

**OWNER'S CERTIFICATE, DEDICATION,
COVENANTS AND RESERVATIONS FOR
PINE HILL NORTH PHASE II**

THIS OWNER'S CERTIFICATE, DEDICATION, COVENANTS AND RESERVATIONS FOR PINE HILL NORTH PHASE II (this "Declaration") is made this 17th day of July, 2020, by Tommy R. Julian, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain real property located in a part of Section 28 and Section 29, TSHP 3 South Range 24 East, Broken Bow, McCurtain County, State of Oklahoma, made a part hereof by this reference and further described on Exhibit "A" attached hereto and made a part hereof (the "Property").

WHEREAS, Declarant has caused the Property to be surveyed and platted into fifty-nine (59) lots, one (1) through fifty-nine (59), solely for residential purposes and platted under the ordinances of the City of Broken Bow under the name "Pine Hill North Phase II", containing common areas and roads for private use, subject to the conditions and restrictions hereafter named.

WHEREAS, Declarant desires to provide for the maintenance and improvement of the common areas and roads now existing or hereafter erected thereon, and dedicates and reserves a 40-foot drainage and utility easement upon all roads on the Property, for the installation and maintenance of utilities.

WHEREAS, Declarant further desires that all land so dedicated to public use be free and clear of all encumbrances; and to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.

WHEREAS, Declarant has deemed it desirable for the foregoing purposes to create an agency to which should be delegated and assigned the powers of maintaining and administering the common areas, roads and facilities, enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

WHEREAS, Declarant has incorporated under the laws of the State of Oklahoma, as a non-profit corporation, Pine Hill North Phase II Neighborhood Association, Inc., for the purpose of exercising the aforementioned functions.

WHEREAS, Declarant further declares that for the purpose of providing an orderly development of the entire Property, and for the further purpose of providing adequate restrictive covenants for the mutual benefit of the Owners, the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions hereinafter set forth, which shall run with such real property and shall be binding on all parties having or acquiring any right, title or interest therein or any part thereof, and shall inure to the benefit of each owner thereof, and such owner's heirs, devisees, personal representatives, trustees, successors and assigns, such covenants and restrictions being hereby imposed upon such real property and every part thereof as a servitude in favor of each and every other part thereof as the dominant tenement.

1. DEFINITIONS

1.1. Definitions of this Declaration. The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

- (a) "Architectural Committee" shall have the meaning specified in Section 6.2 below.
- (b) "Board" shall mean the Board of Directors of the Association.
- (c) "Bylaws" shall mean the Bylaws of the Association which are or shall be adopted by the Board as such Bylaws may from time to time be amended.
- (d) "Certificate" shall mean the Certificate of Incorporation of the Association filed in the office of the Secretary of State of the State of Oklahoma, as same may from time to time be amended.
- (e) "Common Area" shall mean all roads and other land dedicated to public use on the Property.
- (f) "Declarant" shall mean Tommy R. Julian, Owner and Manager of the Property, as described in the opening paragraph and Recitals.
- (g) "Lot" shall mean and refer to one (1) of the fifty-nine (59) lots on the Property.
- (h) "Member", "Class A Member" and "Class B Member" shall mean those persons so defined in Section 4.1 and 4.2 below.
- (i) "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; nor shall such term include any other Person who has an interest merely as security for the performance of an obligation.
- (j) "Person" shall mean an individual, corporation, partnership, association, trust or other legal entity, or any combination thereof.
- (k) "Plat" shall mean the final plat of the Property, which is filed of record in the Office of the County Clerk of McCurtain County, Oklahoma.
- (l) "Property" shall mean and refer to Pine Hill North Phase II, as defined in the Recitals above.

2. POWERS RETAINED BY DECLARANT

2.1. Boundary Changes

The Declarant reserves the right to make such changed in the boundaries of Lots and in the Common Area as he deems necessary or advisable, provided that any such changes shall not

adversely affect the boundaries or the beneficial use and enjoyment of any Lot then owned by Persons other than the Declarant.

