

\*\*\*\*\* Electronically Recorded Document \*\*\*\*\*

# Midland County

**Alison Haley**  
**County Clerk**

**Midland County Clerk Unofficial Copy**

Document Number: 2017-22564  
Recorded At: ERX-RECORDING

Recorded On: August 01, 2017  
Recorded At: 08:48:46 am  
Number of Pages: 17  
Recording Fee: \$86.00

Parties:  
Direct-  
Indirect-

Receipt Number: 544147  
Processed By: Vangie Montemayor

**Midland**

\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.



State of Texas  
County of Midland

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the named RECORDS of Midland County, Texas as stamped hereon.

*Alison Haley*  
County Clerk  
Midland County, Texas

**Midland**

**After Recording, Return To:**

11-GF# <u>201402190</u> LT
RETURN TO: HERITAGE TITLE
401 CONGRESS, SUITE 1500
AUSTIN, TEXAS 78701

**DECLARATION OF RESTRICTIVE COVENANTS**

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "**Declaration**") is made effective as of the 3<sup>rd</sup> day of July, 2017 (the "**Effective Date**"), by Pavilion Midland, LLC, a Texas limited liability company ("**Declarant**") and is as follows:

**RECITALS**

A. Declarant is the owner of certain real property located in Midland County, Texas, which property is more particularly described on Exhibit A attached hereto and hereby made a part hereof (the "**Property**").

B. By special warranty deed recorded in the Official Records of Midland County, Texas, immediately after this Declaration, Declarant will grant and convey a portion of the Property (the "**SH Property**") to SCP Midland 2, LLC, a Delaware limited liability company (together with its successors and/or assigns, "**SH Property Owner**"), which SH Property is more particularly described on Exhibit B attached hereto and hereby made a part hereof. For purposes of this Declaration, the term "**Owner**" shall hereinafter refer to the record owner, whether one or more persons or entities, of the fee simple title to a lot within the Property, including, without limitation, the SH Property, excluding, however, any person or entity holding such interest merely as security for the performance or satisfaction of any obligation

C. Declarant desires to create and carry out a uniform plan for the development, improvement and sale of the Property, subject to the terms and provisions hereof.

NOW, THEREFORE, it is hereby declared that the Property will be held, sold, conveyed and occupied subject to the following covenants, conditions and restrictions that will run with the Property and will be binding upon all parties having or acquiring any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns and will inure to the benefit of each owner thereof, and that each contract or deed conveying any portion of the Property will conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions.

**RESTRICTIVE COVENANTS**

[Intentionally omitted]

2. [Intentionally omitted]

3. Road Improvements. The first of Declarant or SH Property Owner (such party providing such notice hereinafter referred to as the "**Road Builder**") to notice the other (such other party hereinafter referred to as the "**Non-Building Party**") of its desire to build Stonebridge Drive shall be responsible for the design and construction of Stonebridge Drive and related underground water, drainage and sewer utility lines in the location for Stonebridge Drive (65' R.O.W.) as shown on the Plat for PAVILION PARK, SECTION 10, a subdivision in Midland County, Texas, recorded in Cabinet J, Page 194 of the Plat Records of Midland County, Texas (the "**Plat**"), together with the installation of underground storm, drainage and related utility lines, including, rip rap and wing wall, from the SH Property boundary line adjacent to Stonebridge Drive, to connect the SH Property storm water to the Lot 2A Detention Basin as shown on the Plat, all in accordance with the following ("**Road Improvements**"):

(a) the Road Improvements shall include a sixty-five (65) foot Right of Way and a forty-one (41) foot road (curb to curb) built to City of Midland ("**City**") standards for a public road and in a manner appropriate for dedication to the City.

(b) the Road Improvements shall include (i) underground water, drainage and sewer utility lines to be constructed within or alongside such roadway in compliance with City standards and sufficient to serve the Property, and (ii) the installation of underground storm, drainage and related utility lines, including, rip rap and wing wall, from the SH Property boundary line adjacent to Stonebridge Drive to be constructed within or alongside such roadway in compliance with City standards and sufficient to connect storm water runoff from the SH Property to the Lot 2A Detention Basin as shown on the Plat.

(c) Within ninety (90) days following the date Road Builder notices the Non-Building Party of its desire to build Stonebridge Drive, Road Builder shall prepare plans and specifications (the "**Preliminary Plans**") for the Road Improvements using Andrew Mellen, P.E., Maverick Engineering ("**Maverick**"); provided, however, if Maverick is unavailable to prepare the Preliminary Plans, using an engineer licensed in the State of Texas proposed by Road Builder and approved (which approval shall not be unreasonably withheld, conditioned or delayed) by the Non-Building Party. The Non-Building Party's failure to approve or disapprove Road Builder's proposed engineer if Maverick is unavailable within five (5) business days of the request for such approval shall be deemed to constitute the Non-Building Party's approval thereof. The Preliminary Plans shall be made available to the Non-Building Party for its review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Non-Building Party will have ten (10) business days after receipt of the Preliminary Plans to review and approve or disapprove same in writing (the "**Response**"). If the Non-Building Party has any objections or desire any changes to the Preliminary Plans, the Response shall specify all such matters in reasonable detail and shall include feasible and reasonable alternatives. Road Builder shall make such revisions to the Preliminary Plans as the Non-Building Party or its engineers may reasonably request, provided that such changes are reasonably acceptable to Road Builder and do not materially and adversely impact Road Builder's portion of the Property, if applicable, or the development thereof. If the Non-Building Party fails to respond to the Road Builder with respect to the Preliminary Plans within the time period set forth in this Section 3(c), then Road Builder shall deliver to the Non-Building Party a notice to that effect, which shall include the following

statement in bold print: *“Your failure to respond in writing to the Preliminary Plans within five (5) business days after your receipt of this notice shall constitute your deemed approval of the Preliminary Plans as last submitted to you.”* If the Non-Building Party fails to respond to this subsequent notice within five (5) business days after receipt thereof, the Non-Building Party shall be deemed to have approved the Preliminary Plans.

(d) In the event of a dispute with respect to the Preliminary Plans under subsection (c) above, then, at the request of either Road Builder or the Non-Building Party, a principal of each of Road Builder and the Non-Building Party shall for a period of ten (10) business days after receipt of written request therefor, confer in good faith in an attempt to resolve such dispute. If such principals are unable to resolve such dispute within such ten (10) business day period, then, upon written notice to the other (the “**Arbitration Notice**”), Road Builder and the Non-Building Party together shall select a disinterested professional engineer licensed in the State of Texas to resolve the issue (the “**Arbitration Engineer**”). The Arbitration Engineer shall have at least ten (10) years’ experience on comparable matters. If the parties are unable to agree upon the selection of the Arbitration Engineer within five (5) business days of the delivery of the Arbitration Notice, then, no later than ten (10) business days after delivery of the Arbitration Notice, each party shall appoint one engineer meeting the foregoing criteria and the engineers so selected shall together select the Arbitration Engineer (who shall also meet the foregoing criteria). If such persons are unable or unwilling to make such selection within five (5) business days after their appointment, the selection, upon application by either party, shall be made by the County Court for Midland County, Texas. The Arbitration Engineer shall make his or her decision regarding such items within five (5) business days after his or her appointment. The decision of the Arbitration Engineer shall be binding upon the parties. Road Builder and the Non-Building Party shall equally pay the fees of the Arbitration Engineer and each shall pay its own fees for the engineer it appoints (if any) to select the Arbitration Engineer. Upon approval by the Non-Building Party pursuant to subsection (c) above, or the agreement of the principals or the decision of the Arbitration Engineer pursuant to this subsection (d), as applicable, the Preliminary Plans shall become the “**Approved Plans.**”

(e) Prior to entering into a contract for the construction of the Road Improvements and no later than thirty (30) days following adoption of the Approved Plans, Road Builder shall use its commercially reasonable efforts to obtain at least three (3) contractor bids with respect to the Road Improvements and deliver copies of such bids to the Non-Building Party upon receipt thereof, together with Road Builder’s reasonable estimate of the Road Improvements Costs (the “**Estimated Road Improvement Costs**”) and Road Builder’s reasonable estimate of the Road Maintenance Costs (the “**Estimated Road Maintenance Costs**”). Additionally, the Non-Building Party may, without obligation, seek to obtain bids with respect to the construction of the Road Improvements, in which case the Non-Building Party will deliver copies of such bids to the Road Builder for consideration in accordance with this section. Within five (5) business days of receipt of the three (or more) final bids (or, if one or more contractors does not submit a bid within the 30-day period set forth above, within five (5) business days of the expiration of said 30-day period) Road Builder shall select a contractor to construct the Road Improvements on a guaranteed maximum price basis, which selection, form of guaranteed maximum price contract, bid, Estimated Road Improvements Costs and Estimated Road Maintenance Costs shall be subject to the approval (which approval shall not be unreasonably withheld, conditioned or delayed) of the Non-Building Party. If the Non-Building Party does not reasonably approve the contractor

selected by Road Builder, the bid, the Estimated Road Improvement Costs, the Estimated Road Maintenance Costs and the form of guaranteed maximum price construction contract, then the parties shall resolve the dispute using the process outlined in subsection (d) above but using an "Arbitration Contractor" in lieu of an Arbitration Engineer. The bid accepted pursuant to the process set forth in this subsection (e) shall be referred to herein as the "Approved Bid." Road Builder shall use its commercially reasonable efforts to cause the contractor who submits the Approved Bid to name the Non-Building Party as an additional insured on any contractor's liability insurance policies.

(f) "Road Improvement Costs" shall mean all hard and soft costs incurred by Road Builder in connection with the design, permitting and construction of the Road Improvements. Road Builder and the Non-Building Party shall each be responsible for the payment of (i) one-half of the Road Improvement Costs (Non-Building Party's one-half share of such Road Improvement Costs shall hereinafter be referred to as "Non-Building Party's Road Improvement Share"), and (ii) one-half of the cost of maintaining the Road Improvements as set forth in subsection (i) below (the "Road Maintenance Costs") (Non-Building Party's one-half share of such Road Maintenance Costs shall hereinafter be referred to as "Non-Building Party's Maintenance Share"). Declarant and SH Property Owner acknowledge that certain costs have been incurred prior to the date hereof in connection with the design and/or permitting of the Road Improvements (the "Initial Road Design Costs"). To the extent the Initial Road Design Costs have been approved by Road Builder and the Non-Building Party in accordance with the terms of this Declaration, such Initial Road Design Costs shall be treated as Road Improvement Costs hereunder. Notwithstanding anything to the contrary contained herein, no further costs shall be incurred by the parties in connection with the Road Improvements from and after the date hereof except in accordance with the terms of this Declaration.

(g) When reasonably determined by Road Builder and following issuance of the necessary governmental permits for the construction of the Road Improvements and acceptance of the Approved Bid (collectively, the "Commencement Conditions"), Road Builder shall commence and thereafter use its commercially reasonable efforts to diligently prosecute to completion construction of the Road Improvements in substantial accordance with the Approved Plans. In all events, Road Builder shall use its commercially reasonable efforts to Substantially Complete the Road Improvements within nine (9) months after satisfaction of the Commencement Conditions, subject to Force Majeure and/or delays caused by the acts or omissions of the Non-Building Party. "Substantially Complete" means the time at which the City approves the Road Improvements for dedication to the City. "Force Majeure" means a delay or hindrance in the performance by a party of any act required to be performed by reason of Acts of God, strikes, lockouts, failure of power, war, riots, insurrections, acts of terrorism, the act or failure to act of any governmental authority, unusually adverse weather conditions preventing or delaying the performance of work, or any other reason beyond such party's control. Road Builder shall construct the Road Improvements in a good and workmanlike manner, lien-free (subject to the obligation of the Non-Building Party to timely pay the Road Improvements and Maintenance Reimbursement), in substantial accordance with the Approved Plans and all City and other legal requirements. In the event of any material defects discovered in the Road Improvements by either Road Builder or the Non-Building Party, the party making the discovery shall promptly notify the other parties, and Road Builder shall use its commercially reasonable efforts to enforce all applicable warranties and contract rights given by parties which supplied work, material, and

services in connection with the design and construction of the Road Improvements, and the Non-Building Party shall cooperate in a commercially reasonable manner with Road Builder in such enforcement. Any costs incurred by Road Builder in connection with any such enforcement shall be deemed to constitute a Road Improvement Cost. If Road Builder fails to diligently pursue enforcement of any such warranties or contract rights for a discovered defect, then Road Builder, upon request by the Non-Building Party, shall assign to the Non-Building Party all rights necessary to pursue a lawsuit or other enforcement proceeding against the relevant contractors, vendors, or suppliers with respect to the defect in issue. In the event of any disagreement between Road Builder and the Non-Building Party about whether a defect exists, the matter shall be resolved by the Arbitration Engineer using the same procedures as are set forth in subsection (d) above. If field or other conditions necessitate changes to the work or the Approved Plans that will materially affect the Non-Building Party, such changes shall be reflected in a written change order and subject to the Non-Building Party's review and written approval, which approval shall not be unreasonably withheld, conditioned or delayed (each, a "Change Order"). The Non-Building Party shall review and either approve or object to Change Orders within three (3) business days after receipt of a written request therefor, unless due to exigent circumstances, Road Builder needs approval of a particular Change Order sooner than three (3) business days, in which case the Non-Building Party shall endeavor to review and either approve or object to such Change Order as quickly as feasible. The Non-Building Party's failure to approve or disapprove of a Change Order within such three (3) business day period shall be deemed to constitute its approval thereof. Notwithstanding that the Non-Building Party shall only have approval rights over Change Orders that materially affects the Non-Building Party, Road Builder shall provide the Non-Building Party with copies of all change orders for the Road Improvements (regardless of their effect on the Non-Building Party) promptly after Road Builder executes such Change Order.

(h) Upon Substantial Completion of the Road Improvements in substantial accordance with the Approved Plans, Road Builder shall notify the Non-Building Party thereof in writing (the "Substantial Completion Notice"), and the Non-Building Party and Road Builder shall jointly inspect the Road Improvements and prepare a punchlist of incomplete items. Road Builder shall use its commercially reasonable efforts to cause the completion of all items on the punchlist within sixty (60) days after the completion of the punchlist. Road Builder shall also provide the Non-Building Party with (i) one (1) set of marked drawings showing the "as-built" conditions of the Road Improvements, (ii) executed lien waivers (or a suitable bond) from all contractors and suppliers providing labor or materials for the Road Improvements and (iii) a written certification from the engineer who designed the Road Improvements that the Road Improvements have been completed in substantial accordance with the Approved Plans and applicable legal requirements. In addition to the inspection at Substantial Completion, the Non-Building Party shall have the right to conduct interim inspections of the Road Improvements at any time upon reasonable advance notice to Road Builder; provided, however, such inspections will be conducted in a manner which does not interfere with the construction of the Road Improvements.

(i) Until the Road Improvements are dedicated to the City, Road Builder shall reasonably maintain the Road Improvements in substantial accordance with the standard of maintenance for comparable roads in Midland County, Texas, and in a manner that complies in all material respects with applicable legal requirements.

(j) Road Builder and the Non-Building Party shall each be responsible for the payment of one-half of all Road Improvement Costs and one-half of all Road Maintenance Costs. The Non-Building Party's Road Improvement Share and Non-Building Party's Road Maintenance Share (collectively, the "Road Improvements and Maintenance Reimbursement") shall be paid, at the election of the Non-Building Party (which election shall be made in writing no later than five (5) business days after Non-Building Party's receipt of the information described in clauses (i) and (ii) below) either (A) no later than ten (10) business days after Non-Building Party's receipt of the information described in clauses (i) and (ii) below, or (B) in twenty-four equal monthly installments commencing no later than twelve months after Non-Building Party's receipt of the information described in clauses (i) and (ii) below (the "Installment Option"). If Non-Building Party elects the Installment Option, then the Road Improvements and Maintenance Reimbursement shall bear interest at an annual rate equal to 2.5% in excess of the then current prime lending rate as reported in the Wall Street Journal or any successor publication, which interest shall be payable in equal monthly installments together with the monthly installments of the Road Improvements and Maintenance Reimbursement. Concurrently with or subsequent to the delivery of the Substantial Completion Notice, Road Builder shall deliver to the Non-Building Party (i) duly executed final, unconditional lien waivers from all contractors and suppliers furnishing labor, materials and equipment, evidencing full payment of such contractors and suppliers for amounts payable, or in the alternative a customary bond with respect to any disputed payments, and (ii) supporting documentation (such as contractor invoices or Road Builder's proof of payment) reasonably evidencing the costs covered. Any amounts due under this subsection (j) that are not paid within fifteen (15) days after the due date shall bear interest at an annual rate equal to five percent (5%) in excess of the then current prime lending rate as reported in The Wall Street Journal or any successor publication from the date due until the date paid. The Non-Building Party shall be entitled to request in writing and within five (5) business days following receipt by Road Builder of such written request, receive copies of or be allowed to inspect and make copies of, all books, accounts, agreements and other information regarding the Road Improvement Costs and Road Maintenance Costs in the possession or under the control of Road Builder. After all installments of the Road Improvements and Maintenance Reimbursement and any applicable interest have been paid, the Road Builder agrees to record a document in the real property records of Midland County, Texas, stating that no Road Improvements Reimbursement is outstanding.

(k) If the Road Builder has abandoned construction of the Road Improvements work in accordance with the terms of this Declaration, and if such failure is not cured within thirty (30) days after written notice is received by Road Builder from the Non-Building Party specifying the default, then the Non-Building Party shall have the right, but not the obligation, following written notice to the Road Builder of its exercise of such right and an additional five (5) day cure period from the Road Builder's receipt of such subsequent notice, to complete the Road Improvements or take necessary efforts to pursue specific enforcement of Road Builder's obligation to construct the Road Improvements. If, however, the default is of such a nature that it is not reasonably susceptible of being cured within thirty (30) days, Road Builder shall have additional time to cure the default before the Non-Building Party shall be entitled to exercise its remedies, provided that Road Builder commences its efforts to cure within the initial thirty (30) day period, and thereafter diligently prosecutes those efforts to completion. The Non-Building Party shall not be entitled to exercise their remedies if Road Builder's delay is caused by Force Majeure or the acts or omissions of the Non-Building Party. Road Builder shall reasonably cooperate with the Non-Building Party in the exercise of the Non-Building Party's remedies under

this subsection (k). During the time that the Non-Building Party is exercising any such right, the Non-Building Party and its agents shall have a reasonable right to enter upon all portions of the Road Improvements where the applicable work is to be performed. In entering upon the Road Improvements and otherwise in the exercise of their remedies, the Non-Building Party shall use commercially reasonable efforts to minimize any damage to the Road Improvements and any improvements thereon. If the Non-Building Party exercises its self-help right, the Non-Building Party shall indemnify, defend and hold harmless Road Builder from and against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable attorney's fees and costs incurred by Road Builder or the Non-Building Party and arising out of or related to (a) any death, bodily injury, or property damage which occurs in connection with the performance of the work by the Non-Building Party exercising its self help right and (b) any lien or claim of lien arising from such work. In the event that the Non-Building Party takes over the Road Improvements work, then within fifteen (15) days after receipt of the Non-Building Party's default notice, Road Builder shall deliver to the Non-Building Party (i) copies of all plans, specifications, studies, contracts and other documents related to the Road Improvements in Road Builder's possession or reasonable control (the "**Road Documents**"), and (ii) subject to the rights of Road Builder's lender, an executed non-exclusive assignment of all of Road Builder's right, title and interest in and to the Road Documents and all permits, approvals and civil engineering and construction contract(s) for the Road Improvements. Road Builder shall reasonably cooperate with the Non-Building Party in completing construction of the Road Improvements, including, without limitation, by signing applications, easements, and other documents. The Non-Building Party's self-help right under this subsection (k) shall include the right to cause the Road Improvements to be designed if the Road Builder has failed to cause such design to be completed.

(l) If the Non-Building Party performs any of the Road Improvements work pursuant to subsection (k), Road Builder shall reimburse such Non-Building Party within fifteen (15) days after written demand therefor (each, a "**Reimbursement Notice**"), for the direct and reasonable out-of-pocket costs incurred by the Non-Building Party to third parties to perform such Road Improvements work, plus ten percent (10%) for the Non-Building Party's overhead in undertaking this work (collectively, the "**Road Cure Costs**"). Notwithstanding the foregoing, Road Builder shall be entitled to credit against the Road Cure Costs, the applicable Non-Building Party's share of Road Improvement Costs associated with such Road Improvements work. The Non-Building Party may submit to Road Builder Reimbursement Notices from time to time, but no more frequently than monthly. Each Reimbursement Notice shall be accompanied by (a) duly executed lien waivers from all contractors and suppliers furnishing labor, materials and equipment for which payment is sought, evidencing full payment of such contractors and suppliers for amounts payable through the date of the immediately preceding Reimbursement Notice, and (b) supporting documentation (such as contractor invoices or the Non-Building Party's proof of payment) reasonably evidencing the costs covered by the Reimbursement Notice. Any amounts due under this subsection (l) that are not paid within fifteen (15) days after Road Builder's receipt of the Reimbursement Notice therefor shall bear interest at an annual rate equal to five percent (5%) in excess of the then-current prime lending rate as reported in The Wall Street Journal or any successor publication from the date due until the date paid.

Declarant, as owner of the Property, hereby grants to Road Builder and the Non-Building Party, exercising its right to perform the Road Improvements work pursuant to subsection (k), a non-exclusive temporary easement for the construction and maintenance of the Road

Improvements, vehicular and pedestrian access, and for underground utility access to be installed as part of the Road Improvements, under, across and through Stonebridge Drive and ten feet on either side thereof (so long as within the Property) for the time period of construction and maintenance, which easement shall automatically terminate upon dedication of Stonebridge Drive to the City or, as to Road Builder only, upon Road Builder's default hereunder. Road Builder, and any party performing construction on the Property or another, shall maintain comprehensive general liability insurance in an amount of not less than One Million Dollars (\$1,000,000), single limit coverage, with contractual liability coverage, insuring against liability for property damage, bodily injury, and death relating to the construction, use or maintenance of the Road Improvements, and Umbrella/Excess Liability Insurance on a follow form basis of at least Three Million Dollars (\$3,000,000). Such insurance shall also name the Non-Building Party as additional insureds thereunder. Each of Road Builder and the Non-Building Party shall obtain for the insurance company insuring it, a waiver of any right of subrogation that such insurer may have against the other or the other's insurance carriers. Road Builder and/or the Non-Building Party exercising its right to perform the Road Improvements work pursuant to subsection (k), as applicable, shall indemnify, defend and hold harmless each other from and against any and all damages, claims, losses, liabilities and expenses, including, without limitation, reasonable attorney's fees and costs incurred by the non-performing party and arising out of or related to any death, bodily injury, or property damage which occurs in connection with the performance of the Road Improvements work by Road Builder and/or the Non-Building Party exercising its right to perform the Road Improvements work pursuant to subsection (k), as applicable.

4. [Intentionally Omitted].

5. [Intentionally Omitted].

6. Term. The terms, covenants, conditions and restrictions set out in this Declaration will run with and bind the Property described in this Declaration, and will inure to the benefit of and be enforceable by every owner of land within the Property, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Official Records of Midland County, Texas, and continuing for a period of twenty (20) years, after which time this Declaration will be automatically extended for successive periods of five (5) years. Notwithstanding any provision in this Section 6 to the contrary, if any provision of this Declaration would be unlawful, void or voidable by reason of any Texas law restricting the period of time that covenants or 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.

7. Miscellaneous. The article and section headings of this Declaration are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof. If any portion of this Declaration is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Declaration shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by Declarant or any Owner to enforce any term or provision of this Declaration shall not be deemed to be a waiver of Declarant's or such Owner's right to enforce such term or provision. This Declaration shall in all respects, be governed, construed, applied and enforced in accordance with the laws of

the State of Texas. This Declaration shall be recorded in the Official Records of Midland County, Texas, and shall run with the Property.

8. Mortgagee Protection. No portion of this Declaration or any amendment or violation thereof shall operate to defeat or render invalid, in whole or in part, the rights of the beneficiary, insurer, guarantor, or holder of any mortgage or deed of trust encumbering all or any portion of the Property; provided that, after foreclosure of any such mortgage or deed of trust, the property foreclosed shall remain subject to this Declaration. Declarant shall obtain duly executed and acknowledged subordinations from each of its secured lenders in the form attached hereto as Exhibit C.

9. Attorneys' Fees. If any legal proceeding is instituted by any person to enforce or interpret the provisions of this Declaration, the prevailing Owner in such action or proceeding shall be entitled to recover from the other Owner or other Owners, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs.

10. No Public Dedication. The easements established in this Declaration are not intended to create, nor do they create, any rights in the general public and the rights granted herein are private and for the benefit of the parties hereto, their successors and assigns and the other permitted parties expressly referred to in this Declaration.

11. Relinquished Property. Upon the conveyance by any Owner of fee simple title to all or any portion of the Property (the "**Relinquished Property**"), such Owner shall have no further obligations or liabilities under this Declaration with respect to the Relinquished Property it being acknowledged that the obligations and liabilities run with the land and to subsequent owners of fee title, except with respect to any breach of this Declaration by such Owner during its period of ownership of the Relinquished Property for which such Owner shall remain liable following any transfer of the Relinquished Property. Notwithstanding the foregoing, the Declarant shall at all times remain responsible for all of its obligations under the terms of this Declaration, even after it no longer owns fee simple title to any portion of the Property. Declarant may not transfer or assign its rights and/or obligations under this Declaration without the prior written consent of SH Property Owner.

12. No Warranty. UPON SUBSTANTIAL COMPLETION OF THE ROAD IMPROVEMENTS, ROAD BUILDER MAKES NO WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, QUALITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE ROAD IMPROVEMENTS. WITHOUT LIMITATION OF EACH OWNER'S RIGHT TO PURSUE WARRANTIES AND CONTRACT RIGHTS AGAINST PARTIES OTHER THAN ROAD BUILDER WHO SUPPLIED WORK, MATERIAL, AND SERVICE IN CONNECTION WITH THE DESIGN AND CONSTRUCTION OF THE ROAD IMPROVEMENTS PURSUANT TO SECTION 3(G) ABOVE, UPON SUBSTANTIAL COMPLETION OF THE ROAD IMPROVEMENTS, EACH OWNER ACCEPTS THE ROAD IMPROVEMENTS ON AN "AS-IS, WHERE-IS" BASIS WITH ALL FAULTS, AND AGREES TO RELEASE AND DISCHARGE THE ROAD BUILDER FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND, INCLUDING

REASONABLE ATTORNEY'S FEES AND COSTS, RELATED TO OR ARISING OUT OF ANY CLAIM, DAMAGE OR INJURY RELATING TO THE ROAD IMPROVEMENTS.

13. Estoppel. At the request of an Owner, Declarant and/or other Owners shall, from time to time, no later than ten (10) days after written request therefor, execute and deliver to the requesting party, an estoppel certificate in form and content reasonably requested by the requesting party and/or its lenders.

*[remainder of page intentionally left blank]  
signature page next page]*

Midland County Clerk Unofficial Copy

Midland

Midland County Clerk Unofficial Copy

Midland

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Midland County, Texas.

DECLARANT:

PAVILION MIDLAND, LLC



Name: Christopher Kawaja  
Its: Manager

Midland County Clerk Unofficial Copy

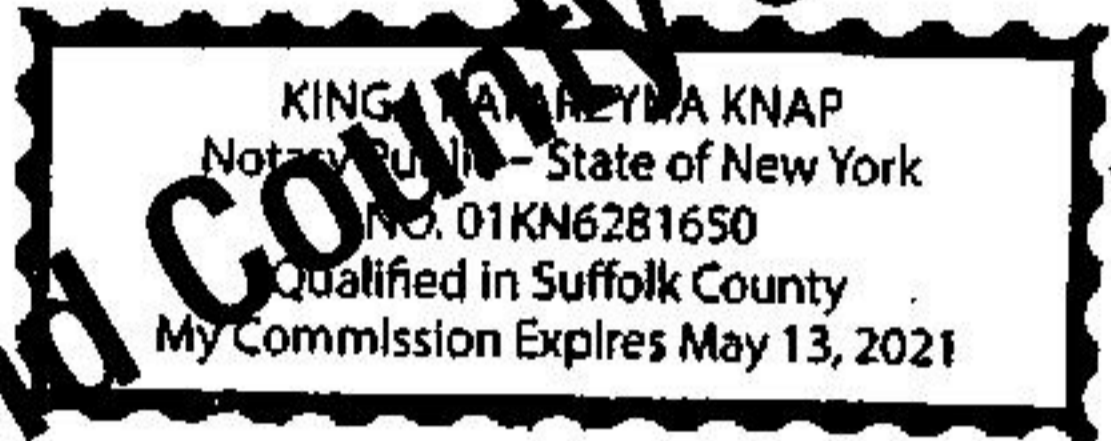
Midland

Midland County Clerk Unofficial Copy

Midland

THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

This instrument was acknowledged before me on the 27<sup>th</sup> day of July, 2017, by Christopher Kawaja, Manager of Pavilion Midland, LLC, on behalf of said limited liability company.



*[Handwritten Signature]*

Notary Public in and for the State of NEW YORK

KINGA KNAP

Printed or Typed Name of Notary

My Commission Expires: 05/13/2021

SEAL

Midland County Clerk Unofficial Copy

Midland

Midland

**EXHIBIT A**

**PROPERTY**

The Property consists of the following:

1. Stonebridge Drive (65' R.O.W.) as shown on the Plat of PAVILION PARK, SECTION 10, a subdivision in Midland County, Texas, recorded in Cabinet J, Page 194 of the Plat Records of Midland County, Texas.
2. Lot 1A, Block 6, PAVILION PARK, SECTION 10, a subdivision in Midland County, Texas, according to the map or plat thereof, recorded in Cabinet J, Page 194 of the Plat Records of Midland County, Texas.

Midland County Clerk Unofficial Copy

Midland

Midland County Clerk Unofficial Copy

Midland

**EXHIBIT B**

**SH PROPERTY**

Lot 1A, Block 6, PAVILION PARK, SECTION 10, a subdivision in Midland County, Texas, according to the map or plat thereof, recorded in Cabinet J, Page 194 of the Plat Records of Midland County, Texas.

**Midland County Clerk Unofficial Copy**

**Midland**

**Midland County Clerk Unofficial Copy**

**Midland**

EXHIBIT C

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under (i) that certain Deed of Trust dated \_\_\_\_\_ and recorded in the Official Records of Midland County, Texas, as Instrument No. \_\_\_\_\_, which Deed of Trust is between \_\_\_\_\_, as Trustor, \_\_\_\_\_, as Trustee, and \_\_\_\_\_, as Beneficiary, and (ii) that certain Vendor's Lien retained in Deed dated \_\_\_\_\_, and recorded under County Clerk's File Number \_\_\_\_\_ of the Official Records of Midland County, Texas, executed by \_\_\_\_\_ to \_\_\_\_\_, securing the payment of one promissory note of even date in the principal amount of \$ \_\_\_\_\_, payable to \_\_\_\_\_, additionally secured by Deed of Trust, of even date, to \_\_\_\_\_, Trustee, recorded under County Clerk's File Number \_\_\_\_\_ of the Official Records of Midland County, Texas, hereby expressly subordinates such Deed of Trust and Vendors Lien and Deed of Trust and its beneficial interests thereunder to that certain Declaration of Restrictive Covenants (the "Declaration") dated \_\_\_\_\_, 20\_\_\_\_, and recorded on \_\_\_\_\_, 20\_\_\_\_ in the Official Records of Midland County, Texas, as Instrument No. \_\_\_\_\_, and to all easements to be conveyed in accordance with the Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the property encumbered by the above described Deed of Trust or Vendors Lien and Deed of Trust by foreclosure (whether judicial or non-judicial), deed in lieu of foreclosure or any other remedy in or relating to the Deed of Trust or Vendors Lien and Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, which shall remain in full force.

Dated: \_\_\_\_\_

\_\_\_\_\_ a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Midland County Clerk Unofficial Copy

Midland

THE STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Printed or Typed Name of Notary

My Commission Expires: \_\_\_\_\_

SEAL

**Midland County Clerk Unofficial Copy**

**Midland**

**Midland County Clerk Unofficial Copy**

**Midland**