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RECEIVED
MAR 22 2004
OPINION COMMITTEE

Lynn Rodriguez, General Counsel
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March 17, 2004

Ms. Nancy Fuller, Chair
Opinion Committee
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43587-04
I.D. # 43587

RQ-0199-GA

RE: Request for Attorney General's Opinion

Dear Ms. Fuller:

On behalf of Texas Southern University, I would like to submit a request for an Attorney General's Opinion on the question of whether certain deed restrictions apply to property where the University is presently constructing privatized student housing.

Texas Southern University is a public institution of higher learning created pursuant to Section 106 of the Texas Education Code. For several years, the University has been constructing privately-funded, apartment-style housing for our students. Currently, the University is constructing student housing on property owned by the University that is contiguous to the University. However, a portion of the property is located in a subdivision that has deed restrictions limiting the density of the apartments, specifically, the number of apartments per lot (see attached).

Case law supports the premise that deed restrictions cannot obstruct the state's use of property it owns for public purposes. In *City of Houston v. Wynne*, 279 S.W. 916 (Tex.Civ.App. - Galveston 1925), the City of Houston wanted to use property that was platted in a subdivision with deed restrictions to build a fire station. The court stated that the homeowners do not have a property interest in the deed restrictions. *Id.* at 918. Furthermore, the court stated, "the restrictions contracted were to prohibit all persons, but not the state or some subdivision thereof, from using any of the lots for purposes other than for residences." *Id.* at 919. As a result, the court held in favor of the City of Houston.

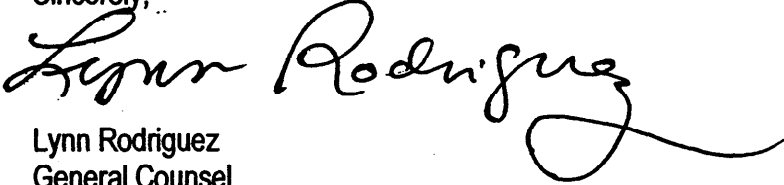
In another case, *Palafox v. W.E. Boyd*, 400 S.W.2d 946 (Tex. 1966), a property owner dedicated a lot in an area platted for a subdivision to the City of El Paso for use as a street. The city argued that platting could not abrogate the power of the state (or a political subdivision to which the state delegates the power) to acquire land for public use. *Id.* at 948. The deed restrictions that the homeowners contracted for could not be properly construed as having the purpose of setting aside, nullifying, or preventing the exercise of governmental authority. *Id.* at 949. The court stated, "covenants of the nature of those here involved should not be so construed or applied as to require the government, or one of its agencies, in the taking or acquiring of private property for a governmental use, to respond in damages either on the theory of a taking of a vested right, or for breach of such a covenant." *Id.*

Nancy Fuller
March 17, 2004
Page 2

In this instance, the construction of the housing will serve a public purpose directly related to the performance of the University's duties and functions, specifically, to house students enrolled at the University. We believe that based on the law, the deed restrictions cannot impede Texas Southern University, a governmental agency, from using the property for governmental purposes. Nevertheless, we request a formal opinion from the Texas Attorney General's Office addressing this question.

Please contact me if you have questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Lynn Rodriguez". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Lynn Rodriguez
General Counsel

Enclosure

Declaration and Petition
For the Modification of, and Addition to, Restrictions

for
TIER WESTER OAKS

The State of Texas
County of Harris

This Declaration and Petition for the Modification of, and Addition to, Restrictions, herein referred to as the "Declaration," is adopted pursuant to Chapter 201 of the Texas Property Code by and between the undersigned owners of certain lots situated within the boundaries of "TIER WESTER OAKS," a 21.75-acre Addition described in the map or plat thereof recorded in Volume 25, Page 53 of the Map Records of Harris County, Texas, which lots are more fully described herein, and more specifically identified herein as the "lots". The lots in TIER WESTER OAKS are subject to certain restrictions described in that certain instrument entitled "Restrictions" dated November 19, 1947, recorded in Volume 1709, Page 5 of the Deed Records of Harris County, Texas, which Restrictions have been renewed and extended by instruments recorded in the Official Public Records of Real Property of Harris County, Texas as follows:

