

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
DOGWOOD PARK**

**Tyler, Smith County, Texas**

**Declarant  
DOGWOOD PARK LLC**

# DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR DOGWOOD PARK

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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
DOGWOOD PARK

This Declaration of Covenants, Conditions & Restrictions for DOGWOOD PARK is made by DOGWOOD PARK LLC, a Texas Limited Liability Company (“**Declarant**”), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon.

Declarant is developing the real property with a commercial business community known as DOGWOOD PARK. Declarant desires to provide for the preservation and maintenance of DOGWOOD PARK, and to protect the value, desirability, and attractiveness of DOGWOOD PARK. Declarant deems it advisable to create an association to administer the functions and activities more fully described in this Declaration.

Declarant hereby declares that the real property described in Appendix A is subject to this Declaration. The provisions contained in this Declaration and all related documents are subject to any and all applicable City Ordinances.

ARTICLE 1

DEFINITIONS

DEFINITIONS. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. “**Areas of Common Responsibility**” means portions of Lots or Buildings that are maintained by the Association, as a common expense, but are not owned by the Association, all as set out on Appendix E attached hereto.

1.2. “**Assessment**” means any charge levied against a Lot or Owner by the Association, pursuant to the Documents, and include Regular Assessments, Special Assessments, and Individual Assessments, as defined in Article 5 of this Declaration.

1.3. **"Assessment Lien"** means a lien encumbering a Lot or Lots to secure payment of Assessments.

1.4. **"Association"** means the association of Owners of Lots in the Property, to be organized as a Texas nonprofit nonstock corporation named DOGWOOD PARK, LLC.

1.5. **"Board"** means the Board of Directors of the Association.

1.6. **"Building"** means the Office Building or Buildings on a Lot or Lots, and all other improvements on the Lot. Where the context indicates or requires, "Building" includes the Lot or Lots.

1.7. **"Building Unit"** means that part of a Building located over a Lot.

1.8. **"Bylaws"** means the bylaws of the Association, as they may be amended from time to time.

1.9. **"Common Area"** also known as ("Common Elements") means that certain real and personal property owned or to be owned by the Association for the use and enjoyment of the Members, Occupants, guests, invitees, and patrons, specifically described as Lot(s) 1-F or any further subdivision of Lots, signage, parking, including carports, dumpsters, sidewalks, driveways, greenbelt and landscaping elements, screening walls, and porches.

1.10. **"Declarant"** means DOGWOOD PARK LLC, a Texas Limited Liability Company, or its successor, who is developing the Property.

1.11. **"Declarant Control Period"** means that period of time, beginning the date this Declaration is recorded, during which Declarant controls the operation and management of the Association, pursuant to Appendix C of this Declaration.

1.12. **"Declaration"** means this document, as it may be amended from time to time. During the Declarant Control Period, Declarant will not lower the architectural maintenance and quality standards set forth herein without the consent of the majority of Owners.

1.13. **"Development Period"** means that period of time during which the Property is being developed, constructed, or marketed, and extends from the date this Declaration is recorded until title to all of the Lots that may be created have been conveyed to Owners other than builders or other persons who purchase Lots for the purpose of constructing Buildings for resale to Owners.

1.14. **"Director"** means a member of the Association's Board of Directors.

1.15. **“Documents”** mean, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws, the Association's Articles of Incorporation, the Rules of the Association, Declarant Representations & Reservations attached as Appendix C to the Declaration, Architectural Renderings and Drawings attached as Appendix D to the Declaration, and Areas of Common Responsibility attached as Appendix E to the Declaration, as any of these may be amended from time to time.

1.16. **“Lot”** means a portion of the Property other than the Common Area, intended for independent ownership, on which there is or will be constructed a Building, as shown on the Plat. Where the context indicates or requires, “Lot” includes the Building Unit.

1.17. **“Majority”** means more than half.

1.18. **“Member”** means a member of the Association, each Member being an Owner of a Lot, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.19. **“Mortgagee”** means a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a Lot.

1.20. **“Occupant”** means an Occupant of a Building Unit, regardless of whether the person owns the Lot.

1.21. **“Office Building”** means a building used for professional office, which includes all Lots, except Lot(s) 1-F or any further subdivision of Lots as shown on the attached Appendix D.

1.22. **“Officer”** means an Officer of the Association and shall include, but shall not be limited to the offices of President (**“President”**), Secretary (**“Secretary”**), Treasurer (**“Treasurer”**), Vice President (**“Vice President”**), and such other officers as the Board may designate from time to time.

1.23. **“Owner”** means a holder of recorded fee simple title to a Lot. Declarant is the initial Owner of all Lots. Contract sellers and Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1.24. **“Plat”** means all plats, singly and collectively, recorded or to be recorded in the Real Property Records of Smith County, Texas, and pertaining to DOGWOOD PARK, an addition to the City of Tyler, Texas, including all dedications, limitations, restrictions, easements, and reservations shown on the Plat, as the plats may be amended from time to time. The Plat, titled “Final Plat,” was filed for record in Smith County, Texas in Cabinet E, Slide 334A of the Plat Records of Smith County, Texas.

1.25. **“Property”** means all the land subject to this Declaration and all



improvements, easements, rights, and appurtenances to the land. The name of the Property is DOGWOOD PARK. The Property is located entirely in the City of Tyler, Smith County, Texas. The Property is located on land described in Appendix A to this Declaration, as shown on the Plat, and includes every Lot and Common Area thereon.

1.26. **“Rules”** means rules and regulations adopted by the Board in accordance with the Documents.

## ARTICLE 2

### THE PROPERTY

2.1. PROPERTY. The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Appendixes to this Declaration, which run with the real property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. ADDITIONAL PROPERTY. The real property described in Appendix B may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association by Declarant during the Development Period, as permitted in Appendix C. Otherwise, the addition of real property to the Property requires the approval of Owners of at least a majority of the Lots, excluding the Declarant during the Declarant Control Period. Annexation of additional real property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the county's real property records.

2.3. SUBJECT TO DOCUMENTS. The real property subject to this Declaration is also subject to the Plat, the Bylaws, the Association's Articles of Incorporation, and the Rules of the Association and Architectural Renderings and Drawings attached to the Declaration as Appendix D, as any of these may be amended from time to time.

2.4. DECLARANT'S RIGHTS & RESERVATIONS. The Property and the Documents are subject to the representations, rights, and reservations of Declarant, as stated in Appendix C of this Declaration. If a provision of Appendix C conflicts with any other provision of the Documents, the terms of Appendix C control. Declarant's representations, rights, and reservations are intentionally segregated as an appendix to facilitate use of this Declaration by Owners after the Declarant-related provisions are obsolete. This Section and every other provision of the Documents that benefits Declarant may not be amended without evidence of Declarant's consent on the instrument of amendment.

2.5. OVERALL DEVELOPMENT. The Property shall consist of a proposed five (5), or fewer Office Buildings and several Outparcels, Lot(s) 1-F or any further subdivision of Lots, unless otherwise approved by Declarant.

2.6. COMMON AREAS. The Common Areas of the Property consist of the following, and any modification of, replacement of, or addition to these:

2.6.1. Lot 1-F. Private drive and utility easements.

2.6.2. Private Drive. Driveway access to Buildings.

2.6.3. Parking Spaces. Parking Spaces, including but not limited to covered parking, for use by Building Owners and Occupants and their customers, business invitees, and guests, subject to the specific rights set forth herein.

2.6.4. Lot 1-F. Other Common area described as any future Nature area and park.

2.6.5. Signage.

(1) Monument sign installed by Declarant located at the entrance to the Property and maintained by the Association that indicates the name of the Development and Occupant of Lot 1-F.

(2) Secondary signs installed by the Declarant or the Association, such as Marquee signs that indicate directions or the listing of names of the Occupants of the Property, are to be maintained by the Association.

(3) Individual signs on any part of a Building Unit are subject to ACC approval and are to be paid for and maintained by the respective Owners or Occupants, as the case may be.

(4) Directional signs are to be maintained by the Association.

2.6.6. Maintenance Easement. The entrance signs, driveways, parking spaces, sidewalks, lawns, landscaping, and sprinklers, including necessary ingress and egress to all areas necessary to accomplish same.

2.6.7. Property Entrances.

(1) Signage;

(2) Planter boxes and fencing;

(3) Electrical and water installations on utility meters in the Association's name;

(4) Grass, shrubs, ground cover, and trees, served by the Association's sprinkler lines.

2.6.8. Street Lamps. Any pole lamps on the Property that are used for street lighting, to the extent they are not maintained by the City of Tyler, Texas.

2.6.9. Personalty. Any personal property owned by the Association, such as books and records, office equipment, and furniture.

