

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
DUNDEE PLACE DEVELOPMENT

THE STATE OF TEXAS

COUNTY OF GREGG

DECLARATION

WHEREAS, Yowell Group, Inc., (hereinafter sometimes referred to as "Declarant", and sometimes referred to as "Developer"), is the owner of all that real property, including the land, all improvements and structures thereon, and all easements, rights-of-way, and appurtenances belonging thereto, located in the Gregg County, Texas and known as Dundee Place Development (hereinafter sometimes referred to as "Dundee Place" and sometimes referred to as "Development") and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

WHEREAS, it is Declarant's intention to impose on Dundee Place mutually beneficial easements, covenants, conditions and restrictions, for the benefit of all owners of individual Lots and/or Residential Units in Dundee Place.

NOW, THEREFORE, Declarant hereby declares that Dundee Place Development is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following easements, covenants, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of said Development and the division thereof into individual lots with individual residential housing thereon, and all of which are established and agreed on for the purpose of enhancing and perfecting the value, desirability, and attractiveness of Dundee Place and every part thereof. All of the easements, covenants, conditions, and restrictions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest therein or any part thereof, and shall be for the benefit of each Owner of a Lot and/or Residential Unit in Dundee Place or any interest therein and shall inure to the benefit of and be binding on each successor in interest of the owners thereof.

ARTICLE 1

DEFINITIONS

Association

1.01. "Association" shall mean Dundee Place Development Homeowners' Association, a corporation organized under the Texas Non-Profit Corporation Act for the management of Dundee Place, the membership of which consists of the Owners of individual Lots and/or Residential Units in Dundee Place. Said Homeowner's Association shall be created.

Board

1.02. "Board" shall mean the Board of Directors of Dundee Place Development Homeowners' Association.

JOHNSON & PALE  
430 N CENTER  
LONGVIEW, TX 75601

#### Common Areas

1.03. "Common Areas" shall mean all portions of Dundee Place other than the Lots and/or Residential Units, including such areas designated on Exhibit "A" attached hereto and incorporated herein by reference and any additional areas later designated as such.

#### Declarant

1.04. "Declarant" or "Developer" shall mean Yowell Group, Inc., its successors and assigns.

#### Declaration

1.05. "Declaration" shall mean the within Declaration of Covenants, Conditions and Restrictions for Dundee Place Development.

#### Homeowner

1.06. "Homeowner" or "Owner" shall mean any person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, who or which owns a Lot and/or Residential Unit in Dundee Place.

#### Lot

1.07. "Lot" shall mean each of the Lots created by a plat, covering all or any portion of the land included as a part of Dundee Place Development except for Lot 1, Block 1, Phase 1 which is not subject to the Covenants and Restrictions.

#### Mortgagee

1.08. "Mortgagee" shall mean a person or entity which holds a mortgage on a Lot and/or Residential Unit in Dundee Place as security for repayment of a loan.

#### Plat

1.09. "Plat" shall mean any recorded plat of Dundee Place Development covering any portion of the land, it being contemplated that the Developer will be filing several plats by Units or Phases as the land is developed.

#### Residential Unit

1.10. "Residential Unit" shall mean a residence constructed or to be constructed on a Lot or Lots.

#### Dundee Place

1.11. "Dundee Place" or "Development" shall mean the entire parcel or real property described in Exhibit "A" attached hereto, including the land, all improvements and structures thereon, and all easements, rights-of-way, and appurtenances thereto, which is divided or to be divided into individual Lots owned by individual owners and operated as a part of Dundee Place Development.

## ARTICLE 2

### THE PROPERTY

#### Property Subject to Declaration

2.01. All the real property described in Exhibit "A" hereto including the land, all improvements and structures thereon and all easements, rights-of-way and appurtenances belonging thereto, shall be subject to this Declaration, excluding Lot 1, Block 1, Phase 1 which is not subject to these Covenants, Conditions and Restrictions.

#### Exclusive Ownership and Possession

2.02. Each owner shall be entitled to the exclusive ownership and possession of his Lot and/or his individual Residential Unit. Any Lot and/or Residential Unit may be jointly or commonly owned by more than one person.

#### Common Areas

2.03. The Common Areas described in Exhibit "A" attached hereto shall be under the exclusive management and control of Dundee Place Development Homeowners' Association subject to the Interim Management provisions as provided for in Paragraph 3.06. Declarant and Developer, Yowell Group, Inc. will retain title to all Common Areas until such time as these areas are deeded to the Association in accordance with the Interim Management provisions in Section 3.06. Each Owner is granted a nonexclusive easement covering the use of the Common Areas in accordance with the purpose for which they are intended, without hindering or encroaching on the lawful rights of the other Owners.

#### Partition of Common Areas

2.04. The Common Areas, shall remain undivided and shall not be the object of an action for partition or division of the ownership so long as the property remains a part of The Dundee Place Development. In any event, all mortgages must be paid prior to the bringing of an action for partition and the written consent of all Mortgagees must be obtained prior to the bringing of an action for partition.

## ARTICLE 3

### ASSOCIATION MANAGEMENT AND CONTROL

#### Homeowners' Association

3.01. The Homeowners' Association, organized as a nonprofit corporation under the Texas Non-Profit Corporation Act, operating under the name of Dundee Place Development Homeowners' Association, is charged with the duties and vested with the powers prescribed by law and set forth herein and in its Articles of Incorporation and Bylaws.

