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**TO:** Burning Tree Master Association Board of Directors

**FROM:** Heath E. Hardcastle

**DATE:** August 22, 2025

**RE:** *Burning Tree Master Association Expiration of Duration*

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You have asked me to identify your options with regard to the expiration of Burning Tree Master Association's existence as provided in its Articles of Organization. This memorandum is intended to set forth an analysis of those options.

**I. BACKGROUND**

The Burning Tree subdivisions were developed as part of PUD-112 beginning in the 1970s. Attached is Exhibit "A" which contains a description of the various Burning Tree subdivisions and the blocks and lots comprising each.

The Deed of Dedication of each Burning Tree subdivision authorized the formation of a homeowner's association for the subdivision and provided each homeowner an easement or right for the use of common areas to be owned and maintained by the Burning Tree Master Association. The individual homeowners were not made members of the Burning Tree Master Association, although the language in some of the documents is unclear in this regard.

The HOAs for the individual subdivisions are identified on the attached Exhibit B. Of note is that Burning Tree Area #6 Association was never formed and the lots identified on Exhibit "B" as not having an association were likely intended to be a part of Burning Tree Area #6 Association.

Burning Tree Master Association was formed in 1975 and its members were intended to be the Burning Tree owner's associations which were approved by Declarant. I do not have sufficient information to determine which of the owner's associations were "approved by Declarant," but it appears from the deeds of dedication that the associations for areas 1, 2, 4, 5 and 7 were likely "approved." Regardless, it is my understanding that those member associations are not currently active and have no duly appointed representatives.

Each of the association's Articles of Organization provided that the association would have an existence of fifty (50) years. Burning Tree Master Association's duration will end in November of this year. In order to extend the duration of Burning Tree Master Association pursuant to Okla. Stat. tit. 18, § 1077, the Articles of Incorporation provide that 75% of the entire membership of

the corporation must agree to the amendment. This would be 75% of the member associations, not the homeowners.

Burning Tree Master Association must either extend its existence or prepare to divest its property.

## II. ANALYSIS

Okla. Stat. tit. 18, § 1097(C) provides that where a provision limits the duration of a corporation's existence to a specified date, a certificate of dissolution shall be executed, acknowledged, and filed with the Secretary of State within ninety (90) days before the specified date. Thus, an expiration is to be treated as a dissolution. The failure to timely file a certificate of dissolution, however, will not affect the expiration of the corporation's existence or the requirement to file the certificate.

Okla. Stat. tit. 18, § 1099 provides that all corporations, whether they expire by their own limitation or are otherwise dissolved, nevertheless shall be continued, for the term of three (3) years from such expiration or dissolution or for such longer period as the district court shall in its discretion direct, for the purpose of prosecuting and defending suits, enabling them gradually to settle and close their businesses, to dispose of and convey their property, to discharge their liabilities, and to distribute to their shareholders any remaining assets. The three-year period is not for continuing the business for which the corporation was organized. A corporation can be dissolved in accordance with its governing documents or with judicial assistance pursuant to Okla. Stat. tit. 18, § 1100. Section 1099 means that no matter how you proceed, you are not under an immediate deadline to dispose of the property.

The Burning Tree Master Association's Articles of Organization provide instruction for dissolution. Article IX of the Articles of Organization requires the assets of the corporation, both real and personal, to be dedicated to an appropriate public agency to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the association. If no public agency will accept the dedication, the assets are to be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by Burning Tree Master Association.

Practically speaking, it may be very difficult to comply with the terms of the Articles of Organization regarding dissolution as a public body is not likely to accept the expense and cost of operating the facilities and another non-profit would not likely be willing to accept the property as it would have no ability to collect dues from the property owners to maintain the facilities. As a result, dissolution would likely require judicial assistance under Okla. Stat. tit. 18, § 1100. Under that statute a court could appoint one or more of the directors of Burning Tree Master Association as trustees, or appoint one or more persons as receivers, to take charge of the company's property and take such actions necessary for the final settlement of the unfinished business of the company.

With regard to a potential private sale of Burning Tree Master Association's assets, Article IV of the Articles of Incorporation provides that the Master Association may "acquire...own, hold,

improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of, real or personal property in connection with the affairs of the association.” The Bylaws provide that the Board of Directors of the Association may exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of the Bylaws, the Articles of Incorporation, or the Declaration.

The Bylaws provide in Article IV that the assent of 2/3 of the members is required to dedicate, sell or transfer all or any part of the common areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No provisions or limitations are specifically placed upon any other sale of the property. As a result, it is possible that Burning Tree Master Association’s Board of Directors could vote to sell the property to a third-party that is not a public agency, authority or utility without obtaining the consent of the member associations. This likely is not a result intended by the drafters of the Bylaws, however, and a potential purchaser or title company may not be comfortable with that interpretation or willing to complete the purchase.

Sale to a private individual may also be difficult because each of the deeds of dedication provide each and every lot owner with an easement to use the facilities of the association. These easements may ultimately be found to be unenforceable as to a third-party; however, the existence of the easement and the potential for a dispute regarding it would likely have a chilling effect on selling the property.

Selling the property comes with additional risk that not only would a transaction fail, but that homeowners may contend that the sale of the property constituted a breach of duty or other wrongful act by the board of directors and seek compensation through legal action against the individual directors. Okla. Stat. tit. 18, §§ 866 and 867 provide for limited immunity of the board of directors of non-profit corporations; however, that immunity is not complete and if litigation were to arise, it would be exorbitantly expensive even if the directors ultimately prevailed. In addition, you have the problem of what to do with the proceeds of a sale as the member associations are inactive and there is no one to whom to distribute them.

### **III. CONCLUSION**

The best results occur if you are able to work with the homeowners to get the member associations active and amend Burning Tree Master Association’s Articles of Incorporation to extend its duration. If that is not possible, the safest option is to proceed with dissolution and seek judicial relief under Okla. Stat. tit. 18, § 1100 whereby any sale or liquidation of the property would be performed pursuant to a court order approving the sale. This procedure would afford the directors protection against liability and would allay any concerns a third-party might have about the authority of the association to transfer the property. I do not recommend a private sale in the absence of court approval for the reasons noted above.

I am available to answer any questions you may have after your review of this memorandum.

## Exhibit "A"

### Land Contained in Each Subdivision

#### **Burning Tree**

Block 1, Lots 1 – 18

Block 2, Lots 1 – 5

Block 3, Lots 1 – 14

Block 4, Lots 1 – 25

Block 5, Lots 1 – 47

Block 6, Lots 1 – 2 (Lot 2 since subdivided into Burning Tree West & Burning Tree Plaza)

#### **Burning Tree South** (added to PUD 112 in 1976)

Block 1, Lots 1 – 19

Block 2, Lots 2- 15

Block 3, Lots 1 – 23

Block 4, Lots 1 – 19

Block 5, Lots 1 – 35

Block 6, Lots 1 – 17

#### **Burning Tree East**

Block 1, Lots 1- 11

Block 2, Lots 1 – 18

Block 3, Lots 1 – 44

Block 4, Lots 1 – 13

#### **Burning Tree West**

Block 1, Lots 1 – 22

Block 2, Lots 1 – 8

#### **Burning Tree Plaza Amended**

Block 1, Lots 1 – 17

#### **Burning Tree Duplexes (Resubdivision of a portion of Burning Tree)**

Block 1, Lots 1 – 12, Burning Tree

Block 2, Lots 1 – 5, Burning Tree

## Exhibit "B"

### HOA's and Land Included Within Each HOA

**Burning Tree Master Association, Inc.:**

Block 5, Lots 26 and 41, Burning Tree  
Block 6, Lot 1, Burning Tree  
Block 1, Lot 1, Burning Tree South  
Block 4, Lot 19, Burning Tree South

**Burning Tree Area I Association, Inc.:**

Block 1, Lots 13 – 18, Burning Tree  
Blocks 3, 4 and 5 (except for lots 26 and 41 of Block 5), Burning Tree

**Burning Tree Area #2 Association, Inc.:**

Block 1, lots 1 – 12, Burning Tree  
Block 2, Burning Tree  
Blocks 1 and 2, Burning Tree Duplex's

**Burning Tree Area #4 Association, Inc.:**

Blocks 1 – 6 (except for Block 1, Lot 1 and Block 4, Lot 19), Burning Tree South

**Burning Tree Area #5 Association, Inc.:**

Block 1, Lots 5 – 11, Burning Tree East  
Block 2, Burning Tree East  
Block 3, Lots 9 – 44, Burning Tree East

**Burning Tree Area #7 Association, Inc.:**

Blocks 1 and 2, Burning Tree West  
Block 1, Burning Tree Plaza Amended

**Areas Not Included in Any Association (Burning Tree Area #6 Association, Inc. was never formed):**

Block 1, Lots 1 – 4, Burning Tree East  
Block 3, Lots 1 – 8, Burning Tree East  
Block 4, Lots 1 – 13, Burning Tree East