

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

**DECLARATION OF PUBLIC PARKING DECK EASEMENT
AND PARK EASEMENT AGREEMENT**

**STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF TARRANT §**

THIS DECLARATION OF PUBLIC PARKING DECK EASEMENT AND PARK EASEMENT AGREEMENT (the "Declaration") is made this ___ day of _____, 2015 by GLADE LIFESTYLE, LLC, a Delaware limited liability company ("Grantor") and the City of Euless, a Texas municipal corporation ("City").

RECTIALS:

A. Grantor is the owner of the real property described on **Exhibit A** attached hereto and incorporated by reference (the "Property");

B. City has granted the required approvals to Grantor for the construction of a multi-story parking structure (the "Parking Deck") on the portion of the Property legally described on **Exhibit B** attached hereto and incorporated by reference (the "Parking Deck Parcel");

C. City has granted the required approvals to Grantor for the construction of a park area (the "Park") on the portion of the Property legally described on **Exhibit C** attached hereto and incorporated by reference (the "Park Parcel");

D. Pursuant to the approvals granted to Grantor by City, Grantor is required to grant certain nonexclusive easements to City for the benefit of the public, in common with all others entitled to use the same, on such terms as hereinafter set forth.

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grantor hereby grants and conveys to City for the use of the public, in common with all others entitled to use the same, a nonexclusive easement for (i) the passage and parking of vehicles over and across the parking and driveway areas of the Parking Deck, (ii) the passage and accommodation of pedestrians over and across the parking, driveway, stairs, landings, and

sidewalk areas of the Parking Deck, and (iii) the use of the Park for public park purposes. The foregoing grant of easement for the passage and parking of vehicles over and across the parking and driveway areas of the Parking Deck shall not permit the passage or parking of any recreational vehicles, campers, extended cab trailers or vans, tractors, trailers, buses and/or any other vehicles of a shape, size or weight that would interfere with the parking circulation of other vehicles within the Parking Deck or that would exceed the design capability of the Parking Deck.

2. Grantor shall be solely responsible for the initial design of the Parking Deck and Park. Such design shall be subject to the approval of the City Manager, not to be unreasonably withheld. Grantor shall also construct the Parking Deck and the Park and shall repair as needed and perpetually maintain the Parking Deck and Park in good condition and in compliance with all ordinances of City.

3. The Parking Deck and Park shall remain open and accessible to City and to the public for free, uninterrupted use, in common with all others entitled to use the same, during all hours of operation, except as Grantor reasonably determines is necessary or advisable to effect necessary repairs, to maintain public safety, and/or prevent the acquisition of any prescriptive rights. The rights under this Declaration shall be subject to such reasonable rules and regulations for use of the Parking Deck and Park established by Grantor from time to time, with the written consent of the City Manager, such consent not to be unreasonably withheld. In the event that any vehicle is parked in a parking space for more than twenty four (24) hours, Grantor shall have the right, but not the obligation, to cause the vehicle to be removed from the Property at the expense of the vehicle's owner. City shall not construct or maintain any fence, barrier or other improvements in the Park. City acknowledges that certain existing leases or declarations of record restrict the use of the Park for certain activities, including without limitation, the sale of certain retail goods (the "Restrictions"). Notwithstanding any provision in this Declaration to the contrary, City agrees that the Park will not be used in violation of such Restrictions, and in the event of any such violation, City will cause such violation to cease upon notice from Grantor.

4. City may use the Park for occasional public festivals or events (each a "Festival" and collectively the "Festivals") sponsored by City which are appropriate and customary for city parks of similar size and character, and when appropriate in connection therewith, City may permit temporary booths or facilities where vendors may sell their art, products, food or beverages. City's rights under the preceding sentence are subject to the following terms and conditions:

- a. Such use of the Park shall be subject to all of the provisions of this Declaration, including without limitation, the provisions of Section 3;
- b. City will notify Grantor of the date of each Festival at least ninety days in advance;
- c. City will notify Grantor at least thirty (30) days before the date of any Festival of the vendors desiring to participate in the Festival and the permitted use of each such vendor. Grantor shall notify City within ten (10) days thereof if the permitted use of any vendor would be in violation of the Restrictions. City

will not permit any vendor whose permitted use may be in violation of the Restrictions to participate in the Festival;

- d. City will maintain reasonable and unobstructed ingress and egress at all times between all buildings, parking areas and sidewalks on the Property and areas adjacent to the Property;
- e. City will be responsible for providing temporary restroom facilities, in one or more locations to be approved by Grantor, at City's sole cost and expense;
- f. City will be solely responsible for providing all safety precautions, security and policing necessary for each Festival, at City's sole cost;
- g. City will promptly clean up and repair any damage to the Park and adjacent areas arising in connection with any Festival, at City's sole cost;
- h. City will maintain commercial general liability insurance for each Festival in an amount of not less than three million dollars (\$3,000,000.00) (such coverage may be satisfied by coverage under one or more umbrella or excess liability policies of insurance). Such insurance shall include liquor liability coverage in the event any alcoholic beverages are sold, served, furnished or permitted in the Park during any Festival. All such policies shall name Grantor as an additional insured. City will provide a certificate to Grantor evidencing such insurance at least ten days before each Festival.