Extension of Restrictions dated March 11, 1970, recorded under Harris County Clerk's File No. D096557; Extension of Restrictions dated July 9, 1981 recorded under Harris County Clerk's File No. H728819; and Third Extension of Restrictions Tierwester Oaks dated May 17, 1992 recorded under Harris County Clerk's File No. N883482.

the hereinabove described Restrictions as renewed and extended being hereinafter called the "Existing Restrictions."

The purpose of this Declaration is to amend and modify the Existing Restrictions in order to create a uniform plan that will preserve the predominant use and character of the lots as a cohesive residential area consisting of detached homes, duplexes, garage apartments, and apartments.

Therefore, the aforementioned consenting lot owners do hereby declare, establish and adopt the following modifications and additions to the Existing Restrictions (the Existing Restrictions as herein modified and added to being herein referred to as "Restrictions") which shall be applicable to the use, occupancy and conveyance of the aforementioned lots, and every contract deed, or other written instrument hereafter executed and conveying the aforementioned lots shall be held to have been executed, delivered and accepted subject to the Restrictions, regardless of whether or not the Restrictions are set out in full or are incorporated by reference in said contract, deed or other instrument.

ARTICLE I
Definitions

The following definitions are hereby added to the Existing Restrictions and are incorporated into the Restrictions.

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Title Data UN 192.168.17.4 HA W308688.007

507-F 870/800 D 127-1

5880-888-822

HW1FW1J7171Y1NW13770C-M09J

NW67:80

5002-52-83J

1.1. "Apartment" and/or "Apartments" shall mean a building or buildings, connected or free-standing, located on one or more lots, each of which buildings contains three or more Single-Family Residences, provided that no Apartment building shall contain more than four (4) Single Family residences for each lot on which such building is located.

1.2. "Association" shall mean the Tierwester Civic Association, an unincorporated civic association.

1.3. "Attached Garage" shall mean a garage that shares a common interior wall with the single family residential dwelling located on a lot or building site.

1.4. "Code" shall mean Chapter 201 of the Texas Property Code and any successor thereto.

1.5. "Corner Lot" or "corner lot" shall mean a lot, as the case may be, of which one or more of the side property lines adjoin the right-of-way of a street running perpendicular to and intersecting the street on which the lot fronts.

1.6. "Deed Restrictions Committee" shall mean and refer to the Deed Restrictions Committee of the Association, appointed and acting in accordance with these Restrictions.

1.7. "Detached Home" shall mean a Single-Family Residence comprised of a single building no part of which comprises any part of the structure of any other residence or building, and shall include the garage, if any, whether attached or free-standing, on the same lot and constructed for use by the occupants of such residence.

1.8. "Duplex" shall mean a single free-standing building that is located on a single lot and that consists of two Single-Family Residences.

1.9. "Garage" shall mean a building or structure or part thereof designed for housing or storing one or more motor vehicles.

1.10. "Grade" shall mean the average elevation of the ground, paved or unpaved, adjoining building or structure, at the center of each exterior wall line. On an unbuilt lot, average elevation will be measured at the center point of the lines established by the building Setbacks.

1.11. "Height" shall mean the vertical distance measured from the Grade to the highest finished roof surface.

1.12. "Lot" or "lot" shall mean any of the separate lots as plotted in the original map or plat for the Addition of Tierwester Oaks encompassing the lots as recorded in the real property records of Harris County, Texas, described in Exhibit A hereof and illustrated in Exhibit B hereof.

1.13. "Setback" shall mean with respect to any building, a line established beyond which no portion of such building, including chimneys, overhangs, eaves, etc., shall extend, measured inward from the lot line to which the Setback refers.

1.14. "Single-Family Residence" shall mean a single, enclosed dwelling unit designed for and used as the common living space for a Single-Family Unit.