2.6.10. Water Feature. Any fountain or nominal water feature that may be added at the sole discretion of Declarant, to be maintained by the Association.

2.7. OWNERSHIP OF COMMON AREA LAND. Before the occupancy by any Owner or Occupant or completion of all improvements, Declarant will convey the Common Area land, being Lot(s) 1-F or any further subdivision of Lots, to the Association, by special warranty deed. If title to the land is clear, the Association may not refuse to accept the deed. This will in no way relieve the Declarant of its duty to complete, on a phased basis, the Common Elements of the Property. Declarant covenants to complete all Common Element improvements consistent with the general development scheme and expressly retains an access easement over Lot(s) 1-F or any further subdivision of Lots to facilitate completion of all Common Element improvements and any remaining Building not completed at such time. Until Lot(s) 1-F or any further subdivision of Lots are conveyed to the Association, Declarant will pay all property taxes and any governmental assessments thereon. Thereafter, taxes on (s) 1-F or any further subdivision of Lots will be paid by the Association and included in the Assessments. Notwithstanding Declarant's title to the Common Area, the Association, through its Members or the Occupants, has exclusive use and benefit of the improvements thereon and the Association will maintain and insure same as provided herein.

### ARTICLE 3

#### MAINTENANCE OBLIGATIONS

3.1. OVERVIEW. The Association shall maintain the Common Areas and Areas of Common Responsibility in accordance with first class office standards in Tyler, Texas. The Association shall hire third party professional management companies for this responsibility, or may self-manage upon a majority vote of its members. As long as Declarant owns a Lot in the Property, the management company shall be selected at the sole discretion of Declarant, or it may elect to self-manage. Anything to the contrary notwithstanding, however, the initial term of any such management agreement shall not exceed five (5) years.

3.2. ASSOCIATION MAINTAINS. The Association's maintenance obligations will be discharged in a manner consistent with first class office standards in Tyler, Texas. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas.

- a. All Common Areas.
- b. The Areas of Common Responsibility.
- c. Real and personal property owned by the Association but which is not a Common Area, such as a Lot acquired by the Association through foreclosure at Owner's expense.

3.3. OWNER RESPONSIBILITY. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

3.3.1. Lot Maintenance. Each Owner, at the Owner's expense, must maintain all interior improvements on its Lot, except any area designated as an Area of Common Responsibility. Maintenance includes, as needed, preventative maintenance, repairs, and replacement. Each Owner is expected to maintain its Lot at a level, to a standard, and with an appearance that is commensurate with other Building Units in the Property. Anything to the contrary herein notwithstanding, the Association shall maintain the Building exteriors and roofs of all Buildings on the Property, whether or not the same are Areas of Common Responsibility.

3.3.2. Owners' Signs. Signs indicating the names of Owners or Occupants of Buildings will be paid for and maintained by the Owner, subject to ACC approval.

3.3.3. Avoid Damage. An Owner may not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, materially reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

3.3.4. Responsible for Damage. An Owner is responsible for its own willful or negligent acts and those of its Occupant's, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Areas, the Areas of Common Responsibility, or the property of another Owner or Occupant to the extent not covered by insurance required to be maintained by the Owner of the damaged property pursuant to this Declaration.

3.3.5. Owner's Default in Maintenance. If the Board determines that an Owner has failed to properly discharge its obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and its Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

BEFORE ACQUIRING AN OWNERSHIP INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER IS STRONGLY ENCOURAGED to contact the Association to obtain and review the most recent designation of Areas of Common Responsibility, which is subject to change from time to time.

3.4. AREAS OF COMMON RESPONSIBILITY. The Association, acting through its Members only, has the right but not the duty to designate, from time to time, portions of Lots or

Buildings as Areas of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense, as shown on Appendix E attached hereto. A designation applies to every Lot having the designated feature. The cost of maintaining Areas of Common Responsibility and the exterior of all Buildings on the Property (including the roofs thereof) shall be included in the Association's annual budget and assessed uniformly against all Lots as a Regular Assessment.

3.4.1. Change in Designation. The Association may, from time to time, change the designation of Areas of Common Responsibility, or provide for no Areas of Common Responsibility. Because the designation is subject to change, the Association will maintain at all times a dated list of the Areas of Common Responsibility for distribution to Owners and prospective purchasers. Additions, deletions, or changes in designation must be:

- a. Approved by Declarant during Declarant Control Period, and approved by Owners of at least a Majority of the Lots after Declarant Control Period.
- b. Published and distributed to an Owner of each Lot.
- c. Reflected in the Association's annual budget and reserve funds.

3.4.2. Initial Designation. The initial designation of Areas of Common Responsibility, Appendix E, will be effective on the date the Declaration is recorded.

### 3.5. PARTY WALLS.

3.5.1. General Rules Of Law To Apply. Each wall which is built as a part of the original construction of the Building Units upon the Property and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto to the extent not covered by insurance required to be maintained pursuant to the terms of this Declaration, in which case the maximum liability will be the insurance deductible. If the Party Wall is on one (1) Lot or another due to an error in construction, such wall shall, nevertheless, be deemed to be on the dividing line and constitute a Party Wall for purposes of this Section. Reciprocal easements shall exist upon and in favor of the adjoining Building Units for the maintenance, repair, and reconstruction of Party Walls. Within twenty (20) days after receipt of a request of an Owner and at the expense of the requesting Owner, all adjoining Party Wall Owners will give estoppel letters stating that no lien or claim is outstanding with respect to Party Wall obligations, or specifying such lien or claim if the same exists.

3.5.2. Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the wall, that Owner will bear the entire cost of repair, reconstruction, or replacement to the extent not covered by the insurance policy maintained by the

Association. If an Owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Smith County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien; provided the claim of lien is filed within ninety (90) days after the date of repairs or replacements to the Party Wall, and suit is filed within one (1) year after the date the lien is filed. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

3.5.3. Alterations. The Owner of a Lot sharing a Party Wall with an adjoining Owner may not cut openings in the wall or alter or change the wall in any manner that affects the use, condition, or appearance of the wall to the adjoining Lot. The Party Wall will remain in the same location as when erected. In the event an Owner of two (2) or more adjoining Lots wishes to combine its adjoining Lots into one (1) Building or to in any way breach the Party Wall separating the respective Lots, then it shall conform and adhere to any and all building codes, ordinances, and regulations of the City of Tyler or Smith County, Texas in effect at that time. This includes, if necessary, inter alia, replatting, at the expense of the affected Lot Owner(s). Any such action for approval from the proper authorities will not be subject to the approval of the Association, provided no Common Area interest is affected.

3.5.4. Weatherproofing. Notwithstanding any other provision of this Section, an Owner, who by its negligent or willful act causes the Party Wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

3.5.5. Right To Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE 4

### ASSOCIATION AND MEMBERSHIP RIGHTS

4.1. THE ASSOCIATION. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a property owners association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association comes into existence on the earlier of (1) issuance of its corporate charter or (2) the initial levy of Assessments against the Lots and Owners. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

4.2. MEMBERSHIP. Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Lot. An attempt to separate membership in the Association from

ownership of the Lot is void and will not be recognized by the Association. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association.

4.2.1. Co-Owners. If a Lot is owned by more than one person or entity, each co-owner is a member of the Association and may exercise the membership rights appurtenant to the Lot.

4.2.2. Contract Purchasers. A member who sells its Lot under a contract for deed may delegate its membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all Assessments attributable to its Lot until fee title to the Lot is transferred.

4.3. VOTING. One (1) vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. Each vote is uniform and equal to the vote appurtenant to every other Lot, except during the Development Period as permitted in Appendix C. Votes may be cast by written proxy, according to the requirements of Section 4.11 of the Bylaws. Cumulative voting is not allowed. The vote appurtenant to a Lot is not divisible by co-owners, who are subject to the following provisions:

4.3.1. Co-Owners Voting at Meeting. If only one (1) of the multiple co-owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one (1) of the co-owners is present, the Lot's one (1) vote may be cast with the co-owners' unanimous agreement. Co-owners are in unanimous agreement if one (1) of the co-owners casts the vote and no other co-owner makes prompt protest to the person presiding over the meeting.

4.3.2. Co-Owners Voting by Proxy or Ballot. Any co-owner of a Lot may vote by ballot or proxy, and may register protest to the casting of a vote by ballot or proxy by the other co-owners. If the person presiding over the meeting or balloting receives evidence that the co-owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

4.4. BOOKS & RECORDS. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Article 1396-2.23.B. of the Texas Non-Profit Corporation Act, as it may be amended from time to time.

4.5. INDEMNIFICATION. The Association indemnifies every Officer, Director, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent, or otherwise. A Leader is liable for its willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. As a common expense, the Association will maintain adequate general liability and directors and officers liability insurance to fund this obligation, if it is reasonably available.

