



Creek 51 Business Park
Declaration of Development
Standards and Protective
Covenants

19-0410 SW



Creek 51 Business Park
Declaration of Development Standards and Protective Covenants

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Creek 51 Business Park

Declaration of Development Standards and Protective Covenants

THIS DECLARATION is made as of the 30 day of November, 2020, by **Creek 51 Business Park, LLC, a Texas Limited Liability Company** (the "Developer").

RECITALS:

WHEREAS, the Developer is the owner of "Creek 51 Business Park", a Subdivision within the City of Broken Arrow, Wagoner County, State of Oklahoma, according to the plat thereof filed of record with the Wagoner County Clerk on September 29, 2020 (Book 2618 Page 0743; the "Property"); and

WHEREAS, it is the Developer's intent to develop the Property into a business park to be known as CREEK 51 BUSINESS PARK (the "Park"); and

WHEREAS, the Developer desires that development of the Park accomplish the following purposes:

(a) Provide for design standards which are structurally, architecturally and aesthetically acceptable to the Developer;

(b) Ensure that any Buildings or Structures within the Park are constructed of materials acceptable to the Developer in energy efficiency, appearance, quality and design;

(c) Provide for adequate off-street parking and loading facilities, sign controls, screening, landscaping, surface drainage, and property maintenance on individual Building Sites; and

(d) Provide for development and maintenance that will preserve and enhance the value of the Property, and generally benefit the Developer, Owners, and the City; and

WHEREAS, to accomplish these purposes, it is the Developer's further intent to impose certain covenants, conditions and restrictions upon the Property (the "Covenants"), and to retain the right (but not the obligation) to enforce the Covenants with respect to any existing or future use of the Property or any part thereof by the Owners, their heirs, assigns, lessees, licensees, invitees, successors-in-interest and personal representatives.

NOW, THEREFORE, the Developer hereby declares that, except as provided in Section 1.15(a), the Property shall be held, sold, conveyed, occupied, developed and maintained in accordance with the Covenants set forth herein, and these Covenants shall run with the land and shall be binding upon any party having any right, title or interest in or to any part or parcel of the Property, their heirs, assigns, lessees, licensees, invitees, successors-in-interest, and personal representatives until these Covenants are terminated in accordance with the provisions hereof.



ARTICLE I Definitions

Unless the context otherwise requires, the terms used herein have the following meanings:

- 1.1 **Affiliate.** The term "Affiliate" shall mean a parent, sister or subsidiary corporation or other entity, joint venture, or general partner of an Owner or a person who owns more than fifty percent (50%) of the voting stock, membership interests, or partnership interests in an Owner.
- 1.2 **Architect.** The term "Architect" shall mean a person duly licensed as an architect under the laws of Oklahoma.
- 1.3 **Association.** The term "Association" shall mean the non-stock, not-for-profit Oklahoma corporation whose membership consists of Owners of Creek 51 Business Park.
- 1.4 **BAPC.** The term "BAPC" shall mean the Broken Arrow Planning Commission or its successor.
- 1.5 **Building.** The term "Building" shall include both the main portion of any building on the Property, and all projections and extensions thereof, including but not limited to platforms, docks, eaves, canopies, walls and screens.
- 1.6 **Building Site.** The term "Building Site" or "Site" shall mean any Lot or contiguous Lots or portion(s) thereof within the Park upon which Buildings may be erected and used in conformance with these Covenants and the statutes, regulations, codes and ordinances of the State of Oklahoma, Wagoner County and the City.
- 1.7 **Common Elements.** The term "Common Elements" shall mean all real property, personal property, fixtures, structures and improvements, the control and maintenance of which will be assigned by the Developer to the Association. Common Elements may include, but not be limited to, such things as the ODE Area, stormwater detention ponds within the Detention Easement Area, lakes, water features, parks, median strips in public streets, entrances to the Park, landscape easement areas, fences, security facilities, street lights, signs, structures, maintenance equipment, drainage systems and other improvements which have been constructed or maintained for the common good of the Owners.
- 1.8 **Detention Easement Area.** The term "Detention Easement Area" shall mean that certain real property which contains the stormwater detention ponds and the area of the Detention Easement which was recorded in the Office of the Wagoner County Clerk (Book 2536 Page 0431, Document No. 2019-14359) on October 28, 2019.
- 1.9 **Developer.** The term "Developer" shall mean, in addition to Creek 51 Business Park, LLC, any person or organization which shall be assigned the right to enforce these Covenants under Section 12.1.