1.15. "Single-Family Unit" shall mean one family unit consisting of individuals all of whom are related to one another by blood, adoption, or marriage and not more than four (4) unrelated individuals, or one household unit consisting of not more than four (4) unrelated individuals.

All terms defined above as singular shall include the plural form, and vice-versa, and all defined terms, whether capitalized or not, shall have the same meaning.

ARTICLE II

Modifications to Existing Restrictions On Use

2.1. Paragraph (2) of the Existing Restrictions which reads as follows:

"Said lots shall be used for residential purposes only. A duplex or apartment house shall be construed as a residence and as such shall be permitted in the addition."

is hereby deleted and replaced in its entirety with Sections 2.2 through 2.10 below:

2.2. Permitted Uses. Except as provided in Section 2.10, each lot shall be used only as a residence by a Single Family Unit, and only a building or structure that qualifies as a Detached Home for a Single Family Unit shall be constructed or used on any lot. The term "single family" as used herein shall refer to both the type of structure erected and the use of a lot and be construed to exclude, without limitation, hospitals, nursing homes, childcare facilities, halfway houses, homes for the mentally retarded and other group homes. The term "residential purposes" as used herein shall be construed to exclude all commercial and professional uses.

2.3. Livestock or Poultry Prohibited. No animals, livestock, or poultry, of any kind shall be raised, bred, or kept on any lot except that household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose.

2.4. Use of Garage as Residence Prohibited. No garage or servants quarters shall be used as a residence, except that servants quarters may be occupied by the members of the Owner's family or the family of a tenant of the main residence or servants actually employed on the premises.

2.5. Certain Structures Prohibited. No trailer, recreational vehicle, tent, shack, garage, or barn shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence, nor shall any used or manufactured residence be moved onto a residential lot. No septic tank or sewage disposal plant shall be built on any lot or maintained thereon.

2.6. Maintenance of Lot. Grass and weeds shall be kept mowed to prevent unsightly appearances. Dead, diseased or damaged trees, or any foliage which might create a hazard to property or persons on any lot or adjacent lot, shall be promptly removed or repaired. Vacant lots shall not be used as dumping ground for rubbish, trash, rubble, or extra soil. Trash shall not be burned.

2.7. Maintenance of Lot and Improvements. Owners are bound and obligated through the purchase of a lot in Tierwester Oaks, to maintain the lot and all improvements on it in a neat and habitable manner. In the event of damage, the Owner shall have one hundred twenty (120) days to begin repairing or demolishing the portion destroyed by said damage, and once timely commenced, such repairs or demolitions must be diligently pursued to the completion. However, in the event the Owner's damage to the property and improvements is not covered by insurance, or the Owner's claim is not approved by the Owner's insurance company, the Owner may apply for a "hardship" exception to the operation of this restriction to be submitted to the President of the Association within one hundred twenty (120) days from the date of such damage. The Deed Restrictions Committee shall rule on the Owner's application for a "hardship" exception within thirty (30) days from the date of submission. The granting of a "hardship" exception in a particular case shall in no event be deemed a waiver of the right to enforce this restriction thereafter.

2.8. Antennae. No electronic antennae or device of any type other than an antenna for receiving local television broadcast signals shall be erected, constructed, placed or permitted to remain on any lot, houses, or buildings except in accordance with this section. Television antennae may be attached to the house provided, however, such antennae must be located to the rear of the roof ridge line, gable or center line of the principal dwelling. Freestanding television antennae must be located behind the rear wall of the main residential structure. No television antennae, either freestanding or attached, shall be permitted to extend more than ten (10) feet above the roof ridge line, gable or center line of the principal dwelling on the lot. No antennae shall be erected, installed or placed on a wooden pole, except for those already in place as of the effective date of this document.

2.9. Garage Sales. No lot shall be used, either temporarily or permanently, for the conducting of any garage sale or similar activity with the exception of (a) not more than two (2) garage sales (Saturdays only) per household per year, and (b) estate sales may be held anytime as the result of the death of the Owner.

