

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SUNDANCE ADDITION, A RESIDENTIAL SUBDIVISION OF THE CITY OF
WHITESBORO, GRAYSON COUNTY, TEXAS
ACCORDING TO THE RECORDED PLAT THEREOF**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUNDANCE ADDITION is made and entered into this ___ day of _____, 2021, by Bywater, LLC, a foreign limited liability company, whose mailing address is P.O. Box 1569, Ardmore, Oklahoma 73401, (“**Declarant**”) which is the current owner of all Lots of SunDance Addition, a Residential Subdivision of the City of Whitesboro, Grayson County, Texas, according to the recorded plat thereof (the “**Addition**”).

WITNESSETH:

WHEREAS, the Declarant is the current owner of all that certain real property (the “**Property**”) located in the City of Whitesboro, Grayson County, Texas, described as follows:

All that certain tract or parcel of land situated in the Simon Areola Survey, Abstract Number 30, and in the L. R. Davis Survey, Abstract Number 363, County of Grayson, State of Texas, said tract being part of a 163.50 acre tract as described in Deed to David Irvin and Mel J. Walterscheid, filed 01 January 2013, and Recorded in Volume 5251 Page 178 of the Deed Records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southwest corner of the tract being described herein at a found survey mark nail, said nail being the southwest corner of said 163.50 acre tract, and the southeast corner of a tract as described in Deed to Linda Darlene Dalton, filed 15 January 1992, and Recorded in Volume 2246 Page 878 of said Deed Records, said nail also being in Tamplen Road (an asphalt surfaced road);

Thence: North 02 degrees 08 minutes 35 seconds West, with the west line of said 163.50 acre tract, and the east line of said Dalton tract, and passing at 13.97 feet a wood fence corner post on the north side of said road, and continuing on said course for a total distance of 1829.62 feet to a wood fence corner post for the northwest corner of this tract, and a corner of said 163.50 acre tract, and also the northeast corner of said Dalton tract, said post also being on the south line of a tract as described in deed to Burrell Scarbrough et ux, Mary L. Scarbrough, filed 03 March 1967, and Recorded in Volume 1076 Page 244 of said Deed Records;

Thence: South 88 degrees 35 minutes 30 seconds East, with a line of said 163.50 acre tract, and the south line of said Scarbrough tract, and passing at a distance of 1085.29 feet to a found ½ inch Steel Rebar by a pipe fence corner post for the southeast corner of said Scarbrough tract and continuing on said course for a total distance of 1439.00 feet to a set ½ inch Steel Square Tubing for the northeast corner of this tract;

Thence: South 02 degrees 32 minutes 59 seconds West, and passing at 1819.48 feet a set ½ inch Steel Square Tubing on the north side of Tamplen Road, and continuing on said course for a total distance of 1836.28 feet to a set survey mark nail for the southeast corner of this tract;

Thence: North 88 degrees 31 minutes 12 seconds West, with the south line of said 163.50 acre tract, and in Tamplen Road, a distance of 168.08 feet to a found nail for a corner of this tract, and in said road;

Thence: North 88 degrees 54 minutes 59 seconds West, with the south line of said 163.50 acre tract, and in Tamplen Road, a distance of 162.46 feet to a found nail for a corner of this tract, and in said road;

Thence: North 01 degrees 05 minutes 01 seconds East, with the south line of said 163.50 acre tract, and in Tamplen Road, a distance of 22.22 feet to a found nail for a corner of this tract, and in said road;

Thence: North 82 degrees 10 minutes 36 seconds West, with the south line of said 163.50 acre tract, and in Tamplen Road, a distance of 317.82 feet to a found nail for a corner of this tract, and in said road;

Thence: South 86 degrees 55 minutes 47 seconds West, with the south line of said 163.50 acre tract, and in Tamplen Road, a distance of 563.73 feet to a found nail for a corner of this tract, and in said road;

Thence: South 89 degrees 08 minutes 45 seconds West, with the south line of said 163.50 acre tract, and in Tamplen Road, a distance of 80.65 feet to the POINT OF BEGINNING and containing 56.721 acres of land.