- 1.10 **Drainage Master Plan.** The term "Drainage Master Plan" shall mean the plan adopted by the Developer describing the drainage pattern of the Property and outlining the proposed drainage system for the Park, together with any future revisions to said plan, which plan and revisions shall be available for review at the office of the Developer.
- 1.11 **Engineer.** The term "Engineer" shall mean a person duly licensed as a professional engineer under the laws of Oklahoma.
- 1.12 **Improvements.** The term "Improvements" shall mean any man-made changes in the natural condition of the Property including, but not limited to, Buildings, Structures, or other construction of any kind, (whether above grade, below grade, or on the land surface), fences, walls, signs, additions, alterations, screen enclosures, sewers, drains, disposals, ponds, waterways, roads, driveways, parking areas, fences, walls, hedges, poles, paving, utilities, grading, landscaping and exterior illumination, and shall expressly include any changes in existing Improvements.
- 1.13 **Lot.** The term "Lot" shall mean any lot shown on the Plat and any fractional part of such lots which has been approved as a "lot split" by the BAPC.
- 1.14 **City.** The term "City" shall mean the City of Broken Arrow, Oklahoma. a municipal corporation.
- 1.15 **Occupancy.** The term "Occupancy" shall mean the legal right of any person or organization, whether Owner, lessee, tenant, licensee or such person's heirs, assigns, successors in interest or personal representatives, to possess and/or use any Lot or Improvements within the Park as determined by the issuance of an occupancy permit by the City, whether or not such right is exercised.
- 1.16 **Owner.** (a) The term "Owner" shall mean one or more partners, persons, trusts, corporations, limited liability companies or other entities holding record title to the fee simple interest to a Lot or Lots, and shall include land contract purchasers (but not land contract vendors) and secured parties if in possession, their heirs, assigns, successors in interest or personal representatives. An Owner may not assign its duties and obligations hereunder except that, upon written notice to the Developer, it may assign all or part of its rights to said Owner's tenant or lessee.
- (a) Prior to the formation of the Association, the term "Owner" shall not include the Developer with respect to Lots not yet sold by the Developer or Lots repurchased by the Developer pursuant to Section 3.2.
- (b) The term "Original Owner" shall mean the first purchaser of each Lot or Lots from the Developer.



- 1.17 **Plat.** The term "Plat" shall mean the plat of Creek 51 Business Park that was recorded in the Office of the Wagoner County Clerk (Book 2618 Page 0743) on September 29, 2020.
- 1.18 **ODE Area.** The abbreviation "ODE" shown on the face of the plat shall mean Overland Drainage Easement for the purposes of overland stormwater drainage for Creek 51 Business Park.
- 1.19 **Site Plan.** The term "Site Plan" shall mean a comprehensive plan describing the development of a Building Site as described in Section 4.1.
- 1.20 **Structure.** The term "Structure" shall mean an above-ground improvement.

ARTICLE II
Permitted Uses

- 2.1 **Compliance with Zoning.** All Building Sites in the Park shall be developed in conformance with the Plat and the zoning requirements in effect as of the date of approval of any necessary building permits for said sites. Owners shall be responsible for ascertaining the zoning classification applicable to their Building Sites, and shall comply with all regulations applicable to such classification. An Owner intending to apply for a zoning amendment, amendment to planned unit development (major or minor), conditional use permit, exception or variance for its Building Site, shall first submit such application to the Developer for review and approval. Disapproval by the Developer shall be formal notwithstanding later favorable action by the BAPC and/or the City.
- 2.2 **Nuisances.** No noxious or offensive trade or activity, whether or not permitted by applicable zoning, shall be carried on within the Park, nor shall anything be done which is or may become an annoyance or nuisance to adjacent Owners or other Park users, or which is inconsistent with these Covenants or other governmental or private restrictions applicable to the Property. Violation of these Covenants shall constitute a nuisance under this section.
- 2.3 **Hazardous Waste.** Notwithstanding anything to the contrary in these Covenants and/or applicable zoning, no storage of hazardous or toxic waste, or discharge of such hazardous or toxic waste into the sanitary system or surface drainage system, shall be permitted within the Park. Any party violating this provision, whether intentionally or negligently, hereby agrees to indemnify the Developer, its Affiliates and each and every other Owner against any and all liability and costs arising from such violation, including reasonable attorneys' fees.



