

**AMENDED AND RESTATED File# 2021-00043796**

**DECLARATION OF COVENANTS OF ASSURANCE AND RESTRICTIONS OF THE  
SOUTH POINTE SUBDIVISION, ALL PHASES,  
TO THE CITY OF TONTITOWN, ARKANSAS**

KNOW ALL MEN BY THE PRESENTS:

WITNESS:

WHEREAS, Wagon Properties, LLC (original “Declarant”) developed and filed covenants for South Pointe, Phase I, a subdivision to the City of Tontitown, Arkansas, as reflected upon a plat of said subdivision filed on October 19, 2018 at Plat Record No. 0024-00000207 of the Real Estate Records of Washington County, Arkansas, in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, (“Original Covenants”); and

WHEREAS, Included in said filed covenants is Paragraph 6.7 which permits the Declarant to file any amendment to said Original Covenants within 3 years from the date of original filing (October 19, 2018) and therefore, on the 21st day of May, 2020, Declarant and Subsequent Declarant under said original covenants filed these Amended & Restated Covenants that applied to at least phases I & II of South Pointe Subdivision; and

WHEREAS, in March 2019, Wagon Properties, LLC, sold the land next to South Pointe Ph I (originally intended to be the land for South Pointe Phases II & III) to Hampton Holdings, LLC, and was named the “Subsequent Declarant” under these Amended & Restated Covenants and this Subsequent Declarant replaced the original Declarant and assumed all of the rights and authority vested in Declarant in the Original Covenants and in these Amended and Restated Covenants; and

WHEREAS, Hampton Holdings, LLC designed and developed South Pointe Phase II (reflected upon a plat filed on May 4, 2020) and Hampton Holdings, LLC brought South Pointe Phases I and II under a common set of covenants and a single Homeowners’ Association with the filing of the Amended and Restated Covenants on May 21, 2020. Hampton Holdings (or assignee) therein also reserved the right to bring additional phases of South Pointe under these same covenants and is now exercising that right to do so.

WHEREAS, Phases III-V of South Pointe are now developed and to be covered by these Covenants. The Subsequent Declarant, is the owner of all Lots of South Pointe, Phases III-V, a subdivision to the City of Tontitown, Arkansas, as reflected upon plats of said subdivision filed on the dates listed below of the Real Estate Records of Washington County, Arkansas, in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, and which

plats are, by reference, made a part of this Declaration, and this Declaration is likewise made a part by reference of said plats;

- Phase III plat originally filed on June 23, 2021 under filing number 0024-00000341
- Phase III amended and corrected plat filed on November 3, 2021 under filing number 0024-00000374
- Phases IV and V plat filed on October 5, 2021 under filing number 024A-00000367

NOW, THEREFORE, the Subsequent Declarant hereby states that the Lots in said South Pointe Subdivision, Phases I, II, III, IV, and V, and any subsequent phased developed by Subsequent Declarant or its assignee, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth in these Amended & Restated Covenants or as hereinafter may be changed or amended as provided herein.

## **ARTICLE I**

### **PROPERTY SUBJECT TO THIS DECLARATION**

1.1. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, is located and situated in Washington County, Arkansas, and which subdivision is located on the following lands, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN.

## **ARTICLE II**

### **DEFINITIONS**

2.1. The following terms as used in this Amended and Restated Declaration of Covenants of Assurance and Restrictions are defined as follows:

- a. "Declaration" means this Declaration of Covenants of Assurance and Restrictions for the South Pointe Subdivision, Phases I, II, III, IV, and V and any subsequent phases permitted hereunder, to the City of Tontitown, Arkansas.
- b. "Property" means the South Pointe Subdivision, Phases I, II, III, IV, V to the City of Tontitown, Arkansas, as the same may be shown on the plats referenced hereinabove and recorded in Washington County, Arkansas.
- c. "Lot" means any numbered Lot designated on the Plat of the property, except the term shall not include the lots numbered 34, 90, 126, and 190 on the Plats, as these are HOA common areas. For future phases, the term "Lot" shall not

include any unbuildable lot.

d. "Plat" means the map of the plat of the South Pointe Subdivision, Phase I, to the City of Tontitown, Arkansas, as it is recorded at Plat Record No. 0024-00000207 in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, plus the plat of the South Pointe Subdivision, Phase II, of the City of Tontitown, Arkansas, as it is recorded at Plat Record No. 0024-00000273, plus the plats of the South Pointe Subdivision, Phases III-V, of the City of Tontitown, Arkansas, as it is recorded at Plat Record No. listed below and any filed plat of future approved phases hereunder.

- Phase III plat originally filed on June 23, 2021 under filing number 0024-00000341
- Phase III amended and corrected plat filed on November 3, 2021 under filing number 0024-00000374
- Phases IV and V plat filed on October 5, 2021 under filing number 024A-00000367

e. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot subject to this Declaration, except that such term shall not mean Declarant or Subsequent Declarant regardless of whether the same has a fee simple interest in any lot.

f. "Declarant" initially meant and referred to Wagon Properties, LLC, as developer of South Pointe Ph I, in the Original Covenants but as of the filing of the Amended and Restated Covenants for Phase II, "Declarant" also refers to Hampton Holdings, LLC, as Wagon Properties hereby expressly conveyed all of its rights under the Original Covenants and under the Amended & Restated Covenants to Hampton Holdings, LLC under paragraph 6.8 hereof.

g. "Subsequent Declarant" means and refers to Hampton Holdings, LLC as developer of South Pointe Ph II and Phases III-V, and any other developer of a future phase of South Pointe subdivision of Tontitown, Arkansas, if Hampton Holdings authorizes said future phase and assigns the rights of a Subsequent Declarant to the developer of that future phase in a future filed amendment to these Amended & Restated Covenants.

h. "Subdivision" shall mean the South Pointe Subdivision, Phases I, II, III, IV, and V to the City of Tontitown, Arkansas, as per the Plats as well as any other phases that may be platted and added later by Declarant and which are subjected to this Declaration.

i. "Association" shall mean and refer to the South Pointe Homeowners

Association, Inc., a non-profit corporation organized and existing pursuant to the laws of the State of Arkansas.

j. "Common Properties" shall mean and refer to those real properties owned by or hereafter acquired by the Association. Common properties are intended to be devoted to the common and private use and enjoyment of Owners of the Lots.

k. "ARC" shall mean and refer to the Declarant until such time as the Declarant relinquishes the responsibilities of the ARC to an Architectural Review Committee as established and maintained by the Association.

l. "Builder" shall mean and refer to any person or entity who is a record owner of a Lot who has acquired such Lot with the intention of building a dwelling on such Lot for resale and who does not use or lease such Lot as a residence, either temporarily or permanently.

### ARTICLE III

#### RESTRICTIONS ON RESIDENTIAL LOTS

3.1. Fences: Privacy fences may be constructed along the side property lines and back property line of a Lot. It is also required that a privacy fence be built from each side of a Dwelling to the adjacent side property lines so as to block the view of the rear yard of a Dwelling from the street in front of a Dwelling. All fences shall be constructed so that the framing shall be toward the inside of the Lot and shall be constructed at a height of six (6) feet to maintain uniformity and shall be constructed of wood. Before any fence may be constructed on any Lot, plans must be submitted to the ARC showing the location of the fence and such plans must be approved by the ARC in accordance with the procedures set forth herein; provided, however, that, in no event shall any fence be built which would detract from the appearance or obstruct visibility of the entry signs to the Property. There shall be no chain link or cyclone fences allowed in the Subdivision.

3.2. Prohibition of Offensive Activities: No activity which may become an annoyance or nuisance to the neighborhood or which shall in any way unreasonably interfere with the quiet enjoyment of each Owner of such Owner's Lot or which shall degrade property values or distract from the aesthetic beauty of the Subdivision, shall be conducted thereon. No repair work involving dismantling, or assembling of boats, motor vehicles or other machinery shall be done in any driveway or adjoining street. No inoperative or junk motor vehicles shall be permitted in the Subdivision whether on a Lot or on a street.