WHEREAS, the Declarant has devised a general plan for the entire Property as a whole, with specific provisions for particular parts and parcels of the Property. This general plan provides a common scheme of development designed to protect and safeguard the Property over a long period;

WHEREAS, this general plan will benefit the Property as a whole, the parcels and lots that constitute the Property, the Declarant, and each successive owner of an interest in the Property; and

WHEREAS, therefore, in accordance with both the doctrines of restrictive covenant and implied equitable servitude, the Declarant desires to restrict the Property according to these covenants, conditions, and restrictions in furtherance of this general development plan.

NOW, THEREFORE, it is declared that all the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions.

ARTICLE I **DEFINITIONS**

Section 1. The following words when used in this Declaration (unless the context shall be prohibitive) shall have the following meanings:

1.1 “Occupancy” of any Lot shall mean that point in time when the first member of the owner’s family or anyone authorized by the owner moves into the dwelling located thereon.

1.2 “Member” shall mean those persons so defined in Sections 2.1, 2.2, and 2.4 of Article II below.

1.3 “Lot” shall mean those tracts of land so designated upon the recorded subdivision Plat of the Addition, which are hereby made subject to these restrictions, and which Lots are hereby restricted to having only one single family residence constructed on each Lot. In addition, such residences shall be used solely for a residence by a single family, meaning only persons who are related by blood or marriage.

1.4 “Person” shall mean an individual, corporation, partnership, trust or other legal entity, or any combination thereof.

1.5 “Owner” shall mean the record owner, whether one or more persons, of the fee simple title to any Lot, including contract sellers, but shall not include a mortgagee, unless such mortgagee has acquired title pursuant to foreclosure or deed in lieu of foreclosure; nor shall such term include any other who has an interest merely as security for the performance of an obligation.

1.6 “Declarant” shall mean Bywater, LLC, or its successors or assigns.

1.7 “Dwelling” means the Lot and the improvements constructed thereon consisting of a single Family Residence designated for separate ownership, the boundaries of which are the Lot lines as shown on the recorded Plat of the Addition.

ARTICLE II
DESIGN REVIEW COMMITTEE

Section 2.1. Design Review Committee. Except as to initial construction by Declarant, no building, improvements, and/or fence shall be erected, placed or altered on any Lot or building site composed of a part of one or more of the above described Lots, nor additions or alterations made to the exterior of any existing structure, until after two (2) sets of the building plans, specifications and plot plans showing the location of such building, improvements, additions or alterations, and/or fence have been approved in writing (within 30 days of receipt by the Design Review Committee chair) as to conformity and harmony of external design with existing structures in said Addition and as to location of the building, improvements and/or fence with respect to topography and finished ground elevation, and with respect to side lot and front building setback lines, by a majority of a Design Review Committee. Such decision is conclusive.

Declarant shall designate and appoint a Design Review Committee consisting of not less than two (2) individuals, which shall serve at the pleasure of the Declarant; Declarant hereby appoints Joel Wisian and Amy Wisian. In the case of the death or resignation of any member or members of said Committee, the Declarant shall have authority to appoint successor members to the above named Committee to fill any vacancy or vacancies created by the death or resignation of any of the aforesaid members, and said newly appointed member or members shall have the same authority hereunder as their predecessors to approve or disapprove such design or location within thirty (30) days after said buildings plans, specifications and plot plan have been submitted to them. If the Design Review Committee fails either to approve or reject an application for proposed work within thirty (30) days after submission, then Committee approval shall not be required, and the applicant shall be deemed to have fully complied with this Article.

After the Declarant no longer owns any Lot, the Design Review Committee shall serve at the pleasure of the Owners who will nominate and vote in by majority vote at least two (2) individuals to serve on the Design Review Committee.

It is specifically understood and agreed that a majority of said Design Review Committee shall have, and are hereby granted the authority and power to waive in writing any building restriction herein contained (except those prohibiting the use of any Lot for business, professional, and/or commercial purposes), if in said Committee's sole opinion such actions would not materially injure and/or substantially affect the property rights of other owners within said Addition. Samples or detailed manufacturers' descriptions of exterior building materials, (i.e. brick, stone, roofing, paint, siding and trim) shall be presented to the Design Review Committee with the plans and specifications.