ARTICLE III Site Specifications and Requirements

- 3.1 **No Subdivision of Lots.** After a Lot has been purchased, such Lot shall not be further subdivided without the written consent of the Developer. No Owner may sell, lease or rent less than all of a Lot without the written consent of the Developer. The Developer may, in granting its consent, attach any conditions it deems appropriate. The foregoing prohibition shall not apply to occupancy leases of space in a Building made in the ordinary course of business.
- 3.2 **Proceeding with Work; Right of Repurchase.** The Original Owner of a Building Site, and any subsequent Owner, shall have two (2) years, or such longer period as may be expressly granted in writing by the Developer, from the closing date of the sale of the Site by the Developer to the Original Owner to begin development of the Site. Once development begins, it shall continue uninterrupted until completion, which shall be no later than one (1) year from commencement, unless a longer period is expressly granted in writing by the Developer. If an Owner fails to comply with this section or any agreement between the Developer and an Owner hereunder permitting development at a later date, the Developer may, but shall not be required to, repurchase the Site from the original owner for the original price paid to the Developer, by giving written notice to the then Owner of its intention to repurchase. The notice can be given at any time after failure of an Owner to comply with this section.
- 3.3 **Limit on Development.** No more than ninety percent (90%) of any Building Site may be covered with Buildings or other Improvements impervious to surface water absorption without special approval of the Developer and/or Owner's Association.
- 3.4 **Duty to Landscape.** All areas of a Building Site not designated on a Site Plan approved by the Developer for Buildings, Structures, storage, walks, parking areas and drives shall be fine-graded, seeded and/or sodded, landscaped, watered and maintained in an attractive condition in accordance with the landscaping plans required in Article VII.
- 3.5 **Use of Excavated Materials.** The Developer shall at its option have the right to free use of any soil, sand, gravel, rock or other material excavated from any Building Site or Lot, if such material is not used upon the Site or Lot from which it was excavated. The Owner of the Site or Lot shall deposit any such material at whatever location within the Park the Developer shall require. No excavated material shall be removed from the Park without the prior written consent of the Developer.

ARTICLE IV Site Plans/Development

- 4.1 **Site Plan.** No new Improvements, or modifications of any kind or degree to existing Improvements, shall be made or constructed upon a Building Site or other Lot until a detailed Site Plan of the entire Building Site or Lot,



with a common scale not smaller than 1" = 100', is reviewed and approved, in writing, by the Developer or designated representative. Improvements shown on such Site Plan shall include, but not be limited to:

- (a) All finished grade levels;
- (b) All Buildings and other Structures, showing the setbacks required by the Plat;
- (c) Sidewalks and driveways (including types of materials);
- (d) Parking areas (including types of materials);
- (e) Loading areas (including types of materials);
- (f) Screening and fencing (including types of materials);
- (g) Utility and storage areas (including types of materials);
- (h) Lawns and landscaped areas (including types of materials);
- (i) Water impoundments (if any);
- (j) Fences (including types of materials);
- (k) Lights (including types);
- (l) Areas of fill and/or cut;
- (m) Storm water drainage plans and facilities;
- (n) On-Site sewer, water and other utility locations, sizes and easement locations;
- (o) Location and type of refuse collection facilities; and
- (p) All exterior signs and all other signs visible from the exterior of Buildings and Structures.

ARTICLE V
Architectural Building Plan
Review

- 5.1 **Building Plan.** No Building or other Structure shall be constructed or placed on any Building Site or other Lot, nor shall any Building or Structure be remodeled or altered, until detailed plans and specifications for such Building, Structure, or remodeling, alteration or addition thereto, have been reviewed and approved, in writing, by the Developer, which approval may be granted or withheld in the sole discretion of the Developer.



Building plans shall comply with the following minimum requirements:

- (a) Plans shall be prepared by an Architect or Engineer in at least 1/8" = 1' scale;
- (b) Plans shall show Building location(s) within the Building Site;
- (c) Floor plans and building elevations shall show all features and information required by the City of Broken Arrow and the State of Oklahoma;
- (d) Plans shall identify all materials used; samples and/or color charts shall be provided to the Developer upon request; and
- (e) Plans shall show all public and/or private utility connections and storm water drainage systems.

5.2 Building Standards. Buildings and Structures shall comply with the following minimum standards:

- (a) They shall be designed by an Architect or Engineer. No side, elevation or facade of a Building or Structure is exempt from public view, consequently, all sides, elevations, or facades of all Buildings and Structures shall be visually pleasing and architecturally and aesthetically compatible with the surrounding environment.
- (b) The majority of exterior and externally visible opaque surfaces shall be constructed of not more than three (3) of the following types of materials (provided, however, that such list shall not be deemed to exclude the use of other accent or exterior trim materials, glass and glazing, and earth berms):
 - (i) Brick;
 - (ii) Architectural precast concrete panels;
 - (iii) Decorative concrete block (for no more than 50% of the exterior building wall area);
 - (iv) Cut stone;
 - (v) Exterior insulation and finish systems such as "Drivit" or "Sunalar";
 - (vi) Wood; and
 - (vii) Other building materials being developed, and to be developed, by the construction industry. The use of such materials will be reviewed by the Developer on a case-by-case basis.



Building materials will be selected for their ability to present a visual statement of a building or structure's strength, attractiveness and permanence. The building materials used shall be harmonious with the natural environment and with the general character of other Buildings and Structures in the Park.