4.6. OBLIGATIONS OF OWNERS. Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

4.6.1. Information. Within thirty (30) days after acquiring an interest in a Lot; within thirty (30) days after the Owner has notice of a change in any information required by this Subsection; and on request by the Association from time to time, an Owner will provide the Association with the following information:

- a. A copy of the recorded deed by which Owner has title to the Lot.
- b. The Owner's address, phone number, and driver's license number, if any.
- c. Any Mortgagee's name, address, and loan number.
- d. The name and phone number of any Occupant other than the Owner.
- e. The name, address, and phone number of Owner's managing agent, if any.

4.6.2. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or its Lot, and will pay Regular Assessments without demand by the Association.

4.6.3. Comply. Each Owner will comply with the Documents as amended from time to time.

4.6.4. Reimburse. Subject to Section 3.3.4 herein, each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, an Occupant of the Owner's Lot, or the Owner or Occupant's family, guests, employees, contractors, agents, or invitees.

4.6.5. Liability. Each Owner is liable to the Association for violations of the Documents by the Owner, an Occupant of the Owner's Lot, or the Owner or Occupant's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

## ARTICLE 5

### COVENANT FOR ASSESSMENTS

5.1. PURPOSE OF ASSESSMENTS. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and promoting the common benefit, and enjoyment of Owners and Occupants, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.



5.2. PERSONAL OBLIGATION. An Owner is obligated to pay its pro rata share of the Assessments levied by the Board against the Owner or its Lot. Each Owner's pro rata share shall be determined by dividing the total number of Lots owned by such Owner by the total number of Lots to be developed on the Property, which total number of initial Lots is one hundred sixteen (116), which is subject to change up or down. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt itself from its Assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of its Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

5.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of Owners of at least sixty-seven percent (67%) of the Lots, excluding Declarant during the Declarant Control Period. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget:

5.3.1. Veto Increased Dues. Upon filing of this Declaration and at least thirty (30) days prior to the effective date of an increase in Regular Assessments, the Board will notify the Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least a Majority of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

5.3.2. Veto Special Assessment. At least thirty (30) days prior to the effective date of a Special Assessment, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless Owners of at least Majority of the Lots (excluding the Lots owned by Declarant) disapprove the Special Assessment by petition or at a meeting of the Association.

5.3.3. Approve Certain Special Assessments. The following actions must be funded by a Special Assessment approved by Owners of at least a Majority of the Lots (excluding the Lots owned by Declarant):

- a. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.
- b. Construction of additional improvements within the Property, but not replacement of improvements in place at the time of issuance of certificate of occupancy.
- c. Any expenditure that may reasonably be expected to significantly

increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

5.4. TYPES OF ASSESSMENTS. There are three (3) types of Assessments: Regular, Special, and Individual.

5.4.1. Regular Assessments. Regular Assessments are based on the annual budget. Each Lot is liable for its equal share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated common expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year; commonly referred to as January through December; in an amount that covers the estimated deficiency. Regular Assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to

- a. Maintenance, repair, and replacement, as necessary, of the Common Area.
- b. Maintenance, repair, and replacement, as necessary of the Area of Common Responsibility.
- c. Maintenance, repair, and replacement, as necessary of the exteriors of the Buildings and roofs.
- d. Utilities billed to the Association.
- e. Services billed to the Association and serving all Lots.
- f. Taxes on property owned by the Association, if any, and the Association's income taxes.
- g. Management, legal, accounting, auditing, and professional fees for services to the Association.
- h. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- i. Insurance premiums and deductibles.
- j. Contributions to the reserve funds.
- k. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

5.4.2. Special Assessments. In addition to Regular Assessments, and subject to Subsection 5.3.3. herein, the Board may levy one or more Special Assessments against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds.

5.4.3. Individual Assessments. In addition to Regular and Special Assessments, the Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: insurance premiums for individual Building coverage, the use of additional assigned covered parking spaces, interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or its Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

5.5. BASIS & RATE OF ASSESSMENTS. Vacant Lots may not be assessed the full amount of its pro rata share of Assessments; provided that the Declarant shall pay any portion of the pro rata share of Assessments allocable to a vacant Lot which is not assessed to such Lot Owner. The rates of Assessment are as follows:

5.5.1. Improved Lot. A Lot that has been improved with a Building for which the City of Tyler, Texas issued a certificate of occupancy will at all times thereafter be assessed at the full rate.

5.5.2. Vacant Lot. A Lot owned by Declarant that is vacant or on which a Building is under construction is not subject to Assessment during the Declarant Control Period, provided Declarant shall pay any operating deficits of the Association as they arise. A vacant Lot becomes subject to Assessment at the full rate on the first day of the month following the month in which the City of Tyler, Texas issues a certificate of occupancy.

5.5.3. Board Determination. Notwithstanding the foregoing, the Board may revoke the reduced-rate status of a vacant Lot if it becomes necessary or desirable for the Association to spend money on or for the Lot, or if the Board determines that a completed Building is eligible for a certificate of occupancy.

5.6. ANNUAL BUDGET. The Board will prepare and approve an estimated annual budget for each fiscal year thirty (30) days prior to the end of the fiscal year; provided that the Board will prepare and approve an estimated annual budget for the first fiscal year within thirty (30) days after filing of this Declaration. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for Assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

5.7. DUE DATE. Regular Assessments are due on the first day of each month, and are delinquent if not received by the Association on or before the first day of the month. Special Assessments and Individual Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Assessment is given, which may be given by mail, fax or email.

5.8. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and use its best efforts to fund reserves out of Regular Assessments.

5.8.1. Operations Reserves. The Association will maintain operations reserves at a level sufficient to cover the cost of operational or maintenance emergencies or contingencies, including the full amount of deductibles on insurance policies maintained by the Association.

5.8.2. Replacement & Repair Reserves. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Area, Area of Common Responsibility, and the exteriors of the Buildings on the Property (including the roof). The amount of reserves to be collected will be periodically revised, but not less than once every seven (7) years by an independent third party service operating in the business of developing reserve amounts for similar projects.

5.9. ASSOCIATION'S RIGHT TO BORROW MONEY. After the Declarant Control Period has expired, the Association is granted the right to borrow money, subject to the consent of Owners of at least a Majority of Lots and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

5.10. ASSESSMENT LIEN. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that its title may be subject to the continuing lien for Assessments attributable to a period prior to the date it purchased its Lot.

5.10.1. Superiority of Assessment Lien. The Assessment Lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and Assessments levied by governmental and taxing authorities, (2) any interim construction lien, and (3) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment Lien is superior to any mechanic's lien for construction of improvements to the Lot or an assignment of the right to insurance proceeds on the Lot, regardless of when recorded or perfected.

5.10.2. Effect of Mortgagee's Foreclosure. A Mortgagee's foreclosure of its deed of

trust lien extinguishes the Association's claim against the Lot for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the Mortgagee's foreclosure sale is liable for Assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

5.10.3. Perfection of Lien. The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the county's real Property records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.

5.10.4. Power of Sale. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's Assessment Lien. The Board may appoint, from time to time, an Association Officer, agent, trustee, substitute trustee, or attorney to exercise the power of sale on behalf of the Association. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

5.10.5. Foreclosure of Lien. The Assessment Lien may be enforced solely by nonjudicial foreclosure in accordance with the provisions applicable to the exercise of power of sale as set forth in Section 51.002 of the Texas Property Code, as it may be amended from time to time. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorney's fees. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

## ARTICLE 6

### EFFECT OF NONPAYMENT OF ASSESSMENTS AND VIOLATION OF THE DOCUMENTS

6.1. COLLECTING DELINQUENT ASSESSMENTS. Owners who honor their obligations to the Association should not be burdened by Owners who default. The Board is responsible for taking action to collect delinquent Assessments. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies that the Association has.

6.1.1. Delinquency. An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date.

6.1.2. Notice to Mortgagee. The Board may notify and communicate with the holder of any lien against a Lot regarding the Owner's default in payment of Assessments.

6.1.3. Interest. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum. Interest is an Individual Assessment.

6.1.4. Late Fees. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time. Late fees are an Individual Assessment.

6.1.5. Costs of Collection. The Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the manager. Collection costs are an Individual Assessment.

6.1.6. Acceleration. If an Owner defaults in paying an Assessment that is payable in installments, the Board may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

6.1.7. Suspension of Use and Vote. If an Owner's account has been delinquent for at least thirty (30) days, the Board may suspend the right of Owners and Occupants to use Common Areas and common services during the period of delinquency. The Board may not suspend an Owner or Occupant's right of access to the Lot. The Board may also suspend the right to vote appurtenant to the Lot. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.