Section 2.2. Use of Lots. All Lots shall be used for single-family residential purposes only. Single family use consists of use as a dwelling by two (2) or more natural persons who are related by marriage or kinship or by not more than four (4) natural persons who are not related by marriage or kinship. However, Developer, as well as any other person engaged in the construction and sale of residences on the Property, shall have the right, during the construction and sales period, to use facilities as may be reasonably necessary or convenient for its business purpose of constructing and selling residences on the Property.

Section 2.3. Type of Buildings Permitted. No building shall ever be erected, altered, placed or permitted to remain on any Lot, other than one (1) detached single-family residence not to exceed two (2) stories in height, and a private garage for not less than two (2) nor more than four (4) automobiles, and other structures customarily appurtenant thereto, including extra garages and outbuildings as hereinafter provided.

Section 2.3. No Business Use. No building or structure of any sort may ever be placed, erected or used for business, professional or commercial purposes, or for other non-single family purposes, on any Lot covered by these Restrictions, except this prohibition shall not apply to any building or structure that may be placed on any Lot, or portion of a Lot covered by these Restrictions that is used exclusively by a public utility company in connection with the furnishing of public utility services to the Property.

Section 2.4. Set Backs. No building shall be located on any Lot nearer to the front lot line or nearer to the side street or nearer to the side lot lines than the minimum building setback line shown on the recorded plat of the Addition.

(a) For the purpose of this Declaration, eaves, windows, guttering, open porches, patios and other items incidental to the building structure which protrude from the main wall thereof are not deemed to be part of the building. Eaves, windows, guttering, and other similar minor items incidental to the building structure may protrude over the side setback line, but may not protrude beyond the side property line.

Section 2.5 Design Restrictions.

(a) **Minimum Dwelling Size.** No dwelling erected on any Lot in said Addition shall contain less than 2000 square feet on the first floor, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages. The roofs of all dwellings shall be constructed utilizing one of the three following options: 1) a 30-year warranted, laminated, double layer, shingle or better; 2) metal; or 3) cedar shake.

(b) **Garages.** All garages or outbuildings must be approved by the Design Review Committee in advance in writing, and must have roofs constructed as provided in (a) above.

(c) **Pre-built Residence.** No existing erected residence may be moved onto and/or placed on any of the Lots, it being the intention of this covenant to indefinitely prohibit the moving onto and/or placing of an existing residential structure on any of the Lots in said Addition, which, without limiting the foregoing, includes mobile homes and pre-fabricated homes.

(d) **Drainage and Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these 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 the utilities, or which may change directions of flow of drainage channels in the easements. The easement areas of each Lot and all improvements in it shall be maintained continuously by the owner

of the Lot, except for those improvements for which a public authority or utility company is responsible. Drainage easements can be established at any time by the Design Review Committee as required for proper and adequate water run-off control in said Addition in any unsold Lots. Any drainage changes must be approved by the Design Review Committee.

(e) **Location of Outbuildings.** No sheds or other outbuildings shall be permitted in the easements reserved for utilities.

(f) **Activities within Dwelling.** For security purposes, no business, trade, garage sale, estate sale, open houses or similar activity, except for any necessary for the initial purchase or sale of Lots and homes within the Addition, shall be carried on upon any residential Lot. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to a neighbor or the neighborhood. To avoid doubt, cultivation of marijuana for commercial purposes is explicitly prohibited on any lot whether inside of a structure or in any open space.

(g) **Temporary Residence.** No structure of temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding, shall be used on any Lot at any time as a residence, either temporarily or permanently.

(h) **Pets and Animals.** All Lots within the Addition are permitted to keep a reasonable number of agricultural animals, dogs, cats, or household pets, provided no animals are kept, bred or maintained for any commercial purpose. Dogs or other household pets shall not be allowed out of the fenced backyard, unless on a leash.

(i) **Lot Split.** No Lot within the Addition shall be re-subdivided to create a greater number of Lots than originally platted; provided, however, that this shall not apply to the sale or exchange of small parcels of land to or between adjoining property owners, where such sale or exchange does not create additional lots and is approved by the Design Review Committee in writing.