- (c) Metal trim materials may be used when in keeping with the architectural and aesthetic character of the Building or Structure.
- (d) All mechanical, electrical, communication, transmission or pollution control or waste handling equipment, whether roof, pedestal or ground mounted, and any outside solid waste, raw material, inventory, finished product, equipment, fuel storage facility or other storage of any kind, shall either be architecturally screened from view using materials identical to, or structurally and visibly compatible with, the main Buildings or Structures on the Building Site, or shall be landscape screened in accordance with Article VII. All storage areas shall be screened as provided above and shall be hard- surfaced with either concrete or asphalt materials within thirty (30) days from the date of Occupancy.
- (e) All Buildings to be constructed on a Building Site which are to be heated or cooled shall be designed and constructed in an energy efficient manner consistent with sound and prudent design and construction techniques.
- (f) All exterior building surfaces visible by the public shall be "Earth Tone" in color and approved by the Developer prior to construction of the building.

5.3 Ancillary Structures. Ancillary Structures will be approved by the Developer only if such Structures are necessary to the principal use of the Building Site, are in architectural and aesthetic conformance with other Building(s) or Structure(s) on the Site, are properly screened, meet all requirements of these Covenants and are otherwise satisfactory to the Developer in its sole discretion. No Building or Structure of a temporary nature may be constructed on any Building Site except construction sheds in use during construction. Such sheds shall be promptly removed upon completion of construction.

5.4 Utilities. All utilities serving a Building Site shall be installed underground.

ARTICLE VI Drainage

6.1 Drainage Plan. Prior to constructing any Improvements upon a Building Site or other Lot, the Owner shall submit to and obtain written approval from the Developer of a detailed plan describing all drainage facilities upon the Site.

6.2 Conformance with Drainage Master Plan. Each Owner shall be responsible for controlling drainage from its Building Site or Lot, including construction of retention facilities, if deemed necessary by the Developer or the City. The existing drainage pattern on a Site shall not be changed significantly, and no



change to the drainage pattern on other lands within the Park shall be caused by an Owner which varies from the Drainage Master Plan as that Plan is amended by the Developer from time to time.

- 6.3 **Storm Drainage.** Storm drainage outfall from a completely developed Site, and generated from a 100 year rain storm event, shall not exceed the physical abilities of the streams, drainage ways or storm sewers immediately adjacent to and downstream from the Site to accommodate such outfall. Such drainage shall be in compliance with the Drainage Master Plan and with all Oklahoma Department of Environmental Quality rules and regulations.
- 6.4 **Erosion Control.** Each Owner shall take whatever steps are deemed reasonably necessary by the Developer to prevent erosion during the construction of any Improvements.

ARTICLE VII Landscaping

- 7.1 **Landscaping Plan.** The landscaping upon any Building Site or Lot shall be carried out in accordance with a detailed landscaping plan which has been reviewed and approved, in writing, by the Developer. The landscape plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size, root condition, and quantity of all plant material. The plan shall also show all ground cover and mulch areas, landscape and construction materials, and construction details.
- 7.2 **Landscaping Methods.** Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover and other landscape materials including permanent sprinkling systems, foundations, storm run-off retention ponds, reflective ponds, and landscape lighting.
- 7.3 **Plant Material.** Selected plant material should provide for a variety of shade trees, evergreen trees and shrubs, ornamental trees and shrubs and ground covers. Plant material selection shall take into consideration the following:
- (a) Disease and insect resistance.
 - (b) Hardiness to the area.
 - (c) The ability to provide seasonal interest.
 - (d) Future maintenance considerations.
- 7.4 **Time for Completion.** All landscaping shall be completed within ninety (90) days following Occupancy.
- 7.5 **Maintenance.** The Owner shall be responsible for maintaining all landscaping as approved on the original plan for his Site. Any variation or changes to the landscape plan must be reviewed and approved in writing by the Developer. Landscaped areas, materials, fixtures, and Improvements shall be maintained



by the Owner of the Building Site, or by such Owner's long-term lessee(s) in good condition at all times. Such maintenance shall include watering, mowing, trimming, pruning, spraying, fertilizing, repairing, planting, transplanting, dusting, treating, and other common landscape maintenance activities necessary to keep the Building Site landscape in a state of growth and visual beauty. Building Sites shall at all times be kept free of weeds, grass clippings, leaves, branches, and other natural debris as well as paper, cans, empty storage drums, crates, pallets, boxes, tires, and other trash or debris.

- 7.6 **Screening.** Landscape materials planted, located and oriented for the primary purpose of screening an ancillary Structure or appurtenance or storage, loading or parking area under Sections 5.2(d), 5.3, 8.1, 8.5, 8.6, and 8.7 shall be of sufficient size to immediately screen a minimum of fifty percent (50%) of such Structure or area and be of a plant type that will provide full screening within three (3) years from time of planting.

ARTICLE VIII Off-Street Parking, Loading and Storage

- 8.1 **Parking and Loading Areas.** Off-street parking and loading areas shall be provided on each Building Site and shall be of sufficient size to accommodate all planned or anticipated parking and loading needs of all Site occupants and visitors. Loading areas shall be separate from parking areas on any Site where possible, as determined by the Developer in its sole discretion. No front or street yard parking shall be allowed unless the same is adequately screened, as determined by the Developer.
- 8.2 **No On-Street Parking.** No motor vehicle or trailer may park on any street, driveway, or on any access easement.
- 8.3 **Hard-surfacing.** All parking, loading and driveway areas shall be hard-surfaced with either concrete or asphalt materials within thirty (30) days from the date of Occupancy.
- 8.4 **Drainage.** All parking, loading, and driveway areas shall be properly sloped and graded to ensure positive drainage to common, private drainage facilities, if any, within the Property or to on-site impoundments, if any. The perimeter of all hard-surfaced areas on the Site shall be edged with a permanent vertical-faced concrete curbing where necessary to facilitate such drainage. Curbing shall be constructed to transition with curbs within the public or private right-of- way.
- 8.5 **Landscaping.** The visual effect of all parking, loading, storage and driveway areas shall be "softened" by use of landscaping so as to minimize the visibility of hard-surfaced areas, vehicles and equipment to motorists and people working in the Park.
- 8.6 **Location of Loading Areas.** Truck and truck-trailer loading, receiving and parking areas shall be located away from the street side(s) of any Building



wherever possible, and shall be designed and located so as to confine all truck maneuvering to the Building Site. In addition, all such loading areas shall be given priority with respect to landscape screening.

- 8.7 **Storage of Trailers and Vehicles.** There shall be no long-term storage of trailers or vehicles on any Building Site unless adequately screened as determined by the Developer, and unless such storage is necessary to the Site Owner's or lessee's principal business conducted on the Site.

ARTICLE IX Signage and Lighting

- 9.1 **Sign Approval.** The Developer recognizes the need for signs advertising the identity of Owners and occupants and the businesses they conduct on the Property, and also recognizes that acceptable standards for such signs may change from time to time. All requests for signs on any Building Site or other Lot within the Park shall be submitted to the Developer for approval and shall contain detail as to height, display surface area, location, materials, color and lighting together with a scaled, full color rendering. The Developer may approve or disapprove the request, in writing, or may require that the proposal be altered to fulfill the intent of these Covenants. If the Developer does not act upon a sign proposal within thirty (30) days after submission, the proposal shall be deemed approved. All decisions regarding signs shall be within the sole discretion of the Developer.
- 9.2 **Sign Standards.** Any sign located within the Park shall, in addition to complying with applicable zoning requirements, meet the following minimum standards:
- (a) Signs may only advertise the name(s) of the Building occupants, the Owners of the Building Site, and the product manufactured or sold on the Building Site.
 - (b) Each Building Site shall contain only one major project sign.
 - (c) Signs shall be permanently affixed to the face of the Building or to the ground, and shall not flash, pulsate, rotate, or be affixed with moving appurtenances. Roof-top signs are prohibited.
 - (d) Signs attached to Buildings shall not extend more than two (2) feet above the higher of the ceiling line of the top floor or the top of a parapet wall.
 - (e) Smaller signs adjacent to individual tenant entrances and identifying individual tenants or directing traffic may also be allowed at the sole discretion of the Developer.
 - (f) All signs must be architecturally compatible to other Improvements.



9.3 Lighting Standards. Lighting on individual Building Sites shall adhere to applicable governmental lighting codes and ordinances, as well as the following requirements:

- (a) All exterior lighting shall be energy efficient and shall be located, oriented, and of an intensity to illuminate only the Building Site or Lot where located without detrimentally affecting activity on adjacent Building Sites or Lots or traffic on streets and highways.
- (b) Lighting shall not be located on the roofs of Buildings. Any lights affixed to a Building shall be oriented downward at no more than a 45 degree angle from the vertical so as to light only areas of the Site.
- (c) Lights may neither flash, pulsate, nor be so bright as to impair or hinder vision on public streets or adjacent Building Sites, or otherwise constitute a nuisance in the judgment of the Developer.
- (d) Mixing of lighting types (i.e. sodium vapor, incandescent, mercury vapor, metal halide) shall be avoided.
- (e) Integration of similar lighting fixtures is encouraged.
- (f) All plans for lighting must be submitted to the Developer for approval.

**ARTICLE X
Other Improvements, Maintenance and
Repair**

10.1 Improvements not Specifically Addressed. The construction and placement of Improvements such as special utilities, antennae, receiving dishes, towers, incidental storage buildings, and other facilities not specifically addressed elsewhere within these Covenants shall require the written approval of the Developer.

10.2 Maintenance and Repair. All improvements on Building Sites shall be kept, maintained and repaired in good condition at all times. Regular maintenance routines shall be followed by Owners such that the Improvements continue to be maintained, at all times, as nearly as possible, in the condition set forth in the Site Plans and Building Plans approved by the Developer. Any damage resulting from casualty loss to any improvements shall be immediately replaced or repaired by Owner to their original condition, as nearly as possible.