2.10. Limited Duplex and Apartment Uses. Notwithstanding Section 2.2 above, lots 1 and 2 of Block 5 and lots 1 through 12 of Block 1 and lots 1 through 12 of Block 2 may be used for Duplexes and Apartments:

ARTICLE III

Modifications to Existing Restrictions for Setbacks

3.1 Paragraph (3) of the Existing Restrictions which reads as follows:

"No building shall be located nearer to the front property line or nearer to the side street line than the building set-back lines shown on the recorded plat of said addition."

is hereby deleted and replaced in its entirety with Section 3.2 and 3.3 below.

3.2. Setbacks: In General. Except as provided in Section 3.3 below, the following setbacks shall apply to each lot:

a. Front Setback: Twenty-five (25) feet from the property line parallel to and closest to the street fronting the lot, or if further from the street, the front Setback shall be the Setback established by the majority of the existing buildings on the same block and facing the same street as the lot.

b. Side Setback: Three (3) feet from each of the lot lines perpendicular to the street fronting the lot.

c. Rear Setback: Five (5) feet from the lot line(s) parallel to and furthest from the street fronting the lot.

d. For purposes of applying the setbacks as set forth in sections 3.2 a, b, and c., the "street fronting the lot" shall mean the street closest to the lot, or, if the lot directly adjoins two parallel streets, either of such streets. If the lot is a Corner Lot, both of the streets adjoining the lot, shall be treated as a "street fronting the lot" for purposes of applying the front Setback. The Setbacks with respect to the remaining lot lines shall be applied by treating each such remaining lot line as either a side or rear lot line by reference to whether such line is a side or rear lot line of the adjoining lot, provided that at least one lot line is treated as a rear lot line.

3.3. Setbacks: Developments on Contiguous Lots. With respect to developments on multiple contiguous lots situated wholly within a single lot or wholly within multiple contiguous lots, the Setbacks set forth in Section 3.2 above shall be applied as though such lot or contiguous lots were a single lot.

ARTICLE IV

Modifications to Existing Restrictions on Value

4.1. Paragraph (4) of the Existing Restrictions which reads as follows:

"The minimum actual value of any residence or main building which may be erected and constructed upon any lot in said addition shall be \$7,500.00."

is hereby deleted and replaced in its entirety with Section 4.2 below:

4.2. Minimum Cost. The minimum cost of construction (excluding lot cost) of any: (i) Detached Home which may be erected or constructed upon any lot shall be \$150,000.00; (ii) Duplex which may be erected or constructed upon any lot shall be \$200,000.00; and Apartments which may be erected or constructed upon any lot shall be \$75,000.00 per Single Family Residence contained in such Apartments.

ARTICLE V

Deletion of Racial Provisions of Existing Restrictions

Paragraph (5) of the Existing Restrictions reading as follows:

"No part of the property shall be sold, rented, conveyed, used or occupied in whole or in part to any person not of the Caucasian Race, except this covenant shall not prevent occupancy by domestic servants of a different race domiciled with any owner or tenant."

is hereby deleted in its entirety.

ARTICLE VI

Modification of Term of Existing Restrictions

6.1 The paragraph of the Existing Restrictions establishing the term of their enforceability, which reads as follows:

"These restrictions shall be considered covenants running with the land and shall continue and remain in effect until January 1, 1973, with the understanding that at any time within three (3) years before January 1, 1973, the then owners of a majority in number of front feet of lots in Tierwester Oaks Addition, which are subject to the same restrictions, may, by written declaration signed and acknowledged by them and recorded in the Deed Records of Harris County, Texas, extend these restrictions for a period of ten (10) years additionally, and then similarly for successive additional periods of ten (10) years as often and as long as the owners of the majority in number of front feet of the lots in this addition may desire."

is hereby deleted and replaced in its entirety with Section 6.2 below:

6.2 These Restrictions are covenants that run with the land, and shall be binding upon and inure to the benefit of all current and future owners of lots for an initial period of ten (10) years beginning on the effective date as set forth in Section 6.1 above and shall be automatically extended and renewed for successive terms of ten (10) years each, each term beginning immediately upon the expiration of the preceding term, unless an instrument adding to, or modifying these Restrictions, is recorded in the Real Property Records of Harris County, Texas during either the initial period or any subsequent extension. Any such instrument must be by a petition pursuant to provisions of the Code, executed and approved by not less than seventy-five percent (75%) of the owners of the lots at the time.

ARTICLE VII

Additional Restrictions

The following covenants and restrictions are hereby added to the Existing Restrictions and shall be a part of the Restrictions.

7.1. Parking.

a. In General. Except as otherwise provided by law, all vehicles, boats and trailers of all sorts shall be parked only in a garage or on a driveway and shall not be parked at any time in any other place in which same would be visible from the street, except that automobiles and pick-up trucks may also be parked alongside a curb of a street. No double parking shall be allowed on any street.

b. Vacant Property. In addition to and not in lieu of any other restrictions in this declaration, no vehicle, trailer, boat or construction equipment of any nature shall be parked on the area of any lot that is vacant.

7.2. Fencing. Barbed wire, broken glass, electric fences, and similar dangerous materials shall not be used as fencing materials. On lots which have a twenty-five (25) foot minimum building line on two (2) sides, no fence, wall, or hedge higher than six (6) feet above the ground, shall be placed or maintained nearer to either street than the building lines. On Corner Lots which have a building line of less than twenty-five (25) feet on the side street, no fence, wall, or hedge higher than six (6) feet above the ground, shall be placed or maintained nearer to the street than the side property line. No massed planting which would interfere with the view of cross traffic shall be allowed on any Corner Lot.

7.3. Signage.

a. Restrictions on Use. No signs, advertisements or bill boards may be erected or installed on any lot other than for the following:

- (i) advertising such lot for sale, or the residence, duplex or apartments on the lot for sale or lease;
- (ii) designating such lot as the recipient of an award by an administering or governing body such as a civic association;
- (iii) supporting an announced candidate immediately preceding a local, state or federal election.

b. Restrictions on Design.

- (i) The face of any sign shall not exceed a total of six (6) square feet in size.
- (ii) Any sign attached to a building on the lot shall be placed no higher than the top of the main front entrance to the building, and the height of any other sign shall not exceed four (4) feet from the grade of the lot on which the sign is situated to the top of the sign.
- (iii) No sign may be illuminated.

c. Number of Signs. Only one sign is allowed at any one time per lot for each use as set forth in Section 7.3.a.

7.4. Garage Setbacks. No garage shall be placed or maintained on any lot or building site nearer than three (3) feet to the side lot or building site line, or nearer to a side street than the minimum building setback line.

7.5. Residences: All residences, garages and other permanent structures shall be built on concrete slabs. Exterior walls of residences shall be constructed with at least seventy-five (75) percent masonry or brick veneer. In computing this percentage, wall masonry below the sill line of windows, or below the midpoint of walls, shall be considered twenty-five (25) percent masonry. Door or window openings shall be considered to be built of the material which encloses them. If a garage is an Attached Garage or is semi-attached by means of a covered walkway or other similar structure to a residence, the perimeter of the residence shall be computed as if the garage did not exist.

7.6. Garages. Walls and roofs of garages shall be constructed of the same material which is used on the walls and roof of the residence, except that, in the event that the proportion of brick and masonry on the walls of the residence below the bottom of the eave fascia trim board is a minimum of eighty-five (85) percent, then the rear and side walls of the garage may be constructed of cedar shakes, board and batten, vertical V-joint boards, or horizontal square edge lapped siding.