(j) **Trash.** No trash, ashes, or other refuse may be thrown, placed or dumped on any vacant Lot or any improved Lot in the Addition. No junk, including inoperable cars, boats, trucks, trailers, recreational vehicles, equipment, commercial vehicles, or other items which are inoperable for more than thirty (30) days will be permitted to be stored on any Lot in the Addition. All trash containers shall be kept out of sight, except on the evening before and the day of pickup.

(k) **Fences.** All fences or walls of any type or nature whatsoever shall be approved by the Design Review Committee before construction. All fences must be located within or on appropriate Lot lines. No chain link fences shall be allowed.

(l) **Parking.** No non-family vehicle, truck, trailer, recreational vehicle, boat, water craft, machinery, tent or temporary structure of any nature whatsoever shall ever be

temporarily or permanently parked, located or otherwise maintained forward of the front building set-back or limit line on a Lot, as same is shown on the recorded plat of the Addition, or on the driveway (it being the intention that all of the above shall be stored in the garage only or such outbuilding); provided, however, that it is not the intention of this paragraph to exclude the temporary parking of passenger automobiles on any portion of the garage driveway that is located in front of such front building limit or set-back line on each building site. No overnight parking in the streets shall be permitted.

(m) **Poles, Masts, and Antennas.** Wind powered generators, windmill devices, poles, masts, television and radio receiving towers, and satellite dishes in excess of twenty-four inches (24") will not be permitted. Plans and location site for satellite dish less than twenty-four inches (24") shall be submitted to and approved by the Design Review Committee in writing.

(n) **Underground Utilities.** An underground electricity distribution system shall be installed to serve all Lots in the Addition. The Owner of each Lot, at the Owner's cost, shall furnish, install, and maintain (all in accordance with the requirements of local governmental authorities and the National Electrical Code) an underground service cable and appurtenances from the meter installed on the Lot by the electric company to such point as may be designated by the company on the property line of the Lot. The company furnishing electric service shall make the necessary connection at the property line and at the meter. Each Owner, at the Owner's cost, shall install, furnish, and maintain a meter loop (in accordance with then-current standards and specifications of the electric company) for the residence constructed on the Lot. No owner of any Lot or Lots in this Addition shall demand or require the furnishing of electrical service through or from overhead wire facilities so long as electric service is available from an underground distribution system.

(o) **Chimneys/Fireplaces.** All chimneys and fireplaces will be of brick, stone or other material approved by the Design Review Committee.

(p) **Floodlights and Landscape Lighting.** Outdoor floodlights and landscape lighting must be approved by the Design Review Committee and must not be offensive to adjoining or nearby property.

(q) **Tree houses and Playground Equipment.** No tree houses or platforms in trees, play towers or other similar structures or equipment shall be located in front of the front building limit line or within fifteen feet of any Lot boundary.

(r) **Yard Ornaments.** No sculpture or lawn ornaments of any kind will be permitted in yards visible from the street without the written consent of the Design Review Committee.

(s) **Special Considerations.** The Design Review Committee shall give special consideration to two story homes having windows which might provide a view into neighboring property. To preserve the privacy of neighboring properties, the Design Review Committee may prohibit location of windows on two story homes which allow a

view which disturbs the privacy of neighboring property.

(t) **Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes will not be erected, placed or maintained on any Lot unless in such a manner that they shall not be visible from the street or neighboring property.

(u) **Diseases and Insects.** No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plants, diseases or noxious insects.

(v) **Access.** During reasonable hours, Declarant, any member of the Design Review Committee, or any authorized representative of any of them, shall have the right to come upon and inspect any Lot and the improvements thereon (except for the interior portions of any residence) for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

(w) **Machinery and Equipment.** No machinery or equipment of any kind shall be operated upon or adjacent to any Lot within the Addition, except such machinery or equipment as is customary in connection with the use, maintenance or construction of a Residence, appurtenant structures, or other Improvements. No machinery or equipment of any kind shall be parked, placed, maintained, constructed, reconstructed or repaired upon any of said Lots within the Addition in such a manner as will be visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to machinery and equipment which are actually in temporary use in conjunction with the maintenance or construction of a Residence, appurtenant structures or other improvements.

(x) **Repair and Maintenance of Buildings and Improvement.** No building or structure upon any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept and maintained in good condition and repair and adequately painted or otherwise finished.