**ARTICLE XI
Area-Wide Benefits**

11.1 Right to Enter and Maintain. The Developer shall have the right to enter upon any Lot, at reasonable times and after reasonable notice to the Owner, for the purpose of maintaining, renewing, or reconstructing any utilities, facilities, ponds, impoundments or other Improvements which



benefit other Lots, in addition to benefiting such Lot. If such Lots contain public utilities or facilities having an area-wide benefit, which are maintained by the City, the City, following prior written notification to the Developer, may, if necessary to maintain such facilities in good working order and appearance, renew, reconstruct, or maintain such facilities or utilities and assess the cost to the Owners or to the Developer, which will, in turn, assess such cost to the Owners as described below. No prior written notification shall be required for emergency repairs.

- 11.2 **Right to Assess.** The cost of such maintenance, renewal or reconstruction whether by the Developer or the Municipality may be assessed against Owners of all Lots within the Property, on a pro rata basis, based on the acreage of real estate owned. Any assessment imposed hereunder shall be a lien against the real property subject to the assessment. Such lien shall be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

ARTICLE XII Enforcement, Termination, Modification

- 12.1 **Right to Enforce.** These Covenants are imposed solely for the benefit of and are enforceable only by the Developer, or such person or organization specifically designated by the Developer, in a document recorded in the Office of the Wagoner County Clerk, as its assignee for the purpose of enforcement thereof. Purchase of the Property or any part thereof by any other party shall not alone confer the right to enforce these Covenants.
- 12.2 **Manner of Enforcement.** These Covenants shall be enforceable by the Developer and its assigns in any manner provided by law or equity, including but not limited to one or more of the following:
- (a) Injunctive relief;
 - (b) Action for specific performance;
 - (c) Action for money damages; and
 - (d) Performance of these Covenants by the Developer on behalf of any party in default thereof for more than thirty (30) days, after receipt by such party of written notice from the Developer describing such default. In such event, the defaulting Owner shall be liable to the Developer for the actual costs of the Developer in performing these Covenants.
- 12.3 **Reimbursement.** Any amounts expended by the Developer in enforcing these Covenants, including reasonable attorney fees, and any amounts expended in curing a default on behalf of any Owner or other party, shall constitute a lien against the subject real property until such amounts are reimbursed to the Developer, with such lien to be in the nature of a



mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

- 12.4 Failure to Enforce Not a Waiver.** Failure of the Developer or assigns to enforce any provision contained herein shall not be deemed a waiver of the Developer's or assigns' right to enforce these Covenants in the event of a subsequent default.
- 12.5 Right to Enter.** The Developer shall have the right to enter upon any Building Site or other Lot within the Park for the purpose of ascertaining whether the Owner of said Site or Lot is complying with these Covenants, and, if the Developer so elects under Section 12.2(d) for the purpose of performing obligations hereunder on behalf of a party in default hereof.
- 12.6 Right to Vary.** The Developer may, in its sole discretion, grant variances from the strict application of these Covenants where strict application of any provision would result in exceptional or undue hardship to the Owner of any Building Site or Lot, or where otherwise deemed appropriate by the Developer. Any variance (approved by Developer) shall take effect upon recording notice thereof in the Office of the Wagoner County Clerk. No variance granted shall create any similar or dissimilar right to any other Owner or party.
- 12.7 Right to Modify.** The Developer may, in its sole discretion, at any time and from time to time, modify these Covenants in writing. Such modifications shall apply only to Building Sites and Lots then owned by the Developer, and to any alterations to existing Improvements or new Improvements on all other Sites and Lots. Modifications shall take effect upon recording.
- 12.8 Duration.** These Covenants shall be binding upon Owners and shall continue and inure to the benefit of the Developer and its assigns for a period of fifty (50) years from the date of recording, unless the Developer earlier records an instrument terminating and releasing the requirements of these Covenants. At the end of fifty (50) years, these Covenants shall continue in effect unless the Developer or a majority of Owners of Building Sites and Lots within the Park executes and records an instrument terminating them.
- 12.9 Addition to or Subtraction from the Property.** The Developer may, in its sole discretion, from time to time subject additional land to the Covenants by recording this document against such land and such additional land shall then be a part of the Property from and after the date of such recording. The Developer may also, in its sole discretion, by an appropriate recorded document, remove land from the effect of these Covenants and thereby reduce the extent of the Property, without the consent of the then Owner of such land. Section 12.8 permits termination of these Covenants in their entirety and this Section permits such a termination as to a part of the Property.



ARTICLE XIII
Owners' Association

- 13.1 Formation of an Owners' Association.** At the Developer's option, but not later than six (6) months after the sale of the last Lot, the Developer shall form an owners' association for the purpose of enforcing these Covenants and maintaining and protecting the Common Elements.
- 13.2 Creation of Owners Association.** The Developer shall authorize the creation of the Association by the filing of Articles of Incorporation of the Association with the Oklahoma Secretary of State. The Developer will give notice of the creation of the Association to all Owners who have notified the Developer of their name and address for notice purposes hereunder. All Owners shall be entitled and required to be members of the Association. The Association shall be known as Creek 51 Business Park Owners Association, Inc. or such other similar name as shall then be available. The Association shall be incorporated as a non-stock, non-profit corporation under the laws of the State of Oklahoma. The Articles of Incorporation and the Bylaws for the Association, which will become effective when the Developer authorizes the creation of the Association, shall be prepared by the Developer in its sole discretion, consistent with the provisions hereof. Upon creation of the Association, the Developer shall retain control over the operation and management of the Association through appointment or election of a majority of the Board of Directors until all of the Lots in the Park has been sold to Owners. Thereafter, the Board of Directors shall be elected by a vote of all of the Owners.
- 13.3 General Purposes of the Association.** The Association, when formed, shall be responsible for implementing and insuring adherence to these Covenants and shall have the exclusive management and control of the Common Elements and enforcement of the restrictions contained herein. Additionally, the Association shall form an architectural review committee as provided in Section 13.11 for the purpose of reviewing and approving construction of Buildings or improvements in the Park as well as the remodeling, alteration or addition thereto.
- 13.4 Voting Rights.** Once the Developer has sold all of the Lots in the Park, votes shall be allocated to Owners of Lots based on the percentage that the square footage contained in an Owner's Lot bears to the total square footage of the Property, including additional property as added by Developer, but excluding the Common Elements. Such vote shall be determined by using the following formula:

$$X = \frac{A}{B} \times 100$$

where the votes attributable to a Lot = X, the square footage of the Lot = A, the total square footage of all Lots = B and the total number of votes is 100.



For example, if the total area within the Property, excluding Common Elements is 1,000,000 square feet and an Owner's Lot contains 100,000 square feet, the Owner of such Lot, shall be entitled to cast a total of ten (10) votes. The Board of Directors shall determine the number of votes attributable to each Lot, using the assistance of such surveyors or engineers as necessary, at least five (5) days prior to the voting on any matter submitted to the members of the Association. The determination of such percentage by the Board of Directors shall be conclusive as to the number of votes attributable to each Lot. The votes of each Lot shall be cast as a block. The manner of determining how such votes shall be cast shall be decided by the Owners of each Lot. The Owners of each Lot, however, may not split the total votes attributed to a Lot. An Owner may cast its votes in person or by proxy in writing delivered to the Secretary of the Association, which proxy may be revoked at any time in person or in writing by the Owner.

- 13.5 General Annual Assessment.** All Lots and the Owners thereof shall be subject to a general annual assessment determined and levied by the Board of Directors of the Association for the purpose of defraying the costs and expenses of the Association in performing its stated purposes and functions, including but not limited to the maintenance and operation of the Common Elements and the enforcement of these Covenants. On or about December 15 of each year, the Board of Directors shall prepare an annual budget and shall determine a general annual assessment based thereon which shall be sufficient to meet the estimated costs and expenses of the Association for the ensuing year.

The general annual assessment shall be allocated and assessed against Owners of all Lots within the Property, on a pro rata basis, based on the square footage of real estate owned (excluding any of the ODE Area), and shall be paid at the time and in the manner determined by the Board of Directors of the Association, which time shall not be sooner than thirty (30) days after the date of the annual membership meeting.

- 13.6 Special Assessments.** Each Lot and the Owners thereof shall be subject to special assessment by the Board of Directors of the Association to cover all or any part of any extraordinary expenses incurred by the Association but not included in the annual budget. Such special assessments shall be assessed against Owners of all Lots within the Park, on a pro rata basis, based on the number of votes. Special assessments shall be due and payable sixty (60) days after the affirmative vote declaring such special assessments by the Board of Directors of the Association.

- 13.7 Collection and Enforcement.** The right to collect or enforce the collection of charges, assessments and special assessments is hereby delegated exclusively to the Association. The Owners of Lots shall be personally obligated to pay such charges, assessments and special assessments upon the Lots owned by them, and such charges, assessments and special assessments shall also be and constitute a lien, until paid, against



the Lot to which charged. All charges, assessments and special assessments levied by the Association which are unpaid when due shall bear interest from such due date at the rate of twelve percent (12%) per annum until paid in full, and such interest, together with the underlying assessment, shall from such time become and remain a part of the lien upon such Lot until paid.

The Association shall have the exclusive and sole right and power to collect or enforce the collection of charges, annual assessments and special assessments, and to bring any and all actions and proceedings for the collection thereof and for the foreclosure of liens therefor. The Association, acting through the Board of Directors, and as representative of all members, may bring an action at Law against any Owner personally obligated for payment of unpaid assessments, or may foreclose the lien against any Lot. Any such foreclosure action shall be brought in the same manner as an action to foreclose a real estate mortgage, and there shall be added to the amount due the costs of suit and interest, together with reasonable attorneys' fees.