6.1.8. Money Judgment. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

6.1.9. Foreclosure of Assessment Lien. As provided by Article 5 of this Declaration, the Association may foreclose its lien against the Lot by judicial or nonjudicial means.

6.1.10. Application of Payments. The Board may adopt and amend policies regarding the application of payments. The Board may refuse to accept partial payment, i.e., less than the full amount due and payable. The Board may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Board's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot's account.

6.2. ENFORCING THE DOCUMENTS. The remedies provided in this Section for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following right to enforce the Documents:

6.2.1. Nuisance. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

6.2.2. Fine. The Association may levy reasonable charges, as an Individual Assessment, against an Owner and its Lot if the Owner or Occupant, or the Owner or Occupant's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

6.2.3. Suspension. The Association may suspend the right of Owners and Occupants to use Common Areas for any period during which the Owner or Occupant, or the Owner or Occupant's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

6.2.4. Self-Help. The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Lot without judicial proceedings.

6.2.5. No Waiver. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the

Documents is not a waiver of the right to do so thereafter.

6.3. NOTICE AND HEARING. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard. The Association's written notice must contain: (1) a description of the violation or property damage; (2) the amount of the proposed fine or damage charge; (3) a statement that not later than the 30th day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and (4) a stated date by which the Owner may cure the violation to avoid the fine -- unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to the Occupant. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional procedures and requirements for notices and hearing.

## ARTICLE 7

### PROPERTY EASEMENTS AND RIGHTS

7.1. GENERAL. In addition to other easements and rights established by the Documents, the Property is subject to the easements and rights contained in this Article.

7.2. OWNER'S EASEMENT OF ENJOYMENT. Every Owner is granted a right and easement of enjoyment and use over the Common Areas, subject to other rights and easements contained in the Documents. An Owner may delegate this right of enjoyment and use to the Occupants of its Lot or Building.

7.3. OWNER'S MAINTENANCE EASEMENT. Every Owner is granted an easement over adjoining Lots and Common Areas for the maintenance or reconstruction of its Building Unit, subject to the consent of the Owner of the adjoining Lot, Building Unit, or the Association in the case of Common Areas, and provided the easement does not damage or materially interfere with the use of the adjoining Lot, Building Unit, or Common Area. Requests for entry to an adjoining Building Unit or Common Area will be made in advance for a time reasonably convenient for the adjoining Owner, who may not unreasonably withhold consent. If an Owner damages an adjoining Lot, Building Unit, or Common Area in exercising this easement, the Owner is obligated to restore the damaged property to its original condition, at his expense, within a reasonable period of time.

7.4. OWNER'S INGRESS & EGRESS EASEMENT. Every Owner, its agents, invitees, and guests are granted a perpetual easement over the Property, as may be reasonably required, for ingress to and egress from each Building Unit.

7.5. ASSOCIATION'S ACCESS EASEMENT. Subject to 7.3 herein, the Association is granted an easement of access and entry to every Lot, Building Unit, and Common Area to perform



maintenance, to enforce architectural and use restrictions, to respond to emergencies, to grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Building and to perform any other duties required by the Documents. The Association will use reasonable efforts not to interfere with Owner/Occupant(s) use and enjoyment of its Building Unit and will be subject to reasonable security rules. The Association will indemnify the Owner/Occupant for willful and wanton conduct or for gross negligence.

7.6. UTILITY EASEMENT. The Association may grant permits, licenses, and easements over Common Areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

7.7. MINERAL INTERESTS. Because of the era in which this Declaration is written, there is renewed interest in oil and gas exploration, therefore the following provisions will apply:

7.7.1. Mineral Interests Reserved. On the date of this Declaration, it is expected that all mineral interests will have been reserved by prior owners of the Property or conveyed pursuant to one (1) or more deeds or other instruments recorded in the Real Property Records of Smith, County, Texas, including but not limited to rights of ingress and egress. Because the instruments conveying or reserving mineral interests were recorded prior to this Declaration, those interests in the Property are superior and are not affected by any provision to the contrary in this Declaration. By accepting title to or interest in a Lot, every Owner acknowledges the existence of the mineral rights and/or reservations referenced in this Article and the attendant rights in favor of the owner or owners of the mineral interests.

7.7.2. Mineral Reservation by Declarant. In the event (1) a mineral interest for any part of the Property has not been reserved or conveyed prior to the Declaration's conveyance of the Property, or (2) a reservation or conveyance of mineral interests is determined to be invalid or to have terminated, Declarant hereby reserves for itself all right, title, and interest in and to the oil, gas, and other minerals in and under and that may be produced from the Property, to have and to hold forever.

7.7.3. Association as Trustee. By accepting title to or interest in a Lot, each Owner acknowledges that any oil, gas, mineral, water, or other natural element in, on, under, or over any part of the Property that has not previously been reserved or conveyed is owned by the Association for the collective and undivided benefit of all Owners of the Property. In support of that purpose, each Owner – by accepting title to or interest in a Lot – irrevocably appoints the Association acting through the Board, as its trustee to negotiate, receive, administer, and distribute the proceeds of any interest in oil, gas, mineral, water, or other natural element in, on, under, or over the Owner's Lot and that may be produced from the Owner's Lot for the collective and undivided benefit of all Owners of the Property.

7.8. ENCROACHMENT EASEMENT. If any portion of a Building encroaches upon any Common Area or upon an adjoining Lot or Building Unit now existing or which may come into existence hereafter as a result of construction, overhangs, brick ledges, repair, shifting, settlement, or movement of any portion of a Building, or as a result of condemnation or eminent domain proceedings, a valid easement for such encroachment shall exist and such encroachment shall remain undisturbed so long as the Building stands.

READERS, PLEASE PAY PARTICULAR HEED TO  
THE NEXT PROVISION TITLED "SECURITY"

7.9. SECURITY. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Occupant acknowledges and agrees, for itself and its agents, invitees, and guests, that Declarant, the Association, and its Directors, Officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Occupant acknowledges and accepts its sole responsibility to provide security for its own person and property, and assumes all risks for loss or damage to same. Each Owner and Occupant further acknowledges that Declarant, the Association, and its Directors, Officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Occupant relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Occupant acknowledges and agrees that Declarant, the Association, and its Directors, Officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

## ARTICLE 8

### ARCHITECTURAL COVENANTS AND CONTROL

8.1. PURPOSE. Because the Lots are part of a single, unified community, the Association has the right to regulate the design, use, and appearance of the Lots, Building Units, and Common Areas in order to preserve and enhance the Property's value and architectural harmony. The purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed. In lieu of written guidelines, this is illustrated by the Architectural Renderings and Drawings of the Property and improvements attached as Appendix D. All Buildings located on the Property shall have consistent, compatible, and common exterior materials, colors, and design.

THE CONSTRUCTION, MODIFICATION, REPLACEMENT, USE, AND  
APPEARANCE OF EVERY LOT & OFFICE BUILDING IS SUBJECT TO THIS  
DECLARATION, ACC APPROVAL, AND RULES & ARCHITECTURAL  
RESTRICTIONS ADOPTED BY THE ASSOCIATION.

8.2. ARCHITECTURAL CONTROL COMMITTEE. The Architectural Control Committee (the “ACC”) consists of two (2) persons appointed by Declarant during the Development Period. After the Development Period, the ACC consists of up to three (3) persons appointed by the Board, pursuant to the Bylaws, or, at the Board's option, the Board may act as the ACC. If the Board acts as the ACC, all references in the Documents to the ACC are construed to mean the Board. Members of the ACC need not be Owners or Occupants.

8.3. PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT. Without the ACC's prior written approval, a person may not construct a Building Unit, remodel, or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another Lot, Building Unit, or the Common Area without ACC approval. The ACC has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

8.4. LIMITS OF LIABILITY. The ACC has sole discretion with respect to taste design, and all standards specified by this Article. The ACC and each of its members have no liability for decisions made in good faith by the ACC, and which are not arbitrary or capricious. The ACC is not responsible for: (1) error in or omissions from the plans and specifications submitted to the ACC, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owners plans and specifications with governmental codes and ordinances and state and federal laws.

8.5. ACC APPROVAL. To request ACC approval, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. The ACC will return one set of plans and specification to the applicant marked with the ACC's response, such as “Approved” or “Denied.” The ACC will retain the other set of plans and specifications, together with the application, for the Association's files.

8.5.1. No Verbal Approval. Verbal approval by the ACC, the Declarant, an Association Director or Officer, a member of the ACC, or the Association's manager does not constitute appropriate architectural approval by the ACC. Architectural approval must be in writing.

8.5.2. No Deemed Approval. The failure of the ACC to respond to an application may not be construed as approval of the application. Under no circumstances may approval of the ACC be deemed, implied or presumed.