5. The easements granted in this Declaration are non-exclusive and Grantor reserves for Grantor and Grantor's successors, assigns and Permittees the right to use and enjoy the Parking Deck and Park on a nonexclusive basis in common with the public, and in common with others entitled to use the same. City acknowledges that the Parking Deck and Park are an integral part of Grantor's commercial development on the Property, and that the Parking Deck and Park will be used in connection with such development by Grantor and Grantor's successors, assigns and Permittees. Grantor also reserves the right to grant similar easements or licenses from time to time for the use of the Parking Deck and Park for the benefit of other property within Glade Parks Planned Development Districts #12-01-PD and #15-07-PD ("Glade Parks") (and the owners thereof and their Permittees), so long as such easements or licenses are on a nonexclusive basis, in common with the public's right to use the same under the terms of this Declaration and in common with all others entitled to use the same. Notwithstanding any provision to the contrary, the use of the Parking Deck and/or Park by Grantor, its successors, assigns and Permittees, and by others within Glade Parks for whom Grantor has granted, or may from time to time grant, similar easements or licenses, is permitted and shall not be deemed to interfere with the public's use of the Parking Deck and Park. "Permittee" shall include, without limitation, all occupants or other persons entitled to the use and occupancy of such property, and their officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, tenants, subtenants, and concessionaires. Grantor shall repair, at Grantor's sole expense, any damage to the Parking Deck or the Park resulting from Grantor's use thereof. Grantor also reserves the right to use and occupy the Parking Deck and Park for all other lawful

purposes not unreasonably interfering with the rights of the public under this Declaration, and the right to use and occupy all areas outside of the Parking Deck and Park for any use permitted by law, and all rights not granted to City under this Declaration are hereby specifically reserved by Grantor

6. Grantor agrees to and hereby does indemnify, defend and hold City and its successors and assigns harmless from and against any and all liability, responsibility, costs, expenses, damages, losses, claims or causes of action, and reasonable and actual attorneys' fees incurred or suffered by such indemnified parties for injury to or death of any third person or damage to or destruction of any property owned by any third person in the Parking Deck or Park resulting from the negligent acts or omissions of Grantor or the failure of Grantor to safely maintain the Parking Deck or Park provided in this Declaration, excluding any negligent acts or omissions of City. The obligations of Grantor under this indemnification shall be limited to the sum of insurance proceeds available to the liability in question. Grantor will maintain commercial general liability insurance in an amount of not less than three million dollars (\$3,000,000.00) (such coverage may be satisfied by coverage under one or more umbrella or excess liability policies of insurance).

7. This Declaration may be enforced by an order of a court of competent jurisdiction prohibiting interference or commanding compliance. Such order shall be obtainable on proof of the existence of interference or threatened interference with the terms of this Declaration without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to this Declaration. In addition, each party shall have the right to pursue any available remedy, at law or in equity.

8. The provisions of this Declaration may be modified, amended or terminated only by the written consent of all record owners of the Property and City, evidenced by a document that has been fully executed and acknowledged by all such parties and recorded in the Real Property Records of Tarrant County, Texas, and no agreement to any modification, amendment or termination of this Declaration shall be required from anyone other than the record owners of the Property and City, nor shall anyone other than the record owners of the Property and City have any right to enforce any of the provisions of this Declaration. This Declaration is not intended to supersede, modify, amend, terminate or otherwise change the provisions of any prior instrument affecting the land burdened by this Declaration.

9. This Declaration is perpetual in duration, runs with the land, and shall bind and inure to the benefit of Grantor, City, their heirs, successors, and permitted assigns, provided City shall not have any right to assign its rights under this Declaration. Grantor shall within fifteen days of final execution of this Declaration file this Declaration in the Real Property Records of Tarrant County, Texas.

10. Each party and its counsel has participated in the review and revision of this Declaration, and any rule of construction to the effect that ambiguities are to be construed against the drafting party shall not apply in interpreting this Declaration, and the language in this Declaration shall be interpreted as to its fair meaning and not strictly for or against any party.

11. This Declaration is not intended to create, nor shall it in any way be interpreted or construed to create any third party beneficiary rights in any person not a party hereto, unless otherwise expressly provided herein.

12. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Parking Deck or Park to the general public, it being the intent of the parties that the easements granted in this Declaration be limited to the purposes expressed in this Declaration.

13. In the event of any transfer or transfers of Grantor's interest in the Property, the transferor shall be automatically released of any and all obligations on the part of Grantor accruing from and after the date of such transfer, and the transferee shall become liable for all obligations of Grantor accruing during the period of such transferee's ownership of the Property. Any liability of Grantor under or related to this Declaration shall be limited to Grantor's interest in the Property. **NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, GRANTOR SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF GRANTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

14. City shall within thirty (30) days of request by Grantor from time to time, execute and acknowledge a certificate stating whether or not this Declaration is in full force and effect; whether or not this Declaration has been modified or amended in any respect, and submit copies of such modifications or amendments, if any; whether or not there are any existing defaults under this Declaration and specifying the nature of such defaults, if any; and such other information as may be reasonably requested by Grantor.

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the _____ day of _____, 2015.

GRANTOR:

CITY:

GLADE LIFESTYLE, LLC

CITY OF EULESS

By: _____
Zach Knutson, Vice-President

By: _____
Linda Martin, Mayor

ACKNOWLEDGMENTS

STATE OF ILLINOIS §
COUNTY OF WINNEBAGO §

BEFORE ME, THE UNDERSIGNED AUTHORITY, personally appeared Zach Knutson, Vice-President of Glade Lifestyle, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2015.

Notary Public
State of Illinois

My commission expires the ____ day of _____, 20____.

STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, THE UNDERSIGNED AUTHORITY, personally appeared Linda Martin, Mayor of the City of Euless, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2015.

Notary Public
State of Texas

My commission expires the ____ day of _____, 20____.

After recording, return to:
Loretta Getchell
City Manager
City of Euless
201 N. Ector Drive
Euless, Texas 76040

EXHIBIT A

Legal Description of Property

EXHIBIT B

Legal Description of Parking Deck Parcel

EXHIBIT C

Legal Description of Park Parcel