

Prepared by and return to: John D. Freund, 1005 Main Street, Suite 200, Dubuque, IA 52001; 563.587.8050

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF
SOUTH POINTE HOMEOWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SOUTH POINTE HOMEOWNERS ASSOCIATION (hereinafter "Declaration") is made on the 22nd day of December, 2017 by DUBUQUE SOUTH POINTE, LLC, an Iowa limited liability company (hereinafter the "Declarant").

RECITALS

Declarant is the owner of certain real property in the City of Dubuque, County of Dubuque, State of Iowa, which is more particularly described as:

Lots 38 through 71, inclusive, of South Pointe, according to the plat recorded on October 18, 2017 as Instrument No. 2017-13004 in the records of the Dubuque County Recorder

(hereinafter the "Real Property").

NOW THEREFORE, Declarant hereby declares that all of the Real Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding upon all parties having any right, title, or interest in the Real Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

1. **Definitions.** For purposes of this Declaration, the following words are defined as set forth below:

- a. "Association" shall mean and refer to SOUTH POINTE HOMEOWNERS ASSOCIATION, its successors and assigns.
- b. "Board of Directors" shall mean the board of directors of the Association.

- c. "Bylaws" shall mean and refer to the bylaws of the Association as may be amended from time to time.
- d. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners.
- e. "Declarant" shall mean and refer to DUBUQUE SOUTH POINTE, LLC, an Iowa limited liability company.
- f. "Developer" shall mean and refer to DUBUQUE SOUTH POINTE, LLC, an Iowa limited liability company.
- g. "Lot Owner" or "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Real Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- h. "Real Property" shall mean and refer to that certain real property hereinbefore described in the Preamble and such additions thereto as may hereafter be brought within the jurisdiction of the Association by the Declarant.
- i. "Review Committee" shall mean any committee established by the Developer for the purpose of assuming oversight as designated to the Developer herein. The Review Committee members shall be selected by the Developer, in the Developer's sole discretion, and such names shall be transmitted to the Association.

2. Single-Family Housing.

- a. All lots within the Real Property shall be used, solely and exclusively, as and for a private single-family residence and a private garage attached to such residence, provided, however, that Developer or the Review Committee, as the case may be, may grant a variance to allow any use permitted within the R-1 and R-2 zoning designation within the zoning ordinance of the City of Dubuque, Iowa. In reviewing requests for a variance, Developer may use any criteria deemed reasonable by Developer or Review Committee in Developer's or the Review Committee's sole discretion, including architectural styling.
- b. No portion of the residence or attached garage shall be erected and maintained which is more than two and one-half (2 ½) stories or thirty-five feet (35') in height, whichever is less.

- c. The square foot area of each single-family residence shall not be less than one thousand six hundred (1,600) square feet for a residence having one story and two thousand two hundred (2,200) square feet for a residence having more than one story, exclusive of open porches, garages, or basements, whether finished or unfinished.
- d. All homes on the Real Property shall contain traditional architectural styling. Each home shall have an attached garage with a minimum of two (2) parking spaces within the garage, for the sole use of the Owners and occupants of the residence.
- e. Exterior walls on all structures built upon the lots may incorporate any of the following: exterior insulation and finish system (EIFS), brick, stucco, stone, cedar shake, horizontal wood lap siding, or Cemplank or an equivalent product.
- f. Roofing materials may incorporate any of the following: wood shakes, wood shingles, slate, copper, or asphalt shingles with weight not less than two hundred twenty (220) pounds. Any roof shall have a minimum 6/12 pitch. Roof forms shall be well organized and consistent in form and pitch in elevations. Roof structures such as attic vents, plumbing vents, and exhaust fans shall be located on the rear of the ridge and shall be painted to match the roof color.
- g. Windows may incorporate any of the following: wood, vinyl, or aluminum-clad wood with clear glass or low E glass. No reflective glass shall be permitted.
- h. Construction of the dwelling structure and garage shall be performed only by construction contractors approved in advance by Developer. This requirement shall run with the land and shall be binding for fifty (50) years from the date of recording of this covenant in the office of the Dubuque County Recorder.

3. Time for Construction. If construction is not begun on the residence within thirty-six (36) months of the purchase of sale by Developer, then such lot shall be mowed and maintained as a finished yard by the Owner thereof such that it shall be free of weeds and debris. Furthermore, if construction is not begun on the residence within thirty-six (36) months of sale by Developer, then the Association shall assess a fee of \$100.00 per month for so long as construction has not begun thereupon. Such fee shall be prorated for the month in which construction begins. The Association shall have the right to collect said fee and shall have the right to file a lien against any lot regarding which the Owner thereof has not paid the fee. Construction on any lot shall be completed within twelve (12) months of the commencement of excavation. Each Lot Owner shall plant no fewer than four (4) trees on the portion of each lot inside the sidewalks and no fewer than two (2) trees between the curb and the sidewalk, for a total of six (6) trees per lot. Every Lot Owner shall contact the

City of Dubuque Forester to determine possible types of trees for planting between the sidewalk and curb. During the period of construction of any residence, the building contractor shall, to the extent possible, keep the lot in a neat and orderly condition. Unless required for construction purposes, building materials shall be properly stored. Any construction debris or other unusable materials shall be picked up and removed on a regular basis. All earth removed for construction shall be removed to a location outside the Real Property, at the Owner's expense. From the commencement of excavation until the completion of construction, each Owner shall place a functioning erosion sock along the entire frontage of the lot.

4. Setback, Sidewalks. Except as provided below, no building on any lot shall be erected nearer than thirty-five feet (35') from the curb which abuts the street, except for the rear and side property lines where the yard clearance shall conform to the City of Dubuque zoning ordinances. If a Lot Owner desires to exceed the front property line requirement, then such Lot Owner must receive the prior written permission of Developer or Review Committee, as the case may be, and, if required, the approval of the City of Dubuque. All lot owners shall install sidewalks on their lots which shall be set back not fewer than seven feet (7') from the curb.

5. Structures Prohibited for Residence. No trailer, basement, tent, shack, garage, barn, or any other out building erected on any of the Real Property shall at any time be used as a residence, temporarily or permanently, except with the approval of Developer or Review Committee, as the case may be, nor shall any residence of a temporary character be permitted, except as may be necessary in the construction of any structure. No basement or residence shall be occupied as a dwelling place until such time as the exterior of said residence is fully completed, including permanent siding, stoops, steps, and finish grading of the lot, nor until such time as the interior of such dwelling is completed to the extent that all ceilings and interior walls, including wall surfaces, other than paint and/or other similar decoration, have been installed.

6. Vehicles. Only passenger automobiles shall be permitted to stand at any time upon the above described property and the streets adjacent thereto, except for service vehicles actually used in the construction of the residence and improvements or for the purpose of performing services to the owner of any lot within the Real Property. No boat, snowmobile, camping, or recreational vehicle or trailer, nor a trailer used to carry or transport the same, shall be kept or stored on any of the lots except within the garage of any permanent out building. No unused old automobiles, machinery, or junk materials shall be kept upon any lot, nor shall any vehicle built for, or adopted to, or modified for, racing purposes be kept or stored upon any of said lots.

7. Signs. No signs, billboards, or advertising devices, except those used in the sale of the property, shall be permitted.

8. Trees. No trees may be cut or removed from any Lot except with the prior approval of Developer or the Review Committee, as the case may be. However, trees that have fallen by act of nature shall be removed from the lot. If any the tree planted pursuant to Paragraph 3 hereof have fallen by an act of nature, then the Lot Owner shall replace the same with a similar tree as soon as practicable.

9. Easements. Drainage, sewage, and utility easements shall exist upon the properties as shown upon the applicable plats.

10. Fences. No fences shall be constructed without prior approval of the Review Committee.

11. Utility Service. All electrical, gas, telephone, and cable television services to each residence shall be installed and maintained underground.

12. Parking. All lots, including garage space, shall have sufficient off-street parking to accommodate at least three automobiles. All driveways and parking areas shall be of hard surface construction of asphalt, concrete, or pavers.

13. Subdivision. No house or garage may be moved upon any lot from any other location. Except as provided below, no lot may be subdivided. Subdivision of a lot may occur only in the event the Owners of adjoining lots desire to subdivide a lot which lies between the lots owned by such owners. In that event, the lot lying between the two other lots may be subdivided such that a portion of the subdivided lot is owned by one adjoining Lot Owner and the other portion is owned by the other adjoining Lot Owner. An Owner who purchases all or part of an adjoining lot may build anywhere on the lot or lots, including on the property line which previously divided the full lot from the adjoining lot, as long as such building and lots otherwise conform to the requirements imposed by this Declaration, provided, however, that no house may be developed on any subdivided lot if the house would be located solely upon either part of the subdivided lot.

14. Compliance with Law. Except as is otherwise provided in this Declaration, all residences and improvements, including but not limited to swimming pools, fences, or other buildings and structures shall comply with all applicable ordinances of the City of Dubuque, Iowa, as the same now or may hereafter exist.

15. Violation of Covenants. If an Owner violates any of the covenants and restrictions herein contained, then it shall be lawful for the Owner of any other lot within the Real Property or Developer or the Review Committee, if applicable, to institute any proceeding at law or in equity, against the person or persons violating or attempting to violate any such covenant or restriction, to prevent him, her, or them from so doing or to recover damages for such violation, or both. In addition, the Association may assess a fee if applicable and may file a lien against any lot in violation.

16. Severability. Invalidation of any of the covenants or restrictions contained in this Declaration, or any part thereof, by judgment or order of a court with competent jurisdiction, shall in no way affect any of the other provisions of this Declaration, and all remaining provisions shall remain in full force and effect.

17. Covenants to Run with the Land. These covenants and restrictions shall run with the land and shall be binding upon all the Owners of lots in the above described real estate, their heirs, grantees, successors, and assigns, and all persons claiming by, through or under them, until

twenty-one (21) years from the recording of this Declaration, except that this Declaration may be extended as provided in Sections 614.24 and 614.25, Code of Iowa.

18. Variances. Notwithstanding anything herein to the contrary, Developer or the Review Committee, as the case may be, may, until such time as a lot has been developed, grant a variance from any of the restrictions and covenants imposed herein as long as it determines, in its sole discretion, that such a variance is in the best interest of the development as a whole. At such time as a lot has been developed (a home has been completed upon the lot), Developer's or the Review Committee's (as the case may be) ability to grant variances with respect to that lot shall terminate.

19. Maintenance Assessment. At such time as residential structures have been completed on twenty percent (20%) or more of the lots within the Real Property, Developer or the Review Committee, as the case may be, shall provide a statement (hereinafter the "Assessment Notice") to each Lot Owner setting forth an annual assessment (hereinafter the "Assessment") to be paid by each Lot Owner toward maintaining, repairing, and insuring certain common areas and amenities within the Real Property for which the City of Dubuque does not accept responsibility. All such obligations deemed reasonable and necessary by Developer, the Review Committee, the Association, or the Maintenance Committee (as defined below), as the case may be (hereinafter the "Maintenance Obligations"). Until such time as residential structures have been completed on twenty percent (20%) or more of the lots in the Real Property, Developer shall be responsible for payment of all such expenses. Once residential structures on over twenty percent (20%) of the Real Property have been completed, the Association shall be responsible to ensure satisfaction of all maintenance obligations from the assessment described herein. The Association may, at its option, appoint a committee (hereinafter the "Maintenance Committee") consisting of five (5) Lot Owners to address such. Thereafter, the Maintenance Committee shall be responsible for ensuring satisfaction of the Maintenance Obligations and Developer shall be relieved, without further notice, of any liability with respect to the Maintenance Obligations. The annual assessment, until amended, shall be One Hundred Dollars (\$100.00) per calendar year, and any Lot Owner shall make a prorated payment of this assessment at the time of closing on the Lot Owner's purchase.

The initial Assessment Notice provided by Developer shall provide an assessment estimated by Developer to be sufficient to cover the Maintenance Obligations for the remainder of the then-current calendar year. On or before January 15 of each calendar year thereafter, the Developer, the Review Committee, the Association, or the Maintenance Committee, as the case may be, shall provide an Assessment Notice setting forth an estimate of the costs for the Maintenance Obligations for the new calendar year. Each Lot Owner shall make full payment to either Developer or the Association of the amount of the Assessment within 30 days of receipt of the Assessment Notice. If at any time it appears that the Assessment is not sufficient to pay the cost of the Maintenance Obligations, then the Developer, the Review Committee, the Association, or the Maintenance Committee, as the case may be, may provide a supplemental Assessment Notice explaining the reason for the additional costs and the amount of additional Assessment. Each Lot owner shall make full payment of the amount set forth in the supplemental Assessment Notice within 30 days of receipt of that notice. Unpaid assessments shall accrue interest at the rate of twelve percent (12%) per annum and Developer, the Review

Committee, the Association, or the Maintenance Committee, as the case may be, may record a document with the Dubuque County Recorder establishing a lien upon the Lot owned by any owner who fails to timely pay the Assessment in the amount of any such unpaid Assessment (the "Lien"). Any Lot Owner who does not timely pay an assessment shall be responsible for all costs associated with collecting the Assessment, including reasonable attorney's fees and court costs with respect to preparation and recording of the Lien or any other collection activity required to collect the Assessment. Developer, the Review Committee, the Association, or the Maintenance Committee, as the case may be, shall be solely responsible for determining what action related to collection shall be taken and, upon filing of the Lien, are authorized to take any and all actions allowed by law to collect the unpaid Assessment, including foreclosure of such Lien.

Executed this 12th day of December, 2017.

DUBUQUE SOUTH POINTE, LLC:

By

Print Name: James Trausch

Its Member

STATE OF IOWA)
COUNTY OF DUBUQUE) ss.

On this 22nd day of December, 2017, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared James Trausch, to me personally known who, being by me duly sworn, did say that he or she is the Member of the limited liability company executing the within and foregoing instrument, that no seal has been procured by the limited liability company by authority of its members, and that James Trausch, as Member, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the limited liability company, by it and by him or her voluntarily executed.

Vanessa Cahill
Notary Public in and for Said State