7.7. Exterior Siding. When a portion of the existing exterior siding is replaced or added to any existing structure or new improvement on a lot, it must be of the same type, quality, size and color as the existing siding on the main residential structure and shall not require the approval of the Deed Restrictions Committee. All exterior siding must be wood or wood product (i.e., Masonite). The thickness, visible width and spacing of exterior siding must be consistent with that of the original exterior siding. All exterior siding must be installed and maintained to avoid sagging, warping or irregular coloration. The Deed Restrictions Committee may require the Owner, at the Owner's sole expense, to repair or replace exterior siding that fails to adhere to these guidelines. All information required by this section to be submitted to the Deed Restrictions Committee must be submitted together with a sample of the exterior siding, for approval prior to commencing any construction or alteration of any structure.

7.8. Repair and Replacement of Roofs. When a portion of an existing roof is repaired or added to any existing structure or improvement on a lot it must be of the same type, quality, size and color as the existing roofing material and shall not require the approval of the Deed Restrictions Committee. If the entire roof, including the roof of the main residence and garage, is replaced or added, the proposed shingle must be of an acceptable type and quality and have a color that is harmonious with the neighborhood and the existing dwelling. All roofing must have a minimum of a twenty-five (25) year warranty by a reputable manufacturer. All information required by this section to be submitted to the Deed Restrictions Committee must be submitted, together with a sample of the roofing material, for approval prior to commencing any construction or alteration of any structure.

7.9. Roof Pitches. Roofs of residences and garages shall have a minimum pitch of four (4) inches of rise to twelve (12) inches of run, except for a roof covering some small area such as a covered patio, not to exceed one hundred (100) square feet, or a dormer, not to exceed fifty (50) square feet.

Roofs of residences and garages shall have a maximum pitch of nine (9) inches of rise to twelve (12) inches of run.

7.10. First Floor Wall Height. All residences and all garages shall have a wall place height (main roof frame line) of not more than ten (10) feet above the ground floor finished concrete slab. The finished area of the upper floor of one and one-half story residences shall be contained within the attic space formed by the ceiling covering the ground floor and the roof. Small dormers will be permitted on the upper floor but the dormer roof shall not extend above the ridge line of the main residence roof.

7.11. Driveways. Driveways and driveway approaches shall be constructed of concrete in accordance with City of Houston Standard Driveway Detail. The street curb shall be broken in such a manner that a driveway must be at least four (4) inches thick at its end toward the street paving, and this extreme end shall be poured against a horizontal form board to reduce the unsightly appearance of a raveling driveway. Walks from the street curb to the residence shall have a minimum width of four (4) feet.

7.12. Minimum Square Footage of One-Story Residences. The floor area of the main structure of a one-story residence, exclusive of porches, garages, semi-finished storage rooms, and servants' quarters, shall contain not less than two thousand (2,000) square feet on each lot or building site.

7.13. Minimum Square Footage of One and One-half Story Residences. The floor area of the main structure of one and one-half story residences, exclusive of porches, garages, semi-finished storage rooms and servants' quarters shall contain not less than two thousand two hundred fifty (2,250) square feet on each lot or building site. The finished area of the upper floor of any one and one-half story residence shall not be less than thirty (30) percent of the finished area on the ground floor.

7.14. Minimum Square Footage of Two Story Residences. The floor area of the main structure of two story residences, exclusive of porches, garages, semi-finished storage rooms and servants' quarters shall contain not less than two thousand five hundred (2,500) square feet on each lot or building site. The finished area of the upper floor of any two story residence shall not be less than seventy (70) percent of the finished area on the ground floor.

7.15. Plans to be Submitted. Construction or alteration of any building shall not commence on any lot or building site in Tierwester Oaks prior to plans for such construction having been submitted to and approved by the Deed Restrictions Committee in writing. These plans shall show in detail the foundation, floor plan, all elevations, all exterior building materials, and a plot plan showing location of residence, garage, patio, and driveway with dimensions. In the event that approval or disapproval has not been given within thirty (30) days from the time of plan submission, then the plans will be deemed approved and the related restrictions will be deemed to have been complied with unless the Deed Restrictions Committee notifies the Owner in writing that the time for approval or disapproval has been extended (such extension not to exceed 15 calendar days) and the reasons why such extension is needed.