### **Membership**

3.02. Membership in the Association is automatically granted to the Owner of each Lot and/or Residential Unit in Dundee Place. On the transfer of title to any Lot and/or Residential Unit, the membership of the transferor automatically ceases and each new Owner immediately becomes a member.

### **Voting Rights**

3.03. Voting shall be based on the ownership of a Lot and/or Residential Unit. The Owner of each Lot is entitled to one (1) vote of the total votes allocated to the Association. In addition to the one vote per Lot each Owner is entitled to an additional one (1) vote for any Residential Unit or part thereof built on an individual Lot.

### **Membership Meetings**

3.04. Meetings of the members shall be called, held and conducted in accordance with the requirements and procedures set forth in the Bylaws.

### **General Powers and Authority**

3.05. The Association, upon incorporation according to the laws of the State of Texas, shall have all the powers of a nonprofit corporation established under Texas law, subject only to the limitations contained in this Declaration and in the other Governing Instruments. The Association, subject to the Interim Management provisions as provided for in Paragraph 3.06, may perform all acts which may be necessary for, or incidental to, the performance of the obligations and duties imposed on in by this Declaration and the other Governing Instruments. The powers of the Association shall include, but are not limited to, the following:

(a) The power to establish, fix, and levy assessments against the Owners in accordance with the procedures set forth in Article 4 of this Declaration and subject to the limitations therein.

(b) The power to adopt reasonable operating rules and regulations governing the use of the Common Areas and the facilities, if any, located thereon, as well as the use of any other Association property.

(c) The right to institute and maintain actions for damages or to restrain any actual or threatened breach of any of the provisions of the Governing Instruments or Association Rules and Regulations either in its own name and on its own behalf or on behalf of any consenting Owner.

(d) The right to discipline members for violation of any provisions of the Governing Instruments or Association Rules and Regulations by suspension of the violator's voting rights, privileges for use of the Common Areas, or by imposition of monetary penalties, subject to the following limitations:

(i) The accused member must be given an opportunity to be heard with respect to the alleged violation.

(ii) Any suspension of privileges and/or imposition of monetary penalties shall be reasonably related to the member's violation.

(e) The power to delegate its authority, duties, and responsibilities, through the Board of Directors, to such committees, officers, employees, or agents as are permitted to be retained under the Governing Instruments.

(f) The right through its agents or employees, to enter any lot when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as is practicable, and any damage caused thereby shall be repaired by the Association at its own expense.

(g) Homeowners Association shall own and be responsible for maintaining all Homeowners Association/Common Areas, the proposed fence along Dundee Road, RV parking, private alleys, and private parks.

(h) Maintenance of the private storm water detention area as shown on Exhibit "A" is the responsibility of the Homeowners Association. The storm water detention area is to be maintained in such a manner as to continue to function for the purpose of storm water detention. No structures or fences may be constructed within this area nor may any planting of shrubs, trees, flowerbeds, etc. be located within this area in such a manner to block, impede or hinder the flow of or storage of storm water. The City of Longview shall have right of access to inspect the storm water detention area for compliance with the City's detention and drainage regulations and if necessary may compel compliance by appropriate court action.

#### Interim Management

3.06. The Developer and Declarant, Yowell Group, Inc., will have exclusive management and control over Dundee Place Development until such time as seventeen (17) lots out of the total of twenty-two (22) lots in Phase I are owned and occupied by Owners of completed Residential Units in Dundee Place, and/or until Seventy-Five (75%) percent of the lots in Phase II, Phase III, and possibly Phase IV are owned and occupied by the Owners of completed Residential Units in Dundee Place. When 17 lots out of 22 lots in Phase I are so owned and occupied, Developer will deed to the Association all those Common Areas in Phase I as described on Exhibit "A" and the Association will assume management and control of the Common Areas and occupied Lots and/or Residential Units in Dundee Place--Phase I.

During this Interim Management period Declarant will collect the Regular Monthly Assessment of fifty dollars (\$50.00) per month due from each Lot owner. Declarant will supervise the total yard care due each Lot during this Interim Management period.

Additionally, during the Interim Management period, the Association will set up its initial organization including incorporation under the non-profit corporation laws of Texas, filing of its Articles of Incorporation, and drafting its Bylaws. The Association will establish its complete management structure including Board of Directors, Officers, and various committees as designated by the Association under its Bylaws. However, the Association as established will serve only as an advisory

committee to Declarant during the Interim Management period. Declarant will endeavor to cooperate with the Association to accomplish any request presented during this Interim Management period, however, Declarant will in no way be bound by the vote of the Association membership.

At such time as Developer commences the development of Dundee Place Development Phase II, Developer will again serve as the Interim Manager for the properties in that phase subject to the conditions and provisions as expressed above. When 75% of the Lots in Phase II are so owned and occupied, Developer will deed to the Association all those Common Areas in Phase II as described on Exhibit "A" and the Association will assume management and control of the Common Areas and occupied Lots and/or Residential Units in Dundee Place--Phase II, and Phase III, and maybe Phase IV.

#### ARTICLE 4

#### ASSESSMENTS

##### Covenant to Pay

4.01. Each owner by acceptance of the deed to such Owner's Lot is deemed to covenant and agree to pay to the Association the Regular and Special Assessments levied pursuant to the provisions of this Declaration. All monies collected shall be put into a Management Fund to be used to defray expenses attributable to the ownership, operation, and maintenance of Common Areas by the Association. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Areas or by abandonment of such Owner's Lot.

