the completion of such improvements, such material must be immediately removed from the property.

7.19 Oil, Gas and Mining Operations. No oil and gas drilling, oil and gas development operations, oil and gas, refining, or quarrying or mining of any minerals or any operations or explorations of any kind shall be permitted upon the Properties or on any Lot, nor shall any type of well, tanks, tunnels, mineral excavations, or shafts or pipelines or battery tanks be so permitted upon any Lot. No derrick or other structure shall be used in boring for oil and/or natural gas wells or shall be erected, constructed, placed or permitted upon any Lot.

7.20 Nuisances. No noxious or offensive activity shall be permitted upon any Lot, nor shall anything be done thereon which may be, or become, an annoyance or nuisance to the neighborhood. No activity shall be carried on upon any Lot or Common Areas which might reasonably be considered as giving annoyance to the neighbors of ordinary sensibilities and which might be calculated to reduce the desirability of the property as a residential neighborhood, even though such activity is in the nature of a hobby and not carried on for profit. The Board of Directors of the Association shall have the sole and exclusive discretion to determine what constitutes an annoyance.

7.21 Sports Equipment. No basketball goals or backboards or any other similar equipment of either a permanent or temporary nature shall be placed within thirty (30) feet of the front property line of any Lot without the prior written consent of the Architectural Control Committee.

7.22 Storage and Repair of Vehicles. No truck with tonnage in excess of three quarter (3/4) ton, motor home, four-wheeler, three-wheeler, motorcycle, non-motorized vehicle, boat, trailer, camper, jeep, marine craft, machinery or equipment of any kind may be parked or stored on any Lot, or in any street for more than forty-eight (48) hours of any seventy-two (72) hour period. No inoperative vehicle (inoperative being defined herein as not in a running or usable condition) may be stored, parked or kept on any Lot or in any street at any time. Nothing herein contained shall be construed to prohibit the storage of any vehicle in a garage.

7.23 On Street Parking. All overnight on street parking is prohibited; provided, however, that nothing contained herein shall prohibit occasional overnight on street parking as the result of out of town guests or visitors at a Dwelling. The Architectural Control Committee shall have broad discretion in determining a violation of the intent of this provision.

7.24 Chimneys. All fireplace chimneys shall be brick or stucco. Prefabricated metal fireplaces and metal flue may be used, but their chimneys must be masonry clad to present the appearance of traditional masonry chimneys.

7.25 House Numbers. All house numbers must be displayed in the brick wall on the front of the house or as otherwise approved by the Architectural Control Committee.

7.26 Mailboxes. A Cluster Mailbox shall be erected by Developer and shall be located in the common area to the Northwest of Lot Fourteen (14).

7.27 Lighting.

- (a) All exterior lighting visible from any street must be approved by the Architectural Control Committee. Where possible, decorative fixtures should compliment the architectural features of the Dwelling. No pole-mounted or building-mounted high intensity lighting will be allowed.
- (b) Moonlighting or uplighting existing trees is permitted, but the light source must be hidden. A lighting plan must be submitted to the Architectural Control Committee.
- (c) Accent lighting should be integrated with the Dwelling's architectural elements. Excessive accent lighting is discouraged.

7.28 Screening.

- (a) All mechanical and electrical equipment (pool, air conditioners, etc.) must be completely screened from public view. A combination of trees, hedges or walls should be used to screen equipment and mechanical areas.
- (b) Play structures, play equipment and storage buildings shall be screened from public view by a combination of trees, shrubs, and fencing.
- (c) All exposed foundations shall be screened from public view.

7.29 Swimming Pools. No swimming pool may be constructed on any Lot without the prior written approval of the Architectural Control Committee. Each application made to the Architectural Control Committee shall be accompanied by two sets of plans and specifications for the proposed swimming pool construction to be done on such Lot, including a plot plan showing the location and dimensions of the swimming pool and all related improvements, together with the plumbing and excavation disposal plan. The Architectural Control Committee's approval or disapproval of such swimming pool shall be made in the same manner as described in this Declaration for other building improvements. The Owner shall be responsible for all necessary temporary erosion control measures required during swimming pool construction on said Lot to insure that there is no erosion into the streets or other Lots. Swimming pool main and backwash drains shall be piped into the sewer

drainage system according to the building codes. Deck area drains shall be tied into the storm water drain system. Deck areas may slope into adjoining plant spaces but not into adjoining Lots.

ARTICLE VIII

GENERAL PROVISIONS

8.01 **Duration.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforced by the Association, the Architectural Control Committee, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless made and recorded and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

8.02. **Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in any equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by the Association, its Architectural Control Committee, or 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.

8.03. **Amendments by Developer.**

- (a) This Declaration may be amended during the first three (3) year period by an instrument signed by Owners of not less than sixty-seven percent (67%) of the Lots now in the Development or which may hereafter be annexed thereto in accordance with the provisions of this Declaration.
- (b) Developer shall have and reserves the right until December 31, 2017, without the joinder or consent of any Owner or mortgagee, to amend this declaration by an instrument in writing duly signed, acknowledged, and filed for record; for the purpose of clarifying any ambiguity or conflicts herein or correcting any inadvertent misstatements, errors or omissions, herein, or to comply with the requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Corporations, Federal National Mortgage Association, Veteran's or Federal Housing Administration, provided that no such amendment shall change the vested property rights of any Lot Owner except as provided in paragraph 8.03(a) above.

8.04 **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.

8.05 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 herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be supplied by inference.

8.06 Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Owner in the Official Records of Brazos County, Texas.

8.07 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

8.08 Severability. Invalidation of any one or more of the covenants, restrictions, conditions or provisions contained in this Declaration, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

ARTICLE IX
CONSENT OF LIENHOLDERS

9.01 The Bank & Trust, the holder of liens covering all or a portion of the Property herein described, have executed this Declaration to evidence their respective consent to the imposition of the foregoing covenants, conditions and restrictions.

IN WITNESS WHEREOF, the undersigned, being the Developer herein and the Lienholders have executed this Declaration to be effective this the 20th day of ~~March~~ April, 2016.

DEVELOPER:

1179 JOINT VENTURE I, LP,
a Texas limited partnership

By: 1179 JOINT VENTURE
MANAGEMENT, L.L.C., a Texas
limited liability company, its general
partner

By: [Signature]
Name: Greg Court
Title: Member

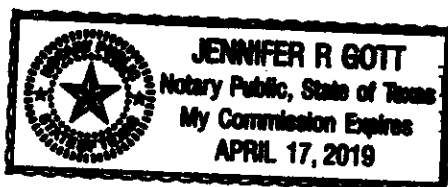
LIENHOLDER:

STATE OF TEXAS

§
§
§

COUNTY OF BRAZOS

This instrument was acknowledged before me on the 20th day of April, 2016 by Greg Court, Member of 1179 JOINT VENTURE I, LP, as the general partner of 1179 JOINT VENTURE MANAGEMENT, L.L.C., on behalf of said entity.



[Signature]
Notary Public, State of Texas
My Commission Expires: 04-17-19

XXXXXX

Filed for Record in:
BRAZOS COUNTY

On: Jun 10, 2016 at 10:08A

As a
Recordings

Document Number: 01266423

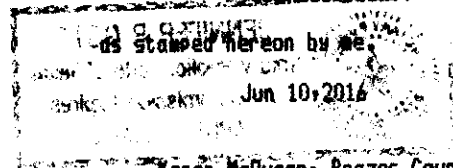
Amount 110.00

Receipt Number - 576688

By:
Amber Moehlman

STATE OF TEXAS COUNTY OF BRAZOS
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 Official Public records of:

BRAZOS COUNTY



Karen McQueen, Brazos County Clerk
BRAZOS COUNTY