8.5.3. Prior Approval. Notwithstanding the foregoing, no permission or approval is required for work that strictly complies with guidelines, plans, specifications, or policies previously developed and approved for all Lots or Building Units by the ACC and still in effect at the time work is initiated. Written approval for specified improvements or alterations on certain Building Units does not constitute approval for all Building Units.

8.5.4. No Approval Required. No approval is required to repaint exteriors or exterior trim in accordance with an ACC-approved color scheme, or to rebuild a Building in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a Building.

8.5.5. Building Permit. If the application is for work that requires a building permit from the City of Tyler, Texas the ACC's approval is conditioned on the city's issuance of the appropriate permit. The ACC's approval of plans and specifications does not mean that they comply with the city's requirements.

8.5.6. No Precedent. Each ACC approval is separate and independent and does not automatically bind the ACC to approve similar requests at a later date for other Building Units.

8.6. ADJOINING UNITS. If an Owner acquires title to two (2) or more adjoining Building Units, it shall have the right to construct door openings between the adjoining structures without ACC approval provided the structural integrity of the Party Wall dividing the two (2) or more structures is not compromised. Such door openings will be closed and removed prior to a subsequent sale of an adjoining Building Unit.

8.7. ACC GUIDELINES. In addition to the Architectural Renderings and Drawings attached hereto as Appendix D, the Association may publish architectural restrictions, guidelines, and standards developed by the ACC, subject to revision from time to time, including revisions to reflect changes in technology, style, and taste. The Association, acting through the ACC, has the right to establish and enforce architectural restrictions, guidelines, and standards relating to every aspect of the exterior of proposed or existing improvements on a Lot or Building Unit, including but not limited to Buildings, and landscaping, and further including replacements or modifications of original construction or installation.

## ARTICLE 9

### USE RESTRICTIONS

9.1. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property as long as such Rules are consistent with the Declaration. In addition to the restrictions contained in this Article, each Lot or Building Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of Common Areas.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of portions of Office or Retail Buildings that are visible from the street or other Office or Retail Buildings, such as roofs, windows, doors, porches, and fences.
- f. Landscaping and maintenance of Common Areas.
- g. Compliance with local laws for leasing and occupancy.
- h. No animals other than domesticated pets may be kept on the Property on a permanent basis, except as allowed by law.
- i. The types, sizes, numbers, conditions, uses, appearances, and locations of motorized and recreational vehicles on the Property.
- j. Disposition of trash and control of vermin, termites, and pests.
- k. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Occupants.

9.2. BUSINESS USE. The use of a Lot or Building Unit is limited exclusively to professional office, and shall not be used for residential dwellings, unless otherwise approved by Declarant.

9.3. EXCLUSIVITY. Intentionally Omitted.

9.4. CONDITIONS OF LEASE. Whether or not it is so stated in a lease, every lease is subject to the Documents. An Owner is responsible for providing its tenant with copies of the Documents and notifying him of changes thereto. Failure by the tenant or its invitees to comply with the Documents, federal or State law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of its tenant's violation, the Owner will promptly obtain its tenant's compliance or exercise its rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain its tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the tenant. The Owner of a leased Building Unit is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against its tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

9.5. ANNOYANCE. No Building Unit, Lot, or Common Area may be used in any way

that: (1) may reasonably be considered annoying to neighboring businesses or adjacent properties; (2) may be calculated to reduce the desirability of the Property as a business/commercial neighborhood; (3) may endanger the health or safety of Occupants; (4) may result in the cancellation of insurance on the Property; or (5) will violate any law. The Board has the sole authority to determine what constitutes an annoyance.

9.6. APPEARANCE. Both the Lot and the Building Unit must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Building Units. The ACC is the arbitrator of acceptable appearance standards.

9.7. WINDOW TREATMENTS. Without the ACC's prior written approval, all window treatments within a Building that are visible from the street or another Building must appear to be uniform in color.

9.8. SIGNS. No signs advertising the Building Units for sale or lease, other advertising signs, or unsightly objects may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Building without the Board's prior written approval. The Board's approval may specify the location, nature, appearance, dimensions, number, and time period of any advertising sign. The Association may effect the removal of any sign that violates this Section without liability for trespass or any other liability connected with the removal. Notwithstanding the foregoing, and subject to the Board's disapproval, an Owner may erect, per Lot, one professionally made sign of not more than five (5) square feet advertising the Lot for sale.

9.9. DRIVEWAYS. The driveway portion of the Property may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the respective Buildings. Without the Board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of inventory, business equipment, and inoperable vehicles; or (2) for outside "sidewalk" sales operations.

9.10. TEMPORARY STRUCTURES. Improvements or structures of a temporary or mobile nature, such as sheds and mobile buildings, may not be placed on a Lot if visible from a street or another Lot. However, the ACC may authorize an Owner or Owner's contractor to maintain a temporary structure (such as a portable toilet or construction trailer) on the Lot during construction of a Building.

9.11. NOISE & ODOR. An Owner or Occupant must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Occupants of neighboring Building Units. The Rules may prohibit the use of noise-producing security devices and wind chimes.

9.12. LANDSCAPING. No person may perform landscaping, planting, or gardening on the Common Area or Areas of Common Responsibility, without the Board's prior written authorization.

9.13. DRAINAGE. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board.

9.14. PARKING. The Property will contain an undetermined number of parking spaces. Parking will be allowed twenty-four (24) hours, seven (7) days a week. The Declarant or Board at its sole discretion shall designate parking spaces reserved for handicapped parking and for the specific needs of the individual Owners and/or their Occupants. All other surface parking spaces shall be unassigned and open to all Owners, Occupants, their guest, or invitees. Parking spaces must be used for parking purposes only, and are not intended for overnight use without the express authorization of the ACC.

## ARTICLE 10

### MORTGAGEE PROTECTION

10.1. INTRODUCTION. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the Board, without approval of Owners or Mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls.

10.2. KNOWN MORTGAGEES. An Owner who mortgages its Lot will notify the Association, giving the complete name and address of its Mortgagee and the loan number. An Owner will also provide that information on request by the Association from time to time. The Association's obligations to Mortgagees under the Documents extend only to those Mortgagees known to the Association. All actions and approvals required by Mortgagees will be conclusively satisfied by the Mortgagees known to the Association, without regard to other holders of mortgages on Lots or Building Units. The Association may rely on the information provided by Owners and Mortgagees.

10.3. ELIGIBLE MORTGAGEES. “**Eligible Mortgagee**” means a Mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged Lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per Lot or Building Unit will be valid so long as the Eligible Mortgagee holds a mortgage on the Building Unit. The Board will maintain this information. A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.

#### 10.4. MORTGAGEE RIGHTS.

10.4.1. Termination. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least fifty-one percent (51%) of Eligible Mortgagees, in addition to the required consents of Owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least sixty-seven percent (67%) of Eligible Mortgagees. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within thirty (30) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

10.4.2. Inspection of Books. Mortgagees may inspect the Association's books and records, including the Documents, by appointment, during normal business hours.

10.4.3. Financial Statements. If a Mortgagee so requests, the Association will give the Mortgagee an financial statement for the preceding fiscal year within one hundred twenty (120) days after the Association's fiscal year-end, paid at requesting mortgagee's expense. A Mortgagee will have the statement prepared at its own expense.

## ARTICLE 11

### AMENDMENTS

11.1. CONSENTS REQUIRED. Except as otherwise provided by this Declaration, certain amendments may be executed by Declarant alone or by the Board alone.

11.2. METHOD OF AMENDMENT. This Declaration may be amended by any method selected by the Board from time to time, pursuant to the Bylaws, provided the method gives an Owner of each Lot the substance if not exact wording of the proposed amendment, a description in layman's terms of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

11.3. EFFECTIVE. To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an Officer of the Association, certifying the requisite approval of Owners and, if required, Eligible Mortgagees; and (3) recorded in the real property records of every county in which the Property is located.

11.4. DECLARANT PROVISIONS. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. Because Appendix C of this Declaration is destined to become obsolete, beginning seven (7) years after the date this Declaration is first recorded, the Board may restate, rerecord, or publish this Declaration without Appendix C, provided any other appendix is not relettered. The automatic expiration and subsequent deletion of Appendix C does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

11.5. AGENCY COMPLIANCE. Appendix C notwithstanding, as long as Declarant owns any Lot or Building Unit on the Property, Declarant may amend this Declaration without the consent of any other Lot Owner in order to comply with the requirements and provisions of the Small Business Administration or similar agencies.

