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NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Declaration of Restrictive Covenants of Madison Park Unit No. 1

Basic Information

Date: _____,
2016

Declarant: **AXE DEVELOPMENT, LLC**
a Texas limited
liability company

Declarant's Address: 2302 10th Avenue
Canyon, TX 79015

Property: Madison Park Unit No. 1, an Addition to the City of Canyon, being an unplatted tract of land in Section 2, Block B-5, H. & G. N. R.R. Co. Survey, Randall County, Texas, according to the map or plat thereof, recorded under Clerk's File No. _____, in the Official Public Records of Randall County, Texas.

Definitions

"Covenants" means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means Axe Development, LLC, a Texas limited liability company, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

"Defaulting Owner" means an Owner who fails to comply with the provisions of this Declaration.

"Easements" means easements within the Property for utilities, drainage, and other purposes as shown on the Plat, of record or created in this Declaration.

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"Lot" means each tract of land designated as a lot on the Plat.

"Owner" means every record Owner of a fee interest in a Lot.

"Plat" means the Plat of the Property recorded in the Official Public Records of Randall County, Texas, under Document No. _____ and any replat of or amendment to the Plat made in accordance with this Declaration.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Structure" means any improvement on a Lot (other than a Residence), including a fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Subdivision" means the Property covered by the Plat and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

Clauses and Covenants

1.0 Imposition of Covenants

1.1 Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

1.2 The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

1.3 Each Owner and occupant of a Lot agrees to comply with this Declaration and agrees that failure to comply may subject him to a fine, damages, or injunctive relief.

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2.0 Plat and Easements

2.1 The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2.2 An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

2.3 Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

2.4 Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

2.5 **Utility Easements.** Declarant and providers of utility services have and are granted easements for installation, maintenance, repair, removal, and operation of utilities and drainage facilities on, under, and across the Property and for the removal of any obstruction that may be placed in an Easement that would constitute interference with the use of the Easement or with the use, maintenance, operation, or installation of the utility.

2.6 **Other Easements.** Declarant reserves for itself, and its successors and assigns an Easement as reasonably necessary for ingress and egress at all times over and upon any Lot to carry out all of the rights and functions created in this Declaration and to perform the duties and obligations of a Defaulting Owner.

2.7 **Landscape Easement.** If an Owner fails to comply with the provisions of Section 4.5 below, Declarant and its successors and assigns may enter upon the Defaulting Owner's Lot to perform the Defaulting Owner's obligations at Defaulting Owner's expense.

3.0 Use and Activities

3.1 **Permitted Use.** A Lot may be used only for an approved Residence and approved Structures for use by a Single Family.

3.2 **Prohibited Activities.** Prohibited activities are—

- a. any activity that is otherwise prohibited by this Declaration;

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- b. any illegal activity;
- c. any nuisance or noxious or offensive activity;
- d. any dumping of rubbish;
- e. any storage of—
 - i. building materials except during the construction or renovation of a Residence or a Structure;
 - ii. Vehicles, except Vehicles in a garage or Structure or operable automobiles on a driveway; or
 - iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
- g. any keeping or raising of animals, livestock, or poultry, except for common domesticated household pets, such as dogs and cats, not to exceed three confined to a fenced yard or within the Residence;
- h. any commercial or professional activity except reasonable home office use;
- i. the drying of clothes in a manner that is visible from any street;
- j. the display of any sign except—
 - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
 - ii. political signage not prohibited by law;
- k. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- l. moving a previously constructed house onto a Lot;
- m. interfering with a drainage pattern or the natural flow of surface water in such a manner as to cause damage to other Lots;

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- n. hunting and shooting; and
- o. occupying a Structure that does not comply with the construction standards for a Residence.

4.0 Construction, Maintenance, and Landscape Standards

4.1 Architectural Control

- a. **Authority.** No Residence, Structure, or driveway may be commenced, erected, placed, altered, reroofed, or replaced, or the exterior stained, painted, or repainted until all colors, plans and specifications (**collectively the "Building Plan"**) have been submitted to and approved in writing by Declarant. Declarant may refuse to approve a Building Plan that may, in the reasonable opinion of Declarant, adversely affect the living enjoyment of Owners or the general value of Lots.
- b. **Plan Submittal.** A complete copy of the Building Plan must be submitted in duplicate to Declarant or its designee either by (i) certified mail, return receipt requested or (ii) personal delivery to Declarant, but personal delivery will not be valid unless receipt of the Building Plan is acknowledged in writing by Declarant or its designee. The Building Plan must be submitted at least 15 days before commencement of staining or painting or commencement of construction of the improvements or reroofing. The Building Plan must—if at all possible—show the nature, kind, shape, height, materials, exterior color scheme, and location of all improvements, including but not limited to elevations and floor plans on each Residence and Structure to be built, square footage, roof pitch, and percentage of brick or other material to be used as exterior siding. The Building Plan must specify building location on the Lot. Samples of proposed construction materials must be delivered promptly to Declarant upon request.

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- c. **Multiple Submissions of Building Plan.** If the Building Plan submitted to Declarant does not include all the information required at the first submittal, the remaining information must be submitted to Declarant within 45 days after the date of the first submittal. If all the information required is not included in the Building Plan submitted to Declarant the second time, no future submittal of the Building Plan will be considered or approved unless the person submitting the Building Plan pays Declarant a non-refundable submission fee of \$250.00.

- d. **Approval Procedure.** When the Building Plan meets the approval of Declarant, Declarant will sign and mark "APPROVED" on one Building Plan and return it to the person furnishing the Building Plan and will sign and retain the duplicate Building Plan. If not approved by Declarant, the Building Plan will be returned marked "NOT APPROVED" and will be accompanied by a statement of the reasons for disapproval signed by Declarant. Any exterior modification of an approved Building Plan must be submitted to Declarant for approval. Verbal statements about the Building Plan will not be binding upon Declarant. If Declarant fails to approve or disapprove the Building Plan within 15 days after the date of submission of all information required, written approval of the proposal will not be required and compliance will be deemed to have been met. In case of a dispute about whether Declarant responded within the required time period, the person submitting the Building Plan will have the burden of establishing the date Declarant received it.

4.2 Lots

- a. **Consolidation of Lots.** An Owner of adjoining Lots may consolidate those Lots into one site for the construction of a Residence.

- b. **Subdivision Prohibited.** No Lot may be further subdivided.

- c. **Easements.** No Easement in a Lot may be granted.

- d. **Maintenance.** Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

4.3 Residences and Structures

- a. **Aesthetic Compatibility.** All Residences, Structures, and Landscaping

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must be aesthetically compatible with the Subdivision.

- b. **Building Codes.** The construction of each Residence and Structure must meet or exceed the building code of the City of Canyon, Texas.

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- c. **Maximum Height.** The maximum height of a Residence is two stories.
- d. **Required Area.** The total area of a Residence, exclusive of porches and garages, must be at least 2200 square feet.
- e. **Location on Lot.** Unless otherwise approved by Declarant, each Residence must face the front Lot line. Residences may not be located within 20 feet from any public street or right-of-way and 10 feet from the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street. The location of a Residence or other building on a Lot must comply with applicable City restrictions or other applicable laws, codes or ordinances.
- f. **Garages.** Each Residence must have at least a two-car garage, which must conform in design and materials with the Residence. Garages may be used only for storage of Vehicles and other property of Owner.
- g. **Damaged or Destroyed Residences and Structures.** Any Residence or Structure that is damaged must be repaired within 365 days and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within 180 days and the Lot restored to a clean and attractive condition.
- h. **Fences and Walls.** A perimeter fence may be constructed on a Lot, but no fence or wall may be located forward of the front wall line of the Residence, except for trellises and decorative fences. Fences may not exceed eight feet in height.
- i. **Antennae.** Unless otherwise approved by Declarant, no antenna, satellite dish, or associated wires may be visible from the street or be located behind the back setback line of any Lot.

4.4 Building Materials for Residences and Structures

- a. **Roofs.** Roofing materials must be earth tone colors, including black, charcoal, grey, and brown. Declarant has the right to approve the color of all roofing materials. Unless otherwise approved by Declarant, all roofs must be either:

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- i. laminated shingles with at least a 30-year warranty by the manufacturer;
- ii. cement, clay, or plastic tiles; or,
- iii. factory backed and painted metal roofing material, but galvanized corrugated roofing is not acceptable.

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- b. **Roof Pitch.** Unless otherwise approved by Declarant, all roofs must have a minimum of 8 and 12 roof pitch.
 - c. **Air Conditioning.** Window or wall-type air conditioners may not be used in a Residence.
 - d. **Exterior Walls.** All Residences must have at least 60.00% of their exterior walls, including exposed foundation, of masonry – stucco, brick, brick veneer, stone, stone veneer, or rock, minus windows and doors. No exposed concrete block or shingle-siding may be used as siding on an exterior wall.
 - e. **Driveways and Sidewalks.** All driveways and sidewalks must be surfaced with concrete.
 - f. **Lot Identification.** Lot address numbers and name identification must be aesthetically compatible with the Subdivision.
 - g. **Materials.** All materials for construction or repair of any Residence or Structure must be new except used brick is acceptable.
 - h. **New Construction.** Unless otherwise approved by Declarant, no prefabricated Structure or any type of building may be moved onto a Lot.
 - i. **Material Storage.** No building material of any kind or character may be placed or stored upon a Lot until the commencement of construction of improvements. During construction, material must be placed only within the property lines of the Lot upon which the improvements are to be erected. Construction and use of material must progress without undue delay.
- 4.5 **Landscape.** Landscaping must be installed within sixty days after occupancy of the Residence. Landscaping must include sodding of the front lawn, flower beds in front of the Residence, and at least two trees on each Lot. Owner agrees to maintain the landscaping in good condition and to:
- (a) replace dead or damaged trees;
 - (b) water and fertilize all landscaping;
 - (c) prune trees;

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- (d) mow grass;
- (e) edge grass along sidewalks along the Lot line;
- (f) control insects for all landscaping;
- (g) maintain the yards in a sanitary and attractive manner; and,
- (h) maintain the irrigation system in good operating condition.

Grass, weeds, and vegetation on each Lot must be kept mowed at regular intervals to maintain the Lot in a neat and attractive manner. An Owner may not permit weeds or grass to grow more than four inches high. If the Defaulting Owner fails to maintain any Lot as required, Declarant or any nondefaulting Owner, at their option, remove and replant trees and have the grass, weeds, and vegetation cut as often as necessary in their judgment, and the Defaulting Owner will be obligated, when presented with an itemized statement, to reimburse the person performing the work for the cost of the work or the person who paid for the work, as applicable.

5.0 Construction Responsibilities.

5.1 Trash Containers. Trash containers such as dumpsters must be located on Owner's Lot and not on the public, county, or state road right-of-way.

5.2 Junk/Trash. Trash, garbage, and other waste may not be kept on any Lot except in the containers approved by Declarant. No portion of the Lot may be used as a dumping ground for junk or as a site for the accumulation of unsightly materials of any kind, including but not limited to unused equipment, inoperative Vehicles, and discarded property.

5.3 Construction Debris. During construction on any Lot, the builder must put all construction trash which is susceptible to being blown from the construction site in a container to prevent trash from blowing off of the construction site. The container must be emptied periodically so there is always room for trash. Builders must prevent construction trash from blowing out of the container and off the construction site. Each Owner of a Lot is responsible for the control of and the disposal of left over construction material and debris. No construction material or debris may be dumped on the Property except on the building site and must be periodically removed so that the building site is cleaned of construction material and debris.

5.4 Completion of Residence. All Residences and Structures must be completed

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within twelve months from the date construction is commenced unless extended by the Declarant.

5.5 **Portable Sanitary Systems.** During construction on any Lot, each builder must provide a portable sanitary system for use by contractors, subcontractors, and their employees until the construction is completed. The portable sanitary system must be located at the rear of the Lot and must be timely serviced and cleaned.

6.0 General Provisions

6.1 **Term.** This Declaration runs with the land and is binding for a term of 40 years. The term may be extended for successive terms of 10 years each by the affirmative vote of 67.00% of the Owners within 12 months before the end of the current term.

6.2 **No Waiver.** Failure by an Owner to enforce this Declaration is not a waiver.

6.3 **Corrections.** Declarant may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

6.4 **Amendment.** This Declaration may be amended at any time by the affirmative vote of 67.00% of the Owners, but the Declaration may not be amended without Declarant's approval while Declarant owns a Lot in the Subdivision.

6.5 **Severability.** If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

6.6 **Notices.** Any notice required or permitted by this Declaration must be given in writing by personal delivery or by certified mail, return receipt requested. Unless otherwise required by law or this Declaration, actual notice, however delivered, is sufficient.

6.7 **Annexation of Additional Property.** On written approval of Declarant and not less than 67.00% of the Owners, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

6.8 **Pre-suit Mediation.** As a condition precedent to the commencement of a legal proceeding to enforce this Declaration, the Owners will mediate the dispute in good faith.

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6.9 Assumption of Risk. Each Owner assumes the risk of personal injury, property damage, or other loss caused by Owner's ownership and use of the Lot.

6.10 Disclaimer and Release. Except as specifically stated in this Declaration or in any deed, and to the maximum extent permitted by applicable law, Declarant disclaims any warranty, guaranty, or representation, oral or written, expressed or implied, past, present or future, of, as to, or concerning:

(i) the nature and condition of the Subdivision, the Property, and the Lots, including but not by way of limitation, the water (either quantity or quality), soil, subsurface, and geology, and the suitability thereof and of the Subdivision, the Property, and any Lot within the Subdivision, for all activities and uses which Owner or any builder may elect to conduct thereon;

(ii) the manner, construction, design, condition, and state of repair or lack of repair of any improvements located on the Property and any Lot;

(iii) except for any warranties contained in the deed to be delivered from Declarant to an Owner, the nature and extent of any right-of-way, possession, reservation, condition or otherwise that may affect the Property and any Lot; and

(iv) the compliance of the Subdivision, the Property, and any Lot with any laws, rules, ordinances or regulations of any governmental or quasi-governmental body (including without limitation, zoning, environmental and land use laws and regulations).

Declarant makes NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, OR ANY LOT WITHIN THE SUBDIVISION.

By acceptance of a deed to any Lot, and to the maximum extent permitted by applicable law, Owner waives, releases, acquits and forever discharges Declarant and any successor or assign of Declarant, and Declarant's managers, members, agents, employees, representatives, attorneys and any other person or entity acting on behalf of Declarant (collectively the "Released Parties"), of and from, any claims, actions, causes of action, demands, rights, damages, liabilities, costs and expenses whatsoever (including court costs and attorney's fees), direct or indirect, known or unknown, foreseen or unforeseen, which Owner now has or which may arise in the future, on account of or in any way growing out of or in connection with the design or physical condition of the

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Subdivision, the Property, or any Lot, or any law, rule, order, statute, code, ordinance, or regulation applicable thereto.

6.11 **Indemnity.** Each Owner agrees to indemnify and hold harmless the Released Parties from all claims, suits, actions, liabilities and proceedings whatsoever and of every kind, known or unknown, fixed or contingent (the "Claims") which may be brought or asserted against the Released Parties, on account of or growing out of all injuries or damages, including death, to persons or property relating to Owner's use, occupancy, ownership, construction, operations, maintenance, repair or condition of any Lot and all losses, liabilities, judgments, settlements, costs, penalties, damages and expenses relating thereto, including, but not limited to, attorney's fees and other costs of defending against, investigating and settling the Claims.

DECLARANT:

AXE DEVELOPMENT, LLC,
a Texas limited liability company

By: _____
Tim Porter, Member

State of Texas §
 §
County of Potter §

This instrument was acknowledged before me on this the ____ day of _____, 2016, by **TIM PORTER**, Member on behalf of **AXE DEVELOPMENT, LLC**, a Texas limited liability company.

[SEAL]

Notary Public