- 13.8 Liability for Payment of Charges and Assessments.** No Owner may exempt himself or his Lot from liability for contribution for charges and assessments levied by the Association by waiver of use of any of the Common Elements, or by the abandonment of his Lot; no conveyance shall relieve the seller or its Lot of such liability, and he shall be jointly, severally and personally liable along with the purchaser in any such conveyance for the charges and assessments incurred until the date of sale, and such charges and assessments against the Lot have been paid. Any interested person shall be entitled to a statement of unpaid assessments with respect to any Lot upon written request to the secretary of the Association.
- 13.9 Suspension of Membership.** The rights of any member in the Association including, but not limited to, the right to be represented in Association affairs, the right to be represented in votes cast, and the right to use of the Common Elements are subject to suspension by the Board of Directors for (a) failure or refusal to pay any assessment payable by a member during the period that such assessment payable by such member remains unpaid for more than 30 days; (b) an infraction of, default in, or breach of the By-laws of the Association, or this Declaration; and (c) any other breach or non-compliance by a member, as determined from time to time by the Board of Directors.
- 13.10 Developer's Conveyance to Association.** Within ninety (90) days of the Association's incorporation, the Developer shall convey the Detention Easement Area to the Association by quit-claim deed.
- 13.11 Architectural Review Committee.** Within ninety (90) days of the Association's incorporation, the Association shall form an architectural review committee (the "Committee") for the purpose of approving any construction of Buildings or improvements in the Park as well as the remodeling, alteration or addition thereto. After the formation of the Committee, no improvements or



modifications of any kind or degree to existing improvements shall be made or constructed upon any Building Site or Lot until a detailed Site Plan together with any other plans required to be submitted under this Declaration have been reviewed and approved in writing by the Committee, which approval may be granted or withheld in the sole discretion of the Committee. The Committee shall consist of three (3) members, who shall be appointed by the Board of Directors of the Association. The members of the Committee shall serve at the pleasure of the Board. The vote of two (2) members of the Committee shall constitute the action of the Committee. Additionally, after the formation of the Committee, all of the provisions in this Declaration that require the approval of the Developer shall be deemed to require the approval of the Committee.

ARTICLE XIV Miscellaneous

- 14.1 Submission of Plans.** Whenever an Owner is required by these Covenants to submit plans of any kind to the Developer, such plans shall be submitted in duplicate and electronically via pdf. After the plans have been reviewed, one set shall be returned to the Owner with the Developer's approval and/or comments. The other set shall be retained by the Association.
- 14.2 Time for Approval.** Unless otherwise specifically provided herein whenever the Developer's approval is required hereunder, the Developer shall take action within thirty (30) days after receipt of the request for approval, together with all plans, specifications, or other documents required for evaluation of such request (unless a longer time is specifically provided for herein). If the Developer determines that additional material or information is necessary, this time period shall not begin until after such additional material or information is provided. If the Developer elects not to grant approval, it shall provide specific written objections within the thirty (30) day time period provided herein; otherwise the request shall be deemed to have been approved.
- 14.3 Developer not Liable.** The Developer, the Association and/or the members of the Committee shall not be liable for any damage, loss, or prejudice suffered or claimed by any person on account of:
- (a) The approval or disapproval of any plans, drawings, and specifications, whether or not in any way defective;
 - (b) The construction of any Improvements, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications;
 - (c) The development of any Building Site or other Lot within the Park; or
 - (d) Waiver, variance, modification or termination of these Covenants.




- 14.4 **Invalidity.** Invalidation of any of the provisions of these Covenants, whether by court order or otherwise, shall in no way affect the validity of the remaining provisions which shall remain in full force and effect.
- 14.5 **Captions.** The captions of articles and sections herein are for convenience only and are not intended to be part of the Covenants or in any way to define, limit or describe the scope and intent of the particular article or section to which they refer.
- 14.6 **Recording.** Any reference herein to recording a document shall mean recording in the office of the County Clerk of Wagoner County, State of Oklahoma.
- 14.7 **Notices.** Every Owner shall give written notice to the Developer of its name and address for notice purposes (identifying the Lot it has acquired) within ten (10) days of becoming an Owner.



IN WITNESS WHEREOF, the Developer has caused the presents to be executed the day and year first written above.


Creek 51 Business Park, LLC,
A Texas Limited Liability Company

By: 
Name: Rex F. Robertson
Its Manager

STATE OF TEXAS)
) ss
COUNTY OF DALLAS)

This instrument was acknowledged before me on this 30th day of November, 2020, by Rex F. Robertson, as Manager of Creek 51 Business Park, LLC, a Texas Limited Liability Company.

My Commission Expires:
09-24-2021


Notary Public

My Commission Number:
TX 128058411