##### Assessments

4.02. Regular and Special Assessments shall be made in accordance with the following:

##### Regular Monthly Assessments

(a) Effective as of October 1, 1998, the Regular Monthly Assessment levied by Dundee Place Development Homeowners' Association shall be Fifty Dollars (\$50.00) per month for each Lot owned which is a total annual assessment of Six Hundred and No/100 Dollars (\$600.00) for each Lot owned. Said annual assessment may be increased each year not more than fifteen per cent (15%) above the maximum assessment for previous year without a vote of the members. The maximum annual assessment may be increased above fifteen per cent (15%) by the vote or written consent of a majority of the members of the Association. The Board of Directors of Dundee Place Development Homeowners' Association may affix the annual assessment at an amount not in excess of the maximum.

##### Special Assessments

(b) In addition to the annual assessments authorized above, Dundee Place Development Homeowners' Association may levy in any assessment year, a Special Assessment applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the common area, including fixtures and personal property related

thereto. Any such assessment must be approved by two-thirds (2/3rds) vote of the members of the Association.

#### Notice and Quorum

4.03. Notice and a quorum are required for action authorized under Sections 4.02 (a) and/or (b). Written notice of any meeting called for the purpose of taking any action authorized by Sections 4.02 (a) and/or (b) shall be sent to all members not less than seven (7) days nor more than fifteen (15) days in advance of such meeting. In the event that the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite majority of the total membership of the Association, said action shall be conditionally passed. If within thirty (30) days the members of the Association meet with a quorum and sufficient votes are obtained opposing the conditional action then such conditional action will be revoked and said increase in the Regular and/or Special Assessments will be void. If the necessary opposition vote is not obtained the conditional resolution will be final and the Regular and/or Special Assessment will be effective as of the date of the conditional vote.

#### Commencement of Assessments

4.04. Regular Assessments shall commence for each Lot in Dundee Place on the first day of the next month following the date of closing on the sale of that Lot and both Regular Monthly and Special Assessments will be fixed at the same rate for each individual Lot.

#### Liability for Assessments

4.05. Each Regular Monthly Assessment and each Special Assessment shall be a separate, distinct, and personal debt and obligation of the individual Owner against whom the same are assessed. The amount of any assessment not paid when due shall be deemed to be delinquent.

#### Remedies for Nonpayment of Assessments

4.06. Any assessment not paid and received within ten (10) days of the date when it is due and payable shall be deemed delinquent, and, without notice, shall accrue a late charge for additional collection cost to be set by the Board; provided, however, such charges shall be made only to the extent legally permissible. Such delinquent payment shall also, at the Board's option, bear interest at the rate of ten per cent (10%) per annum from the date originally due until paid. If any such amount shall remain unpaid longer than fifteen days past the date when it is due and payable, at the Board's election, the assessments due from the delinquent Owner for the next twelve (12) months may be accelerated, and thereby become at once due and payable, and from the fifteenth (15th) day of such month until paid shall bear interest at the rate of ten per cent (10%) per annum. If, after the assessment for the next twelve (12) months has been accelerated by the Board, satisfactory payment of the assessment and accrued interest are paid, then the Board may allow such charge to again be paid on a monthly basis. In order to secure payment of any Regular or Special Assessment, a vendor's lien and superior title to each Lot and/or Residential Unit constructed thereon shall be and is hereby reserved and granted to the Association, which lien may be foreclosed either through appropriate judicial proceedings by the Association or by public sale without judicial proceedings. Each Owner, by accepting conveyance of a Lot, together with any improvements situated thereon, irrevocably grants to the Association a power of sale so that the lien securing payment of the unpaid sums required to be paid by this Declaration may be foreclosed at public sale without judicial proceedings in the manner permitted by law in the State of Texas for mortgagees foreclosing under

a Deed of Trust. The vendor's lien and superior title herein reserved shall be subordinate in all respects to any mortgage. In addition to foreclosing the lien hereby retained, in the event of nonpayment of any Owner of such Owners' Regular or Special Assessments, the Association may, acting through the Board, upon ten (10) days prior written notice thereof to such nonpaying Owner, and in addition to all other rights and remedies available at law or otherwise, upon ten (10) days written notice, purchase from such nonpaying Owner (and for this purpose each Owner hereby grants to the Association an option to so purchase) such nonpaying Owner's Lot and/or Residential Unit thereon at a purchase price equal to the price at which such Owner originally purchased same, less the amount of the unpaid portion of the assessments given rise to such option and less the balance of any debt secured by any mortgage encumbering the subject Lot and/or Residential Unit (said option being expressly subordinate to any mortgage on such nonpaying Owner's Lot and/or Residential Unit).

#### **Payment of Assessments on Conveyance of Lot**

4.07. On the sale or conveyance of a Lot, all unpaid assessments against an Owner for his share in the expenses to which Paragraph 4.02 refers shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

- (a) Assessments, liens, and charges in favor of the state and any political subdivision thereof for taxes past due and unpaid on the Lot and/or Residence.
- (b) Amount due under mortgage instruments duly recorded.