7.16. Composition and Authority. The Deed Restrictions Committee shall be composed of a minimum of three (3) members of the Association, who are Owners, and who have been appointed by the President. The Association may (but is under no duty to) employ an independent architect or

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engineer who is neither a resident of Tierwester Oaks nor an Owner to review and inspect the plans submitted to the Deed Restrictions Committee pursuant to these Restrictions. The independent architect or engineer shall be employed in an advisory capacity to assist and advise the Deed Restrictions Committee and any recommendation of such independent architect or engineer shall not be binding upon the Deed Restrictions Committee. All approved fees and expenses charged by the independent architect or engineer and approved by the Deed Restrictions Committee shall be paid by the Owner seeking architectural review as a condition to submittal. The Deed Restrictions Committee shall have the right, but not the duty, to inspect any completed construction or alteration on any lot or building site, upon reasonable notice to the Owner and at a reasonable time, in order to determine whether such construction or alteration has been completed in accordance with the plans previously approved by the Deed Restrictions Committee.

ARTICLE VIII Exclusions

8.1. Existing Violations ("Grandfather Clause"). The lot of an owner shall not be in violation of the restrictions of this Declaration with respect to any nonconforming use, condition, building or structure, signage, or other circumstances that are in existence at the time that this Declaration is filed with the County Clerk as provided in Section 9.2.c hereof; provided, however, that, after the effective date of these Restrictions, should such nonconforming use be discontinued for a period of three months, such use shall be presumed to be abandoned and shall not thereafter be reestablished or resumed. Any nonconforming use that has been abandoned pursuant to the terms of this article and is thereafter resumed shall be considered a prohibited use in violation of these Restrictions. Except for reconstruction of a building or structure following a fire, storm, or other natural catastrophe to return the building or structure to substantially the same dimensions and condition as before such fire, storm, or other natural catastrophe, any new construction or reconstruction that would otherwise materially increase the floor area or height of a building or materially change the dimensions of the building must comply with the restrictions of this Declaration, and likewise any change of use, signage, or other conditions must comply with the restrictions of this Declaration.

8.2. Election Out. The lot of an owner who executes this declaration as provided in Section 9.2.b hereof, shall be excluded from the operation of the restrictions of this Declaration if the owner elects to mark the appropriate box on the signature page for such lot to exclude the lot from the restrictions.

8.3. Owner Having No Notice. The restrictions of this Declaration shall not apply to any lot of an owner who owned the lot at the time of the filing of this Declaration, who did not sign this Declaration, and who did not receive actual notice of the filing of this Declaration as provided in Section 9.2.d hereof.

8.4. Exclusion After Filing of Declaration. An owner of a lot who does not sign this Declaration may delete that lot from the operation of the restrictions by filing an acknowledged statement that describes the owner's lot by reference to the recorded map or plat of the subdivision and states that the owner elects to have the lot deleted and excluded from the restrictions if such statement is filed before one year after the date on which the owner receives actual notice of the filing of this Declaration.

8.5. Miscellaneous Exclusions. The restrictions of this Declaration shall not apply to any lot to the extent that such lot is excluded pursuant to Section 201.009(b)(5) of the Code, dealing with lot owned by minors or persons declared to be incompetent, or Section 201.009(d) of the Code, dealing with lienholders.

8.6. Election to Remove Exclusion. With respect to any lot that has been excluded from the restrictions of this Declaration for any reason, whether as an entire lot or as part of a predecessor lot the owner(s) of such lot may, at any time and to the extent permitted by law, elect to subject the lot to the restrictions of this Declaration by filing with the County Clerk a notarized statement describing the lot by reference to the recorded map or plat of the subdivision containing the lot and stating that such owner elects to subject the lot to the restrictions contained in this Declaration, and such lot shall thereafter be subject to the restrictions and terms of this Declaration, regardless of any change in ownership.

