

RESTR **DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS FOR**  
**THE TOMBALL BUSINESS & TECHNOLOGY PARK**

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**THE STATE OF TEXAS** §  
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**COUNTY OF HARRIS** §

This Declaration of Covenants, Restrictions and Conditions for the Tomball Business & Technology Park (the "Declaration") is made as of the 18<sup>th</sup> day of November 2014, by the Tomball Economic Development Corporation (the "Declarant").

The Declarant is the current owner of certain real property located in Harris County, Texas shown as Lots 2, 3, 4, and 5 of the Tomball Business and Technology Park Final Plat filed April 9, 2013 as recorded in Film Code No. 653006 of the Map Records of Harris County and as depicted in the attached Exhibit "A" (the "Property"). The Declarant is or will ensure development of the Property. Declarant intends the Property to provide development opportunities for a variety of business and trade uses. The Tomball Business & Technology Park is designed to implement community economic development goals and policies, including attracting new business and industry, retaining existing businesses, enhancing community appearance, and building the local supply of sustainable jobs in the City of Tomball. The Property, and any additional land hereinafter acquired or otherwise added to the Property, is subject to the covenants, restrictions and conditions set forth in this Declaration in order to establish a plan for the development, improvement and use of the Property with architectural, landscaping and maintenance controls.

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The Declarant intends that the Tomball Business and Technology Property Owners Association, Inc. (the Property Owners Association) create, have, exercise and perform on behalf of, and as agent for, the Declarant and the other Owners the functions set forth in this Declaration, which include, without limitation, maintenance of certain portions of the Property and receiving and approving of plans for improvements to be constructed on the Property.

Now, therefore, the Declarant hereby adopts, establishes and imposes the following covenants, restrictions and easements upon the Property, and declares that the Property and all portions thereof are and shall be owned, held, transferred, sold, conveyed and occupied subject to such covenants, restrictions and easements.

**ARTICLE I**  
**DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

- a. *Board* shall mean the Board of Directors of the Property Owners Association.

**STEWART TITLE**

*Courtesy Tom/48*

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- b. *Bylaws* shall mean and refer to the Bylaws of the Association as such Bylaws presently exist and as the Bylaws may hereafter be amended.
- c. *Class A Voting Members* shall mean Owners of one or more Lots within the Property other than Declarant.
- d. *Class B Voting Members* shall mean the Declarant.
- e. *Declarant* shall mean Tomball Economic Development Corporation.
- f. *Declaration* shall mean this Declaration of Covenants, Restrictions, and Conditions for the Tomball Business & Technology Park.
- g. *Governing Documents* shall mean the certificate of formation, the Declaration, the Bylaws, and any amendments, restatements, or other changes, relating to the foregoing
- h. *Lot* shall mean a subdivided portion of the Property.
- i. *Owners* shall mean individuals and/or entities owning a Lot within the Property described in Exhibit "A" known as the Tomball Business & Technology Park.
- j. *Property* shall mean the land described in Exhibit "A" attached hereto known as the Tomball Business & Technology Park.
- k. *Property Owner's Association* shall mean the Tomball Business and Technology Property Owners Association, Inc.

## ARTICLE II GENERAL

### A. **Public Purpose.**

The purpose of this Declaration is to implement a plan for the orderly development and use of the Property, to encourage the construction of high quality, well-designed improvements on the Property, to restrict certain uses of the Property, to provide for certain development and maintenance standards, to generally preserve and protect the aesthetic appearance and value of the Property and the improvements constructed thereon, to create and maintain a quality business and technology park, to encourage a high return on investment for property owners, and to provide opportunities for development of a variety of business and trade uses. It is designed to implement community economic development goals and policies for attracting new business and industry, retaining existing businesses, enhancing community appearance, and building the local supply of sustainable jobs within the City of Tomball.

### B. **The Property Owners Association.**

The Property Owners Association is established by filing a certificate of formation and is governed by its Governing Documents. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code and the Governing Documents. The Board of Directors of the Property Owners Association may adopt rules that do not conflict with law or the Governing Documents. On request, Owners will be provided a copy of any rules. Every Owner is a member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two (2) classes of voting Members: Class A Members are all Owners, other than Declarant. Class A members have one (1) vote per Lot plus one (1) vote for each forty thousand (40,000) square feet within each lot owned. The Class B Member is the Declarant and has three (3) votes for each Lot

owned plus one (1) vote for each forty thousand (40,000) square feet within each lot owned. The Class B Membership ceases and converts to Class A Membership on the earlier of when the Class A Members' votes exceed the total of Class B Member's votes or December 31, 2063.

### **ARTICLE III USE RESTRICTIONS**

#### **A. General.**

Any conveyed premises within the Property shall not be used or occupied at any time for any purpose other than for purposes of projects related to the creation or retention of primary jobs that are suitable for the development, retention, or expansion of manufacturing and industrial facilities, research and development facilities, transportation facilities, distribution centers, small warehouse facilities, business offices, regional or national corporate headquarters facilities, and primary job training facilities for use by higher education institutions.

#### **B. Prohibited Uses.**

None of the lands within the bounds of the Property shall be used for any of the following purposes:

1. Uses constituting nuisance, public or private, by reason of emission of smoke, dust, gas, odor, fumes, noise, vibration or refuse material of any kind;
2. Any establishment that offers or sells a product or service that is intended to provide sexual gratification to its users (including, but not limited to, the dissemination or exhibition of obscene materials; any establishment featuring topless, bottomless, or totally nude performances or personnel; or any establishment that regularly shows X-rated or pornographic movies, or sells or rents pornographic material or movies);
3. Any massage parlor, modeling studio, or establishment where men and/or women are engaged in salacious activities;
4. Single Family Residential;
5. Duplex Residential;
6. Apartments;
7. Mobile Homes;
8. Radio/Television Tower/Cell Tower;
9. Public Parking;
10. Recycling Facility;
11. Commercial and/or non-commercial arena/coliseum;
12. Commercial amusements and/or theme parks;
13. Drive-in eating establishments;
14. Funeral homes;

15. Commercial automotive garages;
16. Hospital or sanitarium;
17. Boarding, care, or treatment of any animal not involved in medical research;
18. Growing or production of any agricultural product;
19. Nursery/plant retail/wholesale sales;
20. Salvage or junkyards;
21. Commercial or non-commercial theater or motion picture house.

**C. Property Owners Association.**

The Property Owners Association shall have the authority to authorize or prohibit uses of the Property provided that such authorizations and prohibitions are in conformance with the zoning designation. Uses that are neither specifically prohibited nor specifically authorized by the Property Owners Association may be permitted only if a use plan describing the proposed use, inasmuch as the Property Owners Association may reasonably request, is submitted to and approved by the Property Owners Association. Approval or disapproval of any proposed use shall be based on the effect of such use on other portions of the Property and the purposes recited in this Declaration.

**ARTICLE IV  
ADMINISTRATION AND ENFORCEMENT**

**A. Compliance with Law.**

1. All improvements in the Property and the use of the Lots in it shall conform to all building, pollution, environmental and other valid governmental regulations, statutes and ordinances.
2. No Owner shall apply for a variance, exception, change, or waiver of any law or governmental regulation until the Owner has obtained the prior written consent of the Property Owners Association to the application.
3. No Owner shall subdivide or change the boundary of any Lot, or apply to any governmental body to subdivide or change the boundary of any Lot until the Owner has obtained the prior written consent of the Property Owners Association to the proposed subdivision or change in boundary.
4. Owners are responsible for all costs associated with the connection to the storm sewer system and other utilities, including payment of all applicable City of Tomball impact and permit fees.

**B. Architectural Review.**

1. The Property Owners Association has the sole and absolute right and authority to review and approve or disapprove plans for any and all improvements to be constructed on the Property.
2. The Property Owners Association has no authority to determine if improvements comply with local or national codes and applicable law.
3. The Lot Owner is solely responsible for ensuring that improvements comply with building codes, ordinances and applicable law.
4. The Lot Owner's project architect and project engineers are responsible for the acceptability, sufficiency and safety of structural, mechanical and electrical systems in the improvements. The Property Owners Association does not review or approve any of these elements.

The Property Owners Association, or its designee, shall review and approve plans and specifications for improvements to be installed, modified or constructed on the Property. No improvements shall be erected, constructed, placed, altered, remodeled, demolished or permitted to remain on any portion of the Property until plans, in such form and detail as the Property Owners Association may deem necessary, shall have submitted to the Property Owners Association and approved by it in writing.

The Property Owners Association, from time to time, may establish and revise a standard review fee which must be paid by the applicant at the time the plans are submitted for review by the Property Owners Association. The Property Owners Association shall have the authority to select and employ professional consultants to assist it in discharging its duties if the Property Owners Association determines it does not have sufficient expertise or time to review any submitted plan. The cost of such consultants shall be paid by the applicant for the Property Owners Association's approval, which fee will be in addition to the review fee.

The process of reviewing and approving plans and specifications is one which of necessity requires the Property Owners Association to make subjective judgments on items for which specific standards or guidelines are not expressly set forth in this Declaration or other guidelines for the development of the Property. The Property Owners Association shall have full power and authority to make such subjective judgments and to interpret the intent and provisions of this Declaration in such manner and with such results as the Property Owners Association, in its sole discretion, may deem appropriate, and in the absence of final adjudication by a court of competent jurisdiction that the Property Owners Association has abused its discretion, such action by the Property Owners Association shall be final and conclusive.

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The Property Owners Association shall be entitled and empowered to enjoin and remove any construction undertaken pursuant to plans that have not been approved in writing by the Property Owners Association. Costs to remove any construction not approved by the Property Owners Association or not properly maintained shall be Owner's responsibility. Improvements for which the Property Owners Association's approval is required are to be constructed in accordance with any development guidelines in existence on the date the preliminary plans are approved, and subsequent changes in such development guidelines shall not require changes in existing construction or plans previously approved by the Property Owners Association.

**C. Property Owners Association Plan Review Requirements.**

1. Only complete submittals will be accepted.
2. Plan Submittal Requirements:
  - a. Two (2) sets of plans including:
    - i. Site plan showing the location, dimensions and orientations of all proposed buildings and other structures including parking areas and driveways in relation to site boundaries and required setback lines, and also depicting the means of ingress and egress, driveways, traffic patterns, sidewalks, parking spaces, parking ratios, fencing, dumpster enclosures and any and all other proposed improvements sealed by a State of Texas Registered Architect or Registered Professional Engineer;
    - ii. Screening at mechanical and electrical service entries;
    - iii. Statement of percentage of impervious Lot coverage;
    - iv. Grading and drainage plans including the elevation of all proposed utility connections sealed by a State of Texas Registered Professional Engineer;
    - v. Utility layouts on site;
    - vi. Landscape and irrigation plan;
    - vii. Exterior building elevation drawings (all sides) with finish schedule. Exterior elevation drawings shall include roof mounted mechanical equipment and proposed screening;
    - viii. Exterior materials and color sample board); and
    - ix. Exterior signage plans, specifications and locations.
3. Following the review, a summary letter stating the results of the review will be mailed to the Property Owner within thirty (30) days of the submittal.
4. No construction may commence until plans have been approved by the Property Owners Association.

5. The Property Owners Association reserves the right to enforce compliance with the approved plans in accordance with the Declaration.
6. The project is located in Tomball, Texas. Approval by the Property Owners Association shall not constitute approval by the City of Tomball. Construction plans must be submitted to the City of Tomball for all applicable permits.

**ARTICLE V  
DEVELOPMENT STANDARDS**

**A. Site Planning.**

**1. Open Space Requirement.**

- a. Open space is defined as land not covered by building, structures or paving.
- b. Fifteen percent (15%) of the gross platted area shall be landscaped open space.

**2. Parking.**

- a. An adequate number of parking spaces for employees, customers/visitors and the handicapped are required for each Lot and each development within such Lot. Accessible parking for the disabled shall be provided according to the City of Tomball, the Americans with Disabilities Act, the Texas Accessibility Standards adopted pursuant to the Architectural Barriers Act, and such other applicable standards and specifications.
- b. No more than thirty (30) parking spaces are permitted in a contiguous single row without being interrupted by a landscape island.
- c. Parking areas are to have concrete curbs and gutters and be constructed of either asphalt or reinforced concrete.
- d. A minimum five-foot wide landscape buffer is required between parking areas and public rights-of-way.

**3. Service Access and Service Areas.**

- a. Service drives and service areas should not interfere with parking, driveways or walkways and must be screened from adjoining properties and public rights-of-way.
- b. Service areas must be paved and screened from public view.
- c. Screening must be compatible with building materials.
- d. All service area lighting shall include directional shields and must be submitted for Property Owners Association review.

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**4. Outside Storage.**

- a. All uses, except storage and unloading, shall be conducted entirely within an enclosed building. Outdoor storage is permitted to the rear of buildings, and square footage is limited to thirty percent (30%) of the gross floor area of the primary building.
- b. The Property Owners Association must first approve any proposed outside storage screening method prior to same being installed on any Lot contained in the Property.
- c. Outdoor storage must be screened from view from all public road right-of-ways. A combination of screening elements may be used, including walls, berms, and landscape.
- d. Solid walls and fences utilized as a means of screening outdoor storage areas and shall be at least six (6) feet high with a maximum height of twelve (12) feet.
- e. Screening walls or fences shall be constructed of masonry, reinforced concrete, or other similar suitable permanent materials that do not contain openings, and shall be complementary to the building architecture.
- f. Wood or chain-link materials are not acceptable for screening purposes.
- g. No outside storage of any kind will be permitted within fifty (50) feet of any publicly dedicated street frontage.
- h. Alternative equivalent screening may be approved by the Property Owners Association at the time the required plan is approved.

**5. Perimeter Fencing.**

- a. Permitted Materials: stone, masonry, wrought iron, decorative metal, or a combination thereof where visible from a public road right-of-way. Wood or vinyl coated metal fencing is permitted at the side and rear of the property where it will not be visible from a public road right-of-way.
- b. Prohibited Materials: Barbed wire, above ground electrified wires, razor wire, sharpened top spikes, or similarly hazardous fence materials are prohibited, unless expressly authorized by the Property Owners Association to meet certain regulatory standards.

**6. Trash Receptacles and Enclosures.**

- a. Trash receptacles must be oriented to the building service areas and screened with a four-sided enclosure.
- b. The enclosure must be two (2) feet higher than the height of the receptacle and a minimum of eight (8) feet in height.
- c. The enclosure shall be constructed of brick, stone, concrete block, decorative metal, or any combination of these elements.



- d. Gates shall be constructed of metal and be opaque.
- e. Wood, chain-link, and vinyl materials are not acceptable.

**7. Utility Areas and Communication Equipment.**

- a. All utility areas located outside the building must be screened from adjacent public streets and adjoining private property.
- b. Banks of electric meters shall not be visible from public roadways.
- c. Towers, tanks, antennae, satellite dishes and other equipment shall be screened from adjacent public streets and adjoining private property.
- d. All transformers must be pad-mounted and screened by a wall, fence or landscaping.
- e. All transformer electrical drops and utilities must be underground, including secondary power, unless specifically approved by the Property Owners Association.

**8. Building Setbacks.**

- a. Front Yard: Thirty-five (35) feet.
- b. Side Yard: Twenty-five (25) feet.
- c. Rear Yard: Twenty-five (25) feet.

**9. Access/Egress Driveways.**

- a. All ingress and egress of Lots shall be from interior streets. No entrance or exit driveway will be permitted on Hufsmith-Kohrville or Holderrieth Roads, unless approved in writing by the Property Owners Association.
- b. No entrance nor exit driveway or curb cut for any Lot shall be allowed within twenty (20) feet from the intersecting Lot line at a street intersection.
- c. All driveways shall be designed and constructed so as to preclude the necessity for vehicles entering the driveway to maneuver, or stack within the traveled way or to use the traveled way as a circulation element.

**10. Flagpoles.**

- a. A maximum of three (3) flagpoles are allowed per site.
- b. Maximum height of the flagpole shall not exceed thirty (30) feet.
- c. Building mounted flagpoles are not permitted.
- d. Only patriotic or company logo flags are permitted.

**11. Lighting.**

- a. Site lighting shall be used to provide illumination for security and safety of parking, loading, and access areas.
- b. All lighting shall be shielded to keep light spread within the site boundaries.

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- c. Light fixtures in parking areas shall not exceed twenty-five (25) feet in height. Security light fixtures shall not project above the fascia or roofline of the building.
- d. Parking lot lighting shall be located, shielded, and directed in such a manner to assure that it does not reflect or cause glare onto adjacent properties or interfere with street traffic.

**12. Landscape and Irrigation.**

- a. All landscaping requirements shall be promulgated in the City of Tomball Zoning Ordinance.
- b. Landscape areas adjacent to Spell, Persimmon, Hufsmith-Kohrville and Holderrieth Road should include hardwood trees, with a minimum caliper of three (3) inches, and ground cover.
- c. Irrigation systems shall be designed so as not to spray water onto adjacent roadways or to permit excessive run off from landscape areas onto pavement.
- d. Landscape plans shall be presented to Property Owners Association for approval prior to installation.

**13. Sidewalks.**

- a. Public sidewalks are required and may be positioned in the fifteen (15) foot landscape buffer along public road rights-of-way.
- b. Sidewalks must be a minimum of five (5) feet wide.
- c. Sidewalks must comply with City of Tomball code requirements.

**B. Building Structures.**

**1. Height.**

- a. Building structures shall have a maximum height of seventy (70) feet, inclusive of architectural features.

**2. Exterior Materials and Colors.**

- a. All exterior materials should complement the architectural design and overall image of the Park.
- b. Acceptable materials are brick, stone, glass, masonry, concrete (including pre-cast concrete or tilt slab construction), Architectural Composite Metal Panels, stucco, and cement plaster. EIFS (exterior insulation finish systems) will be allowed as a trim material. Buildings with architectural composite metal panels shall have factory applied finish.

- c. No building elevation that is visible from a public road right-of-way may have only one (1) material; it must have a combination of at least three (3) of the above described materials.
- d. Color, texture and architectural elements shall be used to break the monotony of large vertical surfaces where visible from public road rights-of-way.
- e. Prohibited exterior materials include:
  - i. Cementitious based siding and trim products;
  - ii. Wood siding, shingle siding, or wood shingle roofing;
  - iii. Painted brick or stone;
  - iv. Corrugated metal;
  - v. Untreated metal;
  - vi. Asbestos;
  - vii. Mirror or reflective glass;
  - viii. Burglar security bars;
- f. Primary building entrances must be clearly defined and recessed or framed by a sheltering element such as an awning, arcade or portico to provide shelter from the sun and inclement weather. A minimum of thirty (30) percent of all primary building entrance areas must be masonry or stone.
- g. Building colors must be low-reflecting, subtle and neutral or earth-toned. Roof colors must be muted and compatible with the dominant building color. High-intensity colors, metallic colors, or fluorescent colors are prohibited.
- h. Business identity colors. Business identity colors may be incorporated into the architectural design of a building as provided for herein:
  - 1. Business identity colors shall complement the building design.
  - 2. Business identity colors shall not dominate the building design and shall not be designed to create an advertisement of the building itself.
  - 3. A maximum of five (5) percent of each exterior wall may consist of business identity colors. Business identity colors located on awnings are excluded from the calculation of the maximum percentage of business identity colors allowed on each exterior wall.

### 3. **Roof Design and Materials.**

- a. Roof forms and materials on all buildings within immediate proximity should be compatible with one another.
- b. Acceptable roof materials include concrete tile, slate, standing seam metal, asphalt shingle, Ethylene Propylene Diene Monomer (EPDM), Thermoplastic polyolefin (TPO), and thirty-year composition shingles.
- c. Roof color should be uniform and integral to the building design.

- d. Roof-mounted mechanical equipment including air conditioners, compressors, condensers, conduits, pipes, vents, ducts, etc. shall be screened from public streets using parapet walls, screening panels, or other equivalent screening method. The method of screening shall be architecturally compatible with other on-site development in terms of colors, materials, and architectural styles.

**C. Signs.**

**1. Jurisdiction.**

- a. The Property is in Harris County and is under the jurisdiction of the City of Tomball, Texas.
- b. Lot Owners must obtain a sign permit from the City of Tomball prior to installing any sign.

**2. Property Owners Association Approval.**

- a. Final written approval must be obtained from the Property Owners Association prior to the manufacturing or installation of any signage.
- b. Prior to installation, the Lot Owner must submit two (2) sets of exterior sign drawings to the Property Owners Association for approval.
- c. A summary letter, stating the results of the review, will be mailed to the Lot Owner within thirty (30) days of the submittal.
- d. Lot Owners must use a licensed sign company to manufacture and install on-site signage.

**3. Allowable Signs.**

- a. Ground-mounted monument signs:
  - i. Each Lot will be allowed one (1) ground-mounted monument sign, except that corner Lots facing two (2) major thoroughfares will be allowed two (2) ground-mounted monument signs;
  - ii. Ground-mounted monument signs shall be a maximum of seven (7) feet in height and seventeen (17) feet in length;
  - iii. The sign must be constructed with materials compatible with the building colors and finishes with a two-foot high masonry or stone base;
  - iv. The sign trim, base and cap must be pre-cast stone;
  - v. Each permitted ground-mounted monument sign shall be located within a planted landscaped area that is of a shape, design and size that will provide a compatible setting and ground definition to the sign. The planted landscaped area shall be maintained on a reasonable and regular basis; and

- vi. Ground-mounted monument signs shall be illuminated from an external light source.
- b. Wall-mounted signs:
- i. Each site will be allowed one (1) wall-mounted sign attached to the building fascia per street frontage, not to exceed two per lot;
  - ii. Each wall-mounted sign shall not exceed fifty (50) percent of the length of building fascia on which it is placed;
  - iii. Sign copy shall include minimal information only. The use of subordinate information, such as a telephone number, lists of products, pictures of products, etc., is discouraged. The name of the business shall be the dominant message on the sign; and
  - iv. Wall signs may be illuminated either internally or externally.
- c. Building address signs:
- 1. Office buildings:
    - i. One (1) building-mounted address sign consisting of the address numerals only;
    - ii. Numerals must be mounted on the building near the entry; and
    - iii. Numerals may not be installed above the first floor of the building.
  - 2. Multi-tenant signs:
    - i. One (1) building-mounted address sign per tenant.
    - ii. Numerals must be mounted above the tenant entry.
- d. Directional and delivery signs:
- 1. Signs to be painted galvanized steel or aluminum single or double post and panel;
  - 2. The color must be compatible with the building and other site and building signage; and
  - 3. The signs will be low profile with a maximum height from ground level of not more than four (4) feet.
- e. Parking signage:
- 1. Handicap parking signs shall meet City of Tomball, Americans with Disabilities Act and the Texas Accessibility Standards adopted pursuant to the Architectural Barriers Act and other applicable standards and procedures, and shall be painted dark bronze; and

2. Reserved parking signage may be in the form of curb or bumper stops.

**4. Prohibited signs.**

All signs not expressly permitted are prohibited, including, but not limited to, the following:

- a. Roof signs
- b. Pole signs
- c. Flashing signs
- d. Animated signs
- e. Revolving signs
- f. Portable signs
- g. Signs in public rights-of-way
- h. Banners, flags, pennants and balloons
- i. LED signs without express written approval by the Board.

**D. Construction.**

- a. The Lot Owner is responsible for the conduct and behavior of its agents, representatives and subcontractors.
- b. All trash and debris must be removed from the site on a regular basis.
- c. Construction crews will not park on, or otherwise use, other Lots within the Property.
- d. The Lot Owner is responsible for damage to adjacent property, roads, driveways, utilities, vegetation, and/or other improvements resulting from construction operations. If any such damage occurs, it must be repaired and/or restored promptly to its original condition, at the expense of the Owner.

**E. Inspections.**

- a. The Property Owners Association, or its designees, shall have the right, during reasonable business hours, to enter upon and inspect any site or improvements then under construction to determine whether or not such construction complies with the plans that been approved by the Property Owners Association.
- b. If the plans have not been approved, the Property Owners Association may, in its discretion, give the Owner of such site and improvements written notice to such effect, and, thereafter, the Property Owners Association shall be entitled to enjoin further construction and to review and require the removal or correction of any work in place that does not comply with said approved plans.

**ARTICLE VI  
TIME LIMIT FOR IMPROVEMENTS**

- A. The Owner of each Lot within the Property shall, within eighteen (18) months after the time of the conveyance of such Lot, commence construction of permanent improvements thereon in accordance with the plans approved by the Property Owners Association. The Property Owners Association may extend the time within which such construction may begin and any such extension shall be in writing.
- B. If, within the eighteen- month period hereinabove provided for or any extension granted by the Property Owners Association, any such Owner of any unimproved Lot within the Property on which construction in accordance with the plans has not commenced, desires to sell such unimproved Lot, the Owner shall first offer such Lot to the Declarant at the original purchase price thereof, with the usual prorating of taxes, insurance premiums, title costs, and closing costs being borne by such Owner as seller and the Declarant as purchaser. The Declarant, upon receipt of written notice of the intention and desire of said Owner to sell such Lot, shall have thirty (30) days thereafter within which to exercise its option to reacquire such Lot on the above terms and conditions. If Declarant does not exercise its option within thirty (30) days, Owner shall have the right to sell the Lot to any other party.
- C. In the event of any such sale by the Owner to the Declarant under subparagraph B above, the Declarant shall pay the consideration therefore to such Owner in cash and such Owner shall execute and deliver a general warranty deed conveying said Lot to the Declarant free and clear of all liens and encumbrances, save and except and subject to zoning ordinances, if any; taxes and assessments not yet due and payable, if any; and the restrictions and limitations of record (not containing provisions of reverter or forfeiture), if any.

**ARTICLE VII  
LIMITATION OF LIABILITY**

The Declarant, the Property Owners Association, the City of Tomball, and the Board shall not, individually or in combination, be liable in damages or otherwise to any person submitting plans or specifications for approval or to any Owner or applicant relating to any portion of the Property by reason of subjective decision, mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications submitted; provided however this provision does not apply to acts of willful misfeasance or malfeasance, misconduct or bad faith. The Declarant, the Property Owners Association, the City of Tomball, and the Board shall not, individually or in combination, be liable in damages or otherwise in connection with any construction, design, engineering or defect associated with any improvement constructed on the Property. The approval of plans and specifications by the Property Owners Association does not constitute any warranty or representation that such plans or specifications comply with governmental requirements or good and prudent designs, engineering and construction practices. It is the sole responsibility of the

Owner to determine and see that its plans and specifications comply with such requirements and practices.

**ARTICLE VIII  
CERTIFICATE OF COMPLIANCE**

Upon request by the Owner who has complied with the provisions of this Declaration, the Property Owners Association may deliver to the Owner a written certificate of such compliance in recordable form, and such certificate shall be conclusive evidence of such compliance.

**ARTICLE IX  
ASSESSMENTS**

The Property Owners Association may levy an assessment to fund operating expenses of the Property Owners Association, and to improve and maintain any common areas (property within the Property not designated as a Lot on the Plat and not accepted for maintenance by the applicable governmental body), including signage or other improvements located within a public right-of-way by agreement with the applicable governmental body. An assessment is a personal obligation of each Owner when the assessment accrues. Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by the Declarant and assigned to the Property Owners Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure assessments. A Lot becomes subject to assessments on conveyance of the Lot by the Declarant.

Regular assessments are levied by the Board annually to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the regular assessment is fifty dollars (\$50.00) per Lot. Regular assessments may be changed annually by the Board. Written notice of the regular assessment will be sent to every Owner at least thirty (30) days before its effective date. Regular assessments will be collected annually in advance, payable on the first day of January, and on the same day of each succeeding year.

In addition to the regular assessments, the Board may levy special assessments for the purpose of funding the cost of repair or replacement of any capital improvement owned or maintained by the Property Owners Association, and requiring funds exceeding those available from the regular assessment. Special assessments must be approved by two-thirds (2/3) of the Owners at a meeting held in accordance with the Bylaws.

The lien granted and reserved to the Property Owners Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Property Owners Association's lien as to assessments due before the foreclosure. Any assessment not paid within thirty (30) days after it is due is delinquent.

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**ARTICLE X  
GENERAL PROVISIONS**

**A. Binding Effect and Duration.**

The covenants and restrictions of this Declaration shall run with title to and bind the Property, shall be binding on all Owners and shall inure to the benefit of and be enforceable by the Declarant, the Property Owners Association, and the Owners, and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date of recording of this Declaration in the Real Property Records of Harris County, Texas, after which time this Declaration shall automatically be extended for three (3) successive periods of ten (10) years each, unless after such fifty-year period an instrument abolishing this Declaration had been executed and dully acknowledged by the Owners owning, in the aggregate, at least a majority of the gross acreage (exclusive of streets and any common areas) within the Property, and subject to, and conditioned upon, written approval by the City of Tomball, the Declarant and the Board of the Property Owners Association, has been recorded in the Real Property Records of Harris County.

**B. Amendment.**

This Declaration or any provisions hereof, may be terminated, amended or vacated, as to any portion of the Property, only by a document duly executed and acknowledged by the Owners owning, in the aggregate, at least a majority of the gross acreage contained within the Property (exclusive of streets and any common areas), subject to and conditioned on written approval by the City of Tomball, the Declarant, and the Board of the Property Owners Association. No such termination, amendment, supplement, or vacation shall be effective until a written instrument setting forth the terms thereof has been executed by the City of Tomball, the Declarant, and the Board of the Property Owners Association, acknowledged and filed in the Real Property Records of Harris County, Texas. The Declarant shall, however, have the absolute right to make minor changes or amendments to this Declaration to correct or clarify errors, omissions, mistakes, or ambiguities contained herein, and the Declarant shall have the absolute right to supplement this Declaration for the inclusion of additional Lots or for the deletion of Lots from the Property.

**C. Enforcement**

The Declarant and the Property Owners Association shall have the right, but not the obligation, to enforce the covenants and restrictions set out in this Declaration. Enforcement may be made by any proceedings at law or in equity against any person violating or attempting to violate any part of this Declaration, as such may be amended, either to restrain or enjoin violations or to recover damages. Damages shall not be deemed to be adequate compensation for any breach or violation of any provision of this Declaration, and the Declarant, the Property Owners Association and the City of Tomball, or any lessees, tenants or other occupants of an Owner's site, shall be entitled to relief by way of injunction, as well as any other remedy in law or in equity. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party. The rights, powers, and remedies provided in this Declaration shall be cumulative and restrictive of other remedies at law or in equity, and the exercise by a person of any particular right, power or remedy shall not be

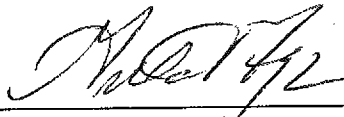
deemed an election of remedies or to preclude such person's right resort to other rights, powers or remedies available to it.

In witness whereof, the Declarant has caused this Declaration to be executed as of the 3<sup>rd</sup> day of March 2015.

**DECLARANT:**

10R

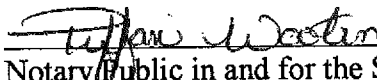
**Tomball Economic Development Corporation**

By:   
Gretchen Fagan, President

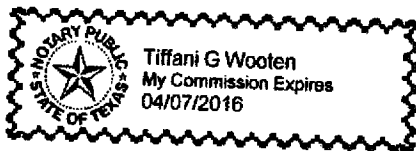
**ACKNOWLEDGEMENT**

THE STATE OF TEXAS    §  
  §  
COUNTY OF HARRIS    §

This instrument was acknowledged before me on the 3<sup>rd</sup> day of March, 2015, by Gretchen Fagan, President of the Tomball Economic Development Corporation, a Texas nonprofit corporation, on behalf of said corporation.

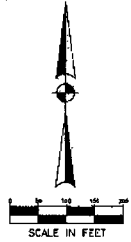
  
Notary Public in and for the State of Texas

(SEAL)



ER 067 - 73 - 1565





## FINAL PLAT TOMBALL BUSINESS AND TECHNOLOGY PARK

A SUBDIVISION OF 120.8081 ACRES (5,262,399.08 SQ. FT.), A PORTION OF WHICH IS A PARTIAL REPLAT OF LOTS 384, 385, 386, 387 AND 394, OF THE TOM BALL TOWNSITE AS RECORDED IN VOL. 2, PG. 65 OF THE HARRIS COUNTY MAP RECORDS, AND BEING A REPLAT OF LOT 4 OF TOMBALL SOUTH COMMERCIAL AS RECORDED IN FILM CODE NO. 632199 OF THE HARRIS COUNTY MAP RECORDS, IN THE ELIZABETH SMITH SURVEY, ABSTRACT NO. 70, AND THE C. N. PILLOTT SURVEY, ABSTRACT NO. 632, CITY OF TOMBALL, HARRIS COUNTY, TEXAS

**OWNERS:**  
Tomball Economic  
Development Corporation  
29201 Quinn Road  
Tomball, TX 77375  
281-401-4066

2978 Industrial Properties, LLC  
29614 Bridle Creek Drive North  
Magnolia, TX 77355-6076

**CLR, Inc.**  
Engineers & Surveyors • GIS  
10000 Park Blvd., Houston, Texas 77036  
Phone: (713) 462-0093 Fax: (713) 468-3229

**SURVCON**  
A DIVISION OF  
**SPRINGCREED**  
Professional Surveying & Mapping  
17177 Springwood Drive, Suite 100  
Houston, Texas 77058  
Phone: (281) 322-2200  
www.springcreed.com

7 LOTS

SCALE: 1"=100' MARCH, 2013

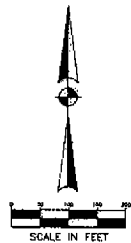
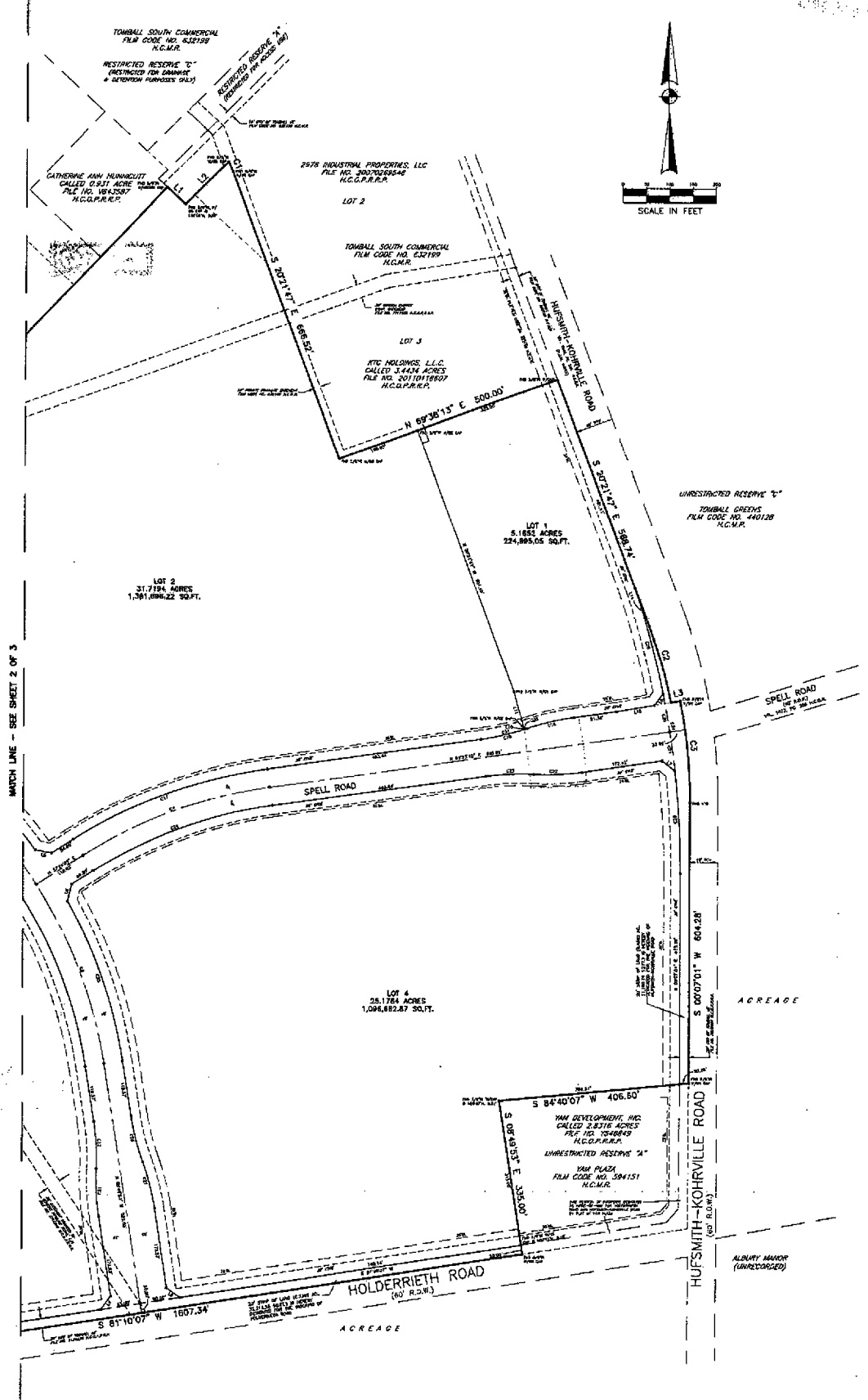
**NOTES (SHEET 2 ONLY):**

1. ONE-FOOT RESERVE DEDICATED FOR BUFFER PURPOSES TO THE PUBLIC IN FEE AS A BUFFER SEPARATION BETWEEN THE SIDE OR END OF STREET WHERE SUCH BENEFITS, NEAR ADJACENT PROPERTIES, THE LOCATION OF SUCH DEDICATION BEING THAT WHEN THE ADJACENT PROPERTY IS SUBDIVIDED OR RE-SUBDIVIDED IN A REVERSE PLAT, THE ONE-FOOT RESERVE SHALL BE DIVIDED EQUALLY BETWEEN THE PUBLIC FOR STREET PURPOSES AND THE ADJACENT PROPERTY. THE RESERVE SHALL REVERT TO AND REMAIN IN THE DEDICATOR, OR HIS HEIRS, ASSIGNS OR SUCCESSORS.
2. TEMPORARY CUL-DE-SAC IS PROVIDED AS A TURN-AROUND AT THE END OF A DEAD END STREET. THE TEMPORARY CUL-DE-SAC SHALL BE AUTOMATICALLY TERMINATED UPON THE EXTENSION OF SOUTH PERSIMMON STREET INTO THE ADJACENT PROPERTY.
3. SEE SHEET 1 OF 3 FOR LINE AND CURVE TABLES.

MATCH LINE - SEE SHEET 3 OF 3

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ER 067 - 73 - 1568



**FINAL PLAT  
TOMBALL BUSINESS  
AND TECHNOLOGY PARK**

A SUBDIVISION OF 120.8081 ACRES (5,262,399.08 SQ. FT.), A PORTION OF WHICH IS A PARTIAL REPLAT OF LOTS 384, 385, 386, 387 AND 394, OF THE TOMBALL TOWNSITE AS RECORDED IN VOL. 2, PG. 65 OF THE HARRIS COUNTY MAP RECORDS, AND BEING A REPLAT OF LOT 4 OF TOMBALL SOUTH COMMERCIAL AS RECORDED IN FILM CODE NO. 632199 OF THE HARRIS COUNTY MAP RECORDS, IN THE ELIZABETH SMITH SURVEY, ABSTRACT NO. 70, AND THE C. N. PILLOT SURVEY, ABSTRACT NO. 632, CITY OF TOMBALL, HARRIS COUNTY, TEXAS

**OWNERS:**  
Tomball Economic Development Corporation  
29201 Quinn Road  
Tomball, TX 77375  
281-401-4088

2978 Industrial Properties, LLC  
25614 Bridle Creek Drive North  
Magnolia, TX 77355-6876

**SURVEYOR/ENGINEER:**  
**CLR, Inc.**  
Engineers & Surveyors • 016  
18028 Prehall, Suite 1100, Tinsley  
Houston, TX 77058  
Phone: (713) 462-6611 Fax: (713) 462-2762



7 LOTS  
SCALE: 1"=100' MARCH, 2013

ER 067 - 73 - 1569

20150134790  
# Pages 22  
04/02/2015 11:52:32 AM  
e-Filed & e-Recorded in the  
Official Public Records of  
HARRIS COUNTY  
STAN STANART  
COUNTY CLERK  
Fees 96.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



*Stan Stanart*

COUNTY CLERK  
HARRIS COUNTY, TEXAS