

COLLATERAL ASSIGNMENT OF DECLARANT'S RIGHTS

28-RTT
11R24701-ND5

THIS COLLATERAL ASSIGNMENT OF DECLARANT'S RIGHTS (this "Assignment") is made and entered into as of May 4, 2012 by SouthStar at Sugar Tree, LLC, a Texas limited liability company ("Assignor"), to and in favor and for the benefit of FP BG Funding, LP, a Texas limited partnership ("Assignee").

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. Loan; Certain Definitions. Assignee made a loan to Assignor and other borrowers in the original principal amount of Fourteen Million Five Hundred Thousand and No/100 Dollars (\$14,500,000.00) (the "Loan"), pursuant to the terms and conditions of that certain Promissory Note dated May 4, 2012 (the "Note"), executed by Assignor and other borrowers in favor of Assignee, which Loan is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated of even date as the Note executed by Assignor, as grantor, to Scott Norman, as trustee for the benefit of Assignee, as beneficiary, recorded in the Real Property Records, Parker County, Texas (as amended, the "Deed of Trust") and the other Loan Documents. Unless otherwise provided herein, all capitalized terms used herein shall have the meanings ascribed to such terms by the Deed of Trust.

2. Assignment of Rights as Declarant under Declaration. Assignor hereby assigns, transfers, conveys and sets over to Assignee, all of Assignor's right, title and interest as the "Declarant" in, to and under (i) that certain Declaration of Covenants, Conditions and Restrictions for Sugartree on the Brazos, recorded in Book 2313, Page 126, Real Property Records, Parker County, Texas (as amended, modified, supplemented or extended, the "ST on the Brazos Declaration") and (ii) that certain Declaration of Covenants, Conditions, and Restrictions, recorded in Book 2754, Page 1759, Real Property Records, Parker County, Texas (as amended, modified, supplemented or extended, the "Second Declaration") encumbering the real property more particularly described in the ST on the Brazos Declaration (the "ST on the Brazos Property") and the Second Declaration (the "Second Declaration Property"). Assignor's right, title and interest as "Declarant" under the ST on the Brazos Declaration and the Second Declaration are assigned to Assignee as security for Assignor's obligations under the Loan Documents and for Assignor's performance and compliance with all monetary and non-monetary terms, covenants and conditions set forth in the Loan Documents, but excludes the obligations of, or any liability for any breach by, Assignor as "Declarant" under the ST on the Brazos Declaration and the Second Declaration. Upon the occurrence of an Event of Default under any of the Loan Documents that is not waived in writing by Assignee, Assignor's right to act as the "Declarant" under the ST on the Brazos Declaration and the Second Declaration shall immediately and automatically be revoked upon written notice from Assignee to Assignor, without the need of possession, foreclosure or any other act or procedure, and all Assignor's right to act as the "Declarant" under the ST on the Brazos Declaration and the Second Declaration assigned hereby shall thereafter be exercised solely by Assignee. Assignee shall not exercise its rights under this Section 2 until the occurrence of an Event of Default. In the event Assignee waives any such Event of Default in writing, Assignee shall reinstate Assignor's right to act as the "Declarant" under the ST on the Brazos Declaration and the Second Declaration. Thereafter, Assignor shall continue to have the right to act as the "Declarant" under the ST on the Brazos Declaration and the Second Declaration unless and until another Event of Default occurs under any of the Loan Documents, at which time Assignor's rights will, once again, automatically be revoked upon written notice from Assignee to Assignor, without



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the need of possession, foreclosure or any other act or procedure pursuant to the terms and provisions of this Assignment.

3. Covenants and Agreements of Assignor. Assignor covenants and agrees that: (a) Assignor shall not modify or amend the ST on the Brazos Declaration or the Second Declaration without the prior written approval of Assignee and any such action by Assignor shall be invalid without such written approval of Assignee, and (b) Assignor shall not further assign, sell, pledge, mortgage or otherwise transfer or encