

AMENDED AND RESTATED BYLAWS OF THE  
BENNER COMMERCE PARK OWNERS ASSOCIATION, INC.

ARTICLE I: INTRODUCTION

Section 1.01. **Names.** The name of this Corporation shall be the Benner Commerce Park Owners Association, Inc.

Section 1.02. **Definition of Bylaws.** These Amended and Restated Bylaws (the "Bylaws") constitute the code of rules adopted by the Benner Commerce Park Owners Association, Inc. (hereinafter the "Corporation"), for the regulation and management of its affairs. These Bylaws replace in its entirety the Bylaws recorded at Centre County Record Book 2034, Page 171 as previously amended.

Section 1.03. **Primary Purpose.** The primary purpose of the Corporation will be to represent the interests of the owners possessing property in the Park (as defined in the Restrictive Covenants) with respect to the administration, maintenance, enforcement, repair and/or replacement of all common rights-of-way and easements in the Park, and also serve as the Master Developer (as defined in the Restrictive Covenants), if and when designated, pursuant to the Second Amended Restated Restrictive Covenants of the Benner Commerce Park (the "Restrictive Covenants"). However, this Section is not to be interpreted as excluding any activities and endeavors which the Corporation may choose to undertake, as long as said activities or endeavors are within the powers granted by the provisions of the Pennsylvania Nonprofit Corporation Law or any successor legislation.

Section 1.04. **Offices.** The registered office of this Corporation in Pennsylvania will be located at 200 Innovation Boulevard, Suite 150, State College, Pennsylvania, 16803, or the office of any successor to the Master Developer, provided that such successor provides a written notice to the Members setting forth such address. In addition, the Corporation may maintain other offices within the Commonwealth of Pennsylvania as its business requires.

Section 1.05. **Fiscal Year.** The fiscal year of the Corporation shall be the calendar year.

ARTICLE II: MEMBERSHIP

Section 2.01. **Definition of Membership.** The Members of this Corporation are those persons or entities having membership rights in accordance with the provisions of these Bylaws.

Section 2.02. **Qualifications for Membership.** Members of this Corporation shall consist of all Owners (as defined in the Restrictive Covenants).

Section 2.03. **Transferability and Assignability of Membership.** Upon sale, transfer or other disposition of a Member's ownership interest in the real property, said Member's membership will terminate and will transfer automatically to the new Owner of the property. Membership in the Corporation is personal to each Owner and is non-assignable.

Section 2.04. **Termination of Membership.** Membership will terminate in this Corporation upon the termination of the Member's ownership interest in the real property.

**Section 2.05. Voting Rights.** Except for matters specifically designated herein to be decided on a “Per Lot” vote, for each matter properly put before the Members for a vote, each member shall have voting rights that correspond to the total number of acres or fraction thereof owned by the Member in the Park. For instance, if a Member owns 7.62 acres of ground within the Park, such Member shall be entitled to 8 votes upon any matter that comes before the Members for a vote. In the event a Member is multiple natural persons, or an entity other than a single natural person, the Member shall designate one person to exercise voting rights on behalf of the Member. For each matter properly put before the Members and specifically set forth herein as a vote or consent to be taken on a “Per Lot” basis, each Member shall be entitled to one vote for each Lot owned by that Member; if the phrase “Per Lot” is not specifically used herein with respect to a particular issue which is the subject of a vote or consent, such matter shall be decided on the acreage voting basis described above.

### ARTICLE III: MEMBERS’ MEETINGS AND VOTING PROCEDURES

**Section 3.01. Quorum.** A quorum shall exist whenever persons representing one-third (1/3) of the Members (Per Lot) are present at a meeting of the Members.

**Section 3.02. Adoption.** The vote of a majority of the votes entitled to be cast by the Members present at a meeting at which a quorum exists is necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by law or any provision of these Bylaws or the Restrictive Covenants.

**Section 3.03. Secret Ballot.** Voting by Members on any matter on which they are entitled to vote may be by secret ballot, except for those instances in which the Members are voting to fill an office or position for which there is one and only one nominated candidate.

**Section 3.04. Notice of Meeting.** Notice of meetings shall be given in writing by the Secretary to each Member at least ten (10) but no more than forty (40) days prior to the meeting. Notice shall include the place, day, and hour of the meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, and be delivered personally, via email or other electronic form of communication, or by first class mail. If mailed, the notice will be deemed to be delivered when deposited in the United States mail addressed to the Member at the Member’s address as it appears on the records of the Corporation.

**Section 3.05. Annual Meeting.** The annual meeting of the Corporation shall be held at some time in the last three months of each fiscal year at such time and place in Centre County, Pennsylvania as the President shall designate. The notice of the annual meeting shall state the date, time, place, and agenda of the meeting, and shall include a listing of nominees for the Executive Committee. The agenda of the annual meeting shall include, but is not limited to, the election of the Executive Committee, Appointment of Officers, annual reports, and any matter which requires the vote of the Members of the Corporation eligible to vote.

**Section 3.06. Special Meetings.** Special meetings of the Corporation may be called by any of the following:

- a. The President of the Corporation;
- b. The written request of twenty-five (25%) percent of the Members (Per Lot) of the Corporation;

c. The Master Developer until such time as the Corporation becomes Master Developer.

**Section 3.07. Notice of Special Meetings.** The notice given to Members of a special meeting shall state the purposes of which the meeting was called. No business may be conducted at the special meeting other than that specified in the notice.

**Section 3.08. Participation in Meetings by Electronic Means.** Provided appropriate equipment is available, a Member may participate in any meeting by means of conference telephone or other electronic means, including, without limitation, the Internet, provided all parties able to hear and participate in all conversations. In such event, the Member(s) participating by conference telephone or other electronic means shall be counted for the purposes of determining a quorum and may exercise all rights and privileges to which such Member might be entitled were such Member personally in attendance or "present" as described in these Bylaws, including the right to vote.

**Section 3.09. Action by Consent.** Except as otherwise specifically set forth in these Bylaws or the Restrictive Covenants, any action required or permitted to be taken at a meeting of the Members may be taken without a meeting upon the written consent of Members holding at least seventy-five (75%) of the votes.

#### ARTICLE IV: OFFICERS

**Section 4.01. Roster of Officers.** The Officers of this Corporation shall consist of the following personnel:

- a. A President,
- b. A Vice-President,
- c. A Secretary/Treasurer.

**Section 4.02. Appointment of Officers.** The Officers shall be appointed by the Executive Committee at the annual meeting.

**Section 4.03. Term of Officers.** Each of the Officers of this Corporation shall serve a term of one (1) calendar year beginning on the first day of January following their appointment, or until their successor(s) are duly appointed.

**Section 4.04. Multiple Officeholders.** An individual may hold more than one office simultaneously, as long as no one person holds the position of President and Secretary simultaneously.

**Section 4.05. Vacancy.** A vacancy in the office of President shall be filled by succession thereto by the Vice-President. A vacancy in any other office shall be filled by appointment by the Executive Committee and shall be filled for the unexpired portion of the term.

**Section 4.06. President.** The President shall be the chief executive officer of the Corporation and shall;

- a. Preside at all meetings of the Corporation and shall be an ex-officio member of all committees, excluding the Committee on Nominations.

- b. Appoint all standing committees and designate the chairperson of each.
- c. Appoint any and all ad-hoc committees deemed desirable or necessary, with the right to remove or substitute.
- d. Perform all duties incident to the office any other duties that may be required by these Bylaws.

**Section 4.07. Vice-President.** The Vice-President shall:

- a. Assume the duties and responsibilities of the President when the President is absent.
- b. Perform such duties as the President may delegate.
- c. Succeed to the office of President in the event of a vacancy therein, at which time the Members shall elect a successor to the office of Vice-President.

**Section 4.08. Secretary/Treasurer.** The Secretary/Treasurer shall:

- a. Keep a record of the proceedings of the Corporation and be the official custodian of all records of the Corporation.
- b. Record the minutes of Member meetings and distribute same to the Members at least five (5) days before the ensuing meeting.
- c. Give and cause to be given all notices as are required by law or by these Bylaws or as directed by the Members of the Corporation.
- d. Maintain a list of Members of the Corporation showing the name of each Member, the total Lots owned by each Member, and the total number of acres owned by each Member. If the Secretary is not able to determine the total number of acres owned by any Member or if the Member fails to report the total number of acres owned, the Secretary may consult the Centre County Assessment Office or such other public records as may be available in order to determine the total number of acres owned by any Member. As of the date of these Bylaws, the total Lots owned by each Member, the total number of acres owned by each Member and the corresponding votes of each Member for both acreage-based and Per Lot-based voting are as set forth in Exhibit C to the Restrictive Covenants.
- e. Have charge of all funds of the Corporation which shall be deposited in a depository institution approved by the Members and shall be bonded.
- f. Collect all monies due the Corporation, including the annual dues of each Member.
- g. Pay all bills owed by the Corporation, after having been assured that bills were properly authorized for payment.
- h. Keep and maintain adequate and correct accounts for the Corporation's income, expenses and business transactions. Said records are to be kept for a minimum of seven (7) years.

i. Maintain a checking account and oversee any and all investments as the Members may authorize.

j. File all required tax returns and forms, and pay any and all associated taxes, with all property tax authorities within the required filing or payment periods.

k. Prepare or cause to be prepared itemized written reports of all sums expended, monies received, and outstanding obligations of the Corporation, to be presented at the annual meeting of the Corporation, and on any other occasion as directed by the Members.

**Section 4.09. Executive Committee.** There shall be an Executive Committee which shall be composed of three individuals who are, or who are employed by or otherwise associated with, Members. The Executive Committee shall carry on the business of the Corporation in the interim between meetings of the Members and shall also carry out other such duties as the Members shall, from time to time, specify. In addition, the Executive Committee may appoint such other committees, standing or ad hoc, as may be necessary or efficient for the proper operations of the Corporation.

a. At the annual meetings of the Corporation, the election of members to the Executive Committee shall be held by cumulative voting where each Member may vote the number of votes that it has on an acreage basis (as calculated under Section 2.05 of these Bylaws) multiplied by the number of candidates (which will be three (3) at each annual meeting). Each Member may cast its votes for one (1) candidate or more than one (1) candidate, as such Member may elect, with the three (3) individuals receiving the highest total number of votes being elected. The term of office of any Executive Committee member shall be fixed at one (1) calendar year commencing on the first day of January following their election. The member of the Executive Committee shall hold office until the earlier to occur of the election of their respective successors or their death, adjudication of incompetence, removal, or resignation. An Executive Committee member may serve an unlimited number of terms and may succeed himself. Nominations may be submitted at least ten (10) days in advance by any Member or may be submitted from the floor by any Member present.

b. Any Executive Committee member may be removed at any time solely for Cause by written consent of the remaining Executive Committee members.

c. Any vacancy in the Executive Committee shall be filled by a vote of the Members held at a special meeting in accordance with the process set forth in Section 4.09(a).

**Section 4.10. Design Review Committee.** The Design Review Committee (as defined in the Restrictive Covenants) shall consist of three individuals, who shall serve for a term of one (1) year, and who shall be selected at the annual meeting in the following manner:

a. One member of the Design Review Committee shall be elected by vote of the Members in accordance with the process set forth in Section 4.09(a);

b. One member of the Design Review Committee shall be elected by the Members present (Per Lot);

c. The third member of the Design Review Committee shall be appointed by the Master Developer so long as the Master Developer owns a Lot. Thereafter, the other two members elected pursuant to 4.10 (a) and 4.10 (b) above shall appoint the third member. If the two elected members cannot agree on a third member, the third member shall be an independent

architect selected by the Executive Committee, the cost of which shall be borne by the Corporation.

- d. Any member of the Design Review Committee may be removed at any time solely for Cause by written consent of the remaining Design Review Committee members.
- e. Any vacancy in the Design Review Committee shall be filled in the same manner as the vacating member was elected or appointed.

**Section 4.11. “Cause” Defined.** As used herein, “Cause” means (i) the commission by such member of an applicable Committee of a felony or a crime involving moral turpitude, (ii) the commission by such member of an applicable Committee of any act involving dishonesty, fraud or a breach of the duty of loyalty with respect to the Corporation or conduct tending to bring the Corporation into public disgrace or disrepute, (iii) gross negligence or willful misconduct with respect to the Corporation by such member of an applicable Committee, (iv) such member of an applicable Committee’s substantial and repeated failure to perform the duties of such Committee or breach of the terms of these Bylaws or the Restrictive Covenants, in each case which, if capable of cure, is not cured within fifteen (15) days after such member of such Committee’s receipt of notice of the same from the Corporation, or (v) if the member of such Committee, or the Member who employs such member of such Committee or with whom the member of such Committee is otherwise associated with, in each case sells all of its membership interest in the Park and such member of such Committee fails to resign in connection therewith.

## ARTICLE V: DUTIES OF MEMBERS

**Section 5.01. General Assessments.** Prior to the Corporation’s annual meeting, the Executive Committee shall have voted on whether an annual assessment shall be assessed for the upcoming fiscal year, and if so, the Executive Committee shall report the same to the Members. The determination of the annual assessment for Members shall be based upon the shared obligations of the Park Owners for open space maintenance, sidewalks, and/or other Common Element expenses within the Park including the obligations of the Corporation for the maintenance and repair of Common Areas and Common Facilities pursuant to the Restrictive Covenants. The Executive Committee shall determine the amount to be assessed and the date(s) on which said assessment shall be due in accordance with the terms of the Restrictive Covenants.

**Section 5.02. Special Assessments.** The Executive Committee shall also determine the amount of any Special Assessment for the limited purposes authorized pursuant to the Restrictive Covenants.

**Section 5.03. Two-Thirds Vote Required.** The decision of the Executive Committee as to the amount of any General or Special Assessment authorized hereby shall be binding upon the Members unless rejected by two-thirds (2/3) of the Members present at the meeting at which it was presented (Per Lot). Should such rejection occur, the Executive Committee may redetermine the assessment and present the same at a special meeting of the Members.

**Section 5.04. Failure to Pay Assessments.** Any Member who fails to pay assessments by the date on which said assessments have been voted to be due, shall have a lien in the amount of said assessments imposed against the Member’s ownership interest in the Park. Said lien shall be lifted upon the full and satisfactory payment of all assessments owed. In the event the Corporation proceeds with legal action to collect assessments owing by any Member, the Corporation shall also be entitled to collect from the Member any expenses incurred by the Corporation in such collection activity, including but not limited to

attorney's fees and court costs. The amount of such expenses shall also constitute a lien against the Member's ownership interest in the Park.

**Section 5.05. Continuity of Lien.** Any lien for assessments shall continue against the real property upon transfer to a subsequent Owner.

**Section 5.06. Restrictive Covenants.** The Second Amended/Restated Restrictive Covenants, conditions, reservations or easements for the Benner Commerce Park as recorded in Centre County Record Book \_\_\_\_\_, at page \_\_\_\_\_, are incorporated by reference into these Bylaws and attached hereto as Exhibit "A".

## ARTICLE VI: INDEMNIFICATION

**Section 6.01. Limitation of Personal Liability of Members.** A Member of the Corporation shall not be personally liable for monetary damages for any action taken, and any failure to take actions, unless:

- a. the Member has breached or failed to perform the duties of his or her office as defined in Section 6.02 below; and
- b. the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

The provision of this Section shall not apply to the responsibility or liability of a Member pursuant to any criminal statute.

**Section 6.02. Fiduciary Duty.** A Member of the Corporation shall stand in a fiduciary relationship to the Corporation, and shall perform his or her duties as a Member in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation, and with such care as a person of reasonable prudence would use under similar circumstances.

**Section 6.03. Factors to be Considered.** In discharging the duties of a Member, each Member may, in considering the best interests of the Corporation, consider the effects of any action upon persons with whom the Corporation has business and other relations and all other pertinent factors.

**Section 6.04. Presumptions.** Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a Member or any failure to take any action shall be presumed to be in the best interests of the Corporation.

**Section 6.05. Indemnification.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any action or proceeding by reason of the fact that he or she is or was a representative of the Corporation, against expenses actually and reasonably incurred by him or her in connection with such action or proceeding if he or she acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the Corporation.

## ARTICLE VII: OPERATIONS

**Section 7.01. Books and Records.** The Corporation shall keep and correct books and records of account, and shall also keep minutes of the proceedings of its Members and Committees. The Corporation shall keep at its registered office a membership roster giving the names and addresses of each Member, and

the original or a copy of its Bylaws including amendments to date certified by the Secretary of the Corporation.

Section 7.02. **Inspection of Books and Records.** All books and records of the Corporation may be inspected by any Member, or the Member's agent or attorney, for any proper purpose at any reasonable time on written demand stating the purpose of inspection.

Section 7.03. **Nonprofit Ownership.** The Corporation will not have or issue shares of stock. No dividend will be paid, and no part of the income of this Corporation will be distributed to its Member or Officers. This provision does not prevent the Corporation from paying reasonable compensation to any person for services rendered, regardless of membership status.

Section 7.04. **Agents.** The Corporation may appoint any and all agents it deems necessary for the property and efficient management of the Corporation, including but not limited to, a Solicitor to provide legal counsel to the Corporation.

Section 7.05. **Conveyance of Assets Upon Dissolution.** In case the Corporation should be dissolved, all assets shall be dealt with in accordance with the legal requirements set forth in the laws of the Commonwealth of Pennsylvania and any applicable tax regulations. Assets consisting of contributions or dues assessment payments from the Members may be returned to the Members on a prorated basis.

## ARTICLE VIII: LIMITATION ON ACTIVITIES

Section 8.01. **Activities.** None of the activities of this Corporation shall consist of the carrying on of political propaganda, or otherwise attempting to influence legislation, nor shall this corporation participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

## ARTICLE IX: DISTRIBUTION OF INCOME AND PROHIBITED ACTIVITIES

Section 9.01. **Distribution of Income.** The Corporation shall distribute its income for each taxable year at the times and in the manner necessary in order not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986.

Section 9.02. **Prohibition of Self-Dealing.** The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1986.

Section 9.03. **Excess Business Holdings.** The Corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986.

## ARTICLE X: AMENDMENT OF BYLAWS

Section 10.01. **Amendment of Bylaws.** These Bylaws may be amended if the applicable amendment is approved by both (a) a majority of the Members voting on acreage basis, and (b) a majority of the Members voting on a per Lot basis), provided the specific amendment has been distributed not less than ten (10) days prior to such meeting.

Any Member may propose amendments to the Bylaws by submitting such to the Secretary at least thirty (30) days prior to any meeting of the Members of the Corporation. Copies of the proposed amendment shall be distributed to all Members.

The amended Bylaws shall take effect immediately upon adoption, unless a different date is specified in the action taken upon such amendment.

Revised and readopted June 23, 2023.

**Exhibit "A"**

Second Amended/Restated Restrictive Covenants

See attached.