11.6. MERGER. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners of at least a Majority of the Lot during Declarant Control Period. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated



association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

## ARTICLE 12

### INSURANCE

12.1. GENERAL PROVISIONS. All insurance affecting the Property is governed by the provisions of this Article, with which the Board shall comply:

12.1.1. Common Expense. The cost of insurance coverage and bonds maintained by the Association is a common expense; however, pursuant to Section 5.4.3. Individual Assessments, the Building Owners are billed separately through Individual Assessments for the cost of insurance on their respective Buildings because of variations in the finish out of the various Buildings.

12.1.2. Insurer. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas with a minimum A.M. Best A- or better rating of VIII and a policyholder surplus of \$100,000,000.

12.1.3. Insured. The Association must be the named insured on all policies obtained by the Association.

12.1.4. Association as Trustee. Each Owner irrevocably appoints the Association, acting through its Board, as its trustee to negotiate, receive, administer, and distribute the proceeds of any claim against any insurance policy maintained by it or the Association, as its interests may appear.

12.1.5. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least ten (10) days' prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

12.1.6. Deductibles. An insurance policy obtained by the Association will contain a deductible not to exceed ten thousand dollars (\$10,000), or if the policy requires a separate wind and hail deductible it will not exceed 2% of the insured value, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an Owner or Occupant or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

12.1.7. Mortgage Clause. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns."

12.2. CASUALTY OR HAZARD. The Association will maintain insurance on the structural components of the Shell Buildings from the framed exterior stud walls out (excluding interior finishes and improvements, contents, furnishings and personal property located therein) and the Common Areas, against loss or damage by fire and loss or damage by all risks now or hereafter embraced by the so-called all-risk fire and extended coverage policy (with vandalism and malicious mischief endorsements), in amounts sufficient to prevent the Association or the Owners from becoming a co-insurer within the terms of the applicable policies, but in any event in an amount not less than the full insurable replacement cost thereof and which policy shall contain a replacement cost endorsement. The "full insurable replacement cost" of the Buildings and the Common Areas shall be determined from time to time but not less than once in a twelve-month period by the Board and the Board shall have the authority to obtain and pay for an appraisal by a person or organization selected by the Board in making such determination. The cost of any and all such appraisals shall be a common expense.

12.2.1. Common Area Insured. The Association will insure Common Areas, including personal property owned by the Association, such as records, furniture, fixtures, equipment, and supplies. Also, the Association will insure any Lot owned by the Association.

12.2.2. Endorsements. To the extent reasonably available, the Association will obtain endorsements to its hazard insurance policy as required by the "Endorsements" paragraph of the Mortgage Protection article of this Declaration.

12.2.3 Subrogation. Policies of Casualty and General Liability Insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against the Owner or its Occupant.

12.3. GENERAL LIABILITY. The Association will maintain a minimum one million dollar (\$1,000,000.00) combined single limit commercial general liability insurance policy over the Common Areas -- expressly excluding the liability of each Owner and Occupant within its Building Unit -- for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the association or other Owners. If available, the Association may obtain liability insurance over the Area of Common Responsibility for bodily injury and property damage resulting from the maintenance of the Area of Common Responsibility.

12.4. DIRECTORS & OFFICERS LIABILITY. To the extent it is reasonably available, the Association will maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's Directors, Officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

12.5. OTHER COVERAGES. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including but not limited to the following:

12.5.1. Worker's Compensation. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of State law or if the Board so chooses.

12.5.2. Fidelity Coverage. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for its services. The policy should be for an amount that exceeds the greater of (1) the estimated maximum funds, including reserve funds that will be in the Association's custody at any time the policy is in force; or (2) an amount equal to three [3] months of Regular Assessments on all Lots. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverage.

12.5.3. Mortgagee Required Policies. Unless coverage is not available or has been waived in writing, the Association will maintain any insurance and bond required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a Mortgagee or an Owner.

12.6. OWNER'S RESPONSIBILITY FOR INSURANCE. Each Owner and Occupant is solely responsible for insuring its personal property in its Building Unit and on the Lot, including interior finishes and improvements, furnishings, inventory, and stored items.

### ARTICLE 13

#### RECONSTRUCTION CONDEMNATION & TERMINATION

13.1. ASSOCIATION AS TRUSTEE. By accepting an interest in or title to a Lot, each Owner appoints the Association, acting through its Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or a substantial part of the Property. As trustee, the Association has full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property as permitted by this Declaration; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

#### 13.2. RESTORATION AFTER DAMAGE.

13.2.1. By Association. The Association will promptly repair or restore any damaged or destroyed portion of the Property which the Association owns or is obligated to insure, including the Building Units and the insurable interior portions thereof. If insurance proceeds or condemnation awards are not sufficient to restore the damaged Property, the Board may levy a Special Assessment to fund the deficiency.

13.2.2. Insurance Deductibles. If repair or restoration of Common Areas is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the repair in the absence of insurance.

13.3. CONDEMNATION. If any part of the Property is condemned, the Board may execute an amendment of this Declaration to describe the altered parameters of the Property. If the Association replaces or restores Common Areas taken by condemnation by obtaining other land or constructing additional improvements, the Board may execute an amendment without the prior consent of Owners to describe the altered parameters of the Property and any corresponding change of facilities or improvements.

13.4. TERMINATION. Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions:

13.4.1. Substantial Taking. In the event of substantially total damage, destruction, or condemnation of the Property, an amendment to terminate must be approved by Owners of at least sixty-seven percent (67%) of the Lots and by certain Mortgagees pursuant to the Mortgagee Protection article of this Declaration.

13.4.2. Total Taking. In the event of condemnation of the entire Property, an amendment to terminate this Declaration may be executed by the Board without a vote of Owners or Mortgagees.

13.4.3. Other Circumstances. In all other circumstances, an amendment to terminate this Declaration must be approved by Owners of at least eighty percent (80%) of the Lots and by certain Mortgagees pursuant to the Mortgagee Protection article of this Declaration.

## ARTICLE 14

### DISPUTE RESOLUTION

14.1. INTRODUCTION & DEFINITIONS. The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the “**Parties**”) agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

14.1.1. “**Claim**” means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Governing Documents.
- c. Claims relating to the design, construction, or maintenance of the Property.

14.1.2. “**Claimant**” means any Party having a Claim against any other Party.

14.1.3. “**Exempt Claims**” means the following claims or actions, which are exempt from this Article:

a. The Association’s claim for Assessments and any action by the Association to collect Assessments.

b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party’s ability to enforce the provision of this Declaration.

c. Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.

d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

14.1.4. “**Respondent**” means the Party against whom the Claimant has a Claim.

14.2. **MANDATORY PROCEDURES.** **Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.**

14.3. **NOTICE.** Claimant must notify Respondent in writing of the Claim (the “**Notice**”), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

14.4. **NEGOTIATION.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent’s receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent’s representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent’s representatives and agents with full access to the property to take and complete corrective action.

14.5. **MEDIATION.** If the Parties negotiate but do not resolve the Claim through negotiation within one hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the Parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual

mediator on which the Parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If claimant does not submit the Claim to mediation within the thirty (30)-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

14.6. TERMINATION OF MEDIATION. If the Parties do not settle the Claim within thirty (30) days after submission to mediation or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

14.7. ALLOCATION OF COSTS. Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

14.8. ENFORCEMENT OF RESOLUTION. Any settlement of the claim through negotiation or mediation will be documents in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorney's fees and court costs.

14.9. GENERAL PROVISIONS. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

14.10. LITIGATION APPROVAL & SETTLEMENT. To encourage the use of alternate dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so express in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of Owners of at least sixty-seven percent (67%) of the Lots, excluding Declarant during Declarant Control Period.

14.10.1. Owner Approval. The Association may not initiate any judicial or administrative proceeding without the prior approval of Owners of at least a majority of the Lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of Assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counter claims in a proceeding instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo.

14.10.2. Higher Approval of Certain Suits. Also, the Association may not initiate any judicial or administrative proceeding against Declarant, Association Officers and Directors, or the managing agent of the Association without the approval of Owners representing at least sixty-seven percent (67%) of the Lots.

14.10.3. Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a Special Assessment, the Association must levy a Special Assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income or reserve funds or savings to fund litigation, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation reserve fund.

14.10.4. Settlement. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute and document related thereto, such as settlement agreement and waiver or release of claims.

## ARTICLE 15

### GENERAL PROVISIONS

15.1. ESTOPPEL CERTIFICATES. At the expense of the requesting party, the Board will issue estoppel certificates regarding payment of Assessments and compliance with ACC requirements.

15.2. COMPLIANCE. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and all applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

15.3. NOTICE. All demands or other notices required to be sent to an Owner or Occupant by the terms of this Declaration may be sent by email, facsimile, text message, or by ordinary or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's Building Unit, and the Owner is deemed to have been given notice whether or not it actually receives it.