#### **ARTICLE 5**

#### **GENERAL PROVISIONS RELATING TO USE AND OCCUPANCY**

##### **Restrictions on Use**

5.01. Dundee Place shall be occupied and used only as follows:

- (a) Each Lot shall be used for a Residential Unit for a single family and for no other purpose, and the minimum living area for each individual dwelling shall be at least 1,500 square feet unless a smaller unit is approved by Declarant, Yowell Group, Inc., its successors or assigns.
- (b) All plans and specifications for initial Residential Units in each Phase must be approved by Declarant, Yowell Group, Inc., its successors or assigns, prior to beginning initial construction on an individual Lot in order that Developer, at its sole discretion, can insure continuity and architectural integrity of Dundee Place.
- (c) No storage buildings, workshops, sheds, or similar structures can be built or later added without the express written approval of Declarant during the Interim Management period, and thereafter the Association.

(d) No overnight parking of trailers, boats, motor homes, or similar vehicles is permitted in Dundee Place.

(e) All driveways are to be concrete or comparable hard surface but under no circumstances shall they consist of only dirt or asphalt.

(f) Individual driveways to Dundee Road shall not be allowed except for existing drive to Lot 1, Block 1, Phase 1, known as 3401 Dundee Road, Longview, Texas.

(g) No railroad ties for purposes of landscaping are permitted in the front yard of a Residential Unit.

(h) The front yard of each Residential Unit must be appropriately landscaped, including sprinkler system, concrete walkway, and a six-foot wood privacy fence joining each Residential Unit near the front corners. All rear yards must be closed with a six-foot privacy fence compatible with existing privacy fences and constructed with material of maximum durability to withstand weather damage. Privacy fences and landscaping must be maintained in a continuous manner to be functional and attractive. In the event the Association deems it necessary to perform essential repairs or maintenance, they can require appropriate payment from the Owner.

(i) Each individual Owner is responsible for the exterior appearance of his individual Residential Unit and must avoid unsightly colors when repainting. Future changes in color must blend with the typical residences in Dundee Place, and in the event an Owner fails to maintain the exterior of the Residential Unit in the condition typical to those around it, the Association has a right to hire the work done and require payment from the Owner.

(j) Only dogs, cats and typical house pets will be allowed, and must be at all times contained within the fenced area of the Residential Unit and if outside the individual fenced enclosure must be on a leash and in control at all times.

(k) No business, professional, or commercial activity of any type shall be operated from or out of any Residential Unit or any Common Areas with the exception of the business of Developer and the transferees of Developer in developing all the Lots as provided for.

(l) No sign of any kind shall be displayed to public view on the Lot or the Common Areas without the prior written consent of the Declarant during the Interim Management period and thereafter the Association, except customary name and address signs and lawn signs not more than five square feet in size advertising a property for sale or rent.

(m) No noxious or offensive activity shall be carried on in any Residential Unit or in the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners.

(n) No Owner shall use or permit such owner's Residential Unit or any Common Areas to be used for any purpose which would (i) void or increase the cost of any insurance in force with respect to the Development, or (ii) make it unreasonably difficult to obtain any insurance required by this Declaration, or (iii) constitute a public or private nuisance, which determination may be made by the Board in its sole discretion, or (iv) constitute a violation of any applicable law, ordinance, rule or regulation (including the Rules and Regulations of the Association), or (v) unreasonably interfere with the use and occupancy of the Development by the other owners as determined by the Board in its sole discretion.

(o) Owner shall at times observe and comply with the Rules and Regulations of the Association.

(p) Specifically exempted from the provisions of this section are activities of the Developer carried out in the regular pursuit of construction, maintenance and sales within the Development, which exemption shall end when all development activity including sales are completed. Such exemption includes but is not limited to maintaining Lots as model homes, placing advertising signs on project property, and generally making such use of Dundee Place's Lots and Common Areas as is necessary to carry on construction, maintenance, and sales activities.

#### Maintenance

5.02. Each Owner will enjoy total yard care year round by the person or persons hired by the Association and paid out of the Regular Monthly Assessments. The Association will also insure that the Common Areas and greenbelts are properly maintained. Except for those portions which the Association is required to maintain or repair, each Owner should at his sole cost and expense, maintain and repair his Lot and/or Residential Unit keeping the same in good condition and repair.

#### Damage Liability

5.03. Each Owner shall be liable to the Association for all damage to the Common Areas or other Association property that is sustained by reason of the negligence or wilful misconduct of that Owner, his family, guests, or tenants.

#### Easements

5.04. The following exclusive and nonexclusive easements pertain to Dundee Place Development as follows:

(a) The Development and Lots shall be subject to an easement in favor of the Owners for minor encroachments created by construction, settling, rising or other movement of the Residential Units, and any encroachment resulting from the overhang or overlap of roofs and gutters.

(b) A non-exclusive easement is hereby granted to each Owner in and to the Development for the purposes of access to and the maintenance and repair of each such Owner's Residential Unit, and if an Owner (including Developer) of any Lot must, in order to make reasonable repairs or improvements to such Lot and/or Residential Unit thereon, enter or cross the Common Areas or another Lot, such

Owner shall have the right and an easement to do so, provided that such Owner shall use the most direct, feasible route in entering and crossing over such area and shall restore the surface so entered or crossed to its original condition at his own expense.

(c) A non-exclusive easement is hereby granted to each Owner in and to the Common Areas for each such Owner's use and enjoyment of the Common Areas, such easement being subject to the Rules and Regulations adopted, from time to time, by the Association.

(d) A non-exclusive easement is hereby granted to the Association in and to the Development for the purposes of providing and maintaining utility services (including without limitation electricity, gas, water, sanitary sewer, storm sewer, telephone, and television antenna) to the Residential Units and the Common Areas. The Association shall have the right to assign, from time to time, such easement on a non-exclusive basis to Owners or others for the purposes of providing and maintaining utility services to any such Owner's Residential Unit.

(e) Developer, so long as Developer owns any Lots, and the Association shall have the right and are hereby granted a non-exclusive easement to use the Common Areas and any Lot or portion thereof as may be needed for repair, maintenance, or construction on such Lot or the Common Areas.

(f) Drainage Easement. Each Lot Owner covenants to provide such easements for drainage and water flow as the contours of the land and the arrangement of buildings by Developer thereon requires.

(g) Special Easements. A special easement for use and enjoyment is granted to any Owner whose privacy fence adjoins an adjacent Residential Unit and extends his enclosed patio/garden area on to an adjacent Lot. Such special easement shall be restricted to those individual Lot Owners whose Residential Units are constructed in such a manner and where such an easement is the most practicable alternative to enclosing the patio/garden area, and will include only the area of the adjacent Lot enclosed by said Owner's privacy fence.

(h) Blanket Easement. An easement shall exist in favor of Developer and the Association over the Lots and the Common Areas for the construction of a common cable television system, a common sprinkler system, or any other item for the common benefit of the Lot Owners. An easement shall also exist for the purposes of repair and maintenance of any item so constructed. An entry upon any Lot or the Common Areas to effectuate the foregoing purposes shall not be deemed a trespass. Each Lot Owner, by his acceptance of a deed to a Lot, agrees to subject any Lot owned by him to these easements, and covenants not to damage or destroy any portion of an item so constructed and shall hold the Association and/or Developer harmless for the cost of repairing or replacing any portion damaged or destroyed by such Lot owner, his family, or his guests and invitees.

(i) Developer reserves for the use and benefit of the Association a perpetual easement of reasonable dimension as shown on Exhibit "A" for the purpose of erecting and maintaining an entrance sign identifying the project.

## Party Walls

5.05. Each wall that is built as a part of the original construction of the Residential Units upon the Development and placed on the dividing line between the Lots shall constitute a Party Wall and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding Party Walls and liability for property damage due to negligence or wilful acts or omissions shall apply thereto.

(a) The cost of the reasonable repair and maintenance of a Party Wall shall be shared in equal amounts by the Lot Owners who make use of such wall.

(b) If a Party Wall is destroyed or damaged by fire or other casualty, any Lot Owner who has used the Party Wall may restore it, and if any other Lot Owner thereafter makes use of the Party Wall, he shall contribute to the cost of restoration thereof equally with the other Owner without prejudice, however, to the right of any such Lot Owner to call for a larger contribution from the other Lot Owner under any rule of law regarding liability for negligence or wilful acts or omissions.

(c) Notwithstanding any other provisions of this section, a Lot Owner who, by his own negligence or wilful act or omission, causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(d) The right of any Owner to contribution from any Owner under this section shall be appurtenant to the land and shall pass to such Owners' successors in title.

## ARTICLE 6

### DAMAGE OR DESTRUCTION

#### Owner's Obligation to Repair

6.01. Each Owner shall, at his sole cost and expense, repair his Residential Unit, keeping the same in a condition comparable to the condition of such Residential Units at the time of its initial construction, excepting only normal wear and tear.

#### Owner's Obligation to Rebuild

6.02. If all or any portion of a Residential Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such Residential Unit in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurs, and shall be completed within six (6) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners.

## ARTICLE 7

### MISCELLANEOUS PROVISIONS

#### Enforcement

7.01. Declarant, Dundee Place Development Homeowners' Association, or any individual Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, Dundee Place Development Homeowners' Association, or by any individual Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### Severability

7.02. Invalidation of any one of these covenants or restrictions by Judgment or Court Order shall in no way affect any other provisions, which will remain in full force and effect.

#### Mortgagee Matters

7.03. Any Mortgagee, upon reasonable notice, shall be entitled to examine the books and records of the Association. Notwithstanding anything to the contrary in this Declaration, Developer states that the common property in this Development has a relatively insignificant influence upon the enjoyment of the premises, and has little or no effect upon the value of the property securing the mortgage for the individual Lots and/or Residential Units. Developer believes that this Development is a "DeMinimus" Planned Unit Development in that (a) the common properties influence and effect is as stated above; (b) its market ability has been proven; and (c) it is not subject to phasing or additions which have not yet been completed. Developer will seek final approval from the Regional Office of the Federal Home Loan Mortgage Corporation to insure classification as a DeMinimus Planned Unit Development. However, if the Planned Unit Development is not classified by FHLMC as DeMinimus, Seller states that Seller will amend this Declaration in order to comply with the requirements under a Class I Planned Unit Development.

#### Rules and Regulations

7.04. The Rules and Regulations with respect to the day to day maintenance, operation and enjoyment of the Development may be amended from time to time by the Association. The Rules and Regulations are of equal dignity with and shall be enforceable in the same manner as, the provisions of this Declaration, but in the event of a conflict, this Declaration shall control. Each Owner, by accepting conveyance of an individual Lot and/or Residential Unit, agrees to comply with and abide by the Rules and Regulations as the same may be amended from time to time.

#### Exhibits

7.05. Exhibit "A" attached hereto are incorporated herein by reference to this Declaration for all purposes as if set out verbatim herein.

#### Violation of Covenants or Rules

7.06. In the event any Owner violates any of the covenants or provisions of this Declaration

or the Rules and Regulations of the Association, the Board of Directors of the Association shall have the right and authority to impose a fine on the Owner in violation thereof for such sum as the Board of Directors may deem appropriate and reasonable under the circumstances, taking into consideration the severity of any such violation and whether or not any such violation continues after the Owner receives a written request from the Association to cure or cease any such violation. Any fines so imposed upon an Owner by the Board of Directors shall not exceed Two Hundred Fifty Dollars (\$250.00) for any single violation. In the event a fine is imposed on an Owner pursuant to this section, the fine shall constitute a contractual obligation of the Owner to the Association and shall be payable to the Association at the same address as the Regular Monthly Assessments or Special Assessments within ten (10) days from the Owner's receipt of a demand therefor. The Association may enforce collection of any such fine in the same manner as provided in Article 4. The remedy provided for herein for violation shall be cumulative of all other remedies provided for in this Declaration or by law.

#### **Delay in Enforcement**

7.07. No delay in enforcing the provisions of this Declaration as to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

#### **Limitation of Liability**

7.08. Developer, as well as its officers, agents, and employees shall not be liable to any owner or Lessee of the land or any portion thereof or to any other party for any loss, claim or demand in connection with a breach of any provision in this Declaration by any party other than Developer and Developer may not be held liable for any actions taken in good faith.

#### **Remedies**

7.09. In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of the provisions of this Declaration, Developer, the Association and each purchaser, Grantee, Owner or Lessee of the land, or any portion thereof, may institute and prosecute any proceeding at law or in equity, to abate, prevent or enjoin any such violation or attempted violation.

#### **Amendment**

7.10. Covenants and restrictions of this Declaration may be amended by duly recording an instrument executed and acknowledged by Declarant and not less than three-quarters (3/4) of the vote of the current Members of the Association until such time as all Lots in Dundee Place Development Phase I, and Phase II, have been sold and occupied and thereafter by not less than three-quarters (3/4) of the Members of the Association.

#### **Subordination**

7.11. No breach of any of the conditions herein contained, or foreclosure by reason of such breach, shall defeat or render invalid the lien of any mortgage made in good faith and for value as to Dundee Place or any Lot and/or Residential Unit therein, provided; however, that such condition shall be binding on any Owner whose title is acquired by foreclosure, trustee sale or otherwise.

Duration

7.12. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Dundee Place Development Homeowners' Association or any individual Owner thereof for a period of twenty-five (25) years from the date hereof, and thereafter shall continue automatically in effect for additional periods of one (1) year, unless otherwise agreed to in writing by the vote of at least three-quarters (3/4) of the Members of the Association.

EXECUTED at Longview, Texas, this 15<sup>th</sup> day of JULY, 1998.

YOWELL GROUP, INC.

BY: *David Yowell*  
DAVID YOWELL, President

THE STATE OF TEXAS

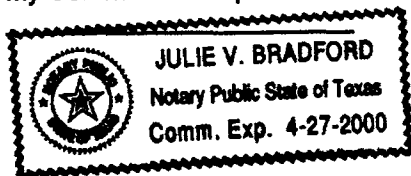
COUNTY OF GREGG

BEFORE ME, the undersigned authority, on this day personally appeared DAVID YOWELL, President of YOWELL GROUP, INC., a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN under my hand and seal of office on this the 15<sup>th</sup> day of July, 1998.

*Julie V. Bradford*  
NOTARY PUBLIC

My Commission Expires:



**MORTGAGEE'S CONSENT AND SUBORDINATION**

LONGVIEW BANK AND TRUST COMPANY, being the owner and holder of a Promissory Note secured by certain liens ("Liens") against the Project described in this Declaration, including the liens created by that certain Deed of Trust dated 5-8-97, recorded in CLERS FILE # 9708585 Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Deed of Trust Records of Gregg County, Texas, hereby consents to the recordation of this Declaration and Plat, and agrees that the liens held by it shall in no way affect any term or provision of any instrument creating any of the liens, or the enforceability thereof, except to the extent of subordinating same to this Declaration and the Plat.

LONGVIEW BANK AND TRUST COMPANY

By: [Signature]

ATTEST:

BY: [Signature]

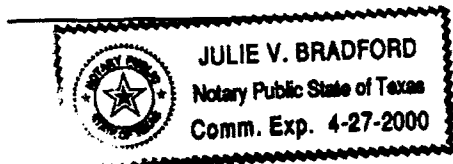
THE STATE OF TEXAS

COUNTY OF GREGG

This instrument was acknowledged before me on the 15<sup>th</sup> day of July, 1998 by W. Larry Marko on behalf of LONGVIEW BANK AND TRUST COMPANY, a corporation.

