1485065 Page 1 of 81 09/30/2022 01:13 PM Karen McQueen, Brazos County Clerk Vol: 18256 Pg: 5

After recording return to:

Frank O. Carroll III, Esq.
Winstead PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
Email: focarroll@winstead.com

SOUTHERN POINTE
AMENDED AND RESTATED
MASTER COVENANT

[*MIXED-USE*]

Brazos County, Texas

THIS DOCUMENT AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN ORIGINAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SOUTHERN POINTE, RECORDED AS DOCUMENT NO. 1368301, OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

NOTE: SAVE AND EXCEPT FOR THE PROPERTY DESCRIBED ON EXHIBIT "B" ATTACHED HERETO, NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT "A" IS SUBJECT TO THE TERMS OF THIS COVENANT UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE PROPERTY IS RECORDED IN THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, IN ACCORDANCE WITH *SECTION 9.5* BELOW.

Declarant: BV SOUTHERN POINTE DEVELOPMENT, INC., a Texas corporation

Unofficial Copy

SOUTHERN POINTE
AMENDED AND RESTATED MASTER COVENANT
[*MIXED-USE*]

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS 2

ARTICLE 2 GENERAL RESTRICTIONS 10

2.1 General 10
2.2 Incorporation of Development Area Declarations 11
2.3 Conceptual Plans 12
2.4 Cell Tower and Telecommunications Equipment 12
2.5 Provision of Benefits and Services to Service Area 12
2.6 Designation of Special Common Areas 13

ARTICLE 3 SOUTHERN POINTE MASTER ASSOCIATION, INC. 14

3.1 Organization 14
3.2 Neighborhoods 14
3.3 Membership 14
3.4 Governance 17
3.5 Voting Allocation 17
3.6 Optional Representative System of Voting 18
3.7 Voting Groups 20
3.8 Powers 21
3.9 Conveyance of Common Area and Special Common Area to the Association 24
3.10 Indemnification 25
3.11 Insurance 25
3.12 Bulk Rate Contracts 26
3.13 Community Services and Systems 26
3.14 Protection of Declarant's Interests 27
3.15 Administration of Common Area 27
3.16 Right of Action by Association 28

ARTICLE 4 INSURANCE AND RESTORATION 28

4.1 Insurance 28
4.2 Flood Insurance 28
4.3 Restoration Requirements 29
4.4 Restoration - Mechanic's and Materialmen's Lien 29

ARTICLE 5 COVENANT FOR ASSESSMENTS 30

5.1 Assessments 30
5.2 Maintenance Fund 30
5.3 Regular Assessments 31

1485065 Page 3 of 81 09/30/2022 01:13 PM Karen McQueen, Brazos County Clerk Vol: 18256 Pg: 7

TABLE OF CONTENTS
(Continued)

		Page
5.4	Special Assessments	31
5.5	Special Common Area Assessments	31
5.6	Service Area Assessments	32
5.7	Individual Assessments	32
5.8	Working Capital Assessment	32
5.9	Amount of Assessment	33
5.10	Late Charges	34
5.11	Owner's Personal Obligation for Payment of Assessments	34
5.12	Assessment Lien and Foreclosure	35
5.13	Exempt Property	37
5.14	Fines and Damages Assessment	37
5.15	Collection of Assessments by Sub-Association	37
ARTICLE 6 THE SOUTHERN POINTE REVIEWER		38
6.1	Architectural Control by Declarant	38
6.2	Architectural Control by Association	38
6.3	Prohibition of Construction, Alteration and Improvement	39
6.4	Architectural Approval	39
6.5	Non-Liability of the Southern Pointe Reviewer	42
ARTICLE 7 MORTGAGE PROVISIONS		42
7.1	Notice of Action	43
7.2	Examination of Books	43
7.3	Taxes, Assessments and Charges	43
ARTICLE 8 EASEMENTS		43
8.1	Right of Ingress and Egress	43
8.2	Reserved and Existing Easements	44
8.3	Roadway and Utility Easements	44
8.4	Entry and Fencing Easement	45
8.5	Landscape, Monumentation and Signage Easement	45
8.6	Easement for Special Events	45
8.7	Solar Equipment Easement	45
8.8	Cellular Tower and Telecommunications Easement	46
8.9	Easement for Maintenance of Drainage Facilities	47
8.10	Easement to Inspect and Right to Correct	47
ARTICLE 9 DEVELOPMENT RIGHTS		47
9.1	Development	47
9.2	Special Declarant Rights	48
9.3	Addition of Land	48
9.4	Withdrawal of Land	48
9.5	Notice of Applicability	49
9.6	Designation of Neighborhood	50

Unofficial Copy

Unofficial Copy

TABLE OF CONTENTS
(Continued)

		Page
9.7	Assignment of Declarant's Rights	50
9.8	Notice of Plat Recordation	51
ARTICLE 10 GENERAL PROVISIONS		51
10.1	Term	51
10.2	Eminent Domain	51
10.3	Amendment	52
10.4	Enforcement	52
10.5	Declarant Fine Authority	53
10.6	No Warranty of Enforceability	53
10.7	Higher Authority	53
10.8	Severability	53
10.9	Conflicts	53
10.10	Gender	53
10.11	Acceptance by Owners	53
10.12	Damage and Destruction	54
10.12	No Partition	55
10.13	View Impairment	55
10.15	Safety and Security	55
10.16	Facilities Open to the Public	56
10.17	Water Quality Facilities	56
10.18	Notices	56
10.19	Mining and Drilling	57
10.20	Drill Site and Pipeline Disclosure	57
10.21	MUD	58
ARTICLE 11 DISPUTE RESOLUTION		58
11.1	Introduction and Definitions	58
11.2	Mandatory Procedures	59
11.3	Claims Affecting Common Areas or Special Common Areas	59
11.4	Claims by Lot Owners	64
11.5	Notice	64
11.6	Negotiation	65
11.7	Mediation	65
11.8	Binding Arbitration-Claims	65
11.9	Allocation Of Costs	67
11.10	General Provisions	67
11.11	Period of Limitation	67
11.12	Funding the Resolution of Claims	68

Unofficial Copy

SOUTHERN POINTE
AMENDED AND RESTATED MASTER COVENANT
[*MIXED-USE*]

This Southern Pointe Amended and Restated Master Covenant [*MIXED-USE*] (the "**Covenant**"), is made by **BV SOUTHERN POINTE DEVELOPMENT, INC.**, a Texas corporation (the "**Declarant**"), and is as follows:

R E C I T A L S:

A. Declarant is developing certain real property located in Brazos County, Texas, as more particularly described on Exhibit "A", attached hereto (the "**Property**").

B. Declarant previously caused to be recorded that certain Original Declaration of Covenants, Conditions and Restrictions of Southern Pointe, recorded as Document No. 1368301 in the Official Public Records of Brazos County, Texas (the "**Original Declaration**").

C. The Original Declaration encumbers certain real property located in Brazos County, Texas, as more particularly described on Exhibit "B", attached to this Covenant and incorporated herewith (the "**Original Property**"), which shall be subject to this Covenant at the time this Covenant is Recorded, and shall constitute a portion of the Development (as defined in this Covenant) and be governed by and fully subject to this Covenant, along with any applicable Development Area Declaration, as a Development Area (as such terms are defined in this Covenant).

E. Portions of the Property may be made subject to this Covenant upon the Recording of one or more Notices of Applicability pursuant to *Section 9.5* below, and once such Notices of Applicability have been Recorded, the portions of the Property described therein shall constitute the Development (defined below) and shall be governed by and fully subject to this Covenant, and the Development in turn shall be comprised of separate Development Areas (defined below) which shall be governed by and subject to separate Development Area Declarations (defined below) in addition to this Covenant.

Save and except for the property described on Exhibit "B" attached hereto, no portion of the Property is subject to the terms and provisions of this Covenant until a Notice of Applicability is Recorded. A Notice of Applicability may only be Recorded by the Declarant.

PROPERTY VERSUS DEVELOPMENT VERSUS DEVELOPMENT AREA	
"Property"	Described on Exhibit "A". This is the land that may be made subject to this Covenant, from time to time, by the Recording of one or more Notices of Applicability. Declarant has no obligation to add all or any portion of the Property to this Covenant.
"Development"	This is the portion of the land described on Exhibit "A" that has been made subject to this Covenant through the Recording of a Notice of Applicability.
"Development Area"	This is a portion of the Development. Each Development Area may be made subject to a Development Area Declaration.

F. This Covenant serves notice that upon the further Recording of one or more Notices of Applicability, portions of the Property identified in such notice or notices shall be subject to the terms and provisions of this Covenant.

NOW, THEREFORE, it is hereby declared that: (i) the Development, including but not limited to those portions of the Development which had heretofore been subjected to the Original Declaration and are more particularly described in Exhibit "B", attached to this Covenant, will be held, sold, conveyed, used and occupied subject to the following covenants, conditions and restrictions which will run with the Development and will be binding upon all parties, their heirs, successors and assigns, having right, title or interest in or to the Development or any part thereof, and will inure to the benefit of each owner thereof; and (ii) each contract or deed conveying those portions of the Property that have been made subject to this Covenant shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Covenant uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Covenant, the text shall control.

ARTICLE 1
DEFINITIONS

Unless the context otherwise specifies or requires, terms used in this Covenant shall have the meanings set forth below:

"**ACC**" means the architectural control committee, as defined in *Section 6.2*. As more particularly described in *Article 6*, during the Development Period, the Declarant acts as the Southern Pointe Reviewer and exercises all rights to approve Improvements within the

Unofficial Copy

Development. A separate ACC will not be formed and has no rights to review and approve Improvements until such rights have been assigned to the Association by a written Recorded instrument executed by the Declarant, or the Development Period has expired or is terminated by a written Recorded instrument executed by the Declarant.

"**Applicable Law**" means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Development, including but not limited to applicable building codes, zoning restrictions, permits and ordinances adopted by a Governmental Entity (defined below), which are in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes, ordinances and regulations specifically referenced in the Documents are "Applicable Law" on the effective date of the Document, and are not intended to apply to the Development if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"**Assessment**" or "**Assessments**" means assessments the Association may impose under this Covenant.

"**Assessment Unit**" has the meaning set forth in *Section 5.9.2*.

"**Association**" means **SOUTHERN POINTE MASTER ASSOCIATION, INC.,** a Texas nonprofit corporation, which will be created by the Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Covenant. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Covenant, the Certificate, the Bylaws and Applicable Law.

"**Board**" means the Board of Directors of the Association.

"**Bulk Rate Contract" or "Bulk Rate Contracts**" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, security services, trash pick-up services, propane service, natural gas service, landscape maintenance services, cable television services, telecommunications services, internet access services, "broadband services", wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial. During the Development Period, Declarant must approve each Bulk Rate Contract.

"**Bylaws**" means the bylaws of the Association, which may be initially adopted and Recorded by Declarant or the Board of the Association and Recorded as part of the initial project documentation for the benefit of the Association. The Bylaws may be amended, from time to time, by the Declarant until expiration or termination of the Development Period. During the Development Period, Declarant must approve any amendment to the Bylaws. After the Development Period, a Majority of the Board may amend the Bylaws.

Unofficial Copy

"**Certificate**" means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

"**City**" means the City of College Station, Texas.

"**Commercial Association**" means **COMMERCIAL PROPERTY OWNERS' ASSOCIATION OF SOUTHERN POINTE, INC.**, a Texas nonprofit corporation, which may be created by the Declarant to exercise the authority and assume the powers specified in an applicable Development Area Declaration and elsewhere in this Covenant. The failure of the Commercial Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Commercial Association, which derives its authority from this Covenant, the Commercial Association's certificate of formation, the Commercial Association's bylaws, and Applicable Law. All portions of the Property made subject to a commercial Development Area Declaration by the Recording of one or more Notices of Applicability shall be subject to the jurisdiction of the Commercial Association in addition to the jurisdiction of the Association. The Commercial Association shall be considered a Sub-Association, as defined herein.

"**Commercial Lot**" means a Lot within the Development, other than Common Area or Special Common Area, that is intended and designated for business or commercial use. Business or commercial use shall include, but not be limited to, all office, retail, wholesale, manufacturing, and service activities. A Commercial Lot, for the purpose of this Covenant, may also include a Lot which will be further subdivided into Residential Lots and Common Areas.

"**Common Area**" means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities (i) held by the Declarant for the benefit of the Residential Association or its Members or (ii) designated by the Declarant as Common Area in accordance with *Section 3.9*. Upon the Recording of such designation, the portion of the Property identified therein shall be considered Common Area for the purpose of this Covenant. Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area shall be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be designated by the Declarant or the Board for the use and enjoyment of the Owners and members of the public.

"**Community Enhancement Covenant**" means the community enhancement covenant that may be Recorded by the Declarant as part of the initial project documentation for the benefit of the Association. The Community Enhancement Covenant may be amended, from time to time, by the Declarant during the Development Period. Upon expiration or termination of the Development Period, the Community Enhancement Covenant may be amended by a Majority of the Board.

"**Community Manual**" means the community manual, which the Declarant may initially adopt and Record as part of the initial project documentation for the Development. The Community Manual may include the Bylaws, Rules and other policies governing the Association. The Community Manual may be amended or supplemented, from time to time, by the Declarant during the Development Period. Upon expiration or termination of the Development Period, the Community Manual may be amended by a Majority of the Board of the Association. All portions of the Property made subject to a commercial Development Area Declaration by the Recording of one or more Notices of Applicability shall be subject to the jurisdiction of the Commercial Association in addition to the jurisdiction of the Association.

"**Covenant**" means this Southern Pointe Amended and Restated Master Covenant [*MIXED-USE*], as defined in the preamble.

"**Declarant**" means **BV SOUTHERN POINTE DEVELOPMENT, INC.**, a Texas corporation, its successors and permitted assigns. Notwithstanding any provision in this Covenant to the contrary, Declarant may, by Recorded instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person. Declarant may also, by Recorded instrument, permit any other person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Covenant.

Declarant enjoys certain rights and privileges to facilitate the development, construction, and marketing of the Property and the Development, and to direct the size, shape and composition of the Property and the Development. These rights are described in this Covenant. Declarant may also assign, in whole or in part, all or any of the Declarant's rights established under the terms and provisions of this Covenant to one or more third-parties.

"**Design Guidelines**" means the standards for design and construction of Improvements, landscaping and exterior items proposed to be placed on any Lot, which may be adopted pursuant to *Section 6.4.2* as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. The Design Guidelines may be Recorded as a separate written instrument or may be incorporated into a Development Area Declaration by exhibit or otherwise. Notwithstanding anything in this Covenant to the contrary, Declarant shall have no obligation to establish Design Guidelines for the Property, the Development, or any portion thereof.

"**Development**" refers to all or any portion of the Property made subject to this Covenant by the Recording of a Notice of Applicability.

"**Development Area**" means any part of the Development (less than the whole), which Development Area may be subject to a Development Area Declaration in addition to being subject to this Covenant.

"**Development Area Declaration**" means, with respect to any Development Area, the separate instruments containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Development Area is subjected.

"**Development Period**" means the period of time beginning on the date when this Covenant has been Recorded, and ending fifty (50) years thereafter, unless earlier terminated by a Recorded instrument executed by the Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property and the Development, and the right to direct the size, shape and composition of the Property and the Development. The Development Period is for a term of years and does not require that Declarant own any portion of the Property or the Development.

"**Documents**" means, singularly or collectively, as the case may be, this Covenant, the Certificate, the Bylaws, the Community Manual, the Community Enhancement Covenant, the Design Guidelines (if adopted), any applicable Development Area Declaration, any applicable Notice of Applicability, as each may be amended from time to time, and any Rules, or policies or procedures the Association promulgates pursuant to this Covenant, and any Development Area Declaration, as adopted and amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is part of such Document. See Table 1 for a summary of the Documents.

"**Governmental Entity**" **or** "**Governmental Entities**" means (a) a public improvement district created pursuant to Chapter 372, Subchapter B of the Texas Local Government Code; (b) a municipal utility district created pursuant to Article XVI, Section 59 of the Constitution of Texas and/or Chapters 49 and 54, Texas Water Code, including, but not limited to, the Brazos County Municipal Utility District No. 1 (the "**MUD**"); (c) any other similarly constituted quasi-governmental entity created for the purpose of providing benefits or services to the Development; or (d) any other regulatory authority with jurisdiction over the Development.

"**Homebuilder**" refers to any Owner (other than Declarant) who is in the business of constructing single-family residences (whether attached or detached) for resale to third parties and acquires all or a portion of the Development to construct single-family residences for resale to third parties.

"**Improvement**" means any and all physical enhancements and alterations to the Development, including, but not limited to, grading, clearing, removal of trees, site work, utilities, landscaping, irrigation, trails, hardscape, exterior lighting, alteration of drainage flow, drainage facilities, detention/retention ponds, water features, fences, walls, signage, and every structure, fixture, and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls,

Unofficial Copy

stairs, patios, decks, walkways, landscaping, mailboxes, awnings and exterior air conditioning equipment or fixtures.

"**Lot**" means any portion of the Development the Declarant designates as such in a Recorded instrument or shown as a subdivided lot on a Plat other than Common Area or Special Common Area.

"**Majority**" means more than half (i.e. greater than fifty percent (50%)).

"**Manager**" has the meaning set forth in *Section 3.8.8*.

"**Maximum Number of Lots**" means the maximum number of Lots that may be created and made subject to the terms and provisions of this Covenant. The Maximum Number of Lots for the purpose of this Covenant is two thousand five hundred (2,500). Until expiration or termination of the Development Period, Declarant may unilaterally increase or decrease the Maximum Number of Lots by Recorded written instrument.

"**Members**" means every person or entity that holds membership privileges in the Association.

"**Mortgage**" or "**Mortgages**" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

"**Mortgagee**" or "**Mortgagees**" means the holder(s) of any Mortgage(s).

"**Neighborhood**" has the meaning set forth in *Section 3.2.*

"**Neighborhood Delegate**" means the representative elected by the Owners of Lots in each Neighborhood pursuant to the Representative System of Voting (as further defined herein) which may be established by the Declarant to cast the votes of all Lots in the Neighborhood on all matters requiring a vote of the membership of the Association, except for the following situations in which this Covenant specifically requires Members or Owners to cast their vote individually: (i) changes to the term of the Covenant as described in *Section 10.1;* (ii) amendments to the Covenant as described in *Section 10.3;* and (iii) initiation of any judicial or administrative proceeding as described in *Section 10.4*. Notwithstanding the foregoing, the Documents may set forth additional circumstances in which the Members or Owners are required to cast their vote individually, and voting by Neighborhood Delegates is prohibited.

"**Notice of Applicability**" means the Recorded notice the Declarant executes for the purpose of adding all or any portion of the Property to the terms and provisions of this Covenant. In accordance with *Section 9.5*, a Notice of Applicability may also subject a portion of the Property to a previously Recorded Development Area Declaration.

"**Occupant**" means a resident, occupant or tenant of a Lot, other than an Owner.

Unofficial Copy

"**Owner**" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot and in no event shall mean any Occupant. Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

"**Permittee**" means any Occupant and any officer, agent, employee, licensee, lessee, customer, vendor, supplier, guest, invitee or contractor of an Owner or Declarant (as applicable).

"**Plat**" means a Recorded subdivision plat of any portion of the Development, and any amendments thereto.

"**Property**" means all of that certain real property described on Exhibit "A", attached hereto and incorporated herein by reference, subject to any additions thereto or withdrawals therefrom as may be made pursuant to *Section 9.3* and *Section 9.4*, respectively, of this Covenant.

"**Record, Recording, Recordation and Recorded**" means recorded in the Official Public Records of Brazos County, Texas.

"**Representative System of Voting**" means the method of voting which the Declarant may establish pursuant to *Section 3.6* below. Declarant shall have no obligation to implement the Representative System of Voting.

"**Residential Association**" means **HOMEOWNERS' ASSOCIATION OF SOUTHERN POINTE, INC.,** a Texas nonprofit corporation, which was previously created by the Declarant, has the authority under its existing bylaws to exercise the authority and assume the powers generally attributed to property owners associations in Section 209 of the Texas Property Code and as further specified in any applicable Development Area Declaration. The failure of the Residential Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Residential Association, which derives its authority from this Covenant, the Residential Association's certificate of formation, the Residential Association's bylaws, and Applicable Law. In addition to the Original Property, all portions of the Property made subject to a Residential Development Area Declaration by the Recording of one or more Notices of Applicability shall be subject to the jurisdiction of the Residential Association in addition to the jurisdiction of the Association. The Residential Association shall be considered a Sub-Association, as defined herein.

"**Residential Developer**" refers to any Owner, other than Declarant, who acquires undeveloped land, one or more Lots or any other portion of the Property for the purposes of development for and/or resale to a Homebuilder.

"**Residential Lot**" means a portion of the Development, designated by Declarant in a Recorded written instrument or shown as a subdivided lot on a Plat, other than Common Area and Special Common Area, which is intended solely for single-family residential use.

"**Rules**" means any instrument, however denominated, which the Declarant may adopt as part of the Community Manual, or the Board may subsequently adopt for the regulation and management of the Development, including any amendments thereto. Until expiration or termination of the Development Period, the Declarant must approve any amendment to the Rules.

"**Service Area**" means a group of Lots designated as a separate Service Area pursuant to this Covenant for purpose of receiving benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.5*.

"**Service Area Assessments**" means assessments levied against the Lots in a particular Service Area to fund Service Area Expenses, as described in *Section 5.6*.

"**Service Area Expenses**" means the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements.

"**Southern Pointe Reviewer**" means the party holding the rights to approve Improvements within the Development and shall be Declarant or its designee until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the Southern Pointe Reviewer shall automatically be transferred to the ACC appointed by the Board, as set forth in *Section 6.2*.

"**Special Common Area**" means any interest in real property or improvements which the Declarant designates in a Recorded Notice of Applicability pursuant to *Section 9.5*, in a Development Area Declaration or in any written instrument Recorded by Declarant (which designation shall be made in the sole and absolute discretion of Declarant) as Special Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Special Common Area Assessments attributable thereto, to one or more, but less than all of the Lots, Owners or Development Areas, and is or shall be conveyed to the Association or as to which the Association shall be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association. The Notice of Applicability, Development Area Declaration, or other written notice shall identify the Lots, Owners or Development Areas assigned to such Special Common Area and further indicate whether the Special Common Area is assigned to such parties for the purpose of exclusive use and the payment of Special Common Area Assessments, or only for the purpose of paying Special Common Area Assessments attributable thereto. By way of illustration and not limitation, Special Common Area might include such things as private drives and roads, entrance facilities and features, monumentation or signage, walkways or landscaping.

"**Special Common Area Assessments**" means assessments levied against the Lots as described in *Section 5.5*.

Unofficial Copy

"**Special Common Area Expenses**" means the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace Special Common Area, which may include a reasonable reserve for capital repairs and replacements.

"**Sub-Association**" means a property owners association created to administer all or a portion of a Development Area. The formation of a Sub-Association must be approved in advance and in writing by the Declarant during the Development Period, and a Majority of the Board after expiration or termination of the Development Period.

"**Voting Group**" has the meaning set forth in *Section 3.7* below.

TABLE 1: DOCUMENTS	
Covenant (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property made subject to the Covenant by the Recording of a Notice of Applicability.
Community Enhancement Covenant (Recorded)	Establishes a fee payable to the Association upon the transfer of a Lot from one party to another.
Notice of Applicability (Recorded)	Describes the portion of the Property being made subject to the terms and provisions of the Covenant and any applicable Development Area Declaration.
Development Area Declaration (Recorded)	Includes additional covenants, conditions and restrictions governing portions of the Development.
Certificate of Formation (Filed with the Secretary of State and Recorded)	Establishes the Association as a non-profit corporation under Texas law.
Community Manual (Recorded)	Includes the Bylaws, Rules and policies governing the Association.
Design Guidelines (if adopted)	**If adopted, govern the design and architectural standards for the construction of Improvements and modifications thereto. Neither the Declarant nor the Southern Pointe Reviewer shall have any obligation to adopt Design Guidelines.**

ARTICLE 2
GENERAL RESTRICTIONS

2.1 General.

2.1.1 Conditions and Restrictions. All Lots within the Development to which a Notice of Applicability has been Recorded in accordance with *Section 9.5*, shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Documents and Applicable Law. **EXCEPT AS OTHERWISE PROVIDED HEREIN, NO PORTION OF THE PROPERTY SHALL**

BE SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT UNTIL A NOTICE OF APPLICABILITY HAS BEEN RECORDED.

2.1.2 Compliance with the Documents and Applicable Law. Compliance with the Documents is mandatory. However, compliance with the Documents is not a substitute for compliance with Applicable Law. Please be advised that the Documents do not purport to list or describe each requirement, rule, or restriction which may be applicable to a Lot located within the Development. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot. Furthermore, Owners should not construe an approval by the Southern Pointe Reviewer as confirmation that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot. The Association, each Owner, Occupant or other user of any portion of the Development must comply with the Documents and Applicable Law, as supplemented, modified or amended from time to time.

The Association, each Owner, Residential Developer, Homebuilder, Occupant or other user of any portion of the Development must comply with the Documents and Applicable Law, as supplemented, modified or amended from time to time.

2.1.3 Development Amenities. A Development Area may include common area, open space, water quality facilities, parkland, trails, landscape areas, roadways, driveways or easements which benefit the Development in addition to the Development Area, as reasonably determined by the Declarant during the Development Period, and a Majority of the Board after termination or expiration of the Development Period (the "**Development Amenities**"). Declarant, during the Development Period, and a Majority of the Board after termination or expiration of the Development Period, may require all or a portion of such Development Amenities be conveyed, transferred or dedicated (by deed easement, or license) to: (i) the Association; or (ii) another entity designated by the Declarant or a Majority of the Board, as applicable. Alternatively, the Declarant, during the Development Period, and a Majority of the Board after termination or expiration of the Development Period, may require that all or a portion of such Development Amenities be owned and maintained by the Owner of all or a portion of a particular Development Area, subject to an easement in favor of other Owner(s) and Occupants, as designated by the Declarant or a Majority of the Board, as applicable (*e.g.*, ingress and egress over and across the driveways constructed within the Development Area). The Development Amenities may not be conveyed or otherwise transferred unless the conveyance and transfer is approved in advance and in writing by the Declarant during the Development Period, and a Majority of the Board after expiration or termination of the Development Period.

2. **Incorporation of Development Area Declarations.** Upon Recordation of a Development Area Declaration such Development Area Declaration shall, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Covenant, to the extent not in conflict with this Covenant, but shall apply only to portions of the Property made subject to the Development Area Declaration upon the Recordation of one or more Notices of Applicability. To the extent of any conflict between the terms and provisions of

Unofficial Copy

a Development Area Declaration and this Covenant, the terms and provisions of this Covenant shall apply.

2.3 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property or the Development (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. **The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or the Development may include uses which are not shown on the Conceptual Plans.** Neither Declarant, a Residential Developer, nor any Homebuilder or other developer of any portion of the Property or the Development makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property or the Development and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, or proposed or planned Improvements, in making the decision to purchase any land or Improvements within the Property or the Development. Each Owner who acquires a Lot within the Development acknowledges development will extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

2.4 Cell Tower and Telecommunications Equipment. Telecommunications, cellular, video and digital equipment, including without limitation, broadcast antennas and related equipment, cell towers, cell tower equipment, or other wireless communication antennas and related equipment, cable or satellite television equipment and equipment for high-speed internet access (collectively, the "**CTT Equipment**") may be located on or near the Property and/or the Development or may be constructed on or near the Property and/or the Development. As more particularly described in *Section 8.8* of this Covenant, Declarant has reserved the right for the benefit of itself and its assigns, to construct, install, use, maintain, repair, replace, improve, remove, and operate CTT Equipment upon all or any portion of the Common Area and/or the Special Common Area. Parties other than the Declarant or its assigns may also have easements for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment.

2.5 Provision of Benefits and Services to Service Area.

2.5.1 Declarant, in a Notice of Applicability Recorded pursuant to *Section 9.5* or in any Recorded notice, may assign Lots to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots in addition to those which the Association generally provides to the Development. During the Development Period, Declarant may unilaterally amend any Notice of Applicability or any

Unofficial Copy

Recorded notice, to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the Lots within the Service Area as a Service Area Assessment.

2.5.2 In addition to Service Areas which Declarant may designate during the Development Period, any group of Owners may petition the Board to designate their Lots as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots within the proposed Service Area, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Lot among all Service Areas receiving the same service). If approved by the Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots within the proposed Service Area, the Association shall provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise determined by the Board. The cost and administrative charges associated with such benefits or services shall be assessed against the Lots within such Service Area as a Service Area Assessment. After expiration or termination of the Development Period, the Board may discontinue or modify benefits or services provided to a Service Area.

2.6 Designation of Special Common Areas. Until the expiration or termination of the Development Period, Declarant may designate, in a Notice of Applicability, a Development Area Declaration or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant), any interest in real property or improvements which benefits certain Lot(s) or one or more portion(s) of but less than all of the Development as Special Common Area, for the exclusive use of and/or the obligation to pay Special Common Area Assessments by the Owners of such Lot(s) or portion(s) of the Development attributable thereto, and is or will be conveyed to the Association or as to which the Association will be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association. The Notice of Applicability, Development Area Declaration, or other Recorded written notice designating such Special Common Area will identify the Lot(s) or portion(s) of the Development assigned to such Special Common Area and further indicate whether the Special Common Area designated therein is for the purpose of the exclusive use and the payment of Special Common Area Assessments by the Owner(s) thereof, or only for the purpose of paying Special Common Area Assessments attributable thereto, but not also for exclusive use. By way of illustration and not limitation, Special Common Area might include such things as private drives and roads, entrance facilities and features, monumentation or signage, walkways or landscaping, which may or may not be exclusively used by the Owners paying the attributable Special Common Area Assessments therefor. All costs associated with maintenance, repair, replacement, and insurance of such Special Common Area will be assessed as a Special Common Area Assessment against the Owners of the Lots to which the Special Common Area is assigned. During the Development

Unofficial Copy

Period, Declarant may Record a written instrument converting any previously designated Special Common Area, or any portion thereof, to Common Area.

ARTICLE 3
SOUTHERN POINTE MASTER ASSOCIATION, INC.

3.1 Organization. The Association shall be a non-profit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Covenant. Unless expressly provided in the Documents, the Association acts through a Majority of the Board. Certain acts and activities of the Association and the Board must be approved by the Declarant during the Development Period. If Declarant approval is required, Declarant's approval must be evidenced in writing.

3.2 Neighborhoods. Declarant reserves the right, but has no obligation, to record a Designation of Neighborhood pursuant to *Section 9.6* to assign portions of the Development to a "**Neighborhood**." A Neighborhood may be comprised of any number of Lots and may include Lots of more than one type, as well as Lots that are not contiguous to one another. Each Designation of Neighborhood shall initially assign the portion of the Development described therein to a specific Neighborhood which may then exist (being identified and described in a previously Recorded Notice of Applicability) or may be newly created. After a Designation of Neighborhood is Recorded, any and all portions of the Development which are not assigned to a specific Neighborhood shall constitute a single Neighborhood. During the Development Period, Declarant may Record an amendment to any previously Recorded Designation of Neighborhood to designate or change Neighborhood boundaries.

3.3 Membership.

3.3.1 Mandatory Membership. Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot. Within thirty (30) days after acquiring legal title to a Lot, if requested by the Board, an Owner must provide the Association with: (i) a copy of the recorded deed by which the Owner has acquired title to the Lot; (ii) the Owner's address, email address, phone number, and driver's license number, if any; (iii) any Mortgagee's name and address; and (iv) the name, phone number, and email address of any Occupant other than the Owner.

3.3.2 Easement of Enjoyment – Common Area. Every Member shall have a right and easement of enjoyment in and to all of the Common Areas and an access easement, if applicable, by and through any Common Area, which easements shall be appurtenant to and

Unofficial Copy

shall pass with the title to such Member's Lot, subject to the following restrictions and reservations:

(i) The right of the Declarant, or the Declarant's designee, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, the right of the Board, to cause such Improvements and features to be constructed upon the Common Area;

(ii) The right of the Association to suspend the Member's rights to use the Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such Member is in violation of any provision of this Covenant;

(iii) The right of the Declarant, during the Development Period, and the Board, with Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Common Area to any Governmental Entity;

(iv) The right of the Declarant, during the Development Period, and the Board, with Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Common Area and the right to enter into agreements for the maintenance, use and/or sharing of Common Area with other persons and/or entities and the charging of usage fees associated therewith;

(v) The right of the Declarant, during the Development Period, and the Board, with Declarant's advance written consent during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon;

(vi) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area; and

(vii) The right of the Association to contract for services and benefits with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant.

3.3.3 Easement of Enjoyment – Special Common Area. Each Owner of a Lot which has been assigned use of Special Common Area in a Notice of Applicability, Development Area Declaration, or other Recorded instrument, shall have a right and easement of enjoyment in and to all of such Special Common Area for its intended purposes, and an access easement, if

Unofficial Copy

applicable, by and through such Special Common Area, which easement shall be appurtenant to and shall pass with title to such Owner's Lot, subject to *Section 3.3.2* and subject to the following restrictions and reservations:

(i) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to cause such Improvements and features to be constructed upon the Special Common Area;

(ii) The right of the Association to suspend the Member's rights to use the Special Common Area for any period during which any Assessment against such Member's Lot remains past due and for any period during which such Member is in violation of any provision of this Covenant;

(iii) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Special Common Area to any Governmental Entity;

(iv) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Special Common Area and the right to enter into agreements for the maintenance, use and/or sharing of Special Common Area with other person's and/or entities and the charging of usage fees associated therewith;

(v) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to promulgate Rules regarding the use of the Special Common Area and any Improvements thereon;

(vi) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Special Common Area and, in furtherance thereof, mortgage the Special Common Area;

(vii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by the Declarant; and

(viii) The right of Declarant during the Development Period to grant additional Lots use rights in and to Special Common Area in a subsequently

Unofficial Copy

Recorded Notice of Applicability, Development Area Declaration, or Recorded instrument.

3.4 Governance. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. Notwithstanding the foregoing provision or any provision in the Documents to the contrary, until one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this Covenant and have been conveyed to Owners other than the Declarant or a Homebuilder, Declarant will appoint and remove all members of the Board and officers of the Association. Within one hundred and twenty (120) days after seventy-five percent (75%) of the Maximum Number of Lots have been made subject to the terms and provisions of this Covenant and have been conveyed to Owners other than the Declarant or a Homebuilder, the Board will call a meeting of Members of the Association for the purpose of electing one-third of the Board (the "**Initial Member Election Meeting**"), which Board member(s) must be elected by Owners other than the Declarant. Declarant may appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period. The individuals elected to the Board at the Initial Member Election Meeting shall be elected for a one (1) year term and shall serve until his or her successor is elected or he or she is replaced in accordance with the Bylaws.

3.5 Voting Allocation. The number of votes which may be cast to elect members to the Board (except as provided by *Section 3.4*), and on all other matters the Members may vote on shall be calculated as set forth below.

3.5.1 Residential Lot. Each Owner of a Residential Lot will be allocated one (1) vote for each Residential Lot so owned. In the event of the re-subdivision of any Residential Lot into two or more Residential Lots: (i) the number of votes to which such Residential Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Residential Lot resulting from such re-subdivision, *e.g.*, each Residential Lot resulting from the re-subdivision will be entitled to one (1) vote; and (ii) each Residential Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Residential Lots for purposes of construction of a single residence thereon, the voting rights and Assessments will continue to be determined according to the number of original Residential Lots contained in such consolidated Residential Lot. Nothing in this Covenant will be construed as authorization for any re-subdivision or consolidation of Residential Lots, such actions being subject to the conditions and restrictions of the Southern Pointe Reviewer.

3.5.2 Commercial Lot. Each Commercial Lot will be allocated that number of votes set forth in the Notice of Applicability attributable to such Commercial Lot t, in accordance with the allocations set forth on Exhibit "C" attached hereto. The allocation of votes is determined based on the use and Improvements constructed or anticipated to be constructed on the Commercial Lot, and/or Development Area, as described on Exhibit "C". If the use or Improvements change after votes have been assigned to a Commercial Lot, and/or Development

Unofficial Copy

Area, the Declarant, and after expiration or termination of the Development Period, a Majority of the Board of the Association, will modify (which modification may be effected after Declarant's conveyance of any Commercial Lot or to any third-party not affiliated with Declarant) by Recorded instrument the number of votes previously assigned to a Commercial Lot and/or Development Area based on the change in use or improvements, which allocation will be determined, in the case of a change in Improvements, based on the plans and specifications reviewed and approved by the Southern Pointe Reviewer.

3.5.3 Declarant. In addition to the votes to which Declarant is entitled by reason of *Section 3.5.1* and *Section 3.5.2*, for every one (1) vote outstanding in favor of any other person or entity, Declarant shall have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to the Declarant pursuant to this *Section 3.5.3* and shall be considered a Member for the purpose of casting such votes, and need not own any portion of the Development as a pre-condition to exercising such votes.

3.5.4 Co-Owners. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners holding a Majority of the ownership interest in the Lot determine among themselves and advise the Secretary of the Association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Lot, and majority agreement shall be conclusively presumed unless another co-Owner of the Lot protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Lot's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event shall the vote for such Lot exceed the total votes to which such Lot is otherwise entitled pursuant to this *Section 3.5.4*.

3.6 Optional Representative System of Voting. The Representative System of Voting shall only be established if the Declarant first calls for election of a Neighborhood Delegate for a particular Neighborhood. The Declarant shall have no obligation to establish the Representative System of Voting. In addition, Declarant may terminate the Representative System of Voting at any time prior to expiration of the Development Period by Recorded written instrument.

3.6.1 Election of Initial Neighborhood Delegate. In the event that the Declarant chooses to establish a Representative System of Voting, the Owners of Lots within each Neighborhood shall elect a Neighborhood Delegate and an alternate Neighborhood Delegate, in the manner provided below, to cast the votes of all Lots in the Neighborhood on matters requiring a vote of the membership, except where this Covenant specifically requires the Owners or Members to cast their votes individually as more particularly described in the definition of "Neighborhood Delegate" in *Article 1* of this Covenant. In the event that a quorum is not met to elect a Neighborhood Delegate and an alternate Neighborhood Delegate by the Owners of Lots within each Neighborhood, during the Development Period, Declarant shall have the right to appoint a Neighborhood Delegate until the next election is held as provided in *Section 3.6.3*. Notwithstanding the foregoing or any provision to the contrary in this Covenant, as provided in *Section 3.4* above, until one hundred and twenty (120) days after seventy-five percent (75%) of the

Unofficial Copy

Maximum Number of Lots have been made subject to the terms and provisions of this Covenant and have been conveyed to Owners other than the Declarant or a Homebuilder, Declarant will have the sole right to appoint and remove all members of the Board.

3.6.2 Term. The Neighborhood Delegate and the alternate Neighborhood Delegate shall be elected on a yearly basis (once every year), by electronic and absentee ballot without a meeting of Owners, or at a meeting of the Owners within each Neighborhood where written, electronic, proxy, and/or absentee ballots may also be utilized, as the Board determines. If the Board determines to hold a meeting for the election of the Neighborhood Delegate and the alternate Neighborhood Delegate, the presence, in person or by proxy, absentee or electronic ballot, of Owners representing at least ten percent (10%) of the total votes in a Neighborhood shall constitute a quorum at such meeting. In the event that a quorum is not met to elect a Neighborhood Delegate and an alternate Neighborhood Delegate, by the Owners of Lots within each Neighborhood, Declarant, during the Development Period, and the Board thereafter, shall have the right to appoint a Neighborhood Delegate and an alternate Neighborhood Delegate until the next election is held. Notwithstanding the foregoing provision, the Declarant during the Development Period, and the Board thereafter, may elect to extend the term of a Neighborhood Delegate and alternate Neighborhood Delegate to the extent Declarant or the Board, as applicable, determines that such extension will result in administrative efficiencies by allowing elections within different Neighborhoods to occur in close proximity to one another; provided, however, that the term of an existing Neighborhood Delegate and alternate Neighborhood Delegate shall not be extended for more than twelve (12) months. If the Neighborhood Delegate is removed in accordance with *Section 3.6.6* below, either the Declarant during the Development Period, or the Board thereafter, shall appoint a new alternate Neighborhood Delegate and the previously elected alternate Neighborhood Delegate shall automatically assume the obligations and duties of the Neighborhood Delegate and serve the remainder of the Neighborhood Delegate's term.

3.6.3 Election Results. At any Neighborhood election, the candidate for each position who receives the greatest number of votes shall be elected to serve as the Neighborhood Delegate and the candidate with the second greatest number of votes shall be elected to serve as the alternate Neighborhood Delegate. The Neighborhood Delegate and alternate Neighborhood Delegate shall serve until his or her successor is elected or appointed.

3.6.4 Voting by the Neighborhood Delegate. The Neighborhood Delegate or, in his or her absence, the alternate Neighborhood Delegate, attends Association meetings and casts all votes allocated to Lots in the Neighborhood that he or she represents on any matter as to which such Neighborhood Delegate is entitled to vote under this Covenant, including the election of Board members upon the expiration or termination of the Development Period. A Neighborhood Delegate may cast all votes allocated to Lots in the Neighborhood in such delegate's discretion and may, but need not, poll the Owners of Lots in the Neighborhood which he or she represents prior to voting.

Unofficial Copy

3.6.5 Qualification. Candidates for election as the Neighborhood Delegate and alternate Neighborhood Delegate from a Neighborhood shall be Owners of Lots in the Neighborhood, spouses of such Owners, Occupants of the Neighborhood, or an entity representative where an Owner is an entity.

3.6.6 Removal. Any Neighborhood Delegate or alternate Neighborhood Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding a Majority of the votes allocated to the Lots in the Neighborhood that the Neighborhood Delegate represents or by the Declarant, until the expiration or termination of the Development Period. If a Neighborhood Delegate is removed in accordance with the foregoing sentence, the alternate Neighborhood Delegate shall serve as the Neighborhood Delegate unless also removed.

3.6.7 Subordination to the Board. Neighborhood Delegates are subordinate to the Board and their responsibility and authority does not extend to policy making, supervising, or otherwise being involved in Association governance.

3.6.8 Running for the Board. An Owner may not simultaneously hold the position of Neighborhood Delegate and be a member of the Board of Directors. In addition, if Neighborhood Delegates are established, a Neighborhood Delegate running for the Board shall resign their position prior to casting any vote for a member of the Board. In such event, the alternate Neighborhood Delegate shall serve out the rest of the term as the former Neighborhood Delegate, and another alternate Neighborhood Delegate shall be elected by the Owners or Members in the Neighborhood to serve out the term as the successor alternate Neighborhood Delegate.

3.7 Voting Groups. Declarant may designate voting groups consisting of one or more Neighborhoods for the purpose of electing members of the Board (the "**Voting Groups**"). The purpose of Voting Groups is to provide groups with dissimilar interests the opportunity to be represented on the Board and to avoid a situation in which less than all the Neighborhoods are able to elect the entire Board. Voting Groups may be established by the Declarant during the Development Period without regard to whether the Representative System of Voting has been implemented in accordance with *Section 3.6* by the Declarant. If Voting Groups are established and the Representative System of Voting has been implemented, then a Neighborhood Delegate shall only vote on the slate of candidates assigned to the Neighborhood Delegate. If Voting Groups are established and the Representative System of Voting has not been implemented, then each Owner of a Lot shall only vote on the slate of candidates assigned to such Owner's Neighborhood.

3.7.1 Voting Group Designation. Declarant shall establish Voting Groups, if at all, by Recording a written instrument identifying the Neighborhoods within each Voting Group (the "**Voting Group Designation**"). The Voting Group Designation will assign the number of members of the Board which the Voting Group is entitled to exclusively elect.

Unofficial Copy

3.7.2 Amendment of Voting Group Designation. The Voting Group Designation may be amended unilaterally by the Declarant at any time during the Development Period. After expiration or termination of the Development Period, the Board shall have the right to Record or amend such Voting Group Designation upon the vote of a Majority of the Board and approval of Neighborhood Delegates representing a Majority of the Neighborhoods. Neither Recordation nor amendment of such Voting Group Designation shall constitute an amendment to this Covenant, and no consent or approval to modify the Voting Group Designation shall be required except as stated in this paragraph.

3.7.3 Single Voting Group. Until such time as Voting Groups are established, all of the Development shall constitute a single Voting Group. After a Voting Group Designation is Recorded, any and all portions of the Development which are not assigned to a specific Voting Group shall constitute a single Voting Group.

3.8 Powers. The Association shall have the powers of a Texas nonprofit corporation. It shall further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it under Applicable Law or this Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, shall have the following powers at all times:

3.8.1 Rules. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, Rules, policies, the Bylaws and the Community Manual, as applicable, which are not in conflict with this Covenant, as the Board deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Association. During the Development Period, the Declarant must approve Rules or policies the Board proposes, as well as the Bylaws and the Community Manual, and any modifications thereto.

3.8.2 Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

3.8.3 Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Documents available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours in accordance with Applicable Law.

3.8.4 Assessments. To levy and collect Assessments and to determine Assessment Units, as provided in *Article 5* below.

3.8.5 Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area,

Unofficial Copy

Improvement or other facility or removing any item to conform to the Documents. The expense the Association incurs in connection with the entry upon any Lot and the removal or maintenance and repair work conducted therefrom, thereon or therein shall be a personal obligation of the Owner of the Lot so entered, shall be deemed an Individual Assessment against such Lot, shall be secured by a lien upon such Lot, and shall be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not enter into, alter or demolish any Improvements on any Lot, other than Common Area or Special Common Area, in enforcing this Covenant before the Association obtains either (i) a judicial order authorizing such action, or (ii) the written consent of the Owner(s) of the affected Lot(s). **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

3.8.6 Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

3.8.7 Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Special Common Area for the purpose of constructing, erecting, operating or maintaining the following:

(i) Parks, parkways or other recreational facilities or structures;

(ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;

(iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;

(iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

(v) Any similar improvements or facilities.

During the Development Period, the Declarant must approve any grant or conveyance under this *Section 3.8.7*. In addition, the Association (with the advance written approval of the Declarant during the Development Period) and the Declarant are each expressly authorized and permitted to convey easements over and across Common Area or Special Common Area for the benefit of property not otherwise subject to the terms and provisions of this Covenant.

3.8.8 Manager. To retain and pay for the services of a person or firm (the "**Manager**"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including Common Area, Special Common Area, and/or any Service Area, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

3.8.9 Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, and all other utilities, services, repair and maintenance, including but not limited to private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, canals, streams, and lakes.

3.8.10 Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Documents or as determined by the Board.

3.8.11 Construction on Common Area and Special Common Area. To construct new Improvements or additions to Common Area and Special Common Area, subject to the approval of the Declarant during the Development Period.

3.8.12 Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board shall determine, to operate and maintain the Development, any Common Area, Special Common Area, Improvement, or other property or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, the Declarant must approve all Bulk Rate Contracts.

Unofficial Copy

3.8.13 Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, easement, gift or otherwise. During the Development Period, the Declarant must approve all acquisitions and dispositions of the Association hereunder.

3.8.14 Authority with Respect to the Documents. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Documents. Any decision by the Board to delay or defer the exercise of the power and authority granted under this *Section 3.8.14* shall not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

3.8.15 Membership Privileges. To establish Rules governing and limiting the use of the Common Area, Special Common Area, and any Improvements thereon as well as the use, maintenance, and enjoyment of the Lots. During the Development Period, the Declarant must approve all Rules governing and limiting the use of the Common Area, Special Common Area, Service Area and any Improvements thereon.

3.8.16 Relationships with Governmental Entities and Tax Exempt Organizations. To create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area, Special Common Area, or Service Area to Governmental Entities or non-profit, tax-exempt organizations. The Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a common expense to be included in the Assessments levied by the Association and included as a line item in the Association's annual budget.

3.9 Conveyance of Common Areas and Special Common Areas to the Association. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees reserve the right, from time to time and at any time, to designate, convey, assign or transfer by written and Recorded instrument property being held by the Declarant or a third party for the benefit of the Association, in the sole and absolute discretion of the Declarant. Upon the Recording of a designation, the portion of the property identified therein will be considered Common Area or Special Common Area, as applicable, for the purpose of this Covenant and the Association shall have an easement over and across the Common Area or Special Common Area necessary or required to discharge the Association's obligations under this Covenant, subject to any terms and limitations to such easement set forth in the designation. Declarant and its assignees may also assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Development, for the Development and the general public, or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed accepted by the Association upon Recordation and without further action by the Association, and shall be considered Common Area or Special Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area or Special Common Area. If

Unofficial Copy

requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment. Declarant and/or its assignees may construct and maintain upon portions of the Common Area and/or the Special Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements in the Development, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area and the Special Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

3.10 Indemnification. To the fullest extent permitted by Applicable Law but without duplication of (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association shall indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such person is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him or her in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that such person: (a) acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

3.11 Insurance. The Board may purchase and maintain, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against such person or incurred by such person in their capacity as an director, officer, committee member, employee, servant or agent of the Association, or arising out of the person's status as such,

Unofficial Copy

whether or not the Association would have the power to indemnify the person against such liability or otherwise.

3.12 Bulk Rate Contracts.

3.12.1 Without limitation on the generality of the Association powers set out in *Section 3.8*, the Association shall have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers the Board chooses (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are the owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. Notwithstanding the foregoing, during the Development Period, the Declarant must approve all Bulk Rate Contracts.

3.12.2 The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Service Area, Special Common Area, or Individual, as the case may be) against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association shall be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Covenant with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Covenant. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available at law, equity, or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or Occupant of such Owner's Lot) directly to the applicable service or utility provider. Such notice shall consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where the Owner (or Occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service shall be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.13 Community Services and Systems. The Declarant, or a designee of the Declarant, is specifically authorized, but not required, to install, provide, maintain or furnish, or to enter into contracts with other persons to install, provide, maintain or furnish, central telecommunication receiving and distribution systems (*e.g.* cable television, high speed data/Internet/intranet services, and security monitoring) and utility services (*e.g.*, electricity, solar, gas, water), and related components, including associated infrastructure, equipment, hardware, and software to

Unofficial Copy

serve all or any portion of the Development ("**Community Services and Systems**"). The Community Services and Systems may be located on Common Area or Special Common Area, and on or in any Improvements constructed upon the Common Area or Special Common Area, and an easement is herein reserved in favor or Declarant or its designee for the purpose of installing, operating, managing, maintaining, upgrading and modifying the Community Services and Systems. Declarant may enter into an agreement with a third-party provider of any Community Services and Systems, which agreement may provide for payments to the Declarant, or a designee of the Declarant, for and in exchange for use of the Community Services and Systems, or otherwise, by Owners or the Association. Any such fees, use charges, royalties, or other payments shall be the sole property of Declarant, unless transferred by Declarant by Recorded written instrument executed by the Declarant and the transferee, and neither the Association nor any Owner shall have any interest therein. In the event the Declarant, or a designee of the Declarant, elects to provide any of the Community Services and Systems to all or any portion of the Development, the Declarant or designee of the Declarant, may enter into an agreement with the Association with respect to such services. In the event Declarant, or any designee of the Declarant, enters into a contract with a third party for the provision of any Community Services and Systems to serve all or any portion of the Development, the Declarant or the designee of the Declarant may assign any or all of the rights or obligations of the Declarant or the designee of the Declarant under the contract to the Association or any individual or entity. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as the Declarant or its designee determines appropriate. **Each Owner acknowledges that interruptions in Community Services and Systems will occur from time to time. The Declarant and the Association, or any of their respective affiliates, directors, officers, employees and agents, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.**

3.14 **Protection of Declarant's Interests**. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots or any portion of the Property owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless the Declarant agrees otherwise in advance and in writing, the Board shall be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

3.15 **Administration of Common Areas**. The administration of the Common Areas, Special Common Areas and Service Areas by the Association shall be in accordance with the provisions of Applicable Law and the Documents, and of any other agreements, documents,

Unofficial Copy

amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any Governmental Entity having regulatory jurisdiction over the Common Area, Special Common Area or Service Area or by any title insurance company selected by Declarant to insure title to any portion of such areas.

3.16 Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a Claim, as such term is defined in *Section 11.1* below, relating to the design or construction of Improvements on a Lot (whether one or more). This *Section 3.16* may not be amended or modified without the written and acknowledged consent of the Declarant and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of a Recorded amendment instrument.

ARTICLE 4
INSURANCE AND RESTORATION

4.1 Insurance. Each Owner shall be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association shall not maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such other insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies shall be a common expense the Association will include in the Assessments levied. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot, or any Improvements or personal property located on a Lot.

4.2 Flood Insurance. Each Owner and Occupant of a Lot is advised that all or any portion of the Property may be located in a flood plain, floodway or area prone to flooding. Each Owner and Occupant is advised to consider purchasing flood insurance on the Owner's or Occupant's Lot. The Association may not be required obtain flood insurance on any portion of the Property. Each Owner and Occupant is advised to: (i) contact local governmental authorities to review flood zone maps for such Owner's or Occupant's Lot; (ii) review the flood maps published by the Federal Emergency Management Agency; (iii) review the Plat(s); and (iv) periodically contact responsible insurance companies licensed to do business in the State of Texas to determine whether flood insurance should be purchased by an Owner or Occupant for the Owner's or Occupant's Lot and all Improvements thereon. The flood plain and floodway

Unofficial Copy

boundaries are subject to change and flooding can occur outside of these areas. Neither the Association nor Declarant shall be held liable for any loss or damage by reason of flooding occurring on any Lot or the Improvements thereon.

4.3 **Restoration Requirements.** In the event of any fire or other casualty, unless otherwise approved by the Southern Pointe Reviewer, the Owner shall: (i) promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof or (ii) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Development within sixty (60) days after the occurrence of such damage. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials substantially similar to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion, or if the Owner does not clean up any debris resulting from any damage within sixty (60) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement, removal, or clean-up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed under Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) shall be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot shall be secured by the liens reserved in this Covenant for Assessments and may be collected by any means provided in this Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.4 **Restoration - Mechanic's and Materialmen's Lien.** Each Owner whose structure the Association repairs, restores, replaces or cleans up pursuant to the rights granted under this Article, hereby grants to the Association an express mechanic's and materialmen's lien for the

Unofficial Copy

reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement, or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement, or clean-up which are delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement, or clean-up, such Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 5
COVENANT FOR ASSESSMENTS

5.1 **Assessments**.

5.1.1 Established by Board. The Board shall levy Assessments pursuant to the provisions of this Article against each Lot in such amounts as the Board shall determine pursuant to *Section 5.9*. The Board shall determine the total amount of Assessments in accordance with the terms of this Article.

5.1.2 Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment is levied and shall be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon (such lien, with respect to any Lot not in existence on the date hereof, shall be deemed granted and conveyed at the time that such Lot is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

5.1.3 Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy the Declarant pays to the Association may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year shall not obligate Declarant to continue payment of a subsidy to the Association in future years.

5.1.4 Commencement of Assessments. Assessments will commence as to a particular Lot on the first day of the month after the Lot has been made subject to the terms and provisions of this Covenant. If Assessments are due and payable less frequently than once per month, e.g., quarterly or annually, Assessments will be prorated based on the number of months remaining during the billing period.

5.2 **Maintenance Fund**. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Covenant. The funds of the Association may be used for any purpose authorized under the Documents and Applicable Law.

Unofficial Copy

5.3 Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association ("**Regular Assessments**") which sets forth: (a) an estimate of expenses the Association will incur during such year in performing its functions and exercising its powers under this Covenant, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Documents; and (b) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, but excluding (c) the operation, maintenance, repair and management costs and expenses associated with any Service Area and Special Common Area. Regular Assessments sufficient to pay such estimated expenses will then be levied at the level set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment by an Owner, the Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

5.4 Special Assessments. In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "**Special Assessments**") whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Documents. The amount of any Special Assessments will be at the sole discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Special Common Area. Any Special Assessment the Association levies for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any Special Assessments the Association levies for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Special Common Area will be levied against all Owners who have been assigned the obligation to pay Special Common Area Assessments based on Assessment Units. All Special Assessments will be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

5.5 Special Common Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by the Association to operate, maintain, repair, or manage any Special Common Area. The budget will be an estimate of the amount needed to operate, maintain, repair and manage such Special Common Area including a reasonable provision for contingencies and an appropriate replacement reserve. The level of Special Common Area Assessments will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding. If the sums collected prove inadequate for any reason, including non-payment of any Assessment by

Unofficial Copy

an Owner, the Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

5.6 Service Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of Service Area Assessments will be allocated (a) equally among Lots within the Service Area, (b) based on Assessment Units assigned to Lots within the Service Area, or (c) based on the benefit received among all Lots in the Service Area. All amounts that the Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general funds.

5.7 Individual Assessments. In addition to any other Assessments, the Board may levy an individual assessment (the "**Individual Assessment**") against an Owner and the Owner's Lot, which may include, but is not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Lot into compliance with the Documents; (iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and project documents; (vi) insurance deductibles; (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Occupants of the Owner's Lot; (viii) common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; (ix) fees or charges levied against the Association on a per-Lot basis; and (x) "pass through" expenses for services to Lots provided through the Association and which are paid by each Lot according to benefit received.

5.8 Working Capital Assessment. Each Owner (other than Declarant) will pay a one-time working capital assessment (the "**Working Capital Assessment**") to the Association in such amount, if any, as may be determined by the Declarant, until expiration or termination of the Development Period, and the Board thereafter. The Working Capital Assessment hereunder will be due and payable to the Association by the transferee immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof, or as otherwise set forth in a Notice of Applicability or other Recorded instrument. Such Working Capital Assessment need not be uniform among all Lots, and the Declarant or the Board, as applicable, is expressly authorized to establish Working Capital Assessments of varying amounts depending on the size, use and general character of the Lots. The Working Capital Assessment may be used to discharge operating expenses or capital expenses, as determined from time to time by the Board. The levy of any Working Capital Assessment will be effective only upon the Recordation of a written notice, signed by the Declarant or a duly authorized officer of the Association, setting forth the amount of the Working Capital Assessment and the Lots to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (a) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (b) transfer to, from, or by the Association; (c) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent, including any conveyances to trusts; or (d) voluntary transfer by an Owner to one or more affiliates who controls, is controlled by, or is under common control with, the Owner. Additionally, an Owner who is a Homebuilder or a Residential Developer will not be subject to the Working Capital Assessment, unless otherwise provided in a Notice of Applicability or other Recorded instrument. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, Declarant, until expiration or termination of the Development Period, will determine application of an exemption in its sole and absolute discretion. The Working Capital Assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 5* and will not be considered an advance payment of such Assessments. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any Working Capital Assessment attributable to a Lot (or all Lots) by the Recordation of a waiver notice or in the Notice of Applicability, which waiver may be temporary or permanent.

5.9 Amount of Assessment.

5.9.1 Assessments to be Levied. The Board shall levy Assessments against each "**Assessment Unit**" (as defined in *Section 5.9.2* below). Unless otherwise provided in this Covenant, Assessments levied pursuant to *Section 5.3* and *Section 5.4* shall be levied uniformly against each Assessment Unit. Special Common Area Assessments levied pursuant to *Section 5.5* shall be levied uniformly against each Assessment Unit allocated to a Lot that has been assigned the obligation to pay Special Common Area Assessments for specified Special Common Area. Service Area Assessments levied pursuant to *Section 5.6* shall be levied: (i) equally; (ii) based on Assessment Units allocated to the Lots within the Service Area; or (iii) based on the benefit received among all Lots in the benefited Service Area that has been included in the Service Area to which such Service Area Assessment relates.

5.9.2 Assessment Unit. Each Residential Lot shall be allocated one (1) "**Assessment Unit**" unless otherwise provided in *Section 5.9.4*. In the event of the re-subdivision of any Residential Lot into two (2) or more Residential Lots, each Residential Lot resulting from the re-subdivision shall be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Residential Lots for the purposes of constructing a single residence thereon, the Assessment Units will continue to be determined according to the number of original Residential Lots contained in such consolidated Residential Lot. Nothing in this Covenant shall be construed as authorization for any re-subdivision or consolidation of Residential Lots, such actions being subject to the conditions and restrictions of the Southern Pointe Reviewer.

5.9.3 Commercial Lots. Each Commercial Lot will be allocated that number of Assessment Units set forth in the Notice of Applicability attributable to such Commercial Lot in accordance with the allocations set forth on Exhibit "C" attached hereto. The allocation of

Assessment Units is determined based on the use and Improvements constructed or anticipated to be constructed on the Commercial Lot and/or Development Area, as described on Exhibit "C". If the use or Improvements change after Assessment Units have been assigned to a Commercial Lot and/or Development Area, the Declarant, and after expiration or termination of the Development Period, a Majority of the Board of the Association, will modify (which modification may be effected after Declarant's conveyance of any Commercial Lot to any third-party not affiliated with Declarant) by Recorded instrument the number of Assessment Units previously assigned to a Commercial Lot and/or Development Area based on the change in use or Improvements, which allocation will be determined, in the case of a change in Improvements, based on the plans and specifications reviewed and approved by the Southern Pointe Reviewer.

5.9.4 Residential Assessment Unit Allocation. Declarant, in Declarant's sole and absolute discretion, may elect to allocate more than one Assessment Unit to a Residential Lot. An allocation of more than one Assessment Unit to a Residential Lot must be made in a Notice of Applicability or in a Development Area Declaration for the Development Area in which the Residential Lot is located. Declarant's determination regarding the number of Assessment Units applicable to a Residential Lot pursuant to this *Section 5.9.4* shall be final, binding and conclusive.

5.9.5 Declarant Exemption. Notwithstanding anything in this Covenant to the contrary, no Assessments shall be levied upon Lots owned by Declarant.

5.9.6 Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Development, Lot from Assessments; (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Development, Lot; or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Development, Lot; or (iv) exempt any Homebuilder from Assessments on any Lots owned by such Homebuilder. In the event Declarant elects to delay or reduce Assessments pursuant to this *Section 5.9.6*, the duration of the delay or the amount of the reduction shall be set forth in a Recorded instrument. Declarant may terminate, extend or modify any delay or reduction set forth in a previously Recorded instrument by Recording a replacement instrument. Declarant or the Board may also exempt from Assessments any portion of the Development which is dedicated to and accepted by a Governmental Entity.

5.10 Late Charges. At the Board's election, it may require the Owner responsible for any payment not paid by the applicable due date to pay a late charge in such amount as the Board may determine, and the late charge (and any reasonable handling costs) shall be a charge upon the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge shall never exceed the maximum charge permitted under Applicable Law.

5.11 Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such

Unofficial Copy

Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1½% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

5.12 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article, together with late charges as provided in *Section 5.10* and interest as provided in *Section 5.11* hereof and all costs of collection, including attorney's fees, as herein provided, are secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.1.2* above, and shall bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns.

5.12.1 Lien Superiority. The aforesaid lien shall be superior to all other liens and charges against such Lot, except only for (i) tax or governmental assessment liens; (ii) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; and (iii) home equity loans or home equity lines of credit which are secured by a second mortgage lien or Recorded second deed of trust lien provided that, in the case of *clauses (ii)* and *(iii)* above, such Mortgage was Recorded, before the delinquent Assessment was due. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board, and such subordination may be signed by a Board member or officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by an authorized officer of the Association and shall be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Covenant shall be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder.

5.12.2 Additional Liens and Rights to Foreclose. The Assessment liens and rights to foreclosure thereof shall be in addition to and not in substitution of any other rights and remedies the Association may have pursuant to Applicable Law and under this Covenant, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred.

5.12.3 Association's Power to Bid. The Association shall have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder shall not be affected by the sale or transfer of any Lot; except, however, that in the

Unofficial Copy

event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale shall be extinguished, provided that past-due Assessments shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence shall not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale.

5.12.4 Release of Lien; Nonpayment; Transfer. Upon payment of all sums secured by a lien of the type described in this *Section 5.12*, the Association shall upon the request of the Owner, and at such Owner's cost, execute an instrument releasing the lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release must be signed by an authorized officer of the Association and Recorded. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such 12-day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable services, provided through the Association and not paid for directly by an Owner or occupant to the utility or service provider. Such notice shall consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where the Owner or the Owner's tenant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service shall not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot shall not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Covenant to the Association, the Owner shall pay such amounts to the Association out of the sales price of the Lot, and such sums shall be paid in preference to any other charges against the Lot other than liens superior to the Assessment liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot shall remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot to a third party.

Unofficial Copy

5.13 **Exempt Property.** The following area within the Development shall be exempt from the Assessments provided for in this Article:

(i) All area dedicated to and accepted by a Governmental Entity;

(ii) The Common Area and the Special Common Area; and

(iii) Any portion of the Property or Development owned by Declarant.

No portion of the Property shall be subject to the terms and provisions of this Covenant, and no portion of the Property (nor any Owner thereof) shall be obligated to pay Assessments hereunder unless and until such Property has been made subject to the terms of this Covenant by the Recording of a Notice of Applicability in accordance with *Section 9.5*.

5.14 **Fines and Damages Assessment**.

5.14.1 Board Assessment. The Board may assess fines against an Owner for violations of the Documents committed by such Owner, an Occupant or an Owner's or Occupant's guests, agents or invitees pursuant to the *Fine and Enforcement Policy* contained in the Community Manual. Any fine and/or charge for damage levied in accordance with this *Section 5.14* shall be considered an Individual Assessment pursuant to this Covenant. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area, Special Common Area, Service Area or any Improvements caused by the Owner, the Occupant or their guests, agents, or invitees. The Manager shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Documents and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

5.14.2 Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 5.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.1.2* of this Covenant. The fine and/or damage charge shall be considered an Assessment for the purpose of this Article and shall be enforced in accordance with the terms and provisions governing the enforcement of Assessments pursuant to this Article.

5.15 **Collection of Assessments by Sub-Association**. Unless the Board elects otherwise (which election may be made at any time on fifteen (15) days advance written notice), each Sub-Association will collect from each Owner under the jurisdiction of such Sub-Association such Owner's share of Regular Assessments, Special Assessments and Individual Assessments levied hereunder. Each Sub-Association will promptly remit to the Association any and all amounts collected by such Sub-Association associated with such Assessments. If a Sub-

Unofficial Copy

Association fails to timely collect any portion of the Assessments due from the Owner under the jurisdiction of the Sub-Association, then after the Association has provided fifteen (15) days' advance written notice to the Sub-Association, the Association may collect Assessments allocated to the Owner under the jurisdiction of the Sub-Association and enforce its lien against such Owner without the joinder of the Sub-Association.

ARTICLE 6
THE SOUTHERN POINTE REVIEWER

6.1 Architectural Control by Declarant. During the Development Period, none of the Association, the Board, or any committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development Period, the Southern Pointe Reviewer for Improvements is Declarant or its designee. No Improvement the Declarant constructs or causes to be constructed shall be subject to the terms and provisions of this Article or approval by the Southern Pointe Reviewer.

6.1.1 Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period no Improvements shall be started or progressed without the prior written approval of the Southern Pointe Reviewer, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

6.1.2 Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation shall be in writing and shall specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated until expiration of twenty-four (24) months after the expiration of the Development Period; and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. The Declarant is not responsible for: (a) errors in or omissions from the plans and specifications submitted to the Declarant; (b) supervising construction for the Owner's compliance with approved plans and specifications; or (c) the compliance of the Owner's plans and specifications with Applicable Law.

6.2 Architectural Control by Association. Until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or

Unofficial Copy

expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "**ACC**") shall assume jurisdiction over architectural control and shall have the powers of the Southern Pointe Reviewer hereunder.

6.2.1 ACC. The ACC shall consist of at least three (3) but no more than seven (7) persons appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. Members of the ACC need not be Owners or Occupants, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

6.2.2 Limits on Liability. The ACC has sole discretion with respect to taste, design and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with Applicable Law.

6.2.3 Release. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND ITS AFFILIATES, THE SOUTHERN POINTE REVIEWER, ASSOCIATION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, PARTNERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE SOUTHERN POINTE REVIEWER'S ACTS OR ACTIVITIES UNDER THIS COVENANT.**

6.3 Prohibition of Construction, Alteration and Improvement. No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Southern Pointe Reviewer. The Southern Pointe Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property or the Development. Unless otherwise provided in the Design Guidelines, an Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement located on such Owner's Lot, provided that such action is not visible from any other portion of the Development or Property.

6.4 Architectural Approval.

6.4.1 Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide or consolidate Lots, a proposal for such plat, re-subdivision or consolidation, shall be submitted in accordance with the

Unofficial Copy

Design Guidelines, if any, or any additional rules adopted by the Southern Pointe Reviewer together with any review fee which is imposed by the Southern Pointe Reviewer in accordance with *Section 6.4.2*. No plat, re-subdivision or consolidation shall be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the contractor which the Owner intends to use to construct the proposed Improvement have been approved in writing by the Southern Pointe Reviewer. The Southern Pointe Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Southern Pointe Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Southern Pointe Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Southern Pointe Reviewer, in its sole discretion, may require. Site plans must be approved by the Southern Pointe Reviewer prior to the clearing of any Lot, or the construction of any Improvements. The Southern Pointe Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the plat, re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the Southern Pointe Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Covenant, the Southern Pointe Reviewer may issue an approval to Homebuilders or a Residential Developer for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval otherwise set forth in this Covenant.

6.4.2 Design Guidelines. The Southern Pointe Reviewer shall have the power, from time to time, to adopt, amend, modify, revoke, or supplement the Design Guidelines which may apply to all or any portion of the Development. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Covenant, the terms and provisions of this Covenant shall control. In addition, the Southern Pointe Reviewer shall have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Covenant. Such charges shall be held by the Southern Pointe Reviewer and used to defray the administrative expenses and any other costs incurred by the Southern Pointe Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the Southern Pointe Reviewer shall be distributed to the Association at the end of each calendar year. The Southern Pointe Reviewer shall not be required to review any plans until a complete submittal package, as required by this Covenant and the Design Guidelines, is assembled and submitted to the Southern Pointe Reviewer. The Southern Pointe Reviewer shall have the authority to adopt such additional or alternate procedural and substantive rules and guidelines not in conflict with this Covenant (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

6.4.3 Approval of Regulatory Submission Item. Each Owner is further advised that prior to submitting any application, variance or special use permit, plat, drainage plans, building or site plan, expressly including any amendments to a preliminary plan or a development plan (a "**Regulatory Submission Item**") required to be submitted by an Owner to a Governmental Entity for approval or issuance of a permit, as applicable, the Owner must first obtain approval from the Southern Pointe Reviewer of the Regulatory Submission Item (the "**Preliminary Regulatory Approval**"). Any Preliminary Regulatory Approval granted by the Southern Pointe Reviewer is conditional and no Improvements may be constructed in accordance with the Regulatory Submission Item until the Owner has submitted to the Southern Pointe Reviewer a copy of the Regulatory Submission Item approved by the Governmental Entity and the Southern Pointe Reviewer has issued to the Owner a "Notice to Proceed". In the event of a conflict between the Regulatory Submission Item approved by the Southern Pointe Reviewer and the Regulatory Submission Item approved by the regulatory authority, the Owner will be required to resubmit the Regulatory Submission Item to the Southern Pointe Reviewer for approval. Each Owner acknowledges that no Governmental Entity has the authority to modify the terms and provisions of the Documents applicable to all or any portion of the Development.

6.4.4 The Southern Pointe Reviewer Approval of Project Names. Each Owner is advised that the name used to identify the Development Area or any portion thereof for marketing or identification purposes must be approved in advance and in writing by the Southern Pointe Reviewer.

6.4.5 Failure to Act. In the event that any plans and specifications are submitted to the Southern Pointe Reviewer as provided herein, and the Southern Pointe Reviewer fails to either approve or reject such plans and specifications for a period of thirty (30) days following such submission, the plans and specifications shall be deemed disapproved.

6.4.6 Variances. The Southern Pointe Reviewer may grant variances from compliance with any of the provisions of the Documents, when, in the opinion of the Southern Pointe Reviewer, in its sole and absolute discretion, such variance is justified by specific circumstances of a particular case. All variances shall be evidenced in writing and if Declarant has assigned its rights to the ACC, must be approved by the Declarant until expiration or termination of the Development Period, or otherwise by a Majority of the members of the ACC. Each variance shall also be Recorded; provided, however, that failure to Record a variance shall not affect the validity thereof or give rise to any claim or cause of action against the Southern Pointe Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in the Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of the Documents for any purpose, except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Documents.

Unofficial Copy

6.4.7 Duration of Approval. The approval of the Southern Pointe Reviewer of any final plans and specifications, and any variances granted by the Southern Pointe Reviewer shall be valid for a period of one hundred and eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and eighty (180) day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the Southern Pointe Reviewer, in its sole and absolute discretion, the Owner shall be required to resubmit such final plans and specifications or request for a variance to the Southern Pointe Reviewer, and the Southern Pointe Reviewer shall have the authority to re-evaluate such plans and specifications in accordance with this *Section 6.4.7* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

6.4.8 No Waiver of Future Approvals. The approval of the Southern Pointe Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Southern Pointe Reviewer shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Southern Pointe Reviewer.

6.4.9 Right to Appeal Denial to the Board. Upon the earlier of: (i) the assignment of the right to review Improvements from the Southern Pointe Reviewer to the ACC; or (ii) the expiration of the Development Period, in the event the ACC denies an Owner's request for approval of plans and specifications, the Owner may appeal such decision to the Board. The Owner's right to appeal shall expire if a request for appeal is not made to the Board, in writing, within thirty (30) days after the denial was issued by the ACC. If a request for appeal from an ACC decision is received by the Board within such period, the Board will, within sixty (60) days after receipt of such request, review the ACC denial along with any additional information submitted to the Board by the Owner. The Board will then issue a decision on the approval or denial of the submitted plans and specifications and in so doing, has the power to overturn, uphold or approve with additional conditions the decision of the ACC.

6.5 Non-Liability of the Southern Pointe Reviewer. NEITHER THE DECLARANT, THE BOARD, NOR THE SOUTHERN POINTE REVIEWER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE SOUTHERN POINTE REVIEWER UNDER THIS COVENANT.

ARTICLE 7
MORTGAGE PROVISIONS

Unofficial Copy

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Development. The provisions of this Article apply to the Covenant and the Bylaws of the Association.

7.1 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**")), shall be entitled to timely written notice of:

(i) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is an eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;

(ii) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

(iii) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

7.2 Examination of Books. The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

7.3 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien Mortgages under Applicable Law shall relate only to the individual Lots and not to any other portion of the Development.

ARTICLE 8
EASEMENTS

8.1 Right of Ingress and Egress. Declarant, its agents, employees, successors, and assigns shall have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other temporary uses of the Common Area or Special Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with construction and development of the Property or the Development. The Development shall be subject to a perpetual non-exclusive easement for the installation and maintenance of, including the right to read, meters, service or repair lines and equipment, and to do any work necessary to properly maintain and furnish the Community Services and Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of

Unofficial Copy

Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Services and Systems and to provide the services available through the Community Services and Systems to any Lots within the Development. Neither the Association, nor any Owner, shall have any interest therein. Such services may be provided either: (i) directly through the Association and paid for as part of the Assessments; or (ii) directly by Declarant, any affiliate of Declarant, or a third party, to the Owner who receives such services or the Association. The Community Services and Systems, including any fees or royalties paid or revenue generated therefrom, shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Services and Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any Person. The rights of Declarant with respect to the Community Services and Systems installed by Declarant and the services provided through such Community Services and Systems are exclusive, and no other person may provide such services through the Community Services and Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in the Community Services and Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of the Community Services and Systems shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Services and Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

8.2 **Reserved and Existing Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third-party prior to any portion of the Property becoming subject to this Covenant are incorporated herein by reference and made a part of this Covenant for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of developing the Property and the Development.

8.3 **Roadway and Utility Easements.** Declarant hereby reserves for itself, its affiliates, and its assigns a perpetual non-exclusive easement over and across the Development (but not through a then-existing structure) for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Development, the Property, and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Development, the Property, and any other property owned by Declarant; (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Development, the Property, and any other property owned by Declarant; and (iv) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, or other areas to serve the Development, the Property, and

Unofficial Copy

any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (i) through (iv) of this section. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Special Common Area, or a Service Area.

8.4 **Entry and Fencing Easement**. Declarant reserves for itself and the Association, an easement over and across the Development for the installation, maintenance, repair or replacement of fencing and subdivision entry facilities which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the fencing and/or subdivision entry facilities to which the easement reserved hereunder applies. Declarant may designate all or any portion of the fencing and/or subdivision entry facilities as Common Area, Special Common Area, or a Service Area.

8.5 **Landscape, Monumentation and Signage Easement**. Declarant hereby reserves an easement over and across the Development for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area, Special Common Area, or a Service Area.

8.6 **Easement for Special Events**. The Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over the Common Area, for the purpose of conducting educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as the Declarant or the Association, in their reasonable discretion, deem appropriate. Members of the public may have access to such events. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot subject to this Covenant acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants to take no action, legal or otherwise, which would interfere with the exercise of such easement.

8.7 **Solar Equipment Easement**. Declarant hereby reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over and across the Development for the installation, maintenance, repair or replacement of a rooftop solar electric generating system designed to deliver electric power to a particular residence built on a Lot or Common Area. Declarant will have the right, from time to time, to Record a written notice which identifies the solar equipment to which the easement reserved hereunder applies. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party.

Unofficial Copy

8.8 **Cellular Tower and Telecommunications Easement**. Declarant hereby grants and reserves for itself and its assigns, an exclusive, perpetual and irrevocable easement, license and right to use any portion of the Common Area or Special Common Area, or any portion of the Property or the Development which Declarant intends to designate as Common Area or Special Common Area (the "**CTT Easement Area**") for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment. Declarant or its assignee will have the right, from time to time, but no obligation, to Record a written notice which identifies the portion of the Common Area or Special Common Area to which the CTT Easement Area pertains, and Declarant, or its assignee, may fence, install landscaping, or otherwise install improvements restricting access to the CTT Easement Area identified in such Recorded instrument. Neither the Association, nor any Owner other than the Declarant or its assignee hereunder, may use the CTT Easement Area in any manner which interferes with operation of the CTT Equipment. Declarant hereby reserves for itself and its assigns the right to use, sell, lease or assign all or any portion of the CTT Easement Area, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment. In addition, Declarant hereby reserves for itself and its assigns a non-exclusive, perpetual and irrevocable easement over the Property and the Development for access to and from the CTT Easement Area and to construct, install, use, maintain, repair, replace, improve, remove, and operate, or allow others to do the same, any utility lines servicing the CTT Equipment. Declarant also reserves for itself and its assigns the right to select and contract with any third-party for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment and to provide any telecommunication, cellular, video or digital service associated therewith. Declarant shall have and hereby reserves for itself and its assigns the sole and exclusive right to collect and retain any and all income and/or proceeds received from or in connection with use or services provided by the CTT Equipment and the rights described in this *Section 8.8*. The rights reserved to Declarant under this *Section 8.8* shall benefit only Declarant and its assigns, and no other Owner or successor-in-title to any portion of the Property or the Development shall have any rights to income derived from or in connection with the rights and easements granted in this *Section 8.8*, except as expressly approved in writing by Declarant. **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND ITS ASSIGNS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF ANY ACTS, ACTIONS OR ACTIVITIES PERMITTED BY DECLARANT ITS ASSIGNS UNDER THIS *SECTION 8.8* (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.** The provisions of this *Section 8.8* shall not be amended without the written and acknowledged consent of Declarant or the assignee of all or any portion of Declarant's rights hereunder.

8.9 **Easement for Maintenance of Drainage Facilities.** Declarant may grant easements for the benefit of a Governmental Entity or third party for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of certain drainage facilities that may be constructed to convey and receive stormwater runoff within the Development. From time to time, Declarant may impress upon certain portions of the Development, for the benefit of a Governmental Entity or third party, additional easements for the inspection, monitoring, operation, maintenance, replacement, upgrade and repair, as applicable, of other drainage facilities that convey and receive stormwater runoff as set forth in one or more declarations, agreements or other written instruments as the same shall be recorded in the Official Public Records of Brazos County, Texas.

8.10 **Easement to Inspect and Right to Correct**. For a period of ten (10) years after the expiration of the Development Period, Declarant reserves for itself and for the Declarant's architect, engineer, other design professionals, builder and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct and relocate any structure, Improvement or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 8.10* may not be construed to create a duty for Declarant, the Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas, Special Common Areas, and the Owner's Lot, and all Improvements thereon for the purposes contained in this *Section 8.10*.

ARTICLE 9
DEVELOPMENT RIGHTS

9.1 Development. It is contemplated that the Development shall be developed pursuant to a plan, which, from time to time, the Declarant may amend or modify in its sole and absolute discretion. Declarant reserves the right, but shall not be obligated, to designate Development Areas, and to create and/or designate Lots, Neighborhoods, Voting Groups, Common Area, Special Common Area, and Service Areas and to subdivide all or any portion of the Development and Property. As each area is conveyed, developed or dedicated, Declarant may Record one or more Development Area Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Development Area Declaration may provide its own procedure for the amendment thereof.

Unofficial Copy

9.2 **Special Declarant Rights.** Notwithstanding any provision of this Covenant to the contrary, at all times, Declarant will have the right and privilege: (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Development; (b) to maintain Improvements upon Lots, including the Common Area and Special Common Area, as sales, model, management, business and construction offices or visitor centers at no charge; and (c) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance.

9.3 **Addition of Land.** Declarant may, at any time and from time to time, add additional lands to the Property and, upon the Recording of a notice of addition of land, such land shall be considered part of the Property for purposes of this Covenant, and upon the further Recording of a Notice of Applicability meeting the requirements of *Section 9.5*, such added lands shall be considered part of the Development subject to this Covenant and the terms, covenants, conditions, restrictions and obligations set forth in this Covenant, and the rights, privileges, duties and liabilities of the persons subject to this Covenant shall be the same with respect to such added land as with respect to the lands originally covered by this Covenant. Such added land need not be contiguous to the Property. To add lands to the Property, Declarant shall be required only to Record a notice of addition of land (which notice may be contained within any Development Area Declaration affecting such land) containing the following provisions:

(i) A reference to this Covenant, which reference shall state the document number or volume and page wherein this Covenant is Recorded;

(ii) A statement that such land shall be considered Property for purposes of this Covenant, and that upon the further Recording of a Notice of Applicability meeting the requirements of *Section 9.5* of this Covenant, all of the terms, covenants, conditions, restrictions and obligations of this Covenant shall apply to the added land; and

(iii) A legal description of the added land.

9.4 **Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Covenant and the jurisdiction of the Association any portion of the Development. Upon any such withdrawal and removal, this Covenant and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to the portion of the Development withdrawn. To withdraw lands from the Property or the Development hereunder, Declarant shall be required only to Record a notice of withdrawal of land containing the following provisions:

(i) A reference to this Covenant, which reference shall state the document number or volume and page number wherein this Covenant is Recorded;

(ii) A statement that the provisions of this Covenant shall no longer apply to the withdrawn land; and

(iii) A legal description of the withdrawn land.

9.5 Notice of Applicability. Upon Recording, this Covenant serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Covenant, any applicable Development Area Declaration and the Community Enhancement Covenant. This Covenant, any applicable Development Area Declaration and the Community Enhancement Covenant shall apply to and burden a portion or portions of the Property upon the Recording of a Notice of Applicability describing such applicable portion of the Property by a legally sufficient description and expressly providing that such Property shall be considered a part of the Development and shall be subject to the terms, covenants conditions, restrictions and obligations of this Covenant, any applicable Development Area Declaration and the Community Enhancement Covenant. To be effective, a Notice of Applicability must be executed by Declarant, and the property included in the Notice of Applicability need not be owned by the Declarant if included within the Property. Declarant may also cause a Notice of Applicability to be Recorded covering a portion of the Property for the purpose of encumbering such Property with this Covenant and any Development Area Declaration previously Recorded by Declarant (which Notice of Applicability may amend, modify or supplement the restrictions, set forth in the Development Area Declaration, which shall apply to such Property). To make the terms and provisions of this Covenant applicable to a portion of the Property, Declarant shall be required only to cause a Notice of Applicability to be Recorded containing the following provisions:

(i) A reference to this Covenant, which reference shall state the document number or volume and page number wherein this Covenant is Recorded;

(ii) A reference, if applicable, to the Recorded Development Area Declaration which will apply to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Development Area Declaration which shall apply to such portion of the Property);

(iii) A reference, if applicable, to the Community Enhancement Covenant which will apply to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Community Enhancement Covenant which shall apply to such portion of the Property);

Unofficial Copy

(iv) A statement that all of the provisions of this Covenant shall apply to such portion of the Property;

(v) A legal description of such portion of the Property; and

(vi) If applicable, a description of any Special Common Area or Service Area which benefits the Property and the beneficiaries of such Special Common Area or Service Area.

NOTICE TO TITLE COMPANY

SAVE AND EXCEPT FOR THE PROPERTY DESCRIBED ON EXHIBIT "B" ATTACHED HERETO, NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT AND THIS COVENANT DOES NOT APPLY TO ANY PORTION OF THE PROPERTY UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PROPERTY AND REFERENCING THIS COVENANT HAS BEEN RECORDED.

9.6 Designation of Neighborhood. Declarant may, at any time and from time to time, file a designation of neighborhood (a "**Designation of Neighborhood**") assigning portions of the Property to a specific Neighborhood. Upon the filing of a Designation of Neighborhood, such land will be considered part of the Neighborhood so designated. To assign portions of the Property to a specific Neighborhood, Declarant will be required only to Record a Designation of Neighborhood containing the following provisions:

(i) A reference to this Covenant, which reference will state the document number or volume and initial page number where this Covenant is Recorded;

(ii) An identification of the Neighborhood applicable to such portion of the Property and a statement that such land will be considered part of such Neighborhood for purposes of this Covenant; and

(iii) A legal description of the designated land.

9.7 Assignment of Declarant's Rights. Notwithstanding any provision in this Covenant to the contrary, Declarant may by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, reservations and duties hereunder.

9.8 Notice of Plat Recordation. Declarant may, at any time and from time to time, Record a notice of plat recordation (a "**Notice of Plat Recordation**"). A Notice of Plat Recordation is Recorded for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this Covenant after portions of the Property are made subject to a Plat. Unless otherwise provided in the Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a residential Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this Covenant (without the necessity of complying with the withdrawal provisions set forth in this Section). Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Covenant.

ARTICLE 10
GENERAL PROVISIONS

10.1 Term. Upon the Recording of a Notice of Applicability pursuant to *Section 3.5*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Covenant shall run with and bind the portion of the Property described in such notice, and shall inure to the benefit of and be enforceable by the Association and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Covenant is Recorded, and continuing through and including January 1, 2089, after which time this Covenant shall be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to a change as contemplated in this *Section 10.1*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. Notwithstanding any provision in this *Section 10.1* to the contrary, if any provision of this Covenant would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, descendants of Elizabeth II, Queen of England.

10.2 Eminent Domain. In the event it becomes necessary for any Governmental Entity to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Covenant is in effect, the Board is hereby authorized to negotiate with such Governmental Entity for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages on the respective Lot. In the event any proceeds

Unofficial Copy

attributable to acquisition of Special Common Area are paid to Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages on the respective Lot.

10.3 Amendment. This Covenant may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to an amendment as contemplated in this *Section 10.3*, it being understood and agreed that any amendment must be approved by a vote of the Members, with each Member casting their vote individually. No amendment will be effective without the written consent of Declarant during the Development Period. No amendment may affect Declarant's rights under this Covenant without Declarant's written consent, which must be part of the Recorded amendment instrument.

10.4 Enforcement. Except as otherwise provided herein, any Owner of a Lot, at such Owner's own expense, Declarant and the Association will each have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of the Documents. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of the Documents. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Covenant and subject to all of the enforcement procedures set forth herein. Failure to enforce any right, provision, covenant or condition set forth in the Documents will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Documents shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE DOCUMENTS.**

Unofficial Copy

10.5 Declarant Fine Authority. During the Development Period, Declarant may assess fines against an Owner for violations of the Documents which have been committed by an Owner, an Occupant, or any guests, agents, family members, or invitees of an Owner or Occupant. The Declarant uses fines to discourage violations of the Documents, and to encourage compliance when a violation occurs, not to punish violators or generate revenue for the Declarant. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Declarant for enforcing the Documents. The Declarant may from time to time adopt a schedule of fines. If the violation of the Documents is ongoing or continuous, the fine may be assessed on a periodic basis (such as daily, monthly, or quarterly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis. An Owner is liable for fines levied by the Declarant for violations of the Documents by the Owner, an Occupant, or any guests, agents, family members or invitees of the Owner or Occupant. Regardless of who commits the violation, the Declarant will direct its communications to the Owner, although the Declarant may send copies of its notices to the Occupants.

10.6 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

10.7 Higher Authority. The terms and provisions of this Covenant are subordinate to Applicable Law. Generally, the terms and provisions of this Covenant are enforceable to the extent they do not violate or conflict with Applicable Law.

10.8 Severability. If any provision of this Covenant is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Covenant, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

10.9 Conflicts. If there is any conflict between the provisions of this Covenant, the Certificate, the Bylaws, or any Rules adopted pursuant to the terms of such documents, or any Development Area Declaration, the provisions of this Covenant shall govern.

10.10 Gender. Whenever the context so requires, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

10.11 Acceptance by Owners. Each Owner of a Lot, or other real property interest in the Development, by the acceptance of a deed of conveyance, and each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Covenant or

Unofficial Copy

to whom this Covenant is subject and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each Owner agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Covenant were recited and stipulated at length in each and every deed of conveyance.

10.12 Damage and Destruction.

10.12.1 Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 10.12*, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty. Notwithstanding the foregoing, the provisions of this *Section 10.12* are not intended to limit or otherwise restrict the terms and conditions of the policy or policies of insurance obtained by the board.

10.12.2 Repair Obligations. Any damage to or destruction of the Common Area or Special Common Area shall be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available.

10.12.3 Restoration. In the event that the Board should determine that the damage or destruction of the Common Area or Special Common Area shall not be repaired and does not authorize alternative Improvements, then the Association shall restore the affected portion of the Common Area or Special Common Area to its natural state and maintain it as an undeveloped portion of the Common Area in a neat and attractive condition.

10.12.4 Special Assessment for Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

10.12.5 Special Assessment for Special Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a Special

Assessment, as provided in *Article 5*, against all Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

10.12.6 Proceeds Payable to Owners. In the event that any proceeds from insurance policies required herein are paid to Owners as a result of any damage or destruction to any Common Area, such payments shall be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages on their Lots.

10.12.7 Proceeds Payable to Owners Responsible for Special Common Area. In the event that any proceeds from insurance policies required herein are paid to Owners as a result of any damage or destruction to Special Common Area, such payments shall be allocated based on Assessment Units and shall be paid jointly to the Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area and the holders of first Mortgages on their Lots.

10.13 No Partition. Except as may be permitted in this Covenant or amendments hereto, no physical partition of the Common Area or Special Common Area or any part thereof shall be permitted, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless all or the portion of the Development in question has been removed from the provisions of this Covenant pursuant to *Section 9.4* above. This *Section 10.13* shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Covenant.

10.14 View Impairment. None of the Declarant, the Southern Pointe Reviewer, or the Association guarantee or represent that any view over and across the Lots or any open space within the Development shall be preserved without impairment. The Declarant, the Southern Pointe Reviewer and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area or Special Common Area) shall have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

10.15 Safety and Security. Each Owner and Occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, none of the Association, the Declarant, or any of their Directors, employees, or agents, shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Unofficial Copy

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Development, cannot be compromised or circumvented; or that any such system or security measures undertaken shall in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing any Occupants of such Owner's Lot that the Association, its Board, employees, agents, and committees, and the Declarant are not insurers or guarantors of security or safety and that each person within the Development assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot and the contents thereof, resulting from acts of third parties.

10.16 Facilities Open to the Public. Certain facilities and areas within the Property shall be open for the use and enjoyment of the public. Such facilities and areas may include, by way of example, greenbelts, trails and paths, parks, roads, sidewalks and medians.

10.17 Water Quality Facilities. Portions of the Development may include one or more water quality facilities, sedimentation, drainage and detention facilities, ponds or related improvements which serve all or a portion of the Development, the Property, or additional land (collectively, the "**Facilities**") and may be inspected, maintained and administered by the Master, Residential, or Commercial Association, as applicable. Access to these Facilities is limited to persons engaged by the applicable Association or the MUD to periodically maintain such Facilities. Each Owner is advised that the Facilities are an active utility feature integral to the proper operation of the Development and may periodically hold standing water. Each Owner is advised that entry into the Facilities may result in injury and is a violation of the Covenant. To the extent any Facilities will be maintained by a Governmental Entity or the MUD, the Declarant reserves the right in accordance with *Section 8.3* to grant an easement to a Governmental Entity or the MUD for the purpose of operation and maintenance. Declarant hereby reserves for itself and its assigns a perpetual non-exclusive easement over and across the Development for the installation, maintenance, repair or replacement of the Facilities. The Facilities may be designated by the Declarant in a written notice Recorded to identify the particular Facilities to which the easement reserved hereunder applies, or otherwise dedicated to the public or applicable governmental authority or the MUD (which may include retention of maintenance responsibility by the applicable Association), conveyed and transferred to any applicable Governmental Entity, the MUD, or conveyed and transferred to the applicable Association as Common Area, Special Common Area or a Service Area. If the Facilities are designated or conveyed or maintenance responsibility reserved or assigned to the applicable Association as Common Area, Special Common Area or a Service Area, such Association will be required to maintain and operate the Facilities in accordance with Applicable Law, or the requirements of any applicable Governmental Entity or the MUD.

10.18 Notices. Any notice permitted or required to be given to any person by this Covenant shall be in writing and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid; (b) by delivering same in person to the intended addressee;

Unofficial Copy

(c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee; or (d) by prepaid telegram, telex, electronic mail, or facsimile to the addressee and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective when received at the office or designated place or machine/equipment of the intended addressee. For purposes of notice the address of each Owner shall be the address of the Lot or such other address as provided by the Owner to the Association, and the address of each Mortgagee shall be the address provided to the Association; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the Association.

10.19 **Mining and Drilling**. Except for the Third Party Oil, Gas and Mineral Interests defined below, no portion of the Property, the Common Area, or the Special Common Area may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property, the Common Area, or the Special Common Area by the Declarant. Furthermore, this provision will not be interpreted to prevent the drilling of water wells by the Declarant or otherwise approved in advance by the Southern Pointe Reviewer which are required to provide water to all or any portion of the Property. All water wells must also be approved in advance by the Southern Pointe Reviewer and any applicable regulatory authority. This *Section 10.18* shall not apply to minerals, resources and groundwater, or some portion thereof or some interest therein, that may have been conveyed or reserved by third parties prior to the Recording of this Covenant (the "**Third Party Oil, Gas and Mineral Interests**"). No representation or warranty, express or implied, is made as to the ownership of the minerals, resources and groundwater or any portion thereof or any interest therein.

10.20 **Drill Site and Pipeline Disclosure**. One or more drill sites (whether one or more, the "**Drill Site**") and one or more pipelines, pipeline right-of-ways and/or pipeline easements (whether one or more, the "**Pipeline**") may be located near or within the Development. The Association does not own or control any Drill Site or Pipeline located near or within the Development. In connection with any Drill Site and/or Pipeline located near or within the Development: (1) there may be existing or abandoned wells, pipelines, equipment and/or facilities for the exploration, extraction and/or transportation of oil, natural gas, petroleum products or other gases or liquids located near or within the Drill Site and/or Pipeline; (2) there may be wells, pipelines, equipment and/or facilities placed near or within any Drill Site and/or Pipeline in the future; (3) portions of the Development within or near any Drill Site and/or the

Unofficial Copy

Pipeline may have restrictions and/or prohibitions on landscaping, planting of trees, fencing, paving, buildings, pools, sheds or other improvements; (4) the owner(s) of the Drill Site and/or Pipeline may have access rights within the Development to the Drill Site, Pipeline, or related facilities to operate, inspect, install, maintain, repair, and/or remove such facilities; (5) the owner(s) of the Drill Site and/or Pipeline may have no obligation to repair damage to any Improvements or the Development caused by such owner(s), and Declarant and the Association expressly disclaims responsibility to repair, or indemnify any Owner against, any such damage. This disclosure is not intended to be all-inclusive or to address every significant feature of any Drill Site or any Pipeline located near or within the Development, and each Owner should review any of the title documents they received when they purchased their Lot that relate to the Drill Site or Pipeline and note the location of any Drill Site, Pipeline, and/or related equipment and facilities relative to their Lot. Further, this disclosure (i) is not intended to, and does not, constitute a full disclosure of all conditions that might affect the Development, and (ii) does not impose upon Declarant or the Association any duty or obligation to make any further or future disclosures to any Owner concerning the Development.

10.21 **MUD**. Each Owner within the Property is advised that portions of the Property are located within one or more MUDs. As an Owner of Property within a MUD, you are required to pay the applicable MUD tax rate for water and wastewater service and residential solid waste and recycling services within the MUD. Further, upon the transfer of any Unit, each Owner is required to provide notice of the applicable MUD to any transferee of the Unit in accordance with Applicable Law.

ARTICLE 11
DISPUTE RESOLUTION

This Article 11 is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Lots, Common Area, Special Common Area, and/or Improvements can create significant financial exposure for the Association and its Members, interfere with the resale and refinancing of Lots, and increase strife and tension among the Owners, the Board and the Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Lot, the Common Area, and the Special Common Area, this Article 11 requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Association and a law firm or attorney who will represent the Association in the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process.

11.1 **Introduction and Definitions**. For the purposes of this *Article 11* only, all references to the "Association" shall refer to the applicable Sub-Association having jurisdiction over the Development Area out of which the Claim, as defined below, arises. The Association, the Owners, Declarant, Homebuilders, Residential Developers and all other persons subject to this Covenant, and each person not otherwise subject to this Covenant who agrees to submit to

Unofficial Copy

this *Article 11* by written instrument delivered to the Claimant which may include, but is not limited to, a Homebuilder, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Lots, Common Area, Special Common Area, or any Improvement within, serving or forming a part of the Property (individually, a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and the Common Area or Special Common Area to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. Notwithstanding anything contained in this *Article 11*, any Claim brought by an Owner related to a residence that is subject to a warranty agreement provided by the Declarant, Residential Developer, or Homebuilder will not be subject to this *Article 11* and will be governed by the warranty agreement, unless the Parties agree to have the dispute governed by this *Article 11*. This *Article 11* may only be amended with the prior written approval of the Declarant, the Association (acting through a Majority of the Board), and Owners holding 100% of the votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

11.1.1 "**Claim**" means:

(i) Claims relating to the rights and/or duties of Declarant, the Association, the Southern Pointe Reviewer, or the ACC under the Documents; or

(ii) Claims relating to the acts or omissions of the Declarant, the Association, or a Board member or officer of the Association during Declarant's control and administration of the Association, and any claim asserted against the ACC or the Southern Pointe Reviewer; or

(iii) Claims relating to the design or construction of Improvements located on the Common Area, Special Common Area, Lots.

11.1.2 "**Claimant**" means any Party having a Claim against any other Party.

11.1.3 "**Respondent**" means any Party against which a Claim has been asserted by a Claimant.

11.2 Mandatory Procedures. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 11.8* below, a Claim must be resolved by binding arbitration.

11.3 Claims Affecting Common Areas or Special Common Areas. In accordance with *Section 3.16* above, the Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a Claim, as defined in *Section 11.1.1*

above, relating to the design or construction of Improvements on a Lot (whether one or more). Additionally, no Lot Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Special Common Area. Each Lot Owner, by accepting an interest in or to title to a Lot, hereby grants to the Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Special Common Area. In the event the Association asserts a Claim related to the Common Area or Special Common Area, as a precondition to providing the Notice defined in *Section 11.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 11*, or taking any other action to prosecute a Claim related to the Common Area or Special Common Area, the Association must:

11.3.1 Obtain Owner Approval of Engagement. *The requirements related to Owner approval set forth in this Section 11.3.1 are intended to ensure that the Association and the Owners approve and are fully informed of the financial arrangements between the Association and a law firm or attorney engaged by the Association to prosecute a Claim relating to the design or construction of the Common Area or Special Common Area. The engagement agreement between the Association and the law firm or attorney may include requirements that the Association pay costs, fees, and expenses to the law firm or attorney which will be paid through Assessments levied against Owners. The financial agreement between the Association and the law firm or attorney may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Association and the law firm or attorney is terminated or if the Association agrees to settle the Claim. In addition, the financial arrangement between the Association and the law firm or attorney may include additional costs, expenses, and interest charges. This financial obligation can be significant. The Board may not engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or Special Common Area or execute a written agreement between the Association and a law firm or attorney for the purpose of prosecuting a Claim relating to the design or construction of Common Area or Special Common Area unless the law firm or attorney and the financial arrangements between the Association and the law firm or attorney are approved by the Owners in accordance with this Section 11.3.1.*

Unless otherwise approved by Members holding eighty percent (80%) of the votes in the Association, the Association, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or Special Common Area if the agreement between the Association and law firm or attorney includes any provision or requirement that would obligate the Association to pay any costs, expenses, fees, or other charges to the law firm or attorney, including but not limited to, costs, expenses, fees, or other charges payable by the Association: (i) if the Association terminates the engagement with the law firm or attorney or engages another firm or third-party to assist with the Claim; (ii) if the Association agrees to settle the Claim for a cash payment or in exchange for repairs or remediation performed by the Respondent or any other third-party; (iii) if the Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney;

Unofficial Copy

and/or (iv) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney. For avoidance of doubt, it is intended that Members holding eighty percent (80%) of the votes in the Association must approve the law firm and attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney.

The approval of the Members required under this *Section 11.3.1* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney; (b) a copy of the proposed written agreement between the Association and the law firm and/or attorney; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Association; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Association; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Association if the conditions for payment occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm and/or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of all or portions of the Common Area, Special Common Area, or Improvements on the Property). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Lots, or the Common Area or Special Common Area will be affected by such testing, and if the destructive testing occurs the means or method the Association will use to repair the Common Area, Special Common Area, or Improvements affected by such testing and the estimated costs thereof. The notice required by this paragraph must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed agreement being approved by the Members. In the event Members holding eighty percent (80%) of the votes in the Association approve the law firm and/or attorney who will prosecute the Claim and the written agreement between the Association and the law firm and/or attorney, the Board shall have the authority to engage the law firm and/or attorney and enter into the written agreement approved by the Members.

11.3.2 Provide Notice of the Inspection. As provided in *Section 11.3.3* below, a Common Area Report is required which is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Common Area Report, the Association must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to each Respondent which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas or Special Common Areas to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection personally or through an agent.

11.3.3 Obtain a Common Area Report. The requirements related to the Common Area Report set forth in this *Section 11.3.3* are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Area Report and recommendations are not affected by influences that may compromise the professional

Unofficial Copy

judgement of the party preparing the Common Area Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Common Area Report is compromised.

Obtain a written independent third-party report for the Common Area or Special Common Area (the "**Common Area Report**") from a professional engineer licensed by the Texas Board of Professional Engineers with an office located in Brazos County, Texas (the "**Inspection Company**"). The Common Area Report must include: (i) a description with photographs of the Common Area or Special Common Area subject to the Claim; (ii) a description of the present physical condition of the Common Area or Special Common Area subject to the Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Area or Special Common Area performed by the Association or a third-party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Area or Special Common Area subject to the Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Area Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Brazos County, Texas, and each such contractor providing the estimate must hold all necessary or required licenses from the Texas Department of Licensing and Regulation or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Area Report must be obtained by the Association. The Common Area Report will not satisfy the requirements of this Section and is not an "independent" report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Association or proposes to represent the Association; (b) the costs and expenses for preparation of the Common Area Report are not required to be paid directly by the Association to the Inspection Company at the time the Common Area Report is finalized and delivered to the Association; or (c) the law firm or attorney that presently represents the Association or proposes to represent the Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Association's agreement with the law firm or attorney) the Association for the costs and expenses for preparation of the Common Area Report. <u>For avoidance of doubt, an "independent" report means that the Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Association will directly pay for the report at the time the Common Area Report is finalized and delivered to the Association</u>.

11.3.4 <u>Provide a Copy of Common Area Report to all Respondents and Owners</u>. Upon completion of the Common Area Report, and in any event no later than three (3) days after the Association has been provided a copy of the Common Area Report, the Association will provide a full and complete copy of the Common Area Report to each Respondent and to each

Unofficial Copy

Owner. The Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Area Report which will include the date the report was provided. The Common Area Report shall be delivered to each Respondent by hand-delivery and to each Owner by mail.

11.3.5 Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report. Commencing on the date the Common Area Report has been completed and continuing for a period of ninety (90) days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Area Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (iii) correct any condition identified in the Common Area Report. As provided in *Section 8.10* above, the Declarant has an easement throughout the Property for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that may be utilized during such ninety (90) day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

11.3.6 Hold Owner Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, the Association must obtain approval from Members holding eighty percent (80%) of the votes in the Association to provide the Notice described in *Section 11.5*, initiate the mandatory dispute resolution procedures set forth in this *Article 11*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which the Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is prosecuted; and (vii) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Association in the Claim; (b) a member of the law firm of the attorney who represents or will represent the Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 11.5*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

Unofficial Copy

11.4 **Claims by Lot Owners**. Pursuant to *Section 11.3* above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Special Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Special Common Area, such Owner shall be required, since a Claim affecting the Common Area or Special Common Area could affect all Owners, as a precondition to providing the Notice defined in *Section 11.5*, initiating the mandatory dispute resolution procedures set forth in this *Article 11*, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Association in accordance with *Section 11.3.2* (Provide Notice of Inspection), *Section 11.3.3* (Obtain a Common Area Report), *Section 11.3.4* (Provide a Copy of Common Area Report to all Respondents and Owners), *Section 11.3.5* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), *Section 11.3.6* (Owner Meeting and Approval), Section 11.3.7 (Officer Certification), and *Section 11.5* (Notice). Additionally, Class action proceedings are prohibited and no Owner shall be entitled to prosecute, participate, initiate or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Covenant.

11.5 **Notice.** Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *Section 11.5*. For Claims governed by Chapter 27 of the Texas Property Code, the time period for negotiation in *Section 11.6* below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with *Section 11.6* to comply with the terms and provisions of Section 27.004 of the Texas Property Code during such sixty (60) day period. *Section 11.6* does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 of the Texas Property Code could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in *Section 11.7* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 11.7* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) if the Claim relates to the design or construction of the Common Area or Special Common Area, a true and correct copy of the Common Area Report and any and all other reports, studies, analyses and recommendations obtained by the Association related to the Common Area or Special Common Area; (b) a copy of any engagement letter between the Association and the law firm and/or

Unofficial Copy

attorney selected by the Association to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area or Special Common Area, reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved the law firm and attorney and the written agreement between the Association and the law firm and/or attorney in accordance with *Section 11.3.1*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 11.3.6* above; and (e) reasonable and credible evidence confirming that Members holding eighty percent (80%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Areas or Special Common Areas, the Notice will also include a true and correct copy of the Common Area Report.

11.6 Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property.

11.7 Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 11.7*. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 11.8*.

11.8 Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 11.8*.

11.8.1 Governing Rules. If a Claim has not been resolved after mediation in accordance with *Section 11.7*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 11.8* and the American Arbitration Association (the "**AAA**") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to

herein as the "**AAA Rules**"). In the event of any inconsistency between the AAA Rules and this *Section 11.8*, this *Section 11.8* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(i) one arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) one arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

11.8.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 11.8* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisional or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

11.8.3 Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 11.8*.

11.8.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with Applicable Law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 11.8* and subject to *Section 11.9* below; provided, however, attorney's fees and costs may not be awarded by the arbitrator to either Claimant or Respondent. In addition, for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code, except that the arbitrator may not award attorney's fees and/or costs to their Claimant or Respondent. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings

Unofficial Copy

the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of Applicable Law; or (iv) a cause of action or remedy not expressly provided under Applicable Law. In no event may an arbitrator award speculative, special, exemplary, treble or punitive damages for any Claim.

11.8.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Brazos County, Texas. Unless otherwise provided by this *Section 11.8*, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

11.9 Allocation Of Costs. Notwithstanding any provision in this Covenant on the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

11.10 General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

11.11 Period of Limitation. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas or Special Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas or Special Common Area, four (4) years and one (1) day from the date that the Association or its manager, board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 11.11* be interpreted to extend any period of limitations.

Unofficial Copy

11.12 **Funding the Resolution of Claims**. The Association must levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this *Article 11*. The Association may not use its annual operating income or reserve funds to fund the costs to resolve a Claim unless the Association has previously established and funded a dispute resolution fund.

EXECUTED to be effective on the date this instrument is Recorded.

DECLARANT:

BV SOUTHERN POINTE DEVELOPMENT, INC.,
a Texas corporation

By: Wallace Phillips III
Printed Name: Wallace Phillips III
Title: President

THE STATE OF TEXAS §

COUNTY OF Brazos §

This instrument was acknowledged before me on September 22, 2022, by Wallace Phillips III, director of BV SOUTHERN POINTE DEVELOPMENT, INC., a Texas corporation, on behalf of said entities.

(SEAL)

PAULA A. BLAKE
My Notary ID # 2865126
Expires May 26, 2024

Paula A. Blake
Notary Public Signature

EXHIBIT "A"

DESCRIPTION OF PROPERTY

[*ATTACHED*]

Unofficial Copy

Exhibit A

Property Description:

Tract One:

All that certain lot, tract or parcel of land being 552.905 acres situated in the S. D. SMITH SURVEY, Abstract No. 210, Brazos County, Texas, and being a part of that certain called 562.915 acre tract described in Deed from Texas World Speedway, Inc. to Grid Raceplex Holdings, Ltd. of record in Volume 8340, Page 52, of the Official Records of Brazos County, Texas, said 552.905 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" Iron Rod with Cap found in the Northeast right-of-way line of State Highway 6 for the most Westerly corner, said corner being the most Southerly corner of the Animate Habitat, Ltd. called 1282.09 acre tract of record in Volume 5463, Page 208;

THENCE N 55° 06' 25" E, along the Northwest line of said called 563.002 acre tract and a Southeast line of said called 1282.09 acre tract a distance of 3263.40 feet to a 1/2" Iron Rod found for angle point;

THENCE N 48° 42' 01" E, continuing along the Northwest line of said called 563.002 acre tract and a Southeast line of said called 1282.09 acre tract a distance of 2373.41 feet to a 1/2" Iron Rod found for the most Northerly corner, said corner being an interior corner of said called 1282.09 acre tract, a 4" Fence Post found for reference bears N 48° 42' 01" E a distance of 39.0 feet;

THENCE S 39° 32' 17" E, along the Northeast line of said called 563.002 acre tract, a distance of 4523.53 feet to a 1/2" Iron Rod found for the most Easterly corner, said corner being an interior corner of the Samantha E. Conole called 6.00 acre tract of record in Volume 1681, Page 299;

THENCE S 13° 53' 13" W, along a Southeast line of said called 563.002 acre tract a distance of 1613.08 feet to a 1/2" Iron Rod with Cap found for an exterior corner, said corner being the Northeast corner of a hereafter called 10.01 acre tract;

THENCE N 76° 35' 25" W, along the most Northerly line of said called 10.01 acre tract a distance of 574.92 feet to a 1/2" Iron Rod with Cap found for Northwest corner of said called 10.01 acre tract;

THENCE S 14° 00' 53" W, along a West line of said called 10.01 acre tract a distance of 286.04 feet to a 1/2" Iron Rod with Cap found for an exterior corner;

THENCE S 86° 03' 48" W, along a North line of said called 10.01 acre tract a distance of 349.65 feet to a 1/2" Iron Rod with Cap found for an interior corner;

THENCE S 09° 25' 22" W along a West line of said called 10.01 acre tract a distance of 165.58 feet to a 1/2" Iron Rod Found with Cap, said corner being the Southwest corner of said called 10.01 acre tract and the Northwest corner of said Richard C. Conole 20.00 acre tract;

THENCE S 04° 14' 54" E along a East line of said called 563.002 acre tract a distance of 117.42 feet to a 1/2" Iron Rod found for angle point;

THENCE S 26° 26' 44" W, continuing along an East line of said called 563.002 acre tract and the West line of said called 20.00 acre tract a distance of 114.20 feet to a 3/8" Iron Rod found for angle point;

THENCE S 07° 20' 44" W, continuing along an East line of said called 563.002 acre tract and the West line of said called 20.00 acre tract a distance of 314.98 feet to a 1/2" Iron Rod with Cap found for angle point;

THENCE S 10° 05' 29" W, continuing along an East line of said called 563.002 acre tract and the West line of said called 20.00 acre tract a distance of 382.26 feet to a 1/2" Iron Rod with Cap found for an exterior corner, said corner being located in the North right-of-way line of Peach Creek Cutoff Road, said corner being the Southwest corner of said called 20.00 acre tract;

THENCE S 86° 59' 09" W, along the North right-of-way line of said Peach Creek Cutoff Road and the South line of said called 563.002 acre tract a distance of 71.87 feet to a 3/4" Iron Rod found for an exterior corner, said corner being the Southeast corner of Lot 1, Block 1 of the LGL Subdivision of record in Volume 5996, Page 197;

THENCE N 10° 05' 29" E, along a West line of said called 563.002 acre tract and the East line of said LGL

Subdivision a distance of 296.88 feet to a 5/8" Iron Rod found for angle point;

THENCE N 07° 20' 44" E, continuing along a West line of said called 563.002 acre tract and the East line of said LGL Subdivision a distance of 113.30 feet to a 5/8" Iron Rod found for an interior corner, said corner being the Northeast corner of said LGL Subdivision;

THENCE S 86° 59' 29" W, along a South line of said called 563.002 acre tract and the North line of said LGL Subdivision a distance of 586.03 feet to a 5/8" Iron Rod found for an interior corner, said corner being the Northwest corner of said LGL Subdivision;

THENCE S 02° 57' 21" E, along an East line of said called 563.002 acre tract and the West line of said LGL Subdivision a distance of 400.65 feet to a bent 3/4" iron Rod found for an exterior corner, said corner being located in the North right-of-way line of said Peach Creek Cutoff Road;

THENCE S 86° 59' 09" W, along the South line of said called 563.002 acre tract and the North right-of-way line of said Peach Creek Cutoff Road a distance of 182.01 feet to a 1/2" Iron Rod found for angle point;

THENCE S 89° 04' 20" W, continuing along the South line of said called 563.002 acre tract and the North right-of-way line of said Peach Creek Cutoff Road a distance of 850.85 feet to a 1/2" Iron Rod with Cap found for the most Southerly corner, said corner being located in the Northeast right-of-way line of said State Highway 6;

THENCE N 73° 35' 16" W, along a Southwest line of said called 563.002 acre tract and the Northeast right-of-way line of said State Highway 6 a distance of 273.19 feet to a 1/2" Iron Rod found for an exterior corner, said corner being the most Southerly corner of the GSO Oil & Gas, Inc. called 3.333 acre tract of record in Volume 2144, Page 173;

THENCE N 16° 28' 27" W, along a West line of said called 563.002 acre tract and an East line of said called 3.333 acre tract a distance of 121.52 feet to a 1/2" Iron Rod found for angle point;

THENCE N 37° 34' 13" E, continuing along a Northwest line of said called 563.002 acre tract and a Southeast line of said called 3.333 acre tract of a distance of 169.28 feet to a 1/2" Iron Rod found for an interior corner of said called 552.905 acre tract, said corner being the most Easterly corner of said called 3.333 acre tract;

THENCE N 52° 25' 47" W, along a Southwest line of said called 563.002 acre tract and the Northeast line of said called 3.333 acre tract a distance of 501.14 feet to a 1/2" Iron Rod with Cap found for an interior corner, said corner being the most Northerly corner of said called 3.333 acre tract;

THENCE S 37° 37' 29" W, along a Southeast line of said called 563.002 acre tract and the Northwest line of said called 3.333 acre tract a distance of 278.22 feet to a 5/8" Iron Rod found in the Northeast right-of-way line of said State Highway 6 for an exterior corner, said corner being the most Westerly corner of said called 3.333 acre tract;

THENCE N 52° 20' 20" W, along the Southwest line of said called 563.002 acre tract and the Northeast line of said State Highway 6 a distance of 199.00 feet to a Concrete Right-of-Way Monument found for angle point;

THENCE N 54° 51' 16" W, continuing along the Southwest line of said called 563.002 acre tract and the Northeast right-of-way line of said State Highway 6 a distance of 2308.70 feet to a 1/2" Iron Rod with Cap found for angle point;

THENCE N 60° 19' 08" W, continuing along the Southwest line of said called 563.002 acre tract and the Northeast right-of-way line of said State Highway 6 a distance of 243.16 feet to a 5/8" Iron Rod found for an exterior corner, said corner being the South corner of the Viking Subdivision of record in Volume 5973, Page 11;

THENCE N 39° 21' 01" E, along a Northwest line of said called 563.002 acre tract and the Southeast line of said Viking Subdivision a distance of 442.04 feet to a 5/8" Iron Rod found for an interior corner, said corner being the East corner of said Viking Subdivision;

THENCE N 60° 25' 37" W, along the Southwest line of said called 563.002 acre tract and the Northeast line of said Viking Subdivision a distance of 399.87 feet to a 5/8" Iron Rod with Cap found for an exterior corner, said corner being the North corner of said Viking Subdivision, said corner also being located in the Southeast line of the Texas World Speedway called 9.306 acre tract of record in Volume 3363, Page 197;

THENCE N 39° 22' 29" E, along a Northwest line of said called 563.002 acre tract and the southeast line of said called 9.306 acre tract a distance of 410.88 feet to a 1/2" Iron Rod found for an interior corner, said corner being the most Easterly corner of said called 9.306 acre tract;

THENCE N 82° 59' 07" W, along a Southwest line of said called 563.002 acre tract and the Northeast line of said called 9.306 acre tract a distance of 528.73 feet to a 1/2" Iron Rod found for angle point;

THENCE N 89° 15' 40" W, continuing along a Southwest line of said called 563.002 acre tract and the North line of said called 9.306 acre tract a distance of 157.48 feet to a 1/2" Iron Rod found for angle point;

THENCE S 79° 48' 33" W, continuing along a Southwest line of said Called 563.002 acre tract and the North line of said called 9.306 acre tract a distance of 49.99 feet to a 1/2" Iron Rod found for an interior corner, said corner being a Northwesterly corner of said called 9.306 acre tract;

THENCE S 36° 51' 11" W, along a Southeast line of said called 563.002 acre tract and the Northwest line of said called 9.306 acre tract a distance of 484.45 feet to a 1/2" Iron Rod found in the Northeast right-of-way line of said State Highway 6 for an exterior corner, said corner being the most Westerly corner of said Called 9.306 acre tract;

THENCE N 54° 37' 53" W, along the Southwest line of said called 563.002 acre tract and the Northeast right-of-way line of said State Highway 6 a distance of 215.86 feet to a 1/2" Iron Rod with Cap found for angle point;

THENCE N 47° 36' 20" W, continuing along the Southwest line of said called 563.002 acre tract and the Northeast right-of-way line of said State Highway 6 a distance of 267.76 feet to the PLACE OF BEGINNING AND CONTAINING AN AREA OF 552.905 ACRES OF LAND, MORE OR LESS.