15.4. SEVERABILITY. Invalidity of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

15.5. CAPTIONS. The captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer.

15.6. INTERPRETATION. Whenever used in the Documents, unless the context

provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

15.7. DURATION. Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

## ARTICLE 16

### SPECIFIC LOT ISSUES

16.1 As set forth in Section 4.2, the Declarant has the right to be exempt any Lot or further subdivision of Lots, from mandatory membership in the Association (with the right to become a member if a subsequent Owner so elects and obtains approval from the Association), and thus exempt from all Association assessments if in fact said Owner elects not to become a member of the Association. Provided however, said Lot shall at all times be subject to those assessments and requirements set forth in Sect 5.2, 5.4.2, 5.4.3, 5.7, 5.8, and 5.10. Provided further, said Lot shall remain subject to all other provisions of this Declaration regardless of the Owner's election as to membership in the Association.

(b) In the event the Declarant agrees, and a subsequent Lot Owner elects not to become a member of the Association, then said Owner shall pay to Declarant (or make payment at Declarant's discretion; eg. to the Association) an appropriate amount determined by the Declarant, which shall represent said Owner's contribution for Common Areas and other responsibilities assumed by the Association. In the event of any nonpayment, a subsequent Lot Owner shall be subject to the remedies outlined in Article 6, with Declarant or its designee having the same rights as the Association would have against its members as outlined in said Article 6.



SIGNED AND ACKNOWLEDGED

SIGNED this 18<sup>th</sup> day of March, 2017 2025

DOGWOOD PARK LLC  
A Texas Limited Liability Company

BY: [Signature]  
Managing Member

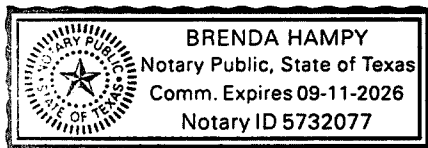
THE STATE OF TEXAS

COUNTY OF SMITH

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BEFORE ME, the undersigned authority, on this day personally appeared Scott E. Greene, Managing Member of DOGWOOD PARK LLC, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as an act of such Limited Liability Company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 18<sup>th</sup> day of March, 2017 2025



Brenda Hampy  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
Notary's Name: Typed or Printed

My Commission Expires:  
\_\_\_\_\_

## APPENDIX A

### LEGAL DESCRIPTION OF THE PROPERTY

#### DOGWOOD PARK

All that certain lot, tract or parcel of land being all of Lots 1-E, 1-F and 2-D N.C.B. 1482 of the Dogwood Park plat, Fourth Amendment, an amending replat of JAMR Addition, recorded in Smith County, Texas in Cabinet F, Slide 56-D of the Plat Records of Smith County, Texas.

APPENDIX B

LEGAL DESCRIPTION OF ADDITIONAL LAND

DOGWOOD PARK

Any Lot(s) or Land adjacent to any of the existing Lots of DOGWOOD PARK as described in Appendix A.

## APPENDIX C

### DECLARANT REPRESENTATIONS & RESERVATIONS

#### DOGWOOD PARK

C.1 DECLARANT'S REPRESENTATIONS. Declarant makes the following representations regarding certain characteristics of the Property.

C.1.1. Phasing. The Property is subject to development in phasing.

C.1.2. New Construction. The Property is newly constructed. None of the improvements in the Property constitute conversion of existing buildings.

C.1.3. No Leasehold. No part of the Property is on leasehold land.

C.1.4. Representations of Size. The sizes or dimensions of living areas, Buildings, and Lots shown on promotional materials used by Declarant during the marketing of the Property are approximated estimates based on pre-construction drawings of representational floor plans. Declarant does not warrant or represent that an Owner's Lot or Building Unit or Units actually contain the sizes or dimensions shown on promotional materials.

C.2. DECLARANT CONTROL PERIOD. For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly buildout and sellout of the Property, Declarant may retain control of the Association, subject to the following:

C.2.1. Duration. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of:

C.2.1.1. Seven (7) years from date this declaration is recorded.

C.2.1.2. Four (4) months after title to one hundred percent (100%) of the Lots that may be created has been conveyed to Owners other than builders or persons who purchase Lots for the purpose of constructing Building Units for resale to Owners.

C.2.1.3. When, in Declarant's sole opinion, the Association is viable, self-supporting, and operational.

C.2.2. Powers. During the Declarant Control Period, Declarant may, without approval of the members appoint, remove, and replace any Officer or Director of the Association, none of whom need be members or Owners.

C.2.3. Organizational Meeting. Within sixty (60) days after the end of the Declarant Control Period, or prior thereto, at the Declarant's option, Declarant will call an organizational meeting of the members of the Association for the purpose of electing, by vote of the Owners, Directors to the Board.

C.3. DECLARANT VOTES. During the Development Period, the vote appurtenant to each Lot owned by Declarant is weighted three (3) times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Development Period, Declarant may cast the equivalent of three (3) votes for each Lot owned by Declarant on any issue before the Association. On termination of the Development Period and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes. During the Declarant Control Period, Declarant may not vote to change the vested property rights or obligations of the Owners.

C.4. DEVELOPMENT PERIOD RIGHTS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

C.4.1. The right to appoint and remove members of the ACC.

C.4.2. The right to amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, including but not limited to the following purposes:

C.4.2.1. To add real property to the Property described in Appendix A.

C.4.2.2. To resolve conflicts, clarify ambiguities, and to correct inadvertent misstatements, scrivener's errors, or omissions in the Documents.

C.4.3. The right to erect, construct, and maintain on and in the Common Areas and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property

C.4.4. The right, at the expense of Declarant, to install, maintain, replace, relocate, and remove signs, banners, flags, display lighting, and seasonal landscaping on the Property for purposes of promoting, identifying, and marketing the Property.

C.4.5. Subject to the rights of Owners and Occupants, the right of ingress and egress in and through the Property to construct, maintain, manage, and market the Property, and to discharge Declarant's obligations under this Declaration.

C. 4.6 The right, at the expense of Declarant, to further develop, subdivide, combine or otherwise improve lots or land within DOGWOOD PARK under Declarant's ownership and control. Declarant will not lower the architectural maintenance and quality standards set forth herein without the consent of the majority of Owners.

C.4.7. The right of entry and access to all Lots or Building Units to perform warranty-related work, if any, for the benefit of the Building Unit being entered, adjoining Building Units, or Common Areas. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.

C.4.8. The right to complete or make improvements indicated on the Plat.

C.4.9. The right to use Building Units owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.

C.4.10. Subject to the terms of the Declaration, the absolute right to exercise any of the foregoing rights without the prior approval of the ACC, the Board, or the Owners.

C.5. RESERVE FUND. Declarant may establish a reserve fund for the Association by collecting contributions, in an amount not to exceed \$300 per Lot, from purchasers when the sale of a Lot closes. Contributions to the fund are not advance payments of Regular Assessments and are not refundable. If Declarant establishes the fund, Declarant will transfer it to the Association by the end of the Declarant Control Period. Declarant may not use the fund to defray Declarant's expenses or construction costs, or to cover the Association's budget deficits during the Declarant Control Period.

C.6. GENERAL RESERVATION. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Article which Declarant hereby reserves exclusively unto itself, its agents, employees, and contractors.

C.7. EXPENSES OF DECLARANT. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not common expenses of the Association.

C.8. OBLIGATION FOR ASSESSMENTS. Until the Association levies an Assessment against the Lots, Declarant will pay all the expenses of the Property and the Association as they accrue. From the date of the initial Assessment until the end of the Declarant Control Period, Declarant will pay either (1) the rate of Assessment for non-Declarant Owners on each Lot owned by Declarant with a developed Building, or (2) the operational expenses of the Association minus the operational expense portion of the Assessments paid by Owners other than Declarant. The Declarant will not use Assessments to defray the cost of capital expenditures.

SIGNED this 18<sup>th</sup> day of March, 2017.

DOGWOOD PARK LLC  
A Texas Limited Liability Company

BY: [Signature]  
Managing Member

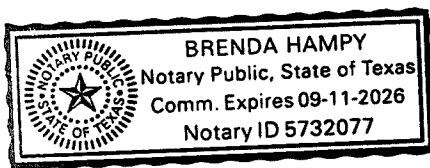
THE STATE OF TEXAS

COUNTY OF SMITH

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BEFORE ME, the undersigned authority, on this day personally appeared SCOTT E GREENE, Managing Member of DOGWOOD PARK LLC, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as an act of such Limited Liability Company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 18<sup>th</sup> day of March, 2017.



Brenda Hampy  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
Notary's Name: Typed or Printed

My Commission Expires:  
\_\_\_\_\_

APPENDIX D

ARCHITECTURAL RENDERINGS AND DRAWINGS

DOGWOOD PARK

As reviewed and approved by the ACC.