2.2. Easements on Common Areas

. The Declarant reserves the right, in his sole discretion, to execute easements for installation and maintenance of public and/or private utilities and drainage facilities and to grant additional easements over portions of the Common Area in connection with the development of the Property, which may include, without limitation, a 40-foot drainage and utility easement upon all roads on the Property to be used for the installation and maintenance of utilities. No structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may cause 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 easement. The easement area on 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. This reservation shall survive the conveyance of the Common Area to the Association. The Association shall comply with these easements and execute any easement requested by the Declarant after the conveyance of the Property to the Association.

2.3. Transfer of Rights

. The Declarant may, by appropriate instrument, assign or convey to any Person any of the rights, reservations, easements and privileges herein reserved by the Declarant, and upon such assignment or conveyance being made, its assigns or grantees may, at their option, exercise, transfer or assign such rights, reservations, easements and privileges or any one or more of them at any time in the same way and manner as those directly reserved by them or it in the instrument.

3. **COMMON AREAS AND ASSOCIATION RESPONSIBILITY**

3.1. Title to Common Area

. Title to the Common Area shall be conveyed to the Association in accordance with Section 8.4.

3.2. Duties of Association

. The Association shall maintain, repair and, to the extent deemed appropriate, improve the Common Area in a manner which will benefit all Owners.

3.3. Member's Rights

. Every Member together with all other Members, shall have a nonexclusive (but exclusive as to all other Persons who are not Members except as set forth herein below), right and easement of enjoyment and use of the Common Area, subject to the conditions and restrictions of this Declaration, the Bylaws and other rules or policies of the Association and the easements granted pursuant to Section 2.2 hereof. Such right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the following rights:

- 3.3.1. Following consent from Declarant (so long as Declarant is a Member), the right of the Association to make any rules or policies regarding the use of the Common Area, subject to such conditions as may be agreed to by the Board and the restrictions set forth herein below.
- 3.3.2. Following consent from Declarant (so long as Declarant is a Member), the right of the Association to borrow money for the purpose of improving the Common Area.
- 3.3.3. Following consent from Declarant (so long as Declarant is a Member), the right of the Association to suspend a Member's voting rights and right to use of the Common Area, not including the roads, (a) for any period during which any assessment against such Member's Lot remains unpaid; or (b) for a period not to exceed thirty (30) days for an infraction of the Association's rules or policies by such Member or invitees.

3.4. Commencement of Right to Use

. The right of use and enjoyment of the Common Area shall commence as to an Owner upon transfer to such Owner of legal title to a Lot, and shall continue so long as such Owner pays assessments pursuant to Section 5 herein below.

3.5. Maintenance and Upkeep

. The maintenance and upkeep of the Common Area shall be the responsibility of and at the expense of the Association from and after the transfer thereof by the Declarant as provided hereinafter. Notwithstanding anything herein contained to the contrary or any possible implication of the Property, the Declarant is not under any obligation whatsoever to make any improvements, or provide utilities or other facilities, beyond those which exist on the Property as of the date an Owner acquires a Lot. The Declarant makes no warranties (implied or otherwise) regarding any improvements on the Property but assigns to the Association all warranties (if any) made by third parties with respect to such improvements.

3.6. Control and Management

. Commencing at such time as the Association becomes the owner of the Common Area, the Association shall control, maintain, and improve the Common Area as provided in this Declaration and in the Association's Certificate of Incorporation and Bylaws. Except as specifically provided in this Declaration, such right of control and management shall be exclusive.