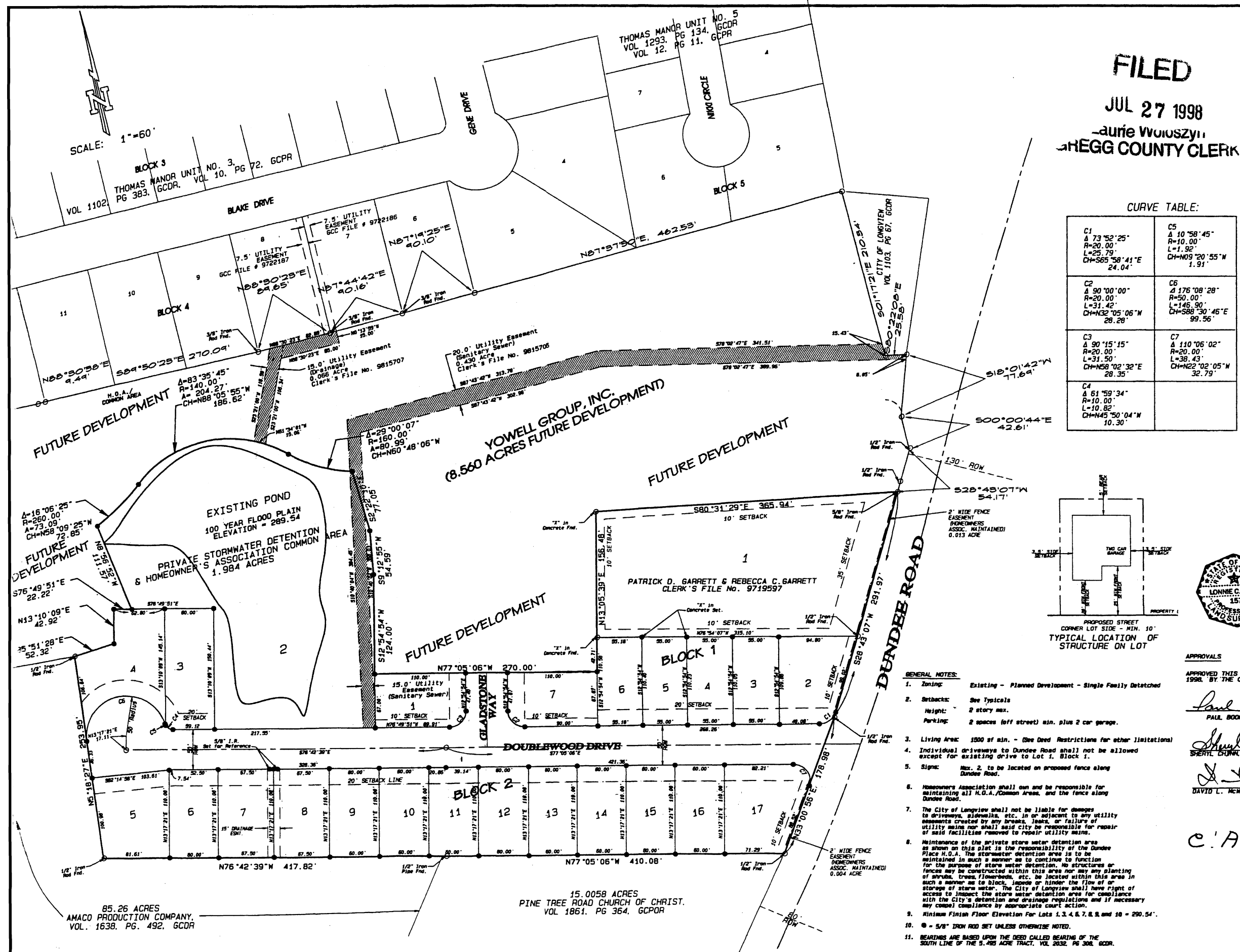
[Signature]  
Notary Public, State of Texas

My commission expires:



# EXHIBIT A

9815838



**FILED**

**JUL 27 1998**

**aurie Wluczyki  
REGG COUNTY CLERK**

**CURVE TABLE:**

|   |   |
|---|---|
| C1<br>A 73°52'25"<br>R=20.00'<br>L=25.79'<br>CH=S65°58'41"E<br>24.04' | C5<br>A 10°58'45"<br>R=10.00'<br>L=1.92'<br>CH=N09°20'55"W<br>1.91'     |
| C2<br>A 90°00'00"<br>R=20.00'<br>L=31.42'<br>CH=N32°05'06"W<br>28.28' | C6<br>A 176°08'28"<br>R=50.00'<br>L=146.90'<br>CH=S88°30'46"E<br>99.56' |
| C3<br>A 90°15'15"<br>R=20.00'<br>L=31.50'<br>CH=N58°02'32"E<br>28.35' | C7<br>A 110°06'02"<br>R=20.00'<br>L=38.43'<br>CH=N22°02'05"W<br>32.79'  |
| C4<br>A 61°59'34"<br>R=10.00'<br>L=10.82'<br>CH=N45°50'04"W<br>10.30' |   |

**DEDICATION**

STATE OF TEXAS  
COUNTY OF GREGG

WE, REBECCA C. GARRETT ACTING INDIVIDUALLY AND AS ATTORNEY IN-FACT FOR PATRICK D. GARRETT, AND DAVID A. YONELL, PRESIDENT OF YONELL GROUP, INC., A TEXAS CORPORATION, OWNERS OF THE 8.178 ACRES OF LAND SHOWN HEREON, HAVE CAUSED SAID 8.178 ACRES TO BE SURVEYED AND SUBDIVIDED AS SHOWN ON THIS PLAN FOR THE USES AND PURPOSES SHOWN HEREON, AND DO HEREBY ACKNOWLEDGE AND ADOPT SAID PLAN OF SUBDIVISION UNDER THE STYLE AND TITLE SHOWN HEREON.

ALL STREETS, UTILITY EASEMENTS AND DRAINAGE EASEMENTS AS SHOWN ON THIS PLAN ARE HEREBY DEDICATED TO THE PUBLIC FOR ITS USE AND BENEFIT.

