

**DECLARATION OF COVENANTS, RESTRICTIONS,
CONDITIONS, ASSESSMENTS, CHARGES,
SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR
THE CROSSING TOWN CENTER
(A Commercial Development within THE CROSSING, a Master Planned
Community)**

This DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS FOR THE TOWN CENTER AT THE CROSSING, hereinafter referred to as the "Declaration," is made on the 26th day of July, 2010 by WERNER-TAYLOR LAND & DEVELOPMENT, L.P., a Texas limited partnership, hereinafter referred to as "Developer."

WITNESSETH:

WHEREAS, Developer, along with SANDRA C. TAYLOR INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF LARRY JAMES TAYLOR DECEASED, and WERNER, TAYLOR & WERNER, LLC, a Texas limited liability company, jointly own 172.446 acres, more or less, of real property described on Exhibit "A" which is attached hereto and incorporated herein for all purposes, hereinafter referred to as the "THE CROSSING," which is to be developed as a master planned commercial and residential community;

WHEREAS, SANDRA C. TAYLOR INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF LARRY JAMES TAYLOR DECEASED, owns a 8.25 acre portion more or less within THE CROSSING known as "Commercial" as well as a 4.50 acre portion more or less known as "Retail/Office", as specifically set forth on the Preliminary Master Site Plan Plat as approved by the city of Tyler, and as more particularly described in Exhibit C attached hereto, hereinafter referred to as "Town Center";

WHEREAS, Developer owns a 2.175 acre lot, within TOWN CENTER, as specifically set forth on the Plat recorded in Cabinet E, Slide 162-A, of the Plat Records of Smith County, Texas, as may be amended from time to time, hereinafter referred to as the "Corner Tract";

WHEREAS, in order to enable Developer to implement a general plan of development and accomplish the development of Town Center as a commercial, office and retail master planned community of high quality and standards in a consistent manner with continuity and to insure the creation of an architecturally harmonious development, Developer desires to subject Town Center to the covenants, conditions,

assessments, charges, servitudes, liens, reservations and easements hereinafter set forth herein collectively called the "Covenants"; and

NOW THEREFORE, Developer hereby declares that Town Center shall be held, sold and conveyed subject to the Covenants, which shall be deemed as covenants running with the land and imposed upon and intended to benefit and burden each part or portion of Town Center, hereinafter defined.

ARTICLE I - DEFINITIONS

1.01 Definitions. The definitions of certain words, phrases or terms used in this Declaration are set forth on Exhibit "B," which is attached hereto and incorporated herein for all purposes, and elsewhere in this Declaration.

ARTICLE II - COVENANTS BINDING ON PROPERTY AND OWNERS

2.01 Property Bound. From and after the date of recordation of this Declaration, Town Center shall be subject to the Covenants, and the Covenants shall run with, be for the benefit of, bind and burden Town Center. Each Owner, its heirs, successors, licensees, invitees, tenants and assigns, shall have a perpetual non-exclusive easement to use and enjoy the private streets, (including, without limitation, Main Drive as show on Exhibit D) and all other common areas designated in this Declaration and/or in the Master Declaration (hereinafter defined) and/or designated on any recorded subdivision plat of any part of Town Center, which easement shall be appurtenant to such Owner's property in Town Center.

2.02 Owners Bound. From and after the date of recordation of this Declaration, the Covenants shall be binding upon and inure to the benefit of the Developer, each Owner, and the heirs, executors, administrators, personal representatives, successors and assigns of the Developer and each Owner, whether or not so provided or otherwise mentioned in the Deed. Each Owner, his heirs, executors, administrators, personal representatives, successors and assigns, expressly agrees to pay, and to be personally liable for, the Assessments provided for hereunder, and Developer and each Owner his heirs, executors, administrators, personal representatives, successors and assigns agree to be bound by all of the Covenants herein set forth.

2.03 General. No use shall be permitted on Town Center which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City of Tyler, Texas or other controlling public authorities. Each Owner, occupant or other user of any portion of Town Center, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or theft agencies having jurisdictional control over Town Center, specifically including, but not limited to, applicable zoning restrictions placed upon Town Center as they exist from time to time. IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE

EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION. THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL. All of Town Center shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided.

ARTICLE III - ARCHITECTURAL CONTROL

3.01 Reservation and Assignment of Architectural Control. The Developer, desiring (i) to provide for the preservation of the values and amenities in and upon Town Center and (ii) to subject Town Center to the reservation of architectural control hereinafter expressed for the purpose of implementing a general plan of development for Town Center to insure the creation of a high quality, architecturally harmonious commercial, office and retail master planned community in and about THE CROSSING, which general plan of development and reservation of architectural control is for the benefit of Town Center, or any part thereof and each Owner, as well as for the benefit of the Developer, hereby reserves the right and all rights to approve or disapprove as to:

- (a) compliance with any specific restrictions imposed by Developer or anyone acting on behalf of the Developer with respect to Town Center and/or any part thereof;
- (b) without limitation, harmony of external, design, adequacy of structural design, location of improvements, allowing and location of exterior lighting, building and landscaping setbacks from property lines, square footage of improvements, height of improvements, driveways, fences, walls, retaining walls and landscaping in relation to surrounding structures and topography which are now or hereafter may be existing or proposed, including, but not by way of limitation, architectural designs, setbacks, landscaping, color schemes, types and quality of construction materials, quality of workmanship, any and all subdivisions, resubdivisions (where permitted), exterior additions to, changes in, construction, paving, alteration or excavation of Town Center or any part thereof (including, but not limited to the trees now located or to be located thereon) and any and all other Permanent Improvements located thereon, either permanent or temporary, including without limitation, additions to, changes in, or

alterations to grade, landscaping, roadways, walkways, signs, exterior lights, walls, fences, buildings, or other structures or improvements of any type or nature located thereon which any person or entity, including without limitation, governmental and quasi-governmental subdivisions or agencies, seeks to commence, erect, construct, place or maintain upon any part or portion of Town Center, or any part thereof; and

- (c) The Developer hereby delegates to the Architectural Control Committee the right and duty to approve and disapprove any part or portion of plans submitted for its review.

3.02 Construction Requests. All requests for approval of any of the items set forth in this Article III shall be submitted in writing to the Developer at 1397 Dominion Plaza Suite 120, Tyler, Texas 75703, or at such other address as may from time to time be designated by the Developer, and such request for approval shall be accompanied by complete and specific plans and specifications showing the nature, kind, shape, elevations, height, materials, color, location, landscaping, and other material attributes of the Permanent Improvements, additions, changes, alterations or excavation of a any part or portion of Town Center. The Architectural Control Committee shall have no duty to exercise the power of approval or disapproval hereby reserved, but if it fails to approve or disapprove any plans or specifications within a 15 day period from Developer's receipt of such plans and specifications, then any requirement for approval shall be deemed waived. The Architectural Control Committee shall have the power and authority to charge an application fee to be submitted with all requests for approval of items as required in this Article III.

3.03 Prior Approval. Without limitation, no building, garage, storage building, fence, wall, sign, exterior lighting, pole, antenna, television or satellite disc or dish, driveway, sidewalk, other walkway, parking lot, mailbox, other structure, equipment or apparatus or any nature whatsoever, either permanent or temporary, landscaping or Permanent improvements shall be commenced, erected, constructed, placed or maintained upon any part or portion of Town Center, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision, or resubdivision thereof, including without limitation changes in or alteration of grade, landscaping, roadways, and walkways, be made until the plans and specifications have been submitted to and approved in writing by Developer or by an Architectural Control Committee composed of three (3) or more representatives appointed by Developer (or by the Association, as provided in Section 10.09) as to (i) compliance with the Covenants herein contained and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not by way of limitation, as to architectural designs, setbacks, landscaping, color schemes and construction materials. The plans and specifications must contain the following:

- (a) A complete set of construction plans and specifications reasonably satisfactory to the Architectural Control Committee;
- (b) A site plan of the part of Town Center, showing, with regard to all Improvements, the nature, exterior color scheme, kind, shape, height,

proposed construction and landscaping materials, location of all existing and proposed Improvements with respect to the particular part or portion of Town Center (including all easements and any proposed front, rear, and side setbacks), location with respect to Improvements on adjoining parts of Town Center, and the number and location of all parking spaces and driveways on the part of Town Center;

- (c) A grading, clearing and drainage plan for the particular part of Town Center; and
- (d) A full and complete description of the intended use of the part of Town Center.

The Architectural Control Committee shall promptly review all plans submitted to it and advise the applicant whether the plans are approved, rejected, conditionally approved or held pending receipt of further information within fifteen (15) days after submission.

Non-exercise of the powers hereby reserved by Developer in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in other or different instances. Likewise, approval of any one set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of gross negligence or willful misconduct attributable to Developer or the Architectural Control Committee, neither Developer nor such Architectural Control Committee shall be liable for the improper enforcement or failure to exercise any of the powers reserved unto Developer pursuant to this Article. The fact that some type of structure or improvement may be mentioned in this Declaration is not in any manner to be construed as a statement that such type of structure or improvement will be allowed on any part or portion of Town Center, as the final approval or disapproval for any type of structure or improvement on any part or portion of Town Center is expressly vested solely in the Architectural Control Committee to be exercised at its sole discretion. Provided, notwithstanding anything in this Declaration to the contrary, neither Developer nor the Architectural Control Committee shall arbitrarily deny any proposed plans or specifications.

3.04 No Liability. In no event shall any approval obtained from the Developer pursuant to the terms of this Declaration be in any manner deemed to be a representation of any nature regarding the structural integrity or safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations, nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval. The Developer shall not at any time have any liability to any Owner or other person or entity for any decision(s) that are made by the Developer as long as such decision(s) are made by the decision maker without willful and intentional misconduct, and so long as such decisions are not arbitrary. Any and all errors or omissions from the plans submitted to the Developer shall be the sole responsibility of the Owner of the real property to which the plans and improvements relate, and the Developer shall have no obligation to check the plans for errors or omissions or to check such plans for compliance with this Declaration, zoning ordinances, laws, building lines, easements or rights-of-way, or any other issue.

3.05 Consent or Approval Requirement. Whenever the consent or approval of the Developer, or the Architectural Control Committee is required under the terms of this Declaration, the Developer and/or the Architectural Control Committee, as applicable, such consent or approval shall not be arbitrarily or unreasonably withheld, delayed or denied.

3.06 Restriction on Commencement of Construction. No construction nor pre-construction (site clearing and tree cutting or trimming, dirt removal, etc.) work of any type, kind or nature may be commenced on any part or portion of the Town Center unless and until the Owner has received the written approval of the Developer or Architectural Control Committee as required by this Declaration.

3.07 Commencement and Completion of Construction. If the owner does not commence construction of the Improvements within one (1) year after approval of the plans by the Architectural Control Committee, such approval shall terminate.

After commencement of construction of any Improvement, the applicant shall diligently prosecute the work thereon, and shall cause the Improvement to be completed as soon after commencement of construction as a reasonably prudent builder would cause the same to be completed under the same or similar circumstances.

3.08 Fees for Review of Plans and Specification. The Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to these Covenants. The Architectural Control Committee shall have the right to employ engineers, attorneys, architects and other professionals or consultants to assist the Architectural Control Committee in the evaluation of any plans and specifications submitted for approval and may charge the Owner for any reasonable costs that exceed the current application fee that is published at the time of the submission. Any such charge levied by the Architectural Control Committee shall be in accordance with the fee schedule adopted by the Architectural Control Committee and then in effect and shall be due and payable when plans are submitted for review to the Architectural Control Committee.

3.09 Finality of Determinations. The authority reserved by the Developer in this Declaration has intentionally been very broad and all encompassing. Except as otherwise specifically provided in this Declaration, no decision of the Developer may in any manner be avoided, challenged, reversed, rendered, modified, changed or nullified in any manner by any person, tribunal, court or other entity, except by the Developer itself, as long as the decision of the Developer was made without willful and intentional misconduct on the part of the Developer

ARTICLE IV - GENERAL RESTRICTIONS, USE AND NONCOMPETITION

4.01 Maintenance.

(a) Developer Land. The Developer or its duly delegated representative, shall maintain and otherwise manage all Developer Land to a reasonable standard of care in providing for the repair, management, and maintenance of the Developer Land.

(b) Assessment of Costs of Maintenance and Repair of Utilities or Developer Lands. In the event that the need for maintenance or repair of Developer Land or utilities within the Town Center is caused by any Owner, his agents, tenants, family, guests or invitees, the cost of such maintenance or repairs, at Developer's option, shall be paid by such Owner.

4.02 General Restrictions.

(a) Design Requirements. Each Owner of a part or portion of the Town Center or representative thereof shall be required to submit a design plan to the Architectural Control Committee for approval. Specific requirements are outlined in the Commercial Design Guidelines as adopted by the Developer and the Architectural Control Committee. These Commercial Design Guidelines may be amended from time to time at the discretion of the Architectural Control Committee; provided, no amendment shall materially reduce the rights of, or increase the burden on, any Owner. In the event of any conflict between the Commercial Design Guidelines and the terms and provisions of this Declaration, this Declaration shall control. Other requirements may be imposed on specific parts of Town Center as deemed necessary by the Architectural Control Committee; provided, no additional requirements shall materially reduce the rights of, or increase the burden on, any Owner. No exterior improvements to any part or portion of the Town Center (with exception to preservation of natural areas during construction) shall be permitted without prior written approval of the Architectural Control Committee.

(b) Setbacks. As to any part or portion of the Town Center, except with respect to walls, fences, planters, hedges or other screening material, no Permanent Improvement or any part thereof may be nearer to any side street line than the side setback line established per the dimensional standards of The City of Tyler. No Permanent Improvement may be located nearer to the rear property line of the part or portion of the Town Center than the rear setback line established per the dimensional standards of The City of Tyler. No Permanent Improvement may be located on any part or portion of the Town Center nearer to the front street line or any adjacent property line of such part of the Town Center than the setback established per the dimensional standards of The City of Tyler. The Developer reserves the right to change setback lines with respect to Developer Land as needed with City of Tyler approval.

(c) Walks. Walks from the street or driveway to the front of the Structure shall have a minimum width of four feet (4') and shall be constructed entirely of concrete (except, however, other materials may be used with the prior written consent of the Architectural Control Committee). Layout of said walks shall be curvilinear in nature, and approved by the Architectural Control Committee.

(d) Re-Subdivision. No part or portion of the Town Center shall be further subdivided unless approved in writing by the Developer, such approval not to be unreasonably withheld.

(e) *(Intentionally Omitted)*

(f) Water Wells. At no time shall the drilling, usage, or operation of any water well be permitted on any part or portion of the Town Center. The Developer reserves the right to drill water wells on any common property as needed to enhance the common areas.

(g) Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed unless previously approved in writing by all governmental authorities having jurisdiction with respect thereto, and by the Developer. No outside toilets of any kind are permitted, and no installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any body of water or water source.

(h) Grasses. With respect to any part or portion of the Town Center, no Owner shall grow or permit the growth of any variety of grass or other vegetation, which is not on the approved list of the Architectural Control Committee.

(i) Utilities. Each and every Structure shall be required to be connected to the water distribution system and sanitary sewer collection system in the Town Center as soon as such utilities are available in the easements adjacent to or within the respective part or portion of the Town Center upon which the Structure is located. Individual underground electrical service drops must be installed to each Structure. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installations, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in the applicable utility company rules, regulations and terms and conditions of service, as the same may be amended from time to time without notice.

(j) Utility and Service Lines. No gas, electric power, telephone, water, sewer, cable television, or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any part or portion of the Town Center, except to the extent, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers where required. All utility lines from each Structure to the common utility lines i.e. (water, gas, sewer, power, etc., utility lines which carry any utility to or sewage from such Structure) shall be maintained by the Owner of such Structure at his own cost and expense.

(k) Easements. Easements for installation and maintenance of perimeter walls, fences, utilities, and drainage facilities are reserved as shown on the recorded plat(s) of the Town Center, or as filed in the Official Public Records of Smith County, Texas. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of fences and utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water

through drainage channels in the easements. The easement area of each part of the Town Center and all improvements located therein shall be maintained continuously by the Owner of the part of the Town Center, except for those improvements for which a public authority or utility company is responsible.

(l) Landscape Easements. Easements for landscaping are reserved as shown on the recorded plat(s) of the Town Center, or as filed in the Official Public Records of Smith County, Texas. Within these easements, no structure, planting or other material shall be placed which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels into the easements. The easement area of each part of the Town Center and all improvements located therein shall be maintained continuously by the Owner of the part of the Town Center, except for those improvements for which a public authority or utility company is responsible.

(m) Irrigation. No sprinkler or irrigation systems of any type that draw upon water from streams, ponds, lakes, wetlands or other surface water within the Town Center shall be installed, constructed or operated within the Town Center unless approved in writing by the Architectural Control Committee. However the Developer shall have the right to draw water from such sources for the purpose of irrigating the common property. Any part or portion of the Town Center that requires irrigation must have underground sprinkler systems that will support healthy growth of grass and other landscaped areas.

(n) Trees. Without the express written consent of Developer, no tree shall be removed from any part or portion of the Town Center located within any greenbelt or common area as declared by the Developer and shown on recorded plats. All trees located on any part or portion of the Town Center that are of three (3) inches or greater in diameter may not be cut or removed without prior written consent of the Architectural Control Committee.

(o) Landscaping Requirements. Each Owner of a part or portion of the Town Center or representative thereof shall be required to submit a landscape plan per the Commercial Design Guidelines to the Architectural Control Committee for approval. These Commercial Design Guidelines may be amended from time to time at the discretion of the Developer and/or the Architectural Control Committee; provided, no amendment shall materially reduce the rights of, or increase the burden on, any Owner. In the event of any conflict between the Commercial Design Guidelines and the terms and provisions of this Declaration, this Declaration shall control. Specific requirements may be imposed on specific parts or portions of the Town Center as deemed necessary by the Architectural Control Committee; provided, no such requirements shall materially reduce the rights of, or increase the burden on, any Owner. All planting and landscape materials shall comply with approved plant and material list as maintained by the Architectural Control Committee

(p) Transition Landscape Zone. A transition landscape zone shall be required to provide a soft, informal transition between existing native vegetation areas and newly

developed landscaping. The limits shall be consistent with the building setbacks established for part or portion of the Town Center, and receive minimal disturbance between property line and setback established. Any variation thereof requires written approval of Architectural Control Committee. The landscape design criteria herein are influenced by the approach of maintaining the overall preservation of each development site.

(q) Pools, Water Features, Landscape Structures. In general, pools and water features should be designed to blend with the surrounding landscape and provide minimal disturbance to adjacent parts of the Town Center and common areas. Landscape Structures such as pergolas, arbors, gazebos, porte-cocheres, greenhouses, and/or decks should be consistent with associated building materials of the Structure. All such features require approval of the Architectural Control Committee prior to commencement of construction.

(r) Grading and Drainage. All site related grading shall provide smooth transitions from built elements to natural or final grade. Retaining walls shall be used where excessive slopes are subject to erosion or appropriate cover cannot be maintained. Erosion control measures shall be implemented throughout construction, to prevent excessive run-off and construction site erosion problems.

(s) Site Maintenance and Protection. Owner is responsible for the overall maintenance of newly developed landscape and perimeter of the Owner's part of the Town Center, providing a natural yet well-kept look. Each Owner or representative thereof is responsible for avoiding damage to existing development, including roadways, infrastructure, signage, landscaping, and adjacent development sites. Any damage incurred in result of development of site shall be repaired.

4.03 Prohibited Uses. During the term of this Declaration, no part of the Town Center shall be used except for professional offices, commercial and/or retail sales and service and appurtenant uses. Service uses may include, but shall not be limited to, (i) financial planning, investment, accounting, and tax preparation services, (ii) offices for attorneys, doctors, dentists, engineers, and realtors, (iii) title insurance companies, financial institutions, brokerage offices, travel and other agencies, interior decorators, and similar service establishments, and (iv) retail shops and restaurants. Notwithstanding the foregoing, no use or operation will be made or conducted, or permitted on or with respect to all or any part of the Town Center which use or operation is obnoxious to a first-class shopping center including the following:

- (a) Any public or private nuisance;
- (b) Any use which emits an obnoxious odor, noise or sound to such a degree that it constitutes a nuisance to a reasonable person; except normal motor room noise associated with a business conducting normal and customary operations;
- (c) Any noxious, toxic or corrosive fuel or gas;

- (d) Any dust, dirt or fly ash in excessive quantities;
- (e) Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- (f) Any assembly, manufacture, distillation, refining, smelting, or mining operations;
- (g) Any "second hand" store, Army, Navy, or government surplus store;
- (h) Any mobile home or trailer court (except those used during the construction period as offices for the various contracting units), labor camp, junk yard, stock yard, or animal raising other than a pet shop, provided that such pet shop shall be conducted so that there shall be no violation of the other prohibitions hereof by reason of the operation of the pet shop.
- (i) Any disposal (except normal storing and disposal of trash in adequate containers maintained in a neat and clean condition), incineration, reduction of garbage or refuse;
- (j) Any fire or bankruptcy sale or auction house operation, other than a liquidation sale not in the ordinary course of doing business;
- (k) Any central laundry or Laundromat, provided however, this prohibition shall not be applicable to onsite service oriented to pick up and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping centers in Smith County, Texas;
- (l) Any automobile sales, leasing or display, including body repair facilities;
- (m) Any bowling alley or skating rink;
- (n) Living quarters, sleeping apartments, or lodging rooms, except for provisions for a security office may include a sleeping area;
- (o) Any veterinary hospital;
- (p) Any mortuary crematorium, or funeral home;
- (q) Any adult store or bookstore selling pornographic material, any adult movies theater, or any video store which sells or rents movies or other videos which have been given an "X" rating by any generally

acknowledged board or committee;

- (r) Any tavern, bar, nightclub, cocktail lounge, discotheque, dance hall or other establishment serving alcoholic beverages (but not including a restaurant) in which sales of alcoholic beverages exceeds sixty percent (60%) of gross revenues arising out of, or resulting from such business;
- (s) Any theater;
- (t) Any telephone call centers;
- (u) Any trailer rentals;
- (v) Any antique mall, bingo parlor, gaming, gambling, or similar establishment or any business operated primarily as a video arcade, provided, nothing contained herein shall prohibit or preclude the operation of an antique store;
- (w) Any storage or mini warehouse facility;
- (x) Any flea markets or pawn shops;
- (y) Any dry cleaners, laundry or similar facility, within the Town Center (except that such a facility shall be permitted on the Corner Tract only); or
- (z) Any other use that is forbidden under applicable municipal and governmental regulations, zoning, and all other pertinent ordinances pertaining to Town Center.

4.04 General Uses. Except for the restrictions set forth in this Article IV, this Declaration shall not restrict in any way the right of any Owner to develop or use any part of the Town Center so long as such development or use is consistent with applicable municipal and governmental regulations, zoning and all other pertinent ordinances pertaining to such development.

4.05 Use Restrictions.

(a) All parts or portions of the Town Center are hereby restricted as follows:

- (1) Antennas. No exterior television, radio or other antenna of any type shall be placed, allowed or maintained upon any Structure without prior written approval and authorization of the Architectural Control Committee. Eighteen (18) inch satellite dishes are permitted but must not be visible from the street.

(2) Noise. No radio, stereo, broadcast or loud speaker units and no amplifiers of any kind shall be placed upon the outside, or be directed to the outside of any Structure without authorization by the Architectural Control Committee.

(3) Exterior lighting. Exterior lighting on any Structure must shine in a way that is inconspicuous to neighboring streets and adjoining properties. The level of illumination of any light shall not be offensive or create a glare when viewed outside the Town Center. Directional light must be aimed into the part of the Town Center on which they are installed.

Upon being given notice by the Architectural Control Committee that any exterior lighting is objectionable, as determined by the Architectural Control Committee in its sole and exclusive discretion, the Owner of the part or portion of the Town Center on which said exterior lighting is located, shall immediately remove any such lighting or shield or redirect the exterior lighting in such a way that it is no longer objectionable to the Architectural Control Committee.

(4) Screenings. Loading, trash and storage areas must be screened or located so they are not visible from the street or adjoining sites. Any equipment or supplies must be stored inside a closed barrier or building so they are not visible to the general public

(5) Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on any part or portion of the Town Center except as approved by the Developer or the Architectural Control Committee.

(6) Diseases and Insects. No Owner shall permit any material or condition to exist upon any part or portion of the Town Center which shall induce, breed or harbor plant disease or noxious insects.

(7) Burning and Incinerators. No open fires or burning shall be permitted on any part or portion of the Town Center at any time and no incinerators or like equipment shall be placed, allowed, or maintained upon any part or portion of the Town Center. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor barbecues or grills.

(8) Signs. No exterior signs or advertisements of any type may be placed, allowed or maintained on any part or portion of the Town Center without prior written approval and authorization of the Architectural Control Committee, except that signs designating the name of the contractor of buildings upon that part of the Town Center maybe placed and maintained in conformity with such common specifications; including without limitation, reasonable restrictions as to size, as may be adopted by the Architectural Control Committee. No pole signs will be allowed. Only monument signs will be allowed as specified in the Commercial Design Guidelines These Commercial Design Guidelines may be amended from time to time at the discretion of the Developer and/or the Architectural Control Committee; provided, no amendment shall materially reduce the rights of, or

increase the burden on, any Owner. In the event of any conflict between the Commercial Design Guidelines and the terms and provisions of this Declaration, this Declaration shall control.

(9) Flags. No flags or poles may be erected on any part or portion of the Town Center without the written approval of the Architectural Control Committee.

(10) Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation motor vehicles, shall be made upon any part or portion of the Town Center within view of neighboring property, pathways and streets, without authorization by the Architectural Control Committee.

(11) Machinery, Fixtures and Equipment. No exterior machinery, fixtures or equipment of any type, including without limitation, heating, air conditioning or refrigeration equipment and clotheslines, shall be placed, allowed or maintained upon the ground of any part or portion of the Town Center, except with the prior written approval and authorization by the Architectural Control Committee and then only in areas attractively screened or concealed (subject to all required approvals as to architectural control) from the view of neighboring property, pathways and streets; and no such machinery, fixtures, or equipment shall be placed, allowed or maintained anywhere other than on the ground (such as on the roof) except if screened or concealed (subject to all required approvals as to architectural control) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the Building and does not have the appearance of a separate piece or pieces of machinery, fixtures, or equipment.

(12) Oil, Gas, and Mineral Activity. No oil exploration, drilling, development or refining operation and no quarrying or mining operations of any kind, including oil wells, service tanks, tunnels, or mineral excavations or shafts shall be permitted upon or under any part or portion of the Town Center; and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any part or portion of the Town Center.

(13) Firearms and Weapons. No part or portion of the Town Center shall be used for hunting or for the discharge of any firearm.

(14) Motor Vehicles. The operation of any and all motorized vehicles within the Town Center shall be subject to such reasonable rules and regulations as shall be established by Developer from time to time.

(15) Parking on Access Drives. No parking of any duration of any automobile, truck, van, or other motorized vehicle of any nature whatsoever will be allowed on the shared access drives located in the Town Center except for reasonable and normal deliveries. In the event the Architectural Control Committee determines this parking prohibition has been violated or abused by any Owner, or any heirs, executors, administrators, legal representatives, successors, assigns,

guests, customers, business invitees of any Owner, the Architectural Control Committee shall, pursuant to the Paragraph 8.02, below, have the right, authority, and power to levy a Fine in a reasonable amount to be determined by the Architectural Control Committee.

(16) Prohibited Parking in Parking Lots. No Owner nor any Owner's heirs, executors, administrators, legal representatives, successors, assigns, guests, customers, business invitees of any Owner shall for any duration be allowed to park or allow to be parked for any reason (except during periods of construction, renovations or repairs) in the parking lot area of any part or portion of the Town Center any (i) boat, boat trailer, recreational vehicle, motor home, bus, tractor trailer, tractor, all terrain vehicles, bob-tail trucks, or any type of utility trailer or similar item, nor (ii) truck or van in excess of one ton.

(17) Misuse and Mismanagement. No part of the Town Center shall be maintained or utilized in such a manner, as in the discretion of the Architectural Control Committee, to present an unsightly appearance, or as to unreasonably offend the morale of or as to constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, other Owners of the Land; and no noxious or, otherwise offensive condition or activity shall, be allowed to exist or be conducted thereon.

(18) Violation of Statutes, Ordinances, and Regulations. No part of the Town Center shall be maintained or utilized in such manner as to violate any applicable statute, ordinance, or regulation of the United States of America, the State of Texas, the County of Smith, the City of Tyler, or any other governmental agency or subdivision having jurisdiction in the premises.

(19) Violation of Covenants, Conditions or Restrictions. No portion of the Town Center may be maintained or utilized in violation of this Declaration.

ARTICLE V. IMPROPER MAINTENANCE BY OWNER

5.01 Maintenance by Owner.

The Owner and occupant of each part or portion of the Town Center agree to maintain such part or portion of the Town Center and all improvements thereon in good order and repair, including, but not limited to:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Tree and shrub pruning as needed for maintenance and health of all trees;
- (3) Fertilizing, mowing, watering, weeding and replacement as necessary to maintain all landscaping and vegetation;
- (4) Prompt removal of fallen or uprooted trees, branches, or shrubs and repair of other damage to trees or large shrubs caused by storms or high winds;
- (5) Keeping all parking areas, driveways, sidewalks, and roads free from trash and litter, attractive and in good condition;

- (6) Striping and restriping, as needed, of all parking areas and maintenance of the surface of all parking areas in good repair
- (7) Exterior maintenance of all Permanent Improvements in a manner and with such frequency as is consistent with good property management;
- (8) Prompt repair of damage to Permanent Improvements; and
- (9) Any other maintenance or repair item the Architectural Control Committee in its sole reasonable good faith discretion deems necessary or desirable.

In the event any part or portion of the Town Center or any Permanent Improvement is in the reasonable judgment of the Architectural Control Committee so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to substantially detract from the appearance or quality of THE CROSSING, or (iii) as to in any manner fail to comply with any of these Covenants, the Architectural Control Committee, as applicable, may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver written notice thereof to the offending Owner that unless corrective action (such corrective action to be stated in the written notice to the Owner) is taken within ten (10) days from the date of such written notice to remedy the situation, the Architectural Control Committee will cause such action to be taken at such Owner's cost and expense to remedy the situation, including entry upon the Owner's part or portion of the Town Center, if necessary. Any such entry upon a part or portion of the Town Center by the Architectural Control Committee or anyone at the direction of the Architectural Control Committee shall not be deemed a trespass or other violation of any law, ordinance or statute. Each Owner grants to the Architectural Control Committee the right to enter upon the Owner's part or portion of the Town Center at all reasonable times to fulfill the obligations under this Article V, and neither the Architectural Control Committee nor anyone else entering upon any part or portion of the Town Center at their direction shall be subject to any liability therefore, except for gross negligence or willful misconduct. If after the expiration of said ten (10) day period the requisite corrective action has not been completed to the reasonable satisfaction of the Architectural Control Committee, the Architectural Control Committee shall be and is hereby authorized and empowered by the violating Owner to cause such remedial action to be taken on the Owner's behalf, and all reasonable costs and expenses thereof and associated therewith, including but not limited to the costs of collection, court costs and reasonable attorneys' fees, such costs and expenses being herein collectively called the "Maintenance Charges," together with interest accruing thereon from the date or dates of the remedial action of such costs at the rate of (i) ten percent (10.0%) per annum or (ii) the highest rate allowed by law if the highest legal rate is less than ten percent (10.0%) per annum, from such date until paid, shall be charged and assessed against the offending Owner and the offending Owner's part or portion of the Town Center. The Maintenance Charges, together with all interest accruing thereon, shall be payable to the Developer or Association (whomever incurred the cost) and shall be secured by the Assessment Lien as provided in Article VI hereof. Written notice of such assessment shall be delivered to the offending Owner by the Architectural Control Committee which notice shall specify the amount of such Maintenance Charges and shall demand payment thereof within thirty (30) days after the date of said notice. By acceptance of a Deed to a part or portion of the Town Center, every Owner agrees to and shall pay to the Developer or the Association

(whomever incurred the costs) all Maintenance Charges that shall be charged or assessed against an Owner's part or portion of the Town Center.

ARTICLE VI - IMPOSITION OF LIEN; OWNERS' AGREEMENT

6.01 Imposition of Assessment Lien and Priority of the Lien. THE OBLIGATION TO PAY MAINTENANCE CHARGES IN THE MANNER PROVIDED FOR IN ARTICLE V, TO PAY FINES IN THE MANNER PROVIDED FOR IN ARTICLE VIII, TO PAY ASSESSMENTS IN THE MANNER PROVIDED FOR IN ARTICLE X, AND TO PAY ANY OTHER CHARGES, OR ASSESSMENTS AS PROVIDED IN THIS DECLARATION, TOGETHER WITH INTEREST, COLLECTION COSTS, COURT COSTS, AND REASONABLE ATTORNEY'S FEES RELATED THERETO, SHALL BE AND IS HEREBY EXPRESSLY SECURED BY A CONTINUING CONTRACTUAL LIEN (THE "ASSESSMENT LIEN") AND CHARGE ON THE PART OR PORTION OF THE TOWN CENTER COVERED BY SUCH MAINTENANCE CHARGES, FINES, ASSESSMENTS OR OTHER CHARGES, WHICH SHALL BIND SUCH PART OR PORTION OF THE TOWN CENTER AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The aforesaid continuing contractual Assessment Lien shall attach to all of the Town Center as of the date of the recording of this Declaration in the Official Public Records of Smith County, Texas, and such Assessment Lien shall be superior to all other liens except as provided in Section 7.03 of this Declaration. The Association shall have the right to subordinate the aforesaid Assessment Lien to any other lien, and the exercise of such right shall be entirely discretionary with the Association. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment Lien is subordinate as provided herein or in Section 7.03 hereof, any part of the Town Center conveyed to, and accepted and held by, the Owner thereof shall be subject to the Assessment Lien provided for in this Section 6.01. To evidence any unpaid Assessments, the Association shall prepare a written notice of unpaid Assessments (the "Notice of Unpaid Assessment") setting forth the amount of the unpaid indebtedness, the name of the Owner and describing the affected part of the Town Center. Such notice shall be signed by an officer of the Association and shall be recorded in the Official Public Records of Smith County, Texas. The Association shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid. THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S PART OR PORTION OF THE TOWN CENTER BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH OF THE TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME. In addition, the Association shall have the right and authority to institute suit against the Owner personally to obtain a judgment for unpaid Assessments. Furthermore, the Association shall have such other rights and remedies as permitted or allowed by applicable law. In any foreclosure proceeding, whether judicial or nonjudicial, or in any suit or other action against, or pertaining to, the Owner, the Owner shall be

required to pay all costs, expenses and reasonable attorneys' fees incurred by the Association. The Developer shall have the right and power to buy the part of the Town Center at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same, subject to any statutory right of redemption.

6.02 Owner's Agreement. Each Owner, owning a portion of the Town Center for said Owner, and the Owner's heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees:

- (a) that the Owner acquires the Owner's part of the Town Center subject to the Maintenance Charges, Fines, Assessments, and the Assessment Lien set forth in this Declaration; and
- (b) that by accepting a Deed to the Owner's part of the Town Center, the Owner is, shall be, and shall remain personally liable for any and all Fines, Maintenance Charges and Assessments created in this Declaration and assessed against the said Owner's part of the Town Center while the said Owner is (or was) the Owner thereof regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether the said Owner signed the Deed; and
- (c) that by accepting a Deed to the Owner's part of the Town Center and to secure the Owner's performance hereunder, the Owner agrees that the Association, in its capacity as trustee, shall have the right to nonjudicially foreclose upon the Assessment Lien granted herein in accordance with and upon compliance with the applicable provisions of the Texas Property Code, as the same may be amended or supplemented from time to time.

ARTICLE VII - ENFORCEMENT OF DECLARATION AND OF ASSESSMENT LIEN

7.01 Enforcement by Developer or Association. The Developer or the Association, acting either jointly or independently, shall each have the right, jointly or severally, but not the obligation, to enforce the provisions of this Declaration, including, but not limited to, enforcement of the Assessment Lien. Any Owner shall also have the right to enforce this Declaration at the said Owner's sole cost and expense by any appropriate action, whether at law or in equity. Neither the Developer, nor the Association shall have any liability to any Owner or any other person or entity for failing or refusing to enforce this Declaration.

7.02 Enforcement Remedies. If the Owner of any part or portion of the Town Center fails to pay any Fines, Maintenance Charges or Assessments assessed, or to pay any interest accrued on any Fines, Maintenance Charges or Assessments, or any and all costs (including court costs and attorneys' fees) incurred by either the Developer or the Association, in collecting same, the Developer and/or the Association, as applicable, shall have the right to enforce the payment of the Fines, Maintenance Charges and Assessments, and all interest accrued thereon and costs incurred by either the Developer or the Association in collecting same, and/or enforce the

Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Developer and the Association do not prejudice their exercise of any other remedy);

- (a) bring an action at law and recover judgment against the Owner personally obligated to pay the Fines, Maintenance Charges or Assessments; or
- (a) enforce the Assessment Lien against such Owner's part or portion of the Town Center by any means available at law or in equity, including without limitation a nonjudicial foreclosure sale of the part or portion of the Town Center, such sale to be conducted in the manner set forth in 51.002 of the Texas Property Code, as the same may be amended or supplemented from time to time. The Developer or any other Owner may be the purchaser at any such foreclosure sale.

7.03 Subordination of the Assessment Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any valid first mortgage lien (purchase money or improvement loan) held by, or deed of trust of which the beneficiary is, an institutional lender which is chartered (or licensed) by the United States or any state within the United States. Sale or transfer of any part or portion of the Town Center shall not affect the Assessment Lien, provided, however, that if the sale or transfer is pursuant to foreclosure of any such superior mortgage lien or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage lien foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the part or portion of the Town Center free of the Assessment Lien for all Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all subsequent charges, liens, or encumbrances (except lien for taxes or other public charges which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take the part or portion of the Town Center subject to all Maintenance Charges and Assessments, and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

ARTICLE VIII -RIGHTS AND POWERS

8.01 Right to Inspect. The Developer and the Association, jointly or severally, shall have the right to enter upon all parts or portions of the Town Center for the purpose of inspecting whether or not the Owner thereof is in compliance with the Declaration and Covenants, and each Owner grants the Developer and the Association the right to enter upon the Owner's part or portion of the Town Center for such inspection purposes. If during the course of construction of any improvements upon a part or portion of the Town Center, the Developer or the Association jointly or severally, determines in its/their sole discretion that there is a material violation of the Covenants,

the Developer or the Association as appropriate, may order a discontinuance of the construction of the Permanent Improvements until such time as corrective measures have been taken to assure full compliance with the Covenants, and an Owner's failure to immediately discontinue or cause the discontinuance of construction of the Permanent Improvements, upon demand by Developer or the Association shall constitute a further violation of this Declaration by that Owner.

8.02 Fines. The Developer and/or the Association shall have the right to levy reasonable fines against any Owner who (i) violates any of the Covenants, (ii) violates any other covenant, restriction, reservation, charge, servitude, assessment or conditions set forth in this Declaration, or (iii) violates any rule, condition or regulation enacted, passed or otherwise required or approved by the Developer or the Association. Such fines against any Owner shall be an Assessment, as herein defined.

- (a) When the Developer or the Association shall levy a reasonable fine against any Owner or Owners, the Developer or the Association as applicable, shall give written notice of such fine to the affected Owner or Owners at such Owner's or Owners' most recent address according to the records of the Association or Developer by United States mail, certified mail, return receipt requested, with proper postage affixed thereon. Upon receipt of such written notice, the Owner or Owners shall have ten (10) days to request in writing a private meeting with the Developer or the Association as applicable, to discuss the nature of the violation giving rise to the fine.
- (b) At the conclusion of the private meeting provided for in Section 8.02(a), above, or (ii) if no private meeting is requested by the Owner or Owners, the, Developer or the Association as applicable, shall advise the Owner or Owners in writing of its final decision with respect to the violation. If the final decision results in a fine being levied against the Owner or Owners, the Owner or Owners shall pay such fine within ten (10) days of such final decision. If such fine is not fully paid within such ten-day period, Developer or the Association may enforce such Assessment as provided in this Declaration, i.e. Article VIII.

ARTICLE IX - RESERVATIONS OF DEVELOPER

9.01 Reservations. The following reservations are hereby made by Developer:

- A. The utility easements shown on any recorded plat of Town Center or any part or portion of Town Center are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Smith County, Texas, as well as for the benefit of Developer to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone liens, television cable lines,

security, gas, water, sanitary sewers, storm and sewers and any other utility or service which Developer may find necessary or proper.

- B. Developer reserves the right from time to time to make changes in the location, shape, and size of, and additions to, the easements described in Section 9.01(A) above, for the purpose of more efficiently or desirably installing utilities therein and thereon, and this right to make such changes is herein and hereby expressly transferred and assigned to Developer.
- C. The title conveyed to any part or portion of the Town Center shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewers or sanitary sewers lines, poles, pipes, conduits, cable television lines or other appurtenances or facilities constructed by Developer or public utility companies upon, wider, along, across or through such utility easements; and the right (but not obligation) to construct, maintain, repair and operate such systems, utilities, appurtenances and facilities is reserved to Developer, its successors and assigns.
- D. The right to sell, dedicate or lease the liens, utilities, appurtenances and other facilities described in Section 9.01(C), above, to any municipality, governmental agency (including any water control or utility district created under Article XVI, Section 59 of the Texas Constitution covering the Town Center as well as other lands), public service corporation or other party is hereby expressly reserved to Developer.
- E. The Developer, and its successors or assigns, shall not be liable for any damage caused or done by the Developer, nor any of its agents or employees to any part or portion of the Town Center, any Permanent Improvements, or to any shrubbery, trees, flowers or other property of any Owner situated within the said utility easements.
- F. The right to enter upon any part or portion of the Town Center during installation of streets for the purpose of performing street excavation, construction, and paving is hereby reserved to Developer, its successors and assigns. The Developer, and its successors or assigns, shall not be liable for any damage done by The Developer nor any of its agents or employees to shrubbery, trees, flowers or other property of the Owner which is necessitated by such street construction unless such damage is the result of gross negligence or willful misconduct.

ARTICLE X - THE COMMERCIAL OWNERS ASSOCIATION

10.01 Establishment. The Developer has established a non-profit Commercial Owners Association for Town Center by the filing of the Certificate of Formation of the Commercial Owners Association with the Secretary of State of the State of Texas. The

name of the said Association is The Crossing Town Center Property Owner's Association (the "Association").

10.02 By-Laws. Bylaws for the Association will be established and adopted by the Board of the Association.

10.03 Membership. The Association shall have members consisting solely of the Owners. The Developer and each Owner of a Lot within Town Center, including successive buyers, shall automatically and mandatorily become and be a member of the Association. Membership in the Association shall be appurtenant to and shall not be separated from ownership of a lot within Town Center. Every Owner/member shall have a right at all reasonable times during regular business hours to inspect the books and records of the Association.

10.04 Voting Rights. The Association shall have two (2) classes of membership to be designated as Class A and Class B.

A. Class A Members shall be all Owners with the exception of the Developer. A Class A member shall be not entitled to vote until (i) the Developer initially sells all of the real property owned by the Developer that are part of Town Center, or (ii) the Developer files a statement with the Association that the Developer will allow the Class A members to vote. Once the Developer files the statement with the Association allowing Class A members to vote, the statement may not be revoked by the Developer. Each Class A member shall, once the Class A members are entitled to vote, be entitled to one (1) vote for each one thousand (1,000) square feet of real estate owned by member within Town Center.

B. The Developer shall be the Class B member for so long as it owns any real estate within Town Center which has not previously been conveyed by the Developer to an Owner. When any real estate is initially sold by the Developer, the Class B membership with respect to such real estate shall cease and automatically become and be a Class A membership. Unless the Developer files the statement with the Association referred to in Section 10.04(A), above, allowing Class A members to vote, for so long as the Developer, owns any Class B membership, the Developer shall be the only member of the Association entitled to vote.

C. Once the Class A members are entitled to vote, whether by sale by the Developer of all of the Developer's the real estate within Town Center or by the Developer's filing the statement with the Association allowing the Class A members to vote, the Class B member shall no longer be entitled to vote as a member of the Association.

10.05 Board of Directors. The Board shall be elected by the members of Town Center as provided in the By-Laws. The Board shall conduct the business of the Association, except when a membership vote is required by this Declaration, the Certificate of Formation, or the By-Laws.

10.06 Assessments. The development of Town Center shall be accomplished in various phases (each sometimes referred to as "Phase"). The Owners within each Phase shall be assessed for the maintenance and care of the Common Area Property which benefits said Phase. The Owners shall not be assessed for the maintenance and care of Common Area Property which does not benefit their Phase. Maintenance and care of Common Area Property shall include, but not be limited to, maintaining, insuring, payment of property taxes, and otherwise owning and operating said Common Area Property. The Developer reserves the right to determine the Common Area Property which benefits each Phase.

The amount of such annual maintenance charge attributable to each Phase shall be determined by the bylaws of the Association.

Notwithstanding anything contained in this Declaration or elsewhere, the Developer shall not at any time be required to pay nor otherwise be responsible for payment of any annual or special maintenance charge or assessment.

10.07 Special Assessments. In addition to the annual maintenance assessment charge as noted in Article 10.06, the Association shall possess the right, power and authority to establish special assessments from time to time as may be necessary or appropriate to pay for (i) any non-recurring expenses within a Phase related to the proper maintenance, care, improvement or reconstruction of any private street or drive, and (ii) any expenses within a Phase related to the proper maintenance, care, improvement or reconstruction of the common areas or landscape easements belonging to the Association it being understood that special assessments charges are subject to the same rules as they apply to a Phase as set forth in Article 10.06 above, it being understood and recognized that particular common areas benefit some but not all Phases. Notwithstanding anything to the contrary contained in this Declaration, any special assessment established hereunder must be approved by the affirmative vote of the then Owners of at least seventy-five percent (75.0%) of the square footage of real property that is part of a Phase being assessed (there being only one vote for each one thousand (1,000) square feet of real estate owned which is part of a Phase and which shall be exercised collectively by any multiple owners of interests in any one tract that is part of a Phase as they may among themselves determine) casting their votes at a duly called meeting for such purpose. The Owners of at least seventy-five percent (75%) of the square footage of real property that is part of a Phase (there being only one vote for each one thousand (1,000) square feet of real estate owned which is part of a Phase, and which shall be exercised collectively by any multiple owners of interests in any one tract that is part of a Phase as they may among themselves determine) must be present at this duly called meeting in order to constitute a quorum

As an alternative, the Developer reserves the right to perform the maintenance contemplated in this Article 10.07, and to assess each Owner with the prorata share of the costs, including reasonable attorney fees incurred by the Developer, as set forth in the bylaws of the Association.

10.08 Conflicts. The Association may make whatever rules, regulations and By-Laws it deems necessary or desirable to govern the Association and its members; provided, however, that any conflict between the Associations' rules, regulations and By-Laws and the provisions of this Declaration shall be controlled by and resolved in favor of this Declaration.

10.09 Maintenance of Main Drive The owners of the lots that are contiguous to the private drive as shown in Exhibit "D" ("Main Drive"), shall be fully responsible for maintenance, repair and upkeep of the Main Drive area as shown in Exhibit "D". Each owner of a lot that is contiguous to this Main Drive shall provide, perform and complete such maintenance, repair and upkeep of the Main Drive in a good and workmanlike manner, on a timely basis, and in accordance with any and all reasonable guidelines and regulations of the Developer or the Association. The costs and expenses of the maintenance, repair and upkeep of the Main Drive area shall be shared among such owners on a prorata basis with each owner of a lot paying his/her/its prorata share of such costs and expenses based upon the number of feet of real property that borders this Main Drive.

ARTICLE XI – THE MASTER ASSOCIATION

11.01 Membership in Master Association. Each Owner of a part or portion of Town Center, including successive buyers, shall automatically and mandatorily become and be a member of the Master Association and shall be subject of the existing restrictions entitled Declaration of Covenants, Restrictions, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for THE CROSSING, filed of record as document number 2007-R00022343 of the Official Public Records of Smith County, Texas (the "Master Declaration") including all restrictions, assessments, easements, etc. as described therein

ARTICLE XII - TERMS; AMENDMENTS; TERMINATIONS

12.01 Term: Method Of Termination. This Declaration and the Covenants shall be effective upon the date of recordation hereof and, as may be amended from time to time, shall continue in full force and effect to and including December 31, 2040. From and after December 31, 2040, this Declaration, as it may have been amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners of at least seventy-five percent (75.0%) of the square footage of real property that is part of Town Center (there being only one vote for each one thousand (1,000) square feet of real estate owned which is part of Town Center and which shall be exercised collectively by any multiple owners of interests in any one tract that is part of Town Center as they may among themselves determine) casting their votes for termination at a meeting of the Owners held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

12.02 Amendments. Until December 31, 2012, excluding any changes to permitted uses, and excluding any amendments that would materially reduce the rights of any Owner, or materially increase the burdens on any Owner, under this Declaration, the Developer shall have the right to unilaterally change or amend this Declaration at any time, in any manner, and for any reason or purpose as determined at the sole discretion of the Developer. After December 31, 2012, this Declaration may be amended or changed in whole or in part at any time only by the affirmative vote of the then Owners of at least seventy-five percent (75.0%) of the of the square footage of real property that is part of Town Center (there being only one vote for each one thousand (1,000) square feet of real estate owned which is part of Town Center and which shall be exercised collectively by any multiple owners of interests in any one tract that is part of Town Center as they may among themselves determine) casting their votes to amend or change this Declaration at a special meeting of the Owners called pursuant to Section 12.03.

12.03 Election Procedures. The affirmative votes required under Sections 12.01 and 12.02 hereof shall be obtained and evidenced by the requisite vote of the Owners present at a meeting of Owners duly called by the Owners of at least twenty-five percent (25.0%) of the square footage of Town Center or by the Developer pursuant to notice to all of the Owners on or prior to ten (10) days before the date of the meeting at which meeting the requisite percentage of Owners vote to so amend or terminate this Declaration. No proxy votes shall be allowed or valid. The notice of the meeting must set forth the proposal as to amendment of this Declaration and such affirmative vote of the requisite percentage of Owners must be evidenced by minutes of the meeting duly certified by the Owners who called the meeting or the Developer. In any event, as long as the Developer owns any part or portion of Town Center, a copy of the minutes shall be delivered to the Developer prior to any amendment or change becoming effective.

12.04 Recording Amendments. Upon the amendment or change of this Declaration (and/or the Covenants contained herein) as herein provided, and upon the other conditions set forth in Section 12.01, Section 12.02 and Section 12.03 of this Article XII having been satisfied, then each amendment shall be executed by the (i) the Developer, its successors or assigns, or (ii) the Owners who voted in favor of the amendment or change, as applicable, placed in recordable form, and filed of record in the Official Public Records of Smith County, Texas, accompanied by a statement that either (i) the Developer, or (ii) the requisite percentage of Owners, have voted to make such amendment to this Declaration.

12.05 Effect. Upon the filing of an amendment or change in accordance with Section 12.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.

ARTICLE XIII - MISCELLANEOUS

13.01 Interpretation of the Covenants. Except for judicial construction, the Developer and/or the Association shall have the exclusive right and power to construe

and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a Court of competent jurisdiction, the Developer's and/or the Association's construction or interpretation of the provisions hereof, as applicable, shall be final, conclusive, and binding as to all persons and properly benefitted or bound by this Declaration and the provisions hereof.

13.02 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other, remaining provisions hereof, which remaining provisions shall be and remain in full force and effect.

13.03 Corner Tract – Special Provisions. Notwithstanding anything herein to the contrary (i) the Corner Tract shall not be subject to any Assessment or Assessment Lien other than that established in Article 10.09, and (ii) approval of plans and specifications for grading and drainage, landscaping, lighting, signage, and Permanent Improvements on the Corner Tract shall be deemed approved so long as they substantially comply with the applicable Commercial Design Guidelines, and (iii) this Section 13.03 and Section 4.03 may not be amended without the written consent of the owner of the Corner Tract.

13.04 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

13.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Developer, or the Association, as applicable, shall have the right to adopt rules and regulations with respect to all other aspects of the rights, activities and duties of the Developer, or the Association, as applicable, provided said rules and regulations are not inconsistent with the provisions of this Declaration; do not materially reduce the rights of the other Owners; and do not materially increase any obligations of the other Owners.

13.06 Disclaimer of Representation. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the Official Public Records of Smith County Texas, neither the Developer nor the Architectural Control Committee makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of Town Center will be carried out.

13.07 Limitation of Liability. In the absence of willful and intentional misconduct attributable to (i) Developer, its successors or assigns, or (ii) the Architectural Control Committee (and any and all members thereof), neither the Developer, nor its successors or assigns, nor the Architectural Control Committee (nor any member thereof), shall have any liability of any nature whatsoever arising out of or in any manner related to the performance or nonperformance of any of the rights and powers reserved unto Developer, the Architectural Control Committee, or their respective heirs, executors, administrators, personal representatives, legal

representatives, successors or assigns, pursuant to this Declaration. Provided, notwithstanding anything herein to the contrary, none of the Developer, the Association or the Architectural Control Committee shall discriminate between the Developer and the other Owners in enforcing, interpreting or administering these Covenants.

13.08 Successors and Assigns. Any reference in this Declaration to Developer shall include Developer's successors and assigns.

13.09 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

13.10 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

13.11 Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to each such person or entity at the address given by such person or entity to the party sending the notice or to the address of the Permanent Improvements or the office of such person or entity if no address has been given. Such address may be changed from time to time by notice in writing.

13.12 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting Town Center. In the event of any conflict between this Declaration and the Master Declaration, this Declaration shall govern and control.

13.13 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions of this Declaration, including any of the Covenants, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions.

13.14 Suspension of the Covenants. The Developer and the Association shall and do have the right during the period of construction, development, and initial sale of Town Center, to grant reasonable and specifically limited exemptions and waivers from

the Covenants to Developer and any other developer or contractor. Any such exemptions or waivers shall be granted only upon specific written request, itemizing the exemption or waiver requested, the location thereof, the need therefor, and the anticipated duration thereof and any authorization and approval thereof shall be similarly itemized. No such exemption or waiver shall be broader in terms of activity, location, or time than is reasonably required.


13.15 Non-Waiver. Any failure or delay on the part of either the Developer, the Architectural Control Committee, the Association and/or any Owner (i) to exercise any right, remedy or duty under this Declaration, or (ii) to take any action to enforce the Covenants or the Declaration, with regard to anyone matter or situation or group of matters or situations in any manner covered by or arising out of the Covenants or Declaration shall not in any manner be deemed or construed to be a waiver of the same or any subsequent matter or situation or group of matters or situation arising hereunder. No forbearance of any type for any period of time by either the Developer, the Architectural Control Committee, the Association and/or any Owner shall be in any manner deemed or construed to be a waiver of any right, remedy or duty hereunder, but all such rights, remedies and duties shall continue in full force and effect as if no forbearance had occurred. All Owners by accepting a Deed to any part or portion of Town Center hereby expressly covenant, stipulate, acknowledge and agree that (i) he, she or it expressly waives the affirmative defense of waiver with respect to any violation of this Declaration, or any part hereof or covenant herein, and (ii) the affirmative defense of waiver as recognized under the laws of the State of Texas shall not be available to any Owner as a defense to the violation of this Declaration, or any part hereof or covenant herein.

13.16 Liberal Interpretation. This Declaration, and all of the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements, shall be liberally construed to effectuate the purposes of this Declaration.

WERNER-TAYLOR LAND & DEVELOPMENT,
L.P., a Texas limited partnership

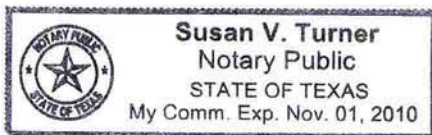
By: WERNER-TAYLOR MANAGEMENT, LLC,
a Texas limited liability company,
Its General Partner

By: 
MICHAEL WERNER, President


SANDRA C. TAYLOR, Individually and as
Independent Executrix of the Estate of Larry
James Taylor (Cause # 36,051P—County
Court, Smith County, Texas)

STATE OF TEXAS §
 §
COUNTY OF SMITH §

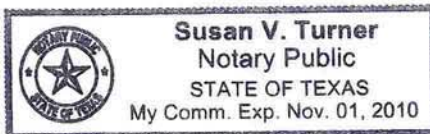
This instrument was acknowledged before me on this 22nd day of JULY, 2010 by MICHAEL WERNER, President of WERNER-TAYLOR MANAGEMENT, LLC, a Texas limited liability company, General Partner of WERNER-TAYLOR LAND & DEVELOPMENT, L.P., a Texas limited partnership, on behalf of said limited partnership.




NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §
 §
COUNTY OF SMITH §

This instrument was acknowledged before me on this 22nd day of JULY, 2010 by, SANDRA C. TAYLOR, Individually and as Independent Executrix of the Estate of Larry James Taylor (Cause # 36,051P--County Court, Smith County, Texas)

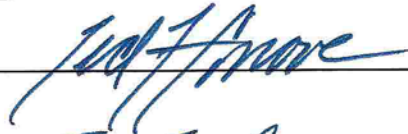



NOTARY PUBLIC, STATE OF TEXAS

JOINDER OF MORTGAGEE

The undersigned, the owner and holder of a mortgage covering Town Center, hereby subordinates its liens to this Declaration, such that this Declaration shall survive, and shall not be extinguished by, any foreclosure of its liens. This subordination shall be binding on the undersigned, its successors and assigns.

Signed on this 21st day of July, 2010.



By: TED F. CONOVER

Name/title: Division - President

WHEN RECORDED RETURN TO:

Mr. Michael J. Werner
Werner-Taylor Land & Development, L.P.
1397 Dominion Plaza Suite 120
Tyler, Texas 75703

EXHIBIT**A****TRACT 1:**

BEING 119.715 acres of land situated in the Don Thomas Quevado Seven League Grant A-18 Section-5 and the Thomas Price Survey A-794 Smith County, Texas and being a part of that certain called 116.509 acre tract to Harry S. Phillips recorded in volume 1559, page 860 of the Deed Records of Smith County, Texas and all of that certain called 30 acre tract known as Tract One to Harry S. Phillips recorded in volume 2119, page 662 of said Deed Records and that certain called 31.65 acre tract known as Tract Two to Harry S. Phillips recorded in volume 2119, page 663 of said Deed Records said 119.715 acres to be more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found for corner in the North line of said 116.509 acre tract and being at the Southwest corner of said 30 acre tract, Tract One and also being at the Southeast corner of that certain called 49.683 acre tract to Timothy John Beverley recorded in volume 2835, page 248 of said Deed Records;

THENCE N 00°28'17" E with the West line of said 30 acre tract and the East line of said 49.683 acre tract a distance of 1237.55 feet to a 1/2" iron rod found for corner at the Northwest corner of said 30 acre tract and the Northeast corner of said 49.683 acre tract and being in the South line of a called 46.185 acre tract to Joe C. Moore recorded in volume 2482, page 345 of said Deed Records;

THENCE S 89°38'15" E with the North line of said 30 acre tract and the South line of said 46.185 acre tract a distance of 1056.33 feet to a rock found for corner at the Northeast corner of said 30 acre tract and the Southeast corner of said 46.185 acre tract and being in the West line of a called 84 acre tract to H.B. Marsh and A.G. McIlwaine recorded in volume 87, page 262 of said Deed Records;

THENCE S 01°00'18" W with the East line of said 30 acre tract and the West line of said 84 acre tract a distance of 39.72 feet to a 1/2" iron rod set for corner at the Northwest corner of said 31.65 acre tract and being at the Southwest corner of said 84 acre tract;

THENCE S 76°47'26" E with the South line of said 84 acre tract and the North line of said 31.65 acre tract a distance of 1477.42 feet to a 1/2" iron rod set for corner at the Northeast corner of said 31.65 acre tract and being in the Northwest line of a Rails to Trails tract;

THENCE S 40°14'36" W with said Northwest line and the Southeast line of said 31.65 acre tract a distance of 78.24 feet to a 1/2" iron rod set for corner in same;

THENCE S 42°51'18" W with said Southeast line and said Northwest line of said Rails to Trails tract a distance of 2057.97 feet to a 1/2" iron rod set for corner in same and being at the South corner of said 31.65 acre tract and a Northerly Southeast corner of said 116.509 acre tract;

TRACT 1 CONTINUED:

THENCE S 42°58'40" W with a Southeast line of said 116.509 acre tract and the Northwest line of said Rails to Trails tract a distance of 719.64 feet to a 1/2" iron rod set for corner in same and being in the right-of-way of County Road 164 and also being at the Southeast corner of said 116.509 acre tract, same being the Northeast corner of a called 2.941 acre tract to Larry J. Taylor recorded in volume 3317, page 828 of said Deed Records;

THENCE S 89°51'09" W with the South line of said 116.509 acre tract and the North line of said 2.941 acre tract and the North line of a called 11.559 acre tract to George W. Woodcock et ux recorded in volume 2210, page 301 of said Deed Records a distance of 1654.17 feet to a 1/2" iron rod set for corner in same;

THENCE N 00°20'21" E across said 116.509 acre tract a distance of 1245.47 feet to a 1/2" iron rod set for corner in the North line of said 116.509 acre tract and the South line of said 49.683 acre tract;

THENCE N 89°59'27" E with the North line of said 116.509 acre tract and the South line of said 49.683 acre tract a distance of 1083.53 feet back to the place of BEGINNING and containing 119.715 acre tract.

TRACT 2:

BEING 0.186 acres of land situated in the Thomas Price Survey A-794 Smith County, Texas also being all of that certain called 0.18 acre tract described in a deed from Julius M. Sanders to Harry S. Phillips dated August 16, 1984 and recorded in volume 2301, page 354 of the Deed Records of Smith County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1" axle w/gear found at the Southwest corner of said 0.18 acre tract and being in the East right-of-way line of an original railroad right-of-way now known as the Rails to Trails property;

THENCE N 42°58'40" E along the West boundary line of said 0.18 acre tract and the East right-of-way line of Rails to Trails a distance of 380.38 feet to a 1/2" iron rod set for corner at the North corner of said 0.18 acre tract and at the intersection of the East right-of-way line of said Rails to Trails property and the Northwest right-of-way line of F.M. 2493;

THENCE S 37°07'39" W along the East boundary line of said 0.18 acre tract and the Northwest right-of-way line of F.M. 2493 a distance of 182.53 feet to the P.C. of a curve to the left whose functions are as follows: Delta angle = 05°54'38", radius = 1,953.67 feet, tangent = 100.85 feet, length = 201.54 feet and a cord which bears S 34°08'51" W 201.45 feet;

THENCE in a Southwesterly direction along said curve to the left a distance of 201.54 feet to a 1" axle found at the Southeast corner of said 0.18 acre tract and being in the Northwest right-of-way line of F.M. 2493;

THENCE N 46°42'05" W along the South boundary line of said 0.18 acre tract and the North boundary line of a called 1.896 acre tract owned by Wayne Moses et ux a distance of 49.53 feet back to the place of BEGINNING and containing 0.186 acres of land.

TRACT 3:

All that certain tract or parcel of land, being 2.941 acres, a part of a called 15.0 acre tract which is in the Northeast part of a called 65 acre tract in SECTION NO. 5, DON THOMAS QUEAVADO LEAGUE, Abstract No. 18, Smith County, Texas, and more particularly described as follows, to-wit:

BEGINNING at an iron pipe for corner, the Northeast Corner of the above mentioned 15 acre tract, same being the Northeast Corner of the called 65 acre tract, said Northeast Corner of the 15 acre tract fully described in a Deed from D. L. Buie and wife, Annie Laurie Buie to Alton Buck and wife, Josephine Buck, recorded in Volume 960, Page 438, Deed Records of Smith County, Texas;

THENCE South 43 degrees 05 minutes West with the East Line of the 15 acre tract and the West line of the St. Louis and Southwestern Railroad, called Lufkin Spur, a distance of 442.57 feet to an iron pin for corner in the East line of the 15.0 acre tract and the West line of the Railroad Right of Way;

THENCE North 77 degrees 45 minutes West, 323.11 feet to an iron pin for corner in a pasture;

THENCE North 18 degrees 44 minutes East, 264.90 feet to an iron pin for corner in the North line of the 15.0 acre tract;

THENCE North 89 degrees 36 minutes East with the North line of 15 acre tract, 533.0 feet to the PLACE OF BEGINNING, Containing 2.941 acres of land.

TRACT 4:

BEING a 49.61 acre tract in the Don Thomas Quevado, Seven League Grant, Section 5, Abstract No. 18, Tyler, Smith County, Texas and being all of a called 49.61 acre tract as described in a Deed from Timothy J. Beverley, et al to Mollie A. Winston, et al in Volume 7356, Page 374 of the Smith County Land Records and being more completely described as follows:

BEGINNING at a 1/2" iron rod found at the Northeast corner of said 49.61 acre tract, at the Northwest corner of a called 119.715 acre tract described in a Deed from BPG, Inc. to Larry J. Taylor in Volume 3416, Page 128 of said Smith County Land Records, on the South boundary line of a called 46.185 acre tract described in a Deed from M. G. Moore to Joe C. Moore in Volume 1521, Page 511 of said Smith County Land Records, on the South boundary line of Section 6 and the North boundary line of Section 5 of said Don Thomas Quevado, Seven League Grant, Abstract No. 18;

THENCE South 01 degree 43 minutes 49 seconds East, a distance of 1237.25 feet with the East boundary line of said 49.61 acre tract and the West boundary line of said 119.715 acre tract, to a 1/2" iron rod found at the Southeast corner of said 49.61 acre tract and at an interior angle corner of said 119.715 acre tract;

THENCE South 87 degrees 47 minutes 42 seconds West, a distance of 1083.74 feet with the South boundary line of said 49.61 acre tract and the most Southerly North boundary line of said 119.715 acre tract to a 1/2" iron rod found at the most Southerly Northwest corner of said 119.715 acre tract and the Northeast corner of a called 58.431 acre tract described in a Deed from Gary T. Kimmel, et ux to Gerald Kirkpatrick, et ux in Volume 6084, Page 273 of said Smith County Land Records;

THENCE South 87 degrees 48 minutes 32 seconds West, a distance of 806.92 feet with the South boundary line of said 49.61 acre tract and the North boundary line of said 58.431 acre tract to a 1/2" iron rod found at a T-post at the Southwest corner of said 49.61 acre tract, at the East corner of a called 2.723 acre tract described in a Deed from Robert E. Steel, et ux to Steel Family Trust in Volume 3264, Page 466 of said Smith County Land Records, and at the South corner of a called 1.038 acre tract described in a Deed from John B. Gabriel and wife, Barbara E. Gabriel to William L. Burleson and wife, Juanita M. Burleson in Volume 1750, Page 716 of said Smith County Land Records;

THENCE North 16 degrees 08 minutes 39 seconds East, a distance of 403.99 feet with the West boundary line of said 49.61 acre tract and the East boundary line of said 1.038 tract to a 1/2" iron rod found at the East corner of said 1.038 acre tract and at the South corner of a called 2.676 acre tract described in a Deed from Gregory A. Fraser, et ux to Charles Randal Mase in Volume 5292, Page 193 of said Smith County Land Records;

TRACT 4 CONTINUED:

THENCE North 14 degrees 06 minutes 55 seconds East, a distance of 421.44 feet with the West boundary line of said 49.61 acre tract and the East boundary line of said 2.676 acre tract to a 1/2" iron rod found;

THENCE North 32 degrees 28 minutes 12 seconds West, a distance of 262.88 feet with the West boundary line of said 49.61 acre tract and the Northeast boundary line of said 2.676 acre tract to a 1/2" iron rod found at the North corner of said 2.676 acre tract, also being in the centerline of County Road No. 196, (Old Noonday Road);

THENCE North 48 degrees 26 minutes 45 seconds East, a distance of 376.39 feet with the West boundary line of said 49.61 acre tract and the centerline of said County Road No. 196, (Old Noonday Road), to a 60 penny nail set in same, at the Northwest corner of said 49.61 acre tract, on the North boundary line of Section 5 and the South boundary line of Section 6 of said Don Thomas Quevado, Seven League Grant, Abstract No. 18, from which a 1/2" iron rod found at the Southwest corner of a called 4.746 acre tract described in a Deed from Novella Wright Duggan, et al to Thomas H. Benson in Volume 1992, Page 402 of said Smith County Land Records, bears North 88 degrees 34 minutes 39 seconds East, a distance of 76.29 feet;

THENCE North 88 degrees 34 minutes 39 seconds East, a distance of 879.80 feet with the North boundary line of said 49.61 acre tract, the South boundary line of said 4.746 acre tract, the North boundary line of said Section 5 and the South boundary line of said Section 6 of the Don Thomas Quevado, Seven League Grant, Abstract No. 18, to a fence corner found at the Southeast corner of said 4.746 acre tract and at the Southwest corner of a called 14 and 36/100 acre tract described in a Deed from J. W. Tyner, et ux to Mitzi D. Tyner Parks and Gordon C. Tyner in Volume 4613, Page 137 of said Smith County Land Records;

THENCE North 88 degrees 02 minutes 35 seconds East, a distance of 568.62 feet with the North boundary line of said 49.61 acre tract, the South boundary line of said 14 and 36/100 acre tract, the North boundary line of said Section 5, and the South boundary line of said Section 6 of said Don Thomas Quevado, Seven League Grant, to the PLACE OF BEGINNING containing 49.61 acres of land of which 0.273 of an acre lies within an area calculated 30 feet from the centerline of County Road No. 192, leaving a net acreage of 49.34 acres of land.

EXHIBIT "B"

DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

"Architectural Control Committee" shall mean the Developer or such other person, persons or entity who shall be named to serve by Developer in conjunction with or as the successor to Developer, provided, however, that such change shall not be effective for purposes of these Covenants until a statement of such change has been duly recorded by the Developer, or Developer's successors or assigns, in the Official Public Records of Smith County, Texas. The Developer, or Developer's successors or assigns, shall have the right at any time to change the number of members comprising the Architectural Control Committee and the persons forming the membership of the Architectural Control Committee at the sole discretion of said Developer, or Developer's successors or assigns, by the filing for record in the Official Public Records of Smith County, Texas of a statement to such effect as provided herein.

"Assessable Property" shall, mean each part or portion of the Town Center and the Permanent Improvements located thereon.

"Assessment" means any general or special assessment at any time imposed by the Association as provided in Article X of the Declaration.

"Assessment Lien" shall mean the lien created and imposed against any part of Town Center by Article VI of this Declaration.

"Center" shall mean all real property within a designated platted area determined by the Developer.

"Town Center Common Area Property" shall mean that portion of Town Center that shall be owned by the Association for the benefit of all of the Owners of the real property located within Town Center.

"Commercial Design Guidelines" shall mean a written instrument adopted by the Architectural Control Committee used to establish design criteria for Permanent Improvements.

"Corner Tract" shall mean the 2.175 acre lot, more or less, within Town Center, as specifically set forth on the Plat recorded in Cabinet E, Slide 162-A of the Plat Records of Smith County, Texas, as may be amended from time to time.

"Covenants" shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

“Developer” shall mean Werner-Taylor Land & Development, L.P., a Texas limited partnership, and its successors or assigns of any or all rights and powers hereunder, but with respect to any such successor or assignee (i) such successor or assignee shall not be deemed to be a “Developer” unless such successor or assignee is designated as such pursuant to a written instrument signed by Developer, which written instrument shall be filed of record in the Official Public Records of Smith County, Texas, and (ii) such successor or assignee shall only have those rights and powers of Developer that are specifically assigned to such successor or assignee pursuant to such written instrument.

“Declaration” shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements as amended or supplemented from time to time as herein provided.

“Deed” shall mean a deed or other instrument conveying the fee simple title to all or any portion of Town Center.

“Developer Land” shall mean all property owned by Developer within Town Center.

“Fines” shall mean the fines that may be imposed as provided in Section 8.02 of this Declaration.

“Maintenance Charges” shall mean any and all costs assessed as provided in Article V of this Declaration.

“Owner” shall mean the person or persons, entity or entities, who, individually or jointly, own record title to a part or portion of Town Center. The term “Owner” shall exclude any person or persons, entity or entities, having an interest in a part or portion of Town Center or any such parcel merely as security for the performance of an obligation. The term “Owner” shall include Developer so long as Developer is a record title owner of any part or portion of Town Center.

“Permanent Improvements” shall mean with respect to any part or portion of Town Center, any and all improvements, structures and other materials and things located thereon, including without limitation, trees, berms, shrubs, hedges and fences.

“Pod Common Area Property” shall mean that portion of Town Center that shall be owned by the Association for the benefit of all of the Owners of the real property located within a specific Pod. Specifically, the common area property coming within this definition shall mean that portion of the real property within a Pod anticipated to be enjoyed only by the Owners of the real property located within a specific Pod

“Structure” shall mean with respect to any part or portion of Town Center, any buildings constructed as Permanent Improvements.

Main Drive