3.7. Limitation of Liability

. The directors and officers of the Association shall not be liable to any Owner, any Person claiming by or through any Owner, or any other party, for any act or omission of such director or officer in the performance of his or her duties, except if such act or omission shall involve gross negligence, bad faith, or reckless disregard of director's or officer's duties, and the Association shall indemnify all such directors and officers from all claims, demands, actions and

5.3. Annual Assessments

Payment. The amount of the initial assessment shall be determined by the Board, but shall not exceed five hundred dollars (\$500.00) per year. After the first year, the Board may increase the annual assessment by no more than ten percent (10%) above the assessment for the previous year. Any increase above ten percent (10%) shall require approval by the Declarant, except, however, following Declarant's surrender of the Association as set forth in Section 8.2 below, such approval is required by Owners holding two-thirds (2/3) of the eligible votes per Lot at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all Members not less than ten (10) nor more than forty (40) days in advance of the meeting. Assessments will be paid on the date set by the Board as set forth in Section 5.11 below, and upon transfer of any Lot to an Owner, such Owner shall pay their pro rata portion of any assessments due for that particular calendar year at closing of such transfer.

5.4. Special Assessment for Capital Improvements

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area; provided that any such assessment shall have the approval by the Declarant, except, however, following Declarant's surrender of the Association as set forth in Section 8.2 below, such approval is required by Owners holding two-thirds (2/3) of the eligible votes per Lot pursuant to votes cast at a meeting duly called for this purpose, notice of which meeting shall be sent to all Members of such class not less than ten (10) nor more than forty (40) days in advance of the meeting.

5.5. Notice and Quorum for Meetings

Notice of all meetings of the Members of the Association shall be given as provided in the Bylaws. At any meeting of the Members of the Association, the presence at the meetings of Members or written proxies entitled to cast at least fifty percent (50%) of all the eligible votes per Lot shall constitute a quorum; provided, however, that if a quorum is not present at any meeting duly called, the Members present, although less than quorum, may give notice to all Members as required herein for the transaction to be considered at an adjourned meeting, and at the adjourned meeting whatever Members are present shall constitute a quorum.

5.6. Commencement Date of Annual Assessments

The annual maintenance assessments provided for herein shall commence as to all Owners who are Members on the date (which shall be the first day of the month) to be fixed by the Board, and shall be paid in advance for the entire year.

5.7. Credit for Expenditures

Notwithstanding the foregoing, monies expended by the Declarant prior to or during any assessment period in improving and maintaining the Common Area or providing services which would otherwise be the responsibility of the Association shall be applied as credits to the sums otherwise owned by the Declarant to the Association hereunder as annual maintenance or special

assessments for the same period, upon the receipt by the Association of satisfactory evidence thereof from the Declarant. Should the amounts so expended by the Declarant in any assessment period exceed the assessments against the Declarant for that period, the difference shall be carried over and applied as a credit or credits in the succeeding period or periods.

5.8. Effect on Nonpayment of Assessments

. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the greater of the Wall Street Journal Prime Rate plus five hundred (500) basis points or eight and one-fourth percent (8.25%) interest, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to cover the annual/special assessments or penalty assessment, and there shall be added to the amount of the delinquent assessment the costs of preparing the petition or complaint in the action. Any judgment thereafter obtained shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action and the assessments. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by the abandonment of the Lot.

5.9. Subordination of the Lien to Mortgages

. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon any Lot being assessed. Sale or transfer of any Lot shall not affect the assessment lien, provided that the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

5.10. Initial Board of Directors

. The initial Board shall be set forth in the Certificate who shall be authorized to elect Officers as provided in the Bylaws. The initial Board shall serve until the first meeting of Members after the commencement date of the annual assessments.

5.11. Assessment Duties of the Board

. The Board shall:

- 5.11.1. Fix the commencement date for annual assessments against all Lots then owned by the Declarant and against all Lots then owned and occupied by other Owners; and send written notice thereof to all Owners, including Owners of unoccupied Lots, at least thirty (30) days before such commencement date; and
- 5.11.2. Cause the Association to prepare and maintain a roster of Lots, the Owners thereof, the assessments applicable thereto, if any, and the status of the payment thereof, which shall be kept in the office of the Association and which shall be open to inspection by any Owner; and

- 5.11.3. Upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, stating whether said assessment has been paid, or if being paid in installments, whether payments are current. Such certificate shall be conclusive evidence of payment of any assessment or installment thereof which is therein stated to have been paid.

