

**FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BAY COLONY NORTHPOINTE, SECTION ONE**

THE STATE OF TEXAS                   §  
  §  
COUNTY OF GALVESTON               §

THIS FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BAY COLONY NORTHPOINTE, SECTION ONE is made on the 5 day of April, 2006.

Whereas, Declarant was the owner *of* certain real property (the surface estate *of* which is hereinafter called and referred to as the "Property" or "Bay Colony Northpointe"), heretofore subdivided into that certain subdivision known as BAY COLONY NORTHPOINTE, SECTION ONE, as reflected on the 28.34 acre plat recorded in 2004A Maps Number 175, 176 Records of Galveston County, Texas (the "Subdivision Plat"), to which recorded Subdivision Plat reference is hereby made for all purposes; and

Whereas, on or about the 28th day of February, 2005, BAY COLONY NORTHPOINTE, L.P ("Declarant") executed and subsequently filed the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BAY COLONY NORTHPOINTE, SECTION ONE ("Original Declaration"), recorded in the Official Property Records of Real Property of Galveston County, Texas under Clerk's File No. GAC 2005015589.

Whereas, pursuant to Article IX, Section 4 of the Original Declaration regarding Amendments by Declarant, the Declarant shall have and reserves the right at, any time and from time to time, without the joinder or consent of any other party, to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, 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 The Declaration, and shall not impair or attest the vested property or other rights of any Owner or his mortgagee.

Whereas, Declarant has discovered that a provisions in the Original Declaration need to be changed to make the Original Declaration consistent with the manner by which Declarant has been collecting maintenance assessments from Builders to date and to make the Original Declaration consistent with the earnest money contract between Bay Colony Northpointe, L.P. and Builders, providing for the Builders to pay ½ rate of assessments during the time it holds title to any Lot.

NOW THEREFORE, Declarant, Bay Colony Northpointe, L.P. amends the following Article III in the Original Declaration, and all other provisions shall remain the same and shall continue in full force and effect, and the amended sections shall read as follows:

## ARTICLE III

### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, and the cost, including reasonable attorney's fees, of the enforcement of any provision of this Declaration against the Owner of any Lot shall be a charge on the land and shall be secured by a continued Vendor's Lien with power of sale upon the Property against which each such assessment is made or enforcement action brought. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but shall be secured by the continuing lien referred to above.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to improve, beautify, maintain, manage and operate the Common Properties, and to pay taxes and insurance premiums thereon, and to promote the recreation, health, safety, convenience, and welfare of the Members, such benefits to include, by way of illustration but not limitation, providing patrol or watchman service, fogging for insect control, enforcing the provisions contained in this Declaration, employing at the request of the Architectural Control Committee one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committee in carrying out its duties and authority as deemed appropriate in the opinion the Board of Directors of the Association, for the maintenance and/or improvement of the Common Properties or for the benefit of the Members, the foregoing uses and purposes being permissive and not mandatory, and the decisions of the Board of Directors of the Association being final as long as made in good faith and in accordance with the By-Laws of the Association and governmental laws, rules and regulations.

Section 3. Annual Assessments. The Association, by action of its Board of Directors, shall levy annual assessments against each Lot to obtain funds (herein called the "maintenance fund") reasonably anticipated to be needed for the purpose stated in Section 2 hereinabove, including reasonable reserves for contingencies and for capital improvements, replacements, and repairs; provided, the annual assessments shall be levied on a uniform basis as follows:

- (a) The amount of the annual assessment for a Lot in the calendar year 2005 shall be TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00). Any calendar year after the calendar year 2005, the Association may increase said maximum amount of the annual assessment for a Lot, but if any such change increases the maximum amount which can be assessed against a Lot to more than 115% of the maximum amount which could have been assessed by the Association in the preceding calendar year including cumulatively all increases in the amount of assessment of any years in which the assessment was not increased, the change must be approved by Members entitled to cast not less than two -

thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting called for this purpose at which a quorum is present or represented. The amount actually assessed against a Lot for any calendar year is referred to as the "Base Assessment Sum" for such year.

- (b) An assessment shall be due from or assessed against all Lots whether it is an Assessable Lot, as defined in Article I Section 14 hereof, or not.
- (c) The rate of assessment for each Lot owned by Builder shall be one-half (1/2) of the regular rate for Lots under subsection (a) above.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereinabove, the Association may levy against all Lots in any calendar year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, purchase, acquisition, repair, or replacement of a capital improvement of the Association, including necessary fixtures and personal property related thereto, but any such assessment must be approved by Members entitled to cast not less than two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting called for this purpose at which a quorum is present or represented. The special assessment against each Lot shall be the same amount as the special assessment against every other Lot.

Section 5. Commencement of Annual Assessment; Due Dates. The annual assessments provided for herein shall commence on each Lot on the first (1st) day of January . The due dates of any special assessment under Section 4 hereof shall be fixed in the resolution of the Members of the Association authorizing or approving such assessment.

Section 6. Duties of the Board of Directors. The Board of Directors of the Association shall determine the amount to be levied as the annual assessment against each Lot for each calendar year, subject to the criteria and limitations set out in Section 3 hereof. At the written request of an Owner, the Association will prepare a certificate in writing signed by an officer of the Association setting forth whether or not there are any unpaid assessments against said Owner's Property. The Association may charge a reasonable fee for furnishing such certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his or her economic detriment.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest lawful rate permitted in Texas. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the rights and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosures pursuant to Section 51.002 of the Texas Property Code, or any amendment to or re-codification thereof, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. Dick H. Gregg, III is hereby appointed as Trustee as to all Lots for the purpose

of enforcing the liens created in favor of the Association in this Declaration by exercising the power of sale herein granted in the same manner as a Deed of Trust. The Board in its sole discretion may appoint additional or substitute trustees to exercise the same powers and duties, from time to time, by written instrument recorded in the Real Property Records of Galveston County, Texas. The liens provided for in this Article shall be in favor of the Association and shall be for the benefit of all Lot owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first (1st) mortgage existing at any time upon the particular Lot involved. Mortgagees are not required to collect assessments. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure (whether by exercise of power of sale or otherwise) or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but such lien shall exist as, and constitute, a separate and distinct charge and lien on each Lot.

Section 9. Exempt Property. The assessments and liens created in this Article III shall apply only to the Lots, and the remainder of the property in the Properties (i.e. common area) shall not be subject thereto or entitled to the rights granted to Members in Article II hereof.

All other provisions in the Declaration of Covenants, Conditions, and Restrictions for Bay Colony, Section One shall remain in full force and effect.

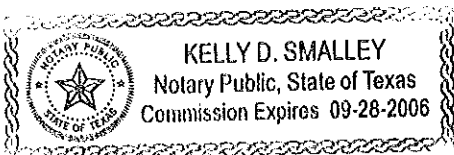
In witness whereof, this FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BAY COLONY NORTHPOINTE, SECTION ONE is executed the 5 day of April, 2006.

BAY COLONY NORTHPOINTE, L.P.,  
a Texas limited partnership by its  
General Partner, Tyee Management,  
LLC.

By: [Signature]  
Tyler D. Todd, Jr., President

The State of Texas           §  
  §  
County of Harris           §

This instrument was acknowledged before me on 5 day of April, 2006 by Tyler D. Todd, Jr., President of Tyee Management, LLC., General Partner for BAY COLONY NORTHPOINTE, L.P., a Texas limited partnership, on behalf of said General Partner.



[Signature]  
Notary Public in and for the State of Texas

**GREGG & GREGG P.C.**  
ATTORNEYS AT LAW  
16055 SPACE CENTER BLVD., SUITE 150  
HOUSTON, TX 77062

PAID

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

*Mary Ann Daigle*

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Mary Ann Daigle, COUNTY CLERK  
GALVESTON, TEXAS