ARTICLE IX
Implementation

9.1. Effective Date. The restrictions of this Declaration, subject to the exclusions set forth in this Declaration, shall become effective upon the date of filing of this declaration with the County Clerk of Harris County, Texas pursuant to Section 9.2.c below, provided that all steps of implementation as set forth in Section 9.2 below are taken within the prescribed time periods.

9.2. Steps of Implementation. The steps of implementation as referred to in Section 9.1 above are as follows:

a. Formation of Petition Committee. A Petition Committee consisting of at least three (3) owners of lots shall be formed for the purpose of carrying out the steps of implementation as set forth in Section 9.2.b through 9.2.d below, and a notice of the formation of such Petition Committee shall be filed with the County Clerk of Harris County, Texas as provided in Section 201.005(b) of the Code. Such a notice was filed on _____, by a Petition Committee consisting of the following owners: James Harrison, Alice Webb, Helen Cashaw and Charlotte K. Bryant.

b. Circulation to Property Owners. During the Petition Committee's existence, this Declaration shall be circulated to owners of lots for signature and notary acknowledgment, which signature and acknowledgment shall be made, for the owner or owners of each lot, on a signature page in substantially the same form and content as shown in Exhibit C hereof, which in any event shall include alternate boxes that are clearly identified in a conspicuous manner next to the signature line that will allow the owner to indicate whether such owner elects to include or exclude the lot from the restrictions contained in this Declaration. Each owner of a lot must sign the signature page; however, only one election either to include or exclude the lot shall be made for each lot.

c. Filing of Declaration. On obtaining acknowledged signatures pursuant to section 9.2.b. of owners who own, in the aggregate, seventy-five percent (75%) of the total number of lots in Tierwester Oaks Section 1, this Declaration shall be filed with the County Clerk of Harris County, Texas by no later than one (1) year from the date that the notice of the formation of the Petition Committee was filed with the County Clerk as provided in Section 9.2.a above.

2017-08-08

d. Notice and Certificate of Compliance. By no later than the sixtieth (60th) day following the date on which this Declaration is filed with the County Clerk as provided in Section 9.2.c, the Petition Committee shall prepare a notice meeting the requirements of Section 201.008(a) of the Code and publish and mail such notice to all record owners of all lots as provided in Section 201.008(b) of the Code. Upon compliance with such notice of all requirements, a certificate of compliance executed by at least a majority of the members of the Petition Committee shall be filed with the County Clerk of Harris County, Texas.

9.3. Suit to Challenge Implementation Procedures. Any owner of a lot who has neither signed this Declaration nor filed a statement described in Section 8.4 and who wishes to challenge the procedures by which the implementation of the restrictions contained in this Declaration is sought must file suit under Section 201.010 of the Code before the one hundred eighty-first (181st) day following the date on which the Petition Committee files with the County Clerk the certificate of compliance as described in Section 9.2.d above.

ARTICLE X
Miscellaneous

10.1. Enforcement. Any owner of a lot or the Association or any of its successors or any designated representative of any such owner, Association or successor, may, to the extent and means permitted by law, enforce the restrictions contained in this Declaration. Failure to enforce any restriction at any time or with respect to any particular violation shall not constitute a waiver of any right to subsequently enforce the same, or other restrictions.

10.2. Partial Invalidity. If any of the restrictions contained in this Declaration is held to be invalid or unenforceable, the remaining restrictions shall remain in full force and effect.

10.3. Continued Validity of Unmodified Restrictions. Except as modified, deleted or added to herein, the Existing Restrictions shall remain in full force and effect.

10.4. Multiple Counterparts. This instrument may be executed in multiple counterparts, all of which shall be considered part of the same instrument.

EXECUTED by owners as of the dates shown on the respective notarized Signature Pages collectively attached as Exhibit C.

Return to:

Charlotte K. Bryant
Tierwester Civic Association
3526 Rosedale
Houston, Texas 77004