6. ARCHITECTURAL STANDARDS

6.1. Purpose

. In order to preserve the natural setting and beauty of the Property, to establish and preserve a harmonious and aesthetically pleasing design for the Property, and to protect and promote the value of the Property, it is hereby declared that the Lots and all improvements located thereon shall be subject to the restrictions set forth in this Section 6. Every Owner of a Lot, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Section 6.

6.2. Architectural Committee

. No building, fence, wall, walk, sign, exterior lighting, driveway, or other structure or improvement, including landscaping, shall be commenced, erected, removed from, or maintained upon the Property until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved in writing as to conformity and harmony of external design and location in relation to existing structures and with respect to topography and finished grade elevation by the "Architectural Committee", which shall, as used herein, mean either: (a) the Declarant so long as the Declarant is the Owner, or (b) thereafter, the Board or a committee composed of three (3) or more representatives appointed by the Board. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. Architectural approval shall be at the discretion of the Architectural Committee. An affirmative vote of a majority of the Architecture Committee shall constitute approval, which shall be in writing; provided however, that in the event the Architectural Committee fails to approve or disapprove of any design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required.

6.3. Submission to Architectural Committee

. Three (3) copies of the plans and specifications shall be submitted to the Architectural Committee in connection with the consideration of any plans (including a survey showing the location of trees of six (6") inches in diameter at a height of six (6') feet above ground) describing the proposed operations on the Lot in sufficient detail, including the nature, color, type, shape, height, materials, location and any other information as may be required or necessary to insure compliance with the existing zoning ordinances and these covenants and requirements contained herein.

6.4. Fees

. No more than fifty percent (50%) of trees shall be removed that are more than six (6") inches in diameter at a height of six (6') feet above ground. Removal of said trees must be approved by the Architectural Committee.

7.5. Lot Maintenance and Appearance

. All Lots shall be kept free of debris, junk or unsightly materials and any accumulation of such things must be removed. Each Owner shall at all times keep its Lot and all landscaping thereon in good order, condition and repair. No Lot shall be used for outside storage; any materials on premises shall be kept in an enclosure, complete with a roof and walls.

7.6. Construction Maintenance and Appearance

. During construction, an Owner may park a motor home or camper trailer upon the Lot owned by said Owner unless said construction period exceeds six (6) months. All Lots and structures shall be kept neat and cleaned while construction occurs and, upon completion of construction, all debris and unsightly materials related to the construction shall be removed.

7.7. Motor vehicles and automobiles

. No automobile(s) may be parked on said premises unless such automobile is on inflated tires and in mechanical operating condition. If available, motorized vehicles on premises shall be kept in an enclosure, complete with a roof and walls.

7.8. Signs

. There shall be a maximum of two (2) signs of any kind that shall be displayed to the public view on any Lot. If the signs are professional signs, the two (2) professional signs shall be of no more than five (5) square feet, one of which advertising the property for sale and the other of which used by a builder during the construction, sales period, and/or as an address and/or name of the structure.

7.9. Fences

. No fence shall be allowed to interfere with or cross easements herein reserved on the Lot. Any fences shall not be higher than thirty-six (36") inches and shall have voids of no less than four (4") inches. Any fence construction must be approved by the Architectural Committee.

7.10. Building Setback Lines

. No building shall be erected nearer than twenty (20) feet to the roads and/or easements upon said roads. No building shall be erected nearer than ten (10) feet from any other Lot line.

7.11. Animals

. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any site. Dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for

any commercial purposes, and further provided that said animals do not become nuisances to the surrounding Owners.

7.12. Above ground fuel storage

. No above ground fuel storage, including but not limited to any type of gas reservoir, shall be buried. Above ground fuel storage containing less than 25 gallons or containing fuel of native materials are permitted if out of public view.