Save & Except from Tract One - Parcel A:

A METES & BOUNDS description of a certain 10.00 acre tract situated in the Sterrett D. Smith Survey, Abstract No. 210 in Brazos County, Texas, being a portion of the remainder of a called 552.905 acre tract conveyed by Special Warranty Deed to McAlister Opportunity Fund 2012, LP, recorded in Volume 11756, Page 130 of the Official Public Records of Brazos County; said 10.00 acre tract being more particularly described as follows with all bearings based on the Texas Coordinate System of 183, Central Zone;

BEGINNING at a found 5/8-inch iron rod (with cap stamped "Jones|Carter") in the occupied northeast right-of-way of State Highway No. 6 (variable width) marking a southerly corner of said 552.905 acre remainder tract being common with a westerly corner of a called 168.73 acre tract conveyed by Special Warranty Deed with Vendor's Lien to Greens Prairie Investors, Ltd. recorded in Volume 13736, Page 274 of the Official Public Records of Brazos County, from which a found concrete monument bears South 54°51'16" East, 516.76 feet;

THENCE North 54°51'16" West, along a common line of said 552.905 acre remainder tract and said northeast right-of-way of State Highway No. 6, 887.66 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking the west corner of the herein described subject tract;

THENCE over and across said 552.905 acre remainder tract the following four (4) courses and distances:

1. North 35°08'44" East, 348.66 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking the northwest corner of the herein described subject tract;
2. South 54°51'16" East, 229.03 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking an interior corner of the herein described subject tract;
3. North 53°38'34" East, 278.01 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking the north corner of the herein described subject tract;
4. South 42°32'34" East, 581.96 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking the northeast corner of the herein described subject tract being in a southeasterly line of said 552.905 acre remainder tract and a northwesterly line of aforementioned 168.73 acre tract, from which a found 5/8-inch iron rod (with cap stamped "Jones|Carter") bears North 34°54'18" East, 100.00 feet;

THENCE South 34°54'18" West, along the common line of the herein described subject tract and said 168.73 acre tract, 488.22 feet to the POINT OF BEGINNING, CONTAINING 10.00 acres of land in Brazos County, Texas, more or less.

SAVE & EXCEPT from Tract One - Parcel Two:

A METES & BOUNDS description of a certain 49.184 acre tract situated in the Sterrett D. Smith Survey, Abstract No. 210 in Brazos County, Texas, being a portion of a called 168.73 acre tract conveyed by Special Warranty Deed with Vendor's Lien to Greens Prairie Investors, Ltd., recorded in Volume 13736, Page 274 of the Official Public Records of Brazos County and all of a called 10.00 acre tract conveyed by Special Warranty Deed to Greens Prairie Investors, Ltd. recorded in Volume 14166, Page 18, Volume 14166, Page 54, Volume 14166, Page 90, Volume 14166, Page 126 and Volume 14166, Page 188 of the Official Public Records of Brazos County; said 49.184 acre tract being more particularly described as follows with all bearings based on the Texas Coordinate System of 1983, Central Zone;

BEGINNING at a found 1/2-inch iron rod (with cap stamped "Strong") in the occupied north right-of-way of Peach Creek Cutoff Road (unknown width), marking the southeast corner of the herein described subject tract being common with the southwest corner of a called 20.00 acre tract conveyed by General Warranty Deed to Richard C. Conole and Sharyn S. Conole recorded in Volume 5229, Page 238 of the Official Public Records of Brazos County;

THENCE South 86°59'09" West, along said occupied north right-of-way of Peach Creek Cutoff Road, 71.87 feet to a found 3/4-inch iron rod for corner of the herein described subject tract in said occupied north right-of-way of Peach Creek Cutoff Road being common with the southeast corner of Lot 1, Block 1 of LGL Subdivision recorded in Volume 5996, Page 197 of the Official Public Records of Brazos County;

THENCE along the common lines of the herein described subject tract and said Lot 1, Block 1 of LGL Subdivision the following three (3) courses and distances:

1. North 10°05'29" East, 296.88 feet to a found 5/8-inch iron rod for angle;
2. North 07°20'44" East, 113.30 feet to a found 5/8-inch iron (with cap stamped "Jones&Carter"), from which a found 5/8-inch iron rod (with cap stamped "CCI") bears North 01°11'21" West, 1.13 feet
3. South 86°59'29" West, 42.59 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter") in the north line of said Lot 1, Block 1 of LGL Subdivision;

THENCE over and across aforementioned 168.73 acre tract the following forty (40) courses and distances:

1. North 03°00'31" West, 145.24 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter") and the

beginning of a curve to the right;
2. Along said curve to the right, having a radius of 225.00 feet, an arc length of 10.48 feet, a delta angle of 2°40'08", a chord bearing of South 85°39'25" West, 10.48 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
3. South 86°59'29" West, 33.93 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
4. North 08°29'46" West, 50.23 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter") and the beginning of a curve to the left;
5. Along said curve to the left, having a radius of 4650.00 feet, an arc length of 563.50 feet, a delta angle of 6°56'36", a chord bearing of North 11°58'04" West, 563.15 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter") and the beginning of a compound curve to the left;
6. Along said compound curve to the left, having a radius of 860.00 feet, an arc length of 357.18 feet, a delta angle of 23°47'47", a chord bearing of North 27°20'15" West, 354.62 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
7. North 39°32'11" West, 60.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
8. North 50°27'43" East, 90.01 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
9. North 05°27'43" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
10. North 50°27'43" East, 50.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
11. South 84°32'17" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
12. North 50°27'43" East, 180.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
13. North 05°27'43" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
14. North 50°27'43" East, 50.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
15. South 84°32'17" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
16. North 50°27'43" East, 180.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
17. North 05°27'43" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
18. North 50°27'43" East, 50.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
19. South 84°32'17" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
20. North 50°27'43" East, 180.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
21. North 05°27'43" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
22. North 50°27'43" East, 50.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
23. South 84°32'17" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
24. North 50°27'43" East, 180.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
25. North 05°27'43" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
26. North 50°27'43" East, 50.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
27. South 84°32'17" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
28. North 50°27'43" East, 180.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
29. North 05°27'43" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
30. North 50°27'43" East, 50.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
31. South 84°32'17" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
32. North 50°27'43" East, 180.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
33. North 05°27'43" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
34. North 50°27'43" East, 50.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
35. South 84°32'17" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
36. North 50°27'43" East, 180.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
37. North 05°27'43" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
38. North 50°27'43" East, 50.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
39. South 84°32'17" East, 35.36 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter");
40. North 50°27'43" East, 120.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones&Carter") marking a northerly corner of the herein described subject tract and being in a southwesterly line of a called 2.92 acre tract conveyed by General Warranty Deed to Ashraf Lakhani recorded in Volume 8902, Page 256 of the Official Public Records of Brazos County;

THENCE South 39°32'17" East, along the common line of the herein described subject tract and said 2.92 acre tract, 312.36 feet to a found 1/2-inch iron rod marking the most northerly east corner of the herein described subject tract being common with a westerly interior corner of a called 6.00 acre tract conveyed by General Warranty Deed to Samantha E. Conole recorded in Volume 1581, Page 299 of the Official Public Records of Brazos County;

THENCE South 13°53'13" West, passing at 1261.37 feet a found 1/2-inch iron rod (with cap stamped "Strong") marking the northeast corner of aforementioned 10.00 acre tract being in the west line of a called 5.604 acre tract conveyed by General Warranty Deed to Samantha E. conole recorded in Volume 1685, Page 221 of the Official Public Records of Brazos County, continuing in all a total distance of 1613.08 feet to a found 1/2-inch iron rod (with cap stamped "Strong") marking an easterly corner of the herein described subject tract being common with the northeast corner of a called 10.01 acre tract conveyed by General Warranty Deed to Laredo Energy V, L.P., recorded in Volume 11588, Page 220 of the Official Public Records of Brazos County and on a westerly line of a called 6.348 acre tract conveyed by General Warranty Deed to Charles A. Anderson, II recorded in Volume 1647, Page 281 of the Official Public Records of Brazos County;

THENCE along the common lines of the herein described subject tract and said 10.01 acre tract the following four (4) courses and distances:

1. North 76°35'25" West, 574.92 feet to a found 1/2-inch iron rod (with cap stamped "Strong");
2. South 14°00'53" West, 280.04 feet to a found 1/2-inch iron rod (with cap stamped "Strong");
3. South 86°05'16" West, 349.33 feet to a found 1/2-inch iron rod (with cap stamped "Strong");
4. South 09°31'10" West, 165.80 feet to a found 1/2-inch iron rod (with cap stamped "Strong") in an easterly line of the herein described subject being common with the southwest corner of said 10.01 acre tract and the northwest corner of aforementioned 20.00 acre tract;

THENCE along the common lines of the herein described subject tract and said 20.00 acre tract the following four

Unofficial Copy

) courses and distances:

1. South 04°14'54" East, 117.42 feet to a found 1/2-inch iron rod for angle;
2. South 26°26'44" West, 114.20 feet to a found 3/8-inch iron rod for angle;
3. South 07°20'44" West, 314.98 feet to a found 1/2-inch iron rod (with cap stamped "Strong") for angle;
4. South 10°05'29" West, 282.36 feet to the POINT OF BEGINNING, CONTAINING 49.184 acres of land in Brazos County, Texas, more or less.

SAVE & EXCEPT from Tract One - Parcel Three:

10.439 acres tract situated in the Sterett D. Smith Survey Abstract No. 210 and being more particularly described as Southern Pointe Section 101 recorded in Volume 17135, Page 180, Official Records, Brazos County, Texas.

SAVE & EXCEPT from Tract One - Parcel Four:

A portion of 26.067 acres tract situated in the Sterett D. Smith Survey Abstract No. 210 and being more particularly described as Southern Pointe Section 200 recorded in Volume 17135, Page 211, Official Records, Brazos County, Texas.

Tract Two:

METES & BOUNDS description of a certain 10.00 acre tract situated in the Sterrett D. Smith Survey, Abstract No. 210 in Brazos County, Texas, being a portion of the remainder of a called 552.905 acre tract conveyed by Special Warranty Deed to McAlister Opportunity Fund 2012, LP, recorded in Volume 11756, Page 130 of the Official Public Records of Brazos Count, said 10.00 acre tract being more particularly described as follows with all bearings based on the Texas Coordinate System of 1983, Central Zone;

BEGINNING at a found 5/8-inch iron rod (with cap stamped "Jones|Carter") in the occupied northeast right-of-way of State Highway No. 6 (variable width) marking a southerly corner of said 552.905 acre remainder tract being common with a westerly corner of a called 168.73 acre tract conveyed by Special Warranty Deed with Vendor's Lien to Greens Prairie Investors, Ltd. recorded in Volume 13736, Page 274 of the Official Public Records of Brazos County, from which a found concrete monument bears South 54°51'16" East, 516.76 feet;

THENCE North 54°51'16" West, along a common line of said 552.905 acre remainder tract and said northeast right-of-way of State Highway No. 6, 887.86 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking the west corner of the herein described subject tract;

THENCE over and across said 552.905 acre remainder tract the following four (4) courses and distances:

1. North 35°08'44" East, 348.66 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking the northwest corner of the herein described subject tract;
2. South 54°51'16" East, 229.03 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking an interior corner of the herein described subject tract;
3. North 53°38'34" East, 278.01 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking the north corner of the herein described subject tract;
4. South 42°32'34" East, 581.96 feet to a set 5/8-inch iron rod (with cap stamped "Jones|Carter") marking the northeast corner of the herein described subject tract being in a southeasterly line of said 552.905 acre remainder tract and a northwesterly line of aforementioned 168.73 acre tract, from which a found 5/8-inch iron rod (with cap stamped "Jones|Carter") bears North 34°54'18" East, 100.00 feet;

THENCE South 34°54'18" West, along the common line of the herein described subject tract and said 168.73 acre tract, 488.22 feet to the POINT OF BEGINNING, containing 10.0 acres of land in Brazos County, Texas, more or less.

Unofficial Copy

EXHIBIT "B"

DESCRIPTION OF ORIGINAL PROPERTY

Lots 1 through 15, Block 1; Lots 1 through 25; Block 2; Lots 1 through 29, Block 3; Lots 1 through 25, Block 4; Lots 1 through 19, Block 5; Lots 1 through 19, Block 6; Lots 1 through 17, Block 7; and Lot 1, Block 8, of Southern Pointe Section 100, a subdivision in Brazos County, Texas, according to the map or plat thereof recorded as Document No. 1359246, Official Public Records of Brazos County, Texas;

Lots 1 through 15, Block 13; Lots 1 through 28, Block 14; and Lots 1 through 14, Block 15, of Southern Pointe Section 101, a subdivision in Brazos County, Texas, according to the map or plat thereof recorded as Document No. 1437234, Official Public Records of Brazos County, Texas;

Lots 15 through 28, Block 15; Lots 1 through 28, Block 16; and Lots 1 through 14, Block 17; of Southern Pointe Section 102, a subdivision in Brazos County, Texas, according to the map or plat thereof recorded as Document No. 1461065, Official Public Records of Brazos County, Texas; and

Lots 1 through 40, Block 25; Lots 1 through 10, Block 26; and Lots 1 through 15, Block 27, of Southern Pointe Section 200, a subdivision in Brazos County, Texas, according to the map or plat thereof recorded as Document No. 1437239, Official Public Records of Brazos County, Texas.

Lots 11 through 22, Block 26; Lots 16 through 31, Block 27; Lots 1 through 26, Block 28; and Lots 1 through 29, Block 29, of Southern Pointe Section 201, a subdivision in Brazos County, Texas, according to the map or plat thereof recorded as Document No. 1470924, Official Public Records of Brazos County, Texas.

Unofficial Copy

EXHIBIT "C"

VOTE AND ASSESSMENT UNIT ALLOCATIONS

Use	Assessment Units and Votes
Commercial	0.40 per 1,000 gross square feet of building improvements, excluding structured parking
Multifamily	0.50 per separate apartment dwelling unit
Single-Family Residential	1 per Residential Lot (*see Sections 3.6.1 and 5.9.2 of the Covenant*)
Standard of Measurement: For purposes of allocating votes and Assessment Units, the total square feet of building Improvements shall be calculated based on the BOMA 2018 Gross Areas: Standard Methods of Measurement ((BOMA/ANSI Z65.3-2018) Gross Area 2 (International Comparison Method)) published by the Building Owners and Managers Association International; provided, however, the square footage of any structured or surface vehicular parking areas shall expressly be excluded.	

Until expiration or termination of the Development Period, the Declarant reserves the right to establish additional categories of property type and the vote and Assessment Unit allocations attributable thereto by Recorded instrument. If a use is not listed on the chart or Covenant and the Declarant has not established a property type and vote and Assessment Unit allocation attributable to the property type, the property type will be assigned 0.40 votes and Assessment Units per 1,000 gross square feet of building improvements, excluding structured parking. Votes and Assessment Units will be rounded to the nearest whole number, provided that in any case a Development Area shall in no event be allocated less than 1 vote and Assessment Unit.

For a Development Area with multiple uses, the votes and Assessments Units allocated to the Development Area will take into consideration each projected use. For example, if a Development Area is anticipated to include 150 individual apartment dwelling units and 5,000 square feet of retail (excluding structured parking), the votes and Assessment Units attributable to the Development Area will equal 77 ([150 apartment dwelling units x 0.5] + [5,000 square feet of retail/1,000 x 0.4]).

The allocation of votes and Assessment Units set forth in a Notice of Applicability may be based on use and anticipated Improvements and shall be binding and conclusive, but will be modified in the event the use or improvements change after votes and Assessment Units have been allocated, which modified allocation will be determined, in the case of a change in Improvements, based on the plans and specifications reviewed and approved by the Southern Pointe Reviewer.