(y) **Nuisances.** No rubbish, junk, materials or debris of any kind, nor an excessive number of motor vehicles shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior horns, whistles, bells, speakers, or other such devices, except security devices used exclusively for security purposes, shall be located, used or placed on any of said Lots. The Design Review Committee in its sole discretion shall have the right to determine the existence of any such nuisance, rubbish, junk, materials, debris or excessive number of motor vehicles.

(aa) **Maintenance of Lawns and Plantings.** Each Owner of a Lot shall, at the

Owner's expense, install and maintain at least two (2) 3" in caliper ornamental trees, keep all shrubs, trees, grass, ground cover and plantings of every kind on their Lot properly mowed and maintained, and free of washes, deadwood, weeds, greenbriar and other unsightly material. The Declarant or the Design Review Committee shall not be responsible to install, maintain, repair or replace any sprinklers or other similar watering systems on any Lots or maintain or dedicate any common areas for the Addition.

(bb) Mailboxes and Address Numbers. Each Lot must install a mailbox next to the curb to meet postal requirements. The address numbers shall be displayed either on the mailbox or the house in a manner approved by the Design Review Committee.

(cc) Power to Amend. The Declarant hereby reserves and is granted the right and power to unilaterally prepare and record a Special Amendment to the Declaration at any time and from time to time, which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans' Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgage covering units. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant, and its assignee, to make or consent to a Special Amendment on behalf of each owner. Each deed, mortgage, trust deed, or other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power of Declarant to make, execute and record Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of any first mortgage upon a Lot or any warranties made by an owner or first mortgagee in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage on such owner's Lot.

(dd) Enforcement of Restrictions. Should the owner and/or tenant of any Lot in the Addition violate any of the restrictions, covenants, and/or conditions contained herein, and thereafter refuse to correct same and to abide by said restrictions, covenants, and conditions contained herein, after reasonable notice, then in such event, any owner of any Lot in said Addition, or the Design Review Committee, may institute legal proceedings to enjoin, abate, and/or correct such violation or violations, and the owner of the Lot or Lots permitting the violation of such restrictions, covenants, and/or conditions shall pay all attorney's fees, court costs, and other necessary expenses incurred by the person, or the Design Review Committee, instituting such legal proceeding to maintain and enforce the aforesaid restrictions, covenants, and conditions, and such costs and attorney's fees as fixed by the Court, for the aforesaid violation or violations, shall become a lien upon the Lot(s), as of the date legal proceedings were originally instituted, and said lien shall be subject to foreclosure in such action, brought to enforce such restrictions, covenants, and/or conditions, either in the action or in a separate foreclosure action, at the discretion of the Design Review Committee or owner who brought the enforcement action, in the same

manner as liens upon real estate, the procedure as to which is fixed by statute.

(ee) **Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. No utility company, water district, political subdivision, or other authorized entity using these easements shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, flowers, or to other property of the Owner situated in the easement.

ARTICLE III **GENERAL PROVISIONS**

Section 3.1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Design Review Committee, or the owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, devisees, personal representatives, trustees, successors, and assigns, for a term of twenty-one (21) years from the date this Declaration is recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part; provided that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken.

Section 3.2. Notices. Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the United States mail, prepaid, to the last known address of the person who appears as a Lot owner on the records of the Design Review Committee at the time of such mailing.

Section 3.3. Amendment. Any Amendment to this Declaration shall require the assent of at least 75% of the Lot owners subject to this Declaration. Any Amendment shall be in writing and must be recorded in the land records of the local county clerk.

Section 3.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

Section 3.5 Attorneys' Fees. If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

IN WITNESS WHEREOF, THIS DECLARATION is executed by the undersigned owner the day and year first above written.

BYWATER, LLC, an Oklahoma limited liability company

By: _____
Joel Wisian, Managing Member

STATE OF OKLAHOMA)
) ss:
COUNTY OF CARTER)

The foregoing was acknowledged before me this ___st day of _____, 2021, by Joel Wisian, the Managing Member of Bywater, LLC, an Oklahoma limited liability company, on behalf of the company.

_____ NOTARY PUBLIC

My Commission Expires:

My Commission Number is: