

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

# BAY POINT, PORT LAVACA, TEXAS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration, made on the date hereinafter set forth by SOUTHEAST LAND PARTNERS, LLC, a Texas limited liability company, hereinafter referred to as "Developer,"

## WITNESETH:

WHEREAS, Developer is the owner of that certain tract of land known as "BAY POINT" being a Subdivision of 274.25 acres of land situated in the Pacsual Guajardo Survey, Abstract 20, Calhoun County, Texas, as described in the plat (the "Plat") recorded in the office of the County Clerk of Calhoun County, Texas, on the \_\_\_ day of \_\_\_\_\_, 2006, after having been approved as provided by law, and being recorded as instrument number \_\_\_\_\_ in the records of Calhoun County, Texas (hereinafter referred to as the "Property" or the "Subdivision"); and

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of Lots in said Subdivision;

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon the Subdivision, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof, except that no part of this Declaration or the Restrictions shall be deemed to apply in any manner to the areas identified or platted as a Reserve or Unrestricted Reserve on the Plat or to any area not included in the boundaries of said Plat. Developer also declares that this Subdivision shall be subject to the jurisdiction of the "Property Owners' Association" (as hereinafter defined).

## RESTRICTIONS

### A. LAND USE

1. The Property described above, together with any tracts subsequently added by the Declarant as aforesaid, are intended for one single family dwelling unit per "Lot" and their use is restricted to that purpose. "Lot" shall mean and refer to any plot of land identified as a Lot or tract on the Plat of the Subdivision. For purposes of this instrument, "Lot" shall not be deemed to include any portion of any "Common Areas," "Reserves", "Restricted Reserves" or "Unrestricted Reserves", (defined herein as any Common Areas, Reserves, Restricted Reserves or Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area. No Lot may be subdivided. Occupancy of a Lot shall be limited to one (1) family, which shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, or no more that two (2) persons who are not so related living together as a single household unit. It is not the intent of the Developer to exclude any individual from a dwelling who is authorized to so remain by any state or federal law. If it is found that this section, or any other section, of the Restrictions are in violation of any law, then the prohibited section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law. No commercial enterprise of any sort shall be situated on any tract

included therein unless the Declarant chooses, in his sole discretion, to designate a tract commercial. Except however Declarant reserves the right to own, maintain, or lease an office upon any portion of the described property for the purpose of promoting or closing future land sales or administering the business of the Declarant, and may permit prospective purchasers of property within the boundaries of the Property and Annexable Area, who are not Owners or Members of the Association, to use the Common Area at reasonable times and in reasonable numbers; and may refer to the services offered by the Association in connection with the development, promotion and marketing of the Property. Further, the Developer may establish Rules and Regulations for the use of the Common Areas in the Subdivision.

2. All tracts shall be kept in a clean and orderly condition at all times, and all trash, garbage and other waste shall be kept in sanitary containers. Such maintenance includes, but is not limited to the following:
  - a. Prompt removal of all litter, trash, refuse, and wastes.
  - b. Lawn mowing (outside of the natural vegetation areas).
  - c. Tree and shrub pruning (outside of the natural vegetation areas).
  - d. Keeping exterior lighting and mechanical facilities in working order.
  - e. Keeping lawn and garden areas alive, free of weeds, and attractive.
  - f. Keeping parking areas, walkways and driveways in good repair.
  - g. Complying with all government health and policy requirements.
  - h. Repainting of improvements.
  - i. Repair of exterior damage to improvements.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, without liability to the Owner, Builder or any occupants of the Lot in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said Lot, to cut, or cause to be cut, such weeds and grass and remove, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner, Builder or occupant of such Lot for the cost of such work and associated materials, plus a fee of \$25.00 for each instance. Payment thereof shall be collected as an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

3. Consistent with the foregoing, no wrecking yard, junk yard or salvage yard is permitted. Automotive vehicles not in running condition shall not remain on the property more than thirty (30) days.
4. No camping allowed on unimproved Lot with exception campers and travel trailers with chemical toilets may be located on the property for short term camping purposes not to exceed fifteen (15) consecutive days and will be regulated by the Association.
5. Hunting is prohibited anywhere within the Subdivision.
6. No farm animals allowed with the exception of one (1) horse per acre on properties of five (5) acres or greater for recreational purposes. Commercial raising or feeding of animals or poultry is prohibited.
7. Any Owner of one or more adjoining Lots (or portions thereof) may, with prior written approval of the Architectural Control Committee, consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting composite site, in which case the side set-back lines along the common lot lines shall be eliminated and said set-back lines shall thereupon be measured from the resulting side property lines rather than from the center adjacent Lot lines as indicated on the Plat (a "Composite Building Site"). Further, any utility easements along said common lot lines shall be eliminated and abandoned upon approval of a Composite Building Site provided such easements are not then being used for utility purposes. Any such Composite Building Site must have a front building set-back line of not less than the minimum front building set-back line of all Lots within that area, and such Composite Building Site will still be considered as individual Lots for purposes of the Maintenance Charge set forth herein.

8. No mobile, prefabricated or factory built home shall be situated on any Lot, permanently or otherwise.
9. Restricted Reserve A and C Bayfront Perpetual Easement. The Developer grants and conveys an exclusive perpetual easement to each individual Owner of a "Bayfront Lot" over and upon that portion of the shoreline of said Bay that lies and is situated between the Lot boundary line closest to the Bay of each Owner's respective Bayfront Lot and the actual pool level or water line of said Bay contained within Restricted Reserve A and C as shown on the Plat, the Owner of any Bayfront Lot having the exclusive right to use, keep and maintain only that portion of the shoreline of said Bay situated adjacent to the boundary line of said Bayfront Lot neared to said Bay and between the actual pool level of the Bay and said boundary line as though the side Bayfront Lot lines were extended to the actual pool level of Bay (each a "Perpetual Easement"). "Bayfront Lot" shall mean the Lots numbered 1 through 52 contained in Block Two of the Plat which are adjacent to and have any portion of the boundary of their Lot if projected to the Bay would connect to a portion of the Bay at the actual pool level of such Bay. "Bay" as used herein shall mean an inlet of water from the Gulf of Mexico. The right to use each of said Perpetual Easements shall be exclusive to each respective Owner of each of the Bayfront Lots and no other Owner in the Subdivision shall be entitled to use said shoreline easement area, provided however, such use shall be further subject to and limited by all legal requirements and permitting requirements of State, Local, and/or Federal authorities related to each of such areas, including but not limited to any wetlands designations or requirements related to the use thereof. Furthermore, the Developer and/or the Association make no representation or warranty that any or all of such Perpetual Easement(s) will be or remain available for use by any Owner based upon such legal requirements. It shall be the responsibility of each Bayfront Lot Owner to investigate and obtain prior to and during ownership all such legal requirements related to use of their Lot and the Perpetual Easement and to obtain as necessary any wetlands delineation from the Army Corp of Engineers. The Owner of each Bayfront Lot, shall at their respective expense, maintain the Perpetual Easement related to their respective Bayfront Lot. Further, each Owner, by accepting a Perpetual Easement, shall indemnify and forever hold harmless the Developer and the Association, its each of their respective successors and assigns, from and against any and all damages or loss arising out of or connected with the use of and improvements placed upon the respective Perpetual Easement.
10. Docks, piers and boathouses are permitted for Bayfront Lots only. Buyer must obtain all permits required by State, Local, and/or Federal authorities before installation of any dock, pier and/or boathouse or making any change for improvement within the Perpetual Easement or in the area of the Bay. Bayfront Lots numbered 15 and 16 (together), and Bayfront Lots 43, 44, 45 and 46 (together), if constructing a dock, pier and/or boathouse, must come to a written agreement, along with the Association as to the construction, maintenance and sharing of a common pier, dock and/or boat house due to the limited area in which to construct such facilities. Piers, docks and/or boathouses shall be constructed of treated wood or similar material and must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property.
11. Drill Sites and Easements. The areas designated as a "Drill Site" and "Easements" thereto on the Plat are the designated drill site and related easement locations for the purposes indicated on the Plat and as further provided herein. With regard to the Drill Site and Easements designated: (a) with regard to the Drill Site bordering on two sides with Lot 7, Block 1, such Drill Site may be used exclusively by the Owners or Lot 7, Block 1, and their families, guests and invitees; and (b) all other Drill Sites and Easements may be otherwise utilized by the Owner whose Lot the Drill Site or Easement is located for recreation, outdoor activities, grazing or other activities other than construction of improvements until such time as the mineral owners desire to use said area for a drill site or easement thereto for the exploration and/or of oil, gas or other minerals. The use of the Drill Site and Easements are specifically subject to the superior right of the mineral owners to use the area as a drill site for the exploration and development of oil, gas or other minerals. Developer shall have and hereby reserves the right, without the

consent of any other Owner or the Association, to grant or create temporary or permanent easements, for access, utilities, pipeline easements, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the Lots or other property owned by Developer, (ii) the Common Area, and (iii) existing utility easements. Furthermore, Developer has the right to grant or assign to the Association any or a portion of any right, title and interest in any real property contained within the Subdivision to the Association for the benefit of the Association, including but not limited to any Drill Sites or Easements. Developer, subject to the provisions for Composite Building Sites, reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Calhoun County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Lots. The Property Owners Association, the Developer and its assigns, further expressly reserves the right to enter upon any Lot for the purpose of improving, constructing or maintaining any natural drainage pattern, area or easement. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or any Utility District serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company, water district, political Subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements. No building, swimming pool or other structure shall be located over, under, upon or across any portion of any utility easement. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, walkways, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, walkways, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements. The Owner of each Lot shall indemnify and hold harmless Developer, and public utility companies having facilities located over, on, across or under utility easements from any loss, expense, suit or demand resulting from death, injuries to persons or damage to property in any way occurring, incident to, arising out of or in connection with said Owner's installation, maintenance, repair or removal of any permitted improvements located within utility easements, including where such death, injury or damage is caused or alleged to be caused by the negligence of such public utility or the Developer, their employees, officers, contractors, or agents.

12. No "for sale" signs shall be placed on unimproved Lots.
13. All Lots are to be serviced by GBRA water system. Furthermore, any Lot Owner shall have the right to drill and operate a well on their Lot to access non-potable water for irrigation purposes only.
14. No outside, open or pit type toilets are permitted in this Subdivision.
15. The Association will be responsible for maintaining all Common Areas and regulating their uses.
16. Landscape Easement – The easement shown on the Plat within Lots 1 Block 2 and Lot 19 Block 3, as a

"Landscape Easement" shall be for use in constructing and maintaining entrance monuments, columns, landscaping and fencing, which shall be owned and maintained by the Association. Lot Owners of the Lots subject to this Landscape Easement shall be prohibited from improving or accessing the area designated for the Landscape Easement.

17. Pathway Reserve – There is shown on the Plat (a) a ten (10) foot pathway reserve located between lots 31 and 32 Block 2 that leads to Restricted Reserve "B" (the "Day Dock Easement"); and (b) Restricted Reserve "B" (the "Day Dock Area"). The Day Dock Easement and Day Dock Area is reserved as a common area day dock for use exclusively for Owners of Lots within the Subdivision and their guests. The rights reserved in the Day Dock Area and Day Dock Easement shall be granted to and maintained by the Association.
18. There is shown on the Plat an area designated as "Reserve D" which has been set aside for potential future road expansion.

**B. CONSTRUCTION AND ARCHITECTURAL CONTROL**

1. No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof, (including, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original construction, on any Lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality of materials, drainage, harmony of external design and color with existing and proposed structures in the Subdivision and location with respect to topography and finished grade elevation. The granting of approval shall in no way serve as a guaranty or warranty as to the quality of the plans or specification nor the habitability, feasibility or quality of the resulting improvements. The sole authority for determining whether construction plans and specifications for proposed improvements are in compliance with the provisions of this Declaration as to quality and color of materials, drainage, harmony of external design and color with existing and proposed structures and location with respect to topography, finished grade elevations and other relevant factors, rests with the Committee. Disapproval of plans and specifications, including location of the proposed improvements, may be based by the Committee, for any reason that shall seem sufficient in the sole discretion of the Committee. Each application made to the Committee shall be accompanied by two sets of professionally drawn plans and specifications for all proposed construction (initial or alterations) to be done on such Lot, including the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Developer or the Association. If approved, one of the two sets of plans submitted shall be returned to the Owner with said approval noted thereon. The Committee may set reasonable application and inspection fees, and deposits. The Owner must obtain from the Committee a receipt for said plans indicating the date said plans are received by the Committee.
2. Dwellings shall be erected containing a minimum 1,200 square feet total, 800 square feet on the ground floor, of living (heated) area exclusive of porches screened or unscreened, and all of such construction, once commenced, shall be completed expeditiously and without any delay of more than thirty (30) days of construction activity after construction has commenced (each a "Dwelling"). Once construction has begun, a Dwelling must be completed within one (1) year from the commencement date. Dwellings can be a maximum of height of 40 feet. Dwellings must be of earth tone colors. No vinyl, aluminum or vertical siding. The exterior of all building must have a coastal theme and be constructed from brick, stucco, stone, hardiplank, or any combination of any of the above.

3. First floor elevation must be at least one (1) foot above the 100 yr flood plain.
4. Every building constructed on a Lot shall be set back at least twenty-five (25) feet from (a) any boundary line of the subject Lot or (b) any Easement, whichever is greater. If a contiguous tract (or tracts) is later consolidated with the tract conveyed hereby, these set back provisions shall be applied not to this original tract but to the Consolidated Tract (as herein defined).
5. Detached garages, work shops, and barns may be constructed on the property after or while the main dwelling is being built, so long as they are in harmony with the main Dwelling and are of good construction, kept in good repair, and are not used for residential purposes. Any workshops, barns or other outbuildings shall be located to the rear of the main Dwelling. All Dwellings, detached garages, workshops, and barns must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property. Barns may only be placed on properties five (5) acres or greater and intended to stable horses.
6. Every Dwelling shall have an individual sewage disposal system which meets or exceeds the minimum standards of State and County health regulations. Prior to occupancy, all Dwellings constructed in this Subdivision must have a septic or sewage disposal system installed by the Owner to comply with the requirements of the appropriate governing agency. All residents of the Subdivision will be required to install aerobic septic systems serving any Dwelling constructed on any Lot.
7. Fences on Bayfront Lots shall be constructed of ornamental iron only. Fencing on properties five (5) acres or greater that are intended to stable horses shall consist of split rail type using wood or synthetic materials and shall have a minimum of three rails attached in an aesthetically pleasing design. No barbed wire or chain link fences shall be allowed in the Subdivision, provided, however, an Owner may obtain approval from the Committee to construct a cage, kennel or dog run out of chain link fence. All fences shall be constructed in harmony with the guidelines established and adopted by the Architectural Control Committee.
8. All driveways must be of hard surface from the street to the Dwelling.

**C. PROPERTY OWNERS' ASSOCIATION, ASSESSMENTS, AND LIEN**

1. A "Property Owners' Association" is hereby created to be made up of the Owners of property within the hereinbefore described together with the owners of subdivision (the "Association"). On or prior to the Control Transfer Date at the discretion of the Developer, and thereafter, upon the approval of the Board of Directors (as provided below), the Association may form and be operated as a non-profit corporation and governed by its Articles of Incorporation and Bylaws upon incorporation, provided that such incorporation documentation is not in conflict with the terms and provisions hereof. Every person or entity who is a record owner of any Lot which is subject to the Maintenance Charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, including contract sellers, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, upon the Control Transfer Date, the Directors of the Association must be Members of the Association (as more particularly described in the By-laws). Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. The initial Board of Directors of the Association shall be designated by the Developer. Upon the Control Transfer Date, Owners may elect a five (5) member board of directors to the Property Owners Association, with three (3) alternates (the "Board of Directors").
2. Through its Board of Directors, the Property Owners Association shall have the authority to:

- a. Declare and collect an assessment per year per Lot from each property owner. Such assessment shall be made for the purpose of maintaining roads and other areas of common use and benefit to subdivision owners. The exact amount of the Maintenance Charge applicable to each Lot will be determined by the Developer until the Control Transfer Date, and thereafter by the Board of Directors of the Association during the month preceding the due date of the Maintenance Charge. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provision hereof. The initial assessment shall be \$200.00 ("Maintenance Charge"), and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot (or residential building site) to the Association annually, in advance, on or before the tenth day of January of each calendar year, or on such other date or basis (monthly, quarterly or semi-annually) as the Developer or the Board of Directors of the Association may designate in its sole discretion. The following property subject to this Declaration shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by the Developer or the Association or a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas; however, no land or improvements devoted to dwelling use shall be exempt from said Maintenance Charge.
- b. Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Lot
- c. The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described herein, including the maintenance of the Common Areas, any greenbelt or easements, roads, rights-of-way, and any common use pier, and the establishment and maintenance of a reserve fund for maintenance thereof. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Developer or Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area, etc. as may from time to time be authorized by the Association. Payment of all legal and other expenses incurred in connection with the enforcement of all charges and assessments, conveyances, restrictions, and conditions affecting the properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charges and assessments, landscaping in common areas, utilities, insurance, taxes, employing policemen and a security force and doing any other things or things necessary or desirable in the opinion of the Association to keep the Properties neat and in good order, or which is considered a general benefit of the Owners or occupants of the properties, it being understood that the judgment of the Association in the expenditure of said fund shall be final and conclusive so long as such judgment is exercised in good faith. The Maintenance Charge is for the purpose of promoting the recreation, health, safety and welfare of the Owners of the Subdivision.

- d. Each Lot shall be subject to a lien to secure unpaid assessments. Said lien shall be foreclosed by formal court proceeding after written notice to the delinquent property owner. This lien shall be subordinate to any lien holder who has provided work or materials for the improvement of any tract and also to any lien holder who has financed construction on the property. As additional security for the payment of the Maintenance Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Calhoun County, Texas. In the event that the Association has determined to nonjudicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code (and any successor statute) and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Calhoun County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgement for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder. In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity. It is the intent of the provisions of this Section to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any duly authorized officer of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection, including reasonable attorneys' fees, which have accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed and (d) the name of the Owner thereof.



Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Trustees to cover the preparation and recordation of such release of lien instrument.

3. The authority to grant or withhold architectural control approval as referred to above is initially vested in the Developer; provided, however, the authority of the Developer shall cease and terminate upon the election of the Architectural Control Committee of the Association (sometimes herein referred to as the "Committee"), in which event such authority shall be vested in and exercised by the Committee, hereinafter referred to, except as to plans and specifications and plot plans theretofore submitted to the Developer which shall continue to exercise such authority over all such plans, specifications and plot plans. The term "Committee," as used in this Declaration, shall mean or refer to the Developer or to the Architectural Control Committee composed of members of the Association appointed by the Board of Directors, as applicable. At the discretion of the Developer or in any event at such time as eighty percent (80%) of the Lots in all sections of the Subdivision are conveyed by Developer (from time to time hereafter referred to as the "Control Transfer Date"), the Developer shall cause an instrument transferring control of the Subdivision to the Association to be placed of record in the Real Property Records of Montgomery County, Texas (which instrument shall include the Control Transfer Date). Thereupon, Developer shall designate a committee of three (3) Members to be known as The Architectural Control Committee. Thereafter, each member of the Committee must be an Owner of property in some Section of the subdivision and shall be elected by the Board of Directors of the Association. Additionally, the Developer shall have the right to discontinue the exercise of architectural control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to such effect in the Real Property Records of Montgomery County, Texas. Declarant shall designate and appoint an Architectural Control Committee consisting of not less than three (3) qualified persons which committee shall serve at the pleasure of the Declarant. The Architectural Control Committee shall be named by vote of the owners of all the property in the subdivision — each owner casting the number of votes and fractions of votes as the acres of land for the candidate of his choice for each post. There shall be no cumulative voting.
4. No building, fence, wall, bulkhead or other structure shall be commenced, erected, or maintained upon any tract, nor shall any exterior addition to; or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by, the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography.
5. In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and such Committee shall either fail to approve or reject such plans and specifications for a period of 45 days following such submission, approval by the Committee shall not be required, and full compliance with this Restriction shall be deemed to have been had.
6. The Association (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be

exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Member of Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (iv) by suspension, after notice and hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Related User which assessment reimbursed the Association for the costs incurred by the Association in connection with such breach; (vi) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or such Rules and Regulations by such Member or a Related User; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorneys' fees incurred by the Association with respect to exercising such remedy. Before the Board may invoke the remedies provided above, it shall give registered or certified notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Developer, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

**D. GENERAL PROVISIONS**

1. Declarant shall have the right to enforce, by any proceeding at law or in equity, all restrictions now or hereafter imposed by the provisions of this Deed. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
2. The covenants, conditions and restrictions of this Deed shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, Declarant or any tract owner subject hereto, and their respective legal representatives, heirs, successors, and assigns.
3. Invalidation of any one or more of these Restrictions by judgment or court order shall in no way affect any other restriction, and all other restrictions shall remain in full force and effect.
4. The Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee. Additionally, Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological

advances, such as security, communications or energy-related devices or equipment which did not exist or were not in common use in residential Subdivisions at the time this Declaration was adopted. Likewise, the Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Association or will adversely affect the property values within the Subdivision.

5. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the then Owners (including the Developer) of the Lots has been recorded agreeing to cancel, amend or change, in whole or in part, this Declaration.

6. This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Developer) entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facie evidence of the date of execution of said amendment by such Owner. Those Members (Owners, including the Developer) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Developer) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Montgomery County, Texas, accompanied by a certificate, signed by a majority of the Board of Trustees, stating that the required number of Members (Owners, including the Developer) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination. The Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee. Additionally, Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological advances, such as security, communications or energy-related devices or equipment which did not exist or were not in common use in residential Subdivisions at the time this Declaration was adopted. Likewise, the Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend

this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Association or will adversely affect the property values within the Subdivision.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand as of this 10<sup>th</sup> day of MAY, 2006.

SOUTHEAST LAND PARTNERS, LLC  
a Texas limited liability company

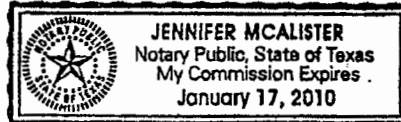
By: [Signature]  
Name: Rick Gaul  
Title: Authorized Agent

STATE OF TEXAS §

COUNTY OF Montgomery §

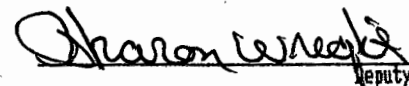
This instrument was acknowledged before me on the 9<sup>th</sup> day of May, 2006, by Jennifer McAlister, Executive Administrator of SOUTHEAST LAND PARTNERS, LLC, a Texas limited liability company, in the capacity therein stated on behalf of said company.

[Signature]  
Notary Public, State of Texas



This Document has been received by this Office for  
Recording into the Official Public Records. We do  
hereby swear that we do not discriminate due to  
Race, Creed, Color, Sex or National Origin.

Filed for Record in:  
Calhoun County  
Honorable Anita Fricke  
County Clerk

  
Deputy

Instr.: 98631  
Stamps: 13 Page(s)