7.13. Roofs

. Eighty percent (80%) of all roof lines shall be a minimum of a six-twelve (6/12) pitch for the living area with no more than twenty percent (20%) of total living area roof to be less than a six-twelve (6/12) pitch. The six-twelve (6/12)-pitch restriction is only for living area and not for covered decks and porches or as tie-in of said roof line.

7.14. Driveways

. Driveways for personal use must originate from a point of the original roads on the Property and shall terminate at a point not outside of Owner's original Lot. This covenant prohibits ingress and egress from any other area or adjoining Lot or Common Area, with the exception that if written easements are signed and filed by all original Owners for the adjoining and/or adjacent Lot or partial Lot that said easement is intended for, then these easements are valid.

7.15. Firearms

. The use of firearms within the Property is strictly prohibited.

7.16. Nuisances

. No noxious or offensive activity or trade shall be carried on upon any Lot nor shall anything be done thereon which may be or may become a nuisance or annoyance to the owners of other Lots within the Property.

8. **GENERAL PROVISIONS**

8.1. General Enforcement

. The Association, or any Owner, including Declarant, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration against any Owners or such Owner's heirs, devisees, personal representatives, trustees, successors or assigns in order to prevent said parties from violating any such covenant or restriction or to recover damages or other dues for such violations. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any such litigation shall be entitled to the award of a reasonable attorney fee to be paid by the other party.

8.2. Term and Amendments

. These covenants and restrictions of this Declaration shall run with and bind the land and all Persons and parties claiming under them unless an instrument signed by the Declarant, except, however, following Declarant's surrender of the Association as set forth in Section 8.2 below, such instrument must be signed by Owners holding two-thirds (2/3) of the eligible votes per Lot approving a change of said covenants and restrictions in whole or in part and such amendment has been filed and recorded in the official records of McCurtain County, Oklahoma. Notwithstanding the prior sentence, no amendment may take effect that modifies Section 5.1 as it relates to Declarant not being obligated to pay an assessment unless either (a) Declarant signs such amendment, or (b) Declarant no longer owns any Lots. Evidence of the passage of such an amendment shall be filed by the secretary of the Association of an affidavit certifying that the amendment passed the requisite vote at a meeting of the Members. The term of this Declaration shall be perpetual unless otherwise prohibited by law, in which case they shall be for an initial period of twenty (20) years, with automatic twenty (20) year renewals at the expiration of the end of the then current term unless otherwise amended as set forth herein.

8.3. Severability

. Invalidation of any of these covenants or restrictions by judgment or court order shall in no ways affect any of the remaining provisions, which shall remain in full force and effect.

8.4. Control by Declarant

NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE CERTIFICATE OF INCORPORATION, OR IN THE BYLAWS OF THE ASSOCIATION, Declarant hereby has title to the Common Areas and retains the right to appoint and remove any member or members of the Board and any officer or officers of the Association until such time as the first of the following events shall occur: (a) the date upon which eighty percent (80%) of the Lots on the Property have been conveyed to Owners other than the Declarant (*i.e.*, 48 Lots), or (b) the surrender of the Association by Declarant by an express amendment to this Declaration executed and recorded by Declarant. Furthermore, each Owner, by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association. Every grantee of any interest in the Property or a Lot, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with this Declaration. Upon Declarant's surrender of the Association pursuant to the provisions of this Declaration, such title and right to the Common Areas and appointment of directors and officers shall pass to the Owners, including Declarant if Declarant then owns one or more Lots and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

Signature page follows this page.

IN WITNESS WHEREOF, the Declarant has set its hand and seal this 22nd day of July, 2020, in and for the County of McCurtain, State of Oklahoma.

"DECLARANT"

Tommy R. Julian
 Tommy R. Julian (Owner/Manager)

ACKNOWLEDGMENTS

STATE OF OKLAHOMA)
) ss:
 COUNTY OF McCURTAIN)

The foregoing instrument was acknowledged before me this 22nd day of July, 2020, by Tommy R. Julian.

Tracy Pond
 Notary Public

My commission expires: 7/16/22 SEAL