*Rebecca C. Garrett*

REBECCA C. GARRETT ACTING INDIVIDUALLY AND AS ATTORNEY IN-FACT FOR PATRICK D. GARRETT OWNERS OF LOT 1, BLOCK 1

*David A. Yonell*

DAVID A. YONELL, PRESIDENT YONELL GROUP, INC., A TEXAS CORPORATION OWNERS OF LOTS 2-7, BLOCK 1 AND LOTS 1-17, BLOCK 2

**ACKNOWLEDGEMENT**

STATE OF TEXAS  
COUNTY OF GREGG

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED DAVID A. YONELL, KNOWN TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE CAPACITY THEREIN STATED AND FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE,

THIS THE 24th DAY OF July, 1998

*Lynda J. Bobo*

NOTARY PUBLIC IN AND FOR GREGG COUNTY, TEXAS



**ACKNOWLEDGEMENT**

STATE OF TEXAS  
COUNTY OF GREGG

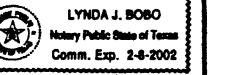
BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED REBECCA C. GARRETT, KNOWN TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN THE CAPACITY THEREIN STATED AND FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE,

THIS THE 24th DAY OF July, 1998

*Lynda J. Bobo*

NOTARY PUBLIC IN AND FOR GREGG COUNTY, TEXAS

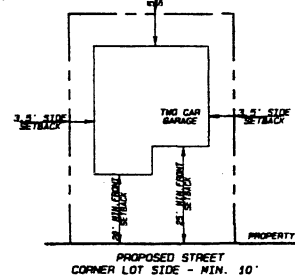


**SURVEYOR'S CERTIFICATE**

I, LONNIE C. PACE PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAN REPRESENTS THE RESULTS OF A SURVEY MADE ON THE GROUND OF A SUBDIVISION OF A 8.178 ACRE TRACT OUT OF A 16.738 ACRE TRACT AND A 4.216 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED IN INSTRUMENT RECORDED IN CLERK'S FILE NO. 9719222 AND 9719237 OF THE OFFICIAL PUBLIC RECORDS OF GREGG COUNTY, TEXAS, ALL OF SAID SUBDIVISION IS INSIDE OF THE BOUNDARIES OF THE CITY OF LONGVIEW, TEXAS.

DATE 24 JULY 98

*Lonnie C. Pace II*  
DATE  
LONNIE C. PACE II  
PROFESSIONAL LAND SURVEYOR  
TEXAS REGISTRATION NO. 1573



**GENERAL NOTES:**

- Zoning:** Existing - Planned Development - Single Family Detached
- Setbacks:** See Typicals  
**Height:** 2 story max.  
**Parking:** 2 spaces (off street) min. plus 2 car garage.
- Living Area:** 1500 sq. ft. - (See Deed Restrictions for other limitations)
- Individual driveways to Dundee Road shall not be allowed except for existing drive to Lot 1, Block 1.**
- Signs:** Max. 2, to be located on proposed fence along Dundee Road.
- Homeowners Association shall own and be responsible for maintaining all H.O.A. Common Areas, and the fence along Dundee Road.**
- The City of Longview shall not be liable for damages to driveways, sidewalks, etc. in or adjacent to any utility easements created by any breaks, leaks, or failure of utility mains nor shall said city be responsible for repair of said facilities removed to repair utility mains.**
- Maintenance of the private storm water detention area as shown on this plan is the responsibility of the Dundee Place H.O.A. The stormwater detention area is to be maintained in such a manner as to continue to function for the purpose of storm water detention. No structures or fences may be constructed within this area nor may any planting of shrubs, trees, flowerbeds, etc. be located within this area in such a manner as to block, impede or hinder the flow or storage of storm water. The City of Longview shall have right of access to inspect the storm water detention area for compliance with the City's detention and drainage regulations and if necessary may compel compliance by appropriate court action.**
- Minimum Finish Floor Elevation For Lots 1, 3, 4, 6, 7, 8, 9 and 10 = 290.54'.**
- Ø = 5/8" IRON ROD SET UNLESS OTHERWISE NOTED.**
- BEARINGS ARE BASED UPON THE DEED CALLED BEARINGS OF THE SOUTH LINE OF THE 9.425 ACRE TRACT, VOL. 2032, PG. 306, GCOR.**

**APPROVALS**

APPROVED THIS THE 24th DAY OF July, 1998, BY THE CITY OF LONGVIEW, TEXAS.

*Paul Boorman*  
PAUL BOORMAN, NEIGHBORHOOD SERVICES DIRECTOR

*Sheryl J. Chinn*  
SHERYL CHINN, CHAIRMAN, LONGVIEW PLANNING & ZONING COMMISSION

*David L. McWhorter*  
DAVID L. McWHORTER, MAYOR, CITY OF LONGVIEW

**PLAT OF SUBDIVISION**

**DUNDEE PLACE, PHASE 1**  
**8.178 ACRES**  
OUT OF A CALLED 16.738 AND A 4.216 ACRE TRACT AS RECORDED IN CLERK'S FILE NO. 9719222 & 9719237 OF THE G.C.O.P.R. IN THE WM ROBINSON SURVEY, A-177, GREGG COUNTY, TEXAS



DATE: 7/24/98 JOB No. 2031-001

C: A P348 S: B

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

*Laurie Woloszyn*

7-27-98 02:15 PM 9815837  
PB \$41.00  
Laurie Woloszyn, County Clerk  
GREGG COUNTY, TEXAS