3.3. Signs: No person shall erect or maintain upon any Lot, or improvement thereto, any sign or advertisement, except a community yard sale sign only for the immediate advertisement and duration of the Subdivision wide sale which will occur twice per calendar

year, and/or a real estate sign when the property is listed for sale, provided, however, that this restriction shall not apply to Declarant or any Builder during development and construction of the Subdivision.

3.4. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats and other common household pets (not to exceed two of each category) provided they are not kept, bred or maintained for commercial purposes. Notwithstanding the foregoing, no animals or fowl may be kept in the Subdivision which result in an annoyance or are obnoxious to residents in the vicinity. Animals are not permitted to roam the Subdivision. Animals must be leashed and under immediate owner control when anywhere in the neighborhood, with the exception of fenced yards. All allowed animals must be kept in compliance with all applicable ordinances, regulations and laws.

3.5. Garbage and Refuse Disposal: No Owner shall accumulate on his or her Lot litter, refuse or garbage, except in approved receptacles. All Owners shall be required to have a mandatory trash pickup as provided or required by the City of Tontitown, Arkansas.

3.6. Limited Access: There shall be no access to any Lot on the perimeter except from designated streets or roads within the Subdivision.

3.7. Drilling and Mining: No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.

3.8. Communication Towers and Satellite Dishes: No communications mast, tower, or structure may be installed on any Lot, except that satellite dishes may be installed only on the rear roof of a dwelling or immediate surrounding ground and shall not exceed the height of the lowest roof ridge line of such dwelling.

3.9. Parking on the Streets: No vehicles may be parked overnight in the streets of the Subdivision. Owners shall provide sufficient off-street parking to accommodate the vehicles used by their families and guests. Furthermore, no semi-trailer trucks or commercial vehicles shall be allowed to park in the Subdivision, either on the streets or on the Lots, provided, however, that this restriction shall not apply to Declarant or any Builder during construction and development of the Subdivision.

3.10. Structures other than Dwellings: No trailer, mobile home, manufactured home, modular home, tent, shack, or other building or structure, temporary or permanent, shall be erected, placed, or used on any Lot, except for a site built dwelling in accordance herewith. However, it is permissible to have a permanent storage building in the rear yard of a dwelling provided that the square footage of such storage building does not exceed 250 square feet and is constructed of a material that complements the dwelling which it accompanies. Further, before any such storage building can be constructed, the Owner or Builder must submit plans to the ARC for its approval. The restrictions contained in this section shall not apply to the Declarant

or any Builder during construction and development of the Subdivision for temporary structures associated with construction and development.

3.11. Recreational Vehicles and Boats: Recreational and camping vehicles, trailers and boats may be stored and parked on the Lots. However, these vehicles, trailers and boats shall be located behind the house or fences, or in or behind the garage, or otherwise screened so that they are not readily visible from the street or adjoining Lots. Screening walls and fences must be approved by the ARC before being constructed.

3.12. Minimum Square Footage: All dwellings in the Subdivision shall have a minimum of one thousand seven hundred fifty (1,750) square feet of heated area in Phase I and a minimum of one thousand five hundred fifty (1,550) square feet of heated area in Phase II-V and future phases. The minimum square footage requirement is exclusive of garages, porches, patios and decks.

3.13. Restriction of Type of Dwelling: There shall be no dwellings erected on any Lot other than a detached single family dwelling having at least a two-car enclosed garage with entrances from the front or side.

3.14. Approval of Plans by ARC: All plans for improvements to be constructed on each Lot shall be first submitted for review and approval by the ARC. Approval by the ARC must be obtained in writing before construction of any improvement on any Lot begins and any variances to the improvement initially approved must be authorized in writing by the chairman of the ARC. Nothing in this paragraph shall be construed to nullify the Subsequent Declarant's authority over the ARC in relation to Phase II-V or any subsequent new phase.

3.15. Exterior of Dwellings:

A. Phase I exteriors shall meet the following requirements: The front exterior wall of all dwellings erected on the Lots shall be of a masonry veneer construction to the extent that the front exterior walls of each such dwelling is at least eighty percent (80%) masonry veneer (brick, stone rock), excluding windows and doors. Cementitious materials (e.g., hardie board) for trim may be used so long as they do not exceed twenty percent (20%) of the exterior, excluding windows and doors. Vinyl and aluminum may not be used except on soffits and fascia. Stucco-like, EIFS materials may not be used on any portion of the exterior. All roof pitches shall be a minimum of 8/12 pitch. Any composition roof on any dwelling in the subdivision shall be an architectural shingle roof, excluding porches and sheds. All cement block must be covered with brick. Notwithstanding the foregoing, however, a waiver may be granted by the Declarant, in its sole discretion, to the exterior restrictions herein contained for any particular dwelling, prior to the construction thereof.

B. Phases II-V, and all subsequent phase exteriors shall meet the following requirements: The front exterior wall of all dwellings erected on the Lots shall be at least sixty percent (60%) masonry veneer (brick, stone rock), excluding windows and doors on

any wall, all cement block must be covered with brick. Cementitious materials (e.g., hardie board) may be used so long as they do not exceed forty percent (40%) of the exterior, excluding windows and doors. Vinyl and aluminum may not be used except on soffits and fascia. Stucco-like, EIFS materials may not be used on any portion of the exterior. All roof pitches shall be a minimum of 8/12 pitch. Any composition roof on any dwelling in the subdivision shall be an architectural shingle roof, excluding porches and sheds. Notwithstanding the foregoing, however, a waiver may be granted by the Declarant, in its sole discretion, to the exterior restrictions herein contained for any particular dwelling, prior to the construction thereof.

3.16. Lot maintenance and sod: All Lots shall be maintained, mowed and kept free of noxious weeds whether they be improved or unimproved. Further, upon construction of a dwelling, the Owner shall sod the entire lawn area of the Lot.

3.17. Sex Offender Restriction: No persons required to register as a sex offender pursuant to the Sex Offender Registration Act of 1997, Arkansas Code Annotated § 12-12-901, et seq, as amended from time to time, or any other similar federal, state or local law, regulation or ordinance, may rent, reside in, own or occupy any Lot or dwelling within the Subdivision either permanently or temporarily.

3.18. Heating and Cooling Devices: No dwelling or any other structure located on a Lot shall be permitted to have a heating or cooling device located in a window.

3.19. Solar Collectors: No solar collectors shall be installed without written approval from the ARC. Such installation shall be in harmony with the design of the dwelling. When reasonably possible, solar collectors shall be installed in a location not visible from the public street in front of the residence.

3.20. Playground Equipment: Playground equipment, including, but not limited to, swing sets, forts, wading or swimming pools and trampolines, may only be placed in the rear yard of a Dwelling.

3.21. Platted easements: All Lots are subject to easements that are shown on the Plat, including, but not limited to, easements for fences, drainage and subdivision identification signs.

## ARTICLE IV

### HOMEOWNERS ASSOCIATION AND COVENANT AND PLAN FOR MAINTENANCE AND OTHER ASSESSMENTS

4.1. Homeowners Association: The South Pointe Homeowners Association, Inc. (referred to herein as "Association") has been formed and incorporated by the Declarant and Declarant and any Builder and other Owner are members thereof. All Owners must be members

of the Association and each shall automatically become a member of the Association upon the conveyance of a lot to him or her. The Association shall be governed By-Laws accepted and approved by the Association.

Lots owned by the Declarant or Subsequent Declarant in any new phase of the subdivision shall not be subject to HOA dues or regulations until 95% of the lots in that phase have been sold to a third party (not including any entity affiliated with Subsequent Declarant), unless Subsequent Declarant elects to have its Lots join the HOA prior to the sale of 95% of the Lots to third (unrelated) parties. However, Builders and homeowners who purchase lots in any new phase will be members of and subject to the HOA from the time of their purchase forward, even if other lots in the same phase are not part of the HOA yet.

All association memberships will pass with Lot ownership in the Subdivision. All Lots will carry one (1) vote in the Association, except that the Declarant and any Subsequent Declarant shall have four (4) votes per Lot for each Lot which it may own in any phase. The Subsequent Declarant shall control the ARC

in relation to any new phase until 95% of all lots in the new phase have been sold to other owners/Builders or are built out by Subsequent Declarant.

4.2. Improvements to Subdivision: It is contemplated that certain improvements may be made to areas in the Subdivision by the Declarant including, but not limited to, entry signs, shell islands, landscaping, retention ponds, fencing, pavilions, playgrounds, a pool, and street lights. At such time as the improvements are completed by the Declarant, the cost, maintenance, capital improvements, operation, taxes, insurance and other expenses incident to such improvements shall be the obligation of the Association and shall be paid from assessments against each lot as herein provided. The HOA must maintain insurance to cover all common areas at all times, including indemnity for Declarant, Subsequent Declarant, and all future board members of the HOA.

4.3. Creation of Lien: Each Owner of any Lot of the Subdivision, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, contract of purchase, or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) Annual assessments or charges; (2) special assessments for capital improvements and other purposes, such assessments to be fixed, established and corrected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. In no event shall an annual or special assessment be applicable at any time to any Lot owned by the Declarant and the Declarant shall not be obligated to pay any annual or special assessment; provided, however, that if the Declarant rents or otherwise occupies a Dwelling after construction is complete, the Declarant shall then become liable for assessments attributable to that Lot. There shall be no assessment against any Common Areas.

4.4. Purpose of Assessments: The assessments levied pursuant hereto by the Association shall be used for the purposes of acquisition, improvement and maintenance of the

common properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common properties and improvements to the Subdivision, insurance thereon, and repair, replacement, and modifications thereto, and for the cost of labor, equipment, materials, management and supervision thereof. In addition, assessments may also be used for expenses related to the necessary and reasonable operation of the Association, including, but not limited to, collection of assessments and related costs and enforcement of this Declaration against any offender.

4.5. Basis and Maximum of Annual Assessments: The annual assessment for each Lot in all Phases shall be Three Hundred Dollars (\$300.00). An Owner's or Builder's first such assessment shall be prorated and paid to the Association at closing according to time of conveyance of a Lot to the Builder or Owner, or in the case of any Builder who owns a lot in Phase I at the time of the filing of these Amended & Restated Covenants, said Builder's first assessment will be due January 1, 2021. The annual assessment may be increased, as hereinafter provided, by a majority vote of the votes entitled to be cast by the members of the Association for the next succeeding "assessment year" (beginning January 1) and at the end of each such period of one year for each succeeding period of one year; provided, however, that Declarant, at Declarant's sole discretion, may increase the annual assessment for the next succeeding assessment year by giving written notice to the Association and its members no later than November 15 of the year prior to the year in which such increase would be effective. At no time shall the annual assessment per lot be increased more than twenty-five percent (25%) above the prior year's annual assessment, except that Declarant may increase the assessment above such maximum in the manner as hereinabove provided. Said annual assessment shall be payable in advance on the 1st day of January each year. The Board of Directors may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount. In lieu of the Declarant not paying an annual assessment until 95% of the lots are sold to unrelated third parties, the Declarant will cover any income shortfalls that are necessary to cover the common area maintenance until such time as 95% of the lots of any new phase are in the HOA and are required to pay said dues.

4.6. Special Assessments for Capital Improvements: In addition to the annual assessments authorized hereinabove, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement or a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 2/3 of the votes entitled to be cast by members of the Association who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be mailed to all members at the last known address of each member at least fifteen (15) days in advance and shall set forth the purpose of the meeting.

4.7. Change in Basis of Maximum of Annual Assessments Only: Subject to the limitations of § 4.5 hereof, and for the purposes therein specified, the Association may change

the maximum and basis of the assessments fixed by § 4.5. hereof prospectively for any such period, provided that any such change shall have the assent of 2/3 of the votes entitled to be cast by members who are voting in person or by proxy, at a meeting duly called for this purpose, where a quorum is present, written notice of which shall be mailed to all members at the last known mailing address of each voting member at least fifteen (15) days in advance and shall set forth the purpose of the meeting. However, nothing herein shall prevent the Declarant from adjusting the annual assessments as prompted in section 4.5.

4.8. Quorum for any Action Authorized Under Sections 4.6 and 4.7: The quorum of any action authorized by Sections 4.6 and 4.7 hereof, the presence at the meeting of members, or of proxies, entitled to cast fifty percent (50%) of all votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4.6 and 4.7. No quorum, or vote, is required for Declarant changes.

4.9. Late Payment of Assessments: As hereinabove provided, each annual assessment shall be due and payable on the 1st day of January of each year. In the event of default as to any payment (annual or special), and if the default is not remedied within ninety (90) days, the Association shall have the option of taking such action as permitted by law or equity and by this Declaration and the By-laws of the Association. An additional late charge of ten percent (10%) shall be assessed on any payment which is more than ninety (90) days delinquent. Costs of collection of the assessment, including reasonable attorney's fees therefor, shall also be assessed.

The due date of any special assessment under § 4.6 hereof shall be fixed in the resolution of the members of the Association authorizing such assessments, with the same option on the part of the Association in the event of default.

4.10. Duties of the Board of Directors: In addition to the other duties of the Association's Board of Directors as may be set forth herein or in the By-laws of the Association, the said Board of Directors shall fix the date of any special assessment against each lot for any special assessment period at least thirty (30) days in advance of such special assessment, written notice of the special assessment shall thereupon be sent to every member subject thereto at the last known mailing address of such member.

The Secretary of the Association, upon demand at any reasonable time, shall furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

4.11. Effect of Non-Payment of Assessment and the Lien Remedies of the Association: If the assessments (annual or special) are not paid on the date when due, then such assessment shall be come delinquent as provided in § 4.5 hereof and shall, together with such interest, late charges thereon and costs of collection thereof as herein provided, thereupon become a continuing lien on the lot which shall bind such lot in the hands of the then owner, its successors, heirs, devisees, personal representatives and assigns. If the assessment is not paid as

provided herein, it shall bear interest from date of delinquency at the maximum rate of interest allowed by law, not to exceed ten percent (10%) per annum, and the Association may foreclose the lien against said lot, and there shall be added to the amount of such assessment the cost of attorney fees in connection with any court proceedings arising therefrom, together with all court costs, late charges and expenses incurred by the Association.

4.12. Subordination of the Lien or Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust now or hereafter placed upon the Lots subject to assessment; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such lot pursuant to a Decree of Foreclosure, or any other proceeding or transfer in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

## ARTICLE V

### PROPERTY RIGHTS OF THE COMMON PROPERTIES

5.1. Members' Easement for Enjoyment: Subject to the provision of this article and related provisions set forth elsewhere herein, every member shall have a right of enjoyment in and to the common properties and the areas, subject to the rules and regulations governing such use as promulgated, from time to time, by the Association. Failure to abide by any such rules will result in loss of use privileges as well as fines. Such right and easement shall be appurtenant to and shall pass with the conveyance of title to every Lot.

5.2. Extent of Members' Rights of Enjoyment: The rights of easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Association to borrow money for the purpose of acquiring, constructing, improving and maintaining the common properties and in aid thereof to mortgage said properties or execute a deed of trust or other instrument covering said properties. In the event of default upon any such mortgage, the lender shall have a right, after taking possession of such properties, to charge service or use charges, admission and other fees as a condition to continued enjoyment by the members, and if necessary, to have other relief as permitted by law; and,
- b. The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and,
- c. The right of the Association to charge reasonable service or use charges, admission and other fees for the use, service and enjoyment of the common properties; and,

- d. The right of the Association to limit the number of members per lot who may be entitled to the benefit of the easement of enjoyment as to the common properties by reason of ownership of a Lot; and
- e. The right of individual members to have exclusive use of any of the common properties as from time to time may be granted by the Board or its designate;
- f. The right of the Association to pass and enforce rules and regulations related to use, control and maintenance of the common properties and the areas situate thereon.

## ARTICLE VI

### MISCELLANEOUS

6.1 Enforcement. In the event of default on the part of the Owner or occupant of any Lot in observing any or all of the requirements herein set forth, such default continuing after five (5) days written notice thereof, the Association may, without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot, cut, or cause to be cut, such weeds and grass, and remove or cause to be removed, such garbage, trash or rubbish, junk or inoperative vehicles, or any other prohibited item or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work plus Fifty Dollars (\$50.00) per day for each day a violation of this Declaration continues after notice. The Owner or occupant, as the case may be, agrees by the purchase or the occupation of the Lot to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's and continuing contractual lien shall be retained by Declarant at the time of conveyance of each Lot for the benefit and favor of the Association, but inferior to a purchase money lien or mortgage. Such vendor's and continuing contractual lien shall be applicable and effective whether mentioned specifically or omitted in each conveyance of a Lot by Declarant and the Association shall have all right to enforce said lien.

6.2. Violations: If the parties hereto, or their heirs, successors or assigns or any other person shall violate or attempt to violate any of the covenants or restrictions herein while said covenants or restrictions are still in force, it shall be lawful for any person or persons owning any interest in any Lot or Lots in the Subdivision, as well as the Association in its own right, to prosecute any violation or attempted violation of any such covenant or restriction, either to prevent the person from doing so or to recover damages, penalties and costs, including reasonable attorney's fees. Violators of covenants or community rules may also be subjected to fines and/or loss of use of community amenities. If use of amenities is revoked due to HOA violations, any continued use of common areas may be considered criminal trespassing and

subject members and their guests to arrest. Failure to pay any such fines may result in the Association filing a lien on the property owner's lot until such payment is completed.

6.3. Severance: Invalidation of any one of these covenants by judgment or court order shall, in no way, affect any other provisions herein contained.

6.4. Waiver: Failure of any of the parties, their heirs, successors or assigns, to exercise any of the options contained herein upon breach by the other party, its heirs, successors or assigns, subject to this Declaration, shall not constitute a waiver of that party's right to exercise such option upon future breach.

6.5. Duration; Amendment: The provisions of this Declaration shall run with and bind the Property for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

- a. Deeds of conveyance of Lots or any part thereof, may contain the above restrictive covenants by reference to this document, but whether or not such reference is made, each and all of such restrictive covenants shall be valid and binding upon the restrictive grantees.
- b. After seven (7) years from the date this Declaration is recorded, this Declaration may be amended by an instrument signed by a sufficient number of Owners representing not less than sixty percent (60%) of the votes in the Association.
- c. All amendments shall be recorded in the Official Public Records of Real Property of Washington County, Arkansas.

6.6. Additional Phases: Subsequent Declarant reserves the right, without joinder or consent of any Owner, Builder, or Mortgagee, to file additional plats in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas to add additional phases which shall be subject to this Declaration.

6.7. Declarant Amendments: The Subsequent Declarant reserves the right for three (3) years from the date this Declaration is filed in the Washington County land records, without joinder or consent of any Owner, Builder or mortgagee, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record, for any purpose whatsoever. Any such amendment shall be recorded in the Official Public Records of Real Property of Washington County, Arkansas. Furthermore, Declarant and Subsequent Declarant reserves the right to make additional restrictions in any deed conveying title to a Lot.

6.8. Assignment of Rights: As Wagon Properties, LLC no longer owns the majority of properties located within South Pointe Phase I and owns no properties in South Pointe Phase II, Wagon Properties, LLC completely assigned all of its rights as Declarant to Hampton



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

South Pointe Phase I and South Pointe Phase II, and South Pointe Phases III-V, as finally platted with the City of Tontitown, Arkansas, and filed of Record in the Washington County real estate records.

Washington County, AR  
I certify this instrument was filed on  
11/15/2021 8:03:38 AM  
and recorded in REAL ESTATE

File# 2021-00043796  
Kvle Svlvester - Circuit Clerk