## APPENDIX E

AREAS OF COMMON RESPONSIBILITY

## DOGWOOD PARK

MAINTENANCE RESPONSIBILITY CHART – Category “A”

The following chart describes and defines the Owner Association and Lot Owner areas of responsibility, and applies to Lots 1-K, 2-E, 2-F, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and any further subdivisions of Lots, 1-L, 1-M, 2-G, and 32.

COMPONENT OF PROPERTY	AREA OF COMMON RESPONSIBILITY	OWNER RESPONSIBILITY
Roofs.	All aspects including Roof Trusses, decking, felt, shingles, and metal flashing.	None.
Roof – mounted attachments.	None.	All Aspects.
Exterior vertical walls of buildings, other exterior buildings, other exterior features of buildings not specifically listed in chart.	All aspects.	None.
Building foundations, patio slabs, and A/C slabs.	All aspects except those listed under Owner Responsibility.	Tolerance for minor cracks that are inevitable results of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the building.
Concrete driveways, parking areas & sidewalks.	All aspects except those listed under Owner Responsibility.	All aspects directly installed on Owners lot(s).
Retaining walls	All aspects.	None.
Signage	All aspects except directional signage and building signage.	All aspects directly installed on Owners lot(s).
Gutters and downspouts.	All aspects.	None.
Yard irrigation system. (sprinkler)	All aspects.	None.
Exterior light fixtures on buildings.	Fixture Only	All aspects other than the fixture, including bulbs.
Carports	N/A	N/A
Skylights.	N/A	N/A
Attics.	None.	All aspects.
Insulation	All aspects.	None.
Weather-stripping.	None.	All aspects.
Chimneys & Fireplaces.	N/A	N/A
Fences and gates around perimeter property, if applicable.	All aspects.	None.

COMPONENT OF PROPERTY	AREA OF COMMON RESPONSIBILITY	OWNER RESPONSIBILITY
Landing Elements.	N/A	N/A
Fountain at the common park area.	N/A	N/A
Surface water drainage systems.	All aspects, including collection drains and drain systems.	None. Prohibited from changing the drainage system.
Doors of Buildings	None.	All aspects.
Windows.	None.	All aspects.
Water, sewer, electrical lines & systems.	All aspects of lines and system serving the lot.	None for lines and system serving the lot.
Heating and cooling systems & water heaters.	None.	All aspects.
Intrusion alarms, on doors/windows, smoke/heat detectors, monitoring equipment.	None.	All aspects.
Cable for television or internet.	Standards for location and appearance of cable and/or conduit.	All other aspects.
Television antennas and satellite dishes.	Standards for location and appearance of exterior-mounted devices.	All other aspects.
Pest Control.	None.	All aspects.
Parking and driveway lights.	N/A	N/A
Landscaping	All Aspects of Front and Side Yard, Trees in Front and Side Yard, Common Area	Back yard and all other aspects.

**NOTE 1:** "All aspects" includes maintenance, repair, and replacement, as needed.

**NOTE 2:** The components listed in the first column are applicable only if they exist and may not be construed to create a requirement to have such a component. A skylight is an example of a component that may or may not be on a building.

**NOTE 3:** If the Owner is responsible for a component of the building that is shared with one or more other Owners in the building, such as roof trusses and the foundation, the responsibility is shared by the Owners of all the buildings. If the Owners of the buildings cannot agree on an equitable division of the costs based on the circumstances, the division will be equal among the buildings although one building may be more affected than the others. If the Owners of the buildings cannot agree on any aspect of maintenance that requires their joint participation, the matter will be decided by a 3 – person ad hoc committee appointed by the board.

**NOTE 4:** If an owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work, at said Owner's expense, after giving required notices to the Owner.

**NOTE 5:** This Maintenance Responsibility Chart may be revised by the Association, with the approval of Owners representing at least a majority of the Lots in the Property. A revised Chart must be recorded in the Real Property Records of Smith County, Texas. Notwithstanding the Declarant Control Period whereas no such approval would be required.

**NOTE 6:** Roof and exterior maintenance may not be changed except by vote of one hundred percent (100%) of the Owners of Category "A" classification Lots in DOGWOOD PARK.

**MAINTENANCE RESPONSIBILITY CHART – Category “B”**

The following chart describes and defines the Owner Association and Lot Owner areas of responsibility, and applies to Lots 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and any further subdivisions of Lots, 1-L, 1-M, 2-G, and 32.

<b>COMPONENT OF PROPERTY</b>	<b>AREA OF COMMON RESPONSIBILITY</b>	<b>OWNER RESPONSIBILITY</b>
Roofs.	None.	All aspects including Roof Trusses, decking, felt, shingles, and metal flashing.
Roof – mounted attachments.	None.	All Aspects.
Exterior vertical walls of buildings, other exterior buildings, other exterior features of buildings not specifically listed in chart.	None.	All Aspects.
Building foundations, patio slabs, and A/C slabs.	None.	All Aspects.
Concrete driveways, parking areas & sidewalks.	All aspects except those listed under Owner Responsibility.	All aspects directly installed on Owners lot(s).
Retaining walls	None.	All Aspects.
Signage	All aspects except directional signage and building signage.	All Aspects directly installed on Owners lot(s).
Gutters and downspouts.	None.	All Aspects.
Yard irrigation system. (sprinkler)	None.	All aspects.
Exterior light fixtures on buildings.	None.	All Aspects.
Carports	N/A	N/A
Skylights.	N/A	All aspects.
Attics.	None.	All aspects.
Insulation	None.	All aspects.
Weather-stripping.	None.	All aspects.
Chimneys & Fireplaces.	None.	All aspects.
Fences and gates around perimeter property, if applicable.	All aspects except those listed under Owner Responsibility.	All aspects directly installed on Owners lot(s).

<b>COMPONENT OF PROPERTY</b>	<b>AREA OF COMMON RESPONSIBILITY</b>	<b>OWNER RESPONSIBILITY</b>
Landing Elements.	N/A	N/A
Surface water drainage systems.	None.	All aspects, including collection drains and drain systems, notwithstanding prohibited changes to common drainage system.
Doors of Buildings	None.	All aspects.
Windows.	None.	All aspects.
Water, sewer, electrical lines & systems.	All aspects of lines and system serving the lot.	None for lines and system serving the lot.
Heating and cooling systems & water heaters.	None.	All aspects.
Intrusion alarms, on doors/windows, smoke/heat detectors, monitoring equipment.	None.	All aspects.
Cable for television or internet.	Standards for location and appearance of cable and/or conduit.	All other aspects.
Television antennas and satellite dishes.	Standards for location and appearance of exterior-mounted devices.	All other aspects.
Pest Control.	None.	All aspects.
Parking and driveway lights.	None.	All aspects.
Landscaping	None.	All aspects.

**NOTE 1:** "All aspects" includes maintenance, repair, and replacement, as needed.

**NOTE 2:** The components listed in the first column are applicable only if they exist and may not be construed to create a requirement to have such a component. A skylight is an example of a component that may or may not be on a building.

**NOTE 3:** If the Owner is responsible for a component of the building that is shared with one or more other Owners in the building, such as roof trusses and the foundation, the responsibility is shared by the Owners of all the buildings. If the Owners of the buildings cannot agree on an equitable division of the costs based on the circumstances, the division will be equal among the buildings although one building may be more affected than the others. If the Owners of the buildings cannot agree on any aspect of maintenance that requires their joint participation, the matter will be decided by a 3 – person ad hoc committee appointed by the board.

**NOTE 4:** If an owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work, at said Owner's expense, after giving required notices to the Owner.

**NOTE 5:** This Maintenance Responsibility Chart may be revised by the Association, with the approval of Owners representing at least a majority of the Lots in the Property. A revised Chart must be recorded in the Real Property Records of Smith County, Texas. Notwithstanding the Declarant Control Period whereas no such approval would be required.

**NOTE 6:** Roof and exterior maintenance may not be changed except by vote of one hundred percent (100%) of the Owners of Category "B" classification Lots in DOGWOOD PARK.

AFTER RECORDING, PLEASE RETURN TO:

S.E. Greene, Managing Member  
DOGWOOD PARK HOLDINGS LLC  
6115 New Copeland Rd, Suite 210  
Tyler, Texas 75703

**Smith County  
Karen Phillips  
Smith County Clerk**

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**Document Number:** 202501007879

eRecording - Real Property

RESTRICTION

Recorded On: March 19, 2025 03:52 PM

Number of Pages: 54

Billable Pages: 53

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

Total Recording: \$233.00

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

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

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Document Number: 202501007879

Receipt Number: 20250319000152

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User: Amber M



**STATE OF TEXAS  
COUNTY OF SMITH**

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

Karen Phillips  
Smith County Clerk  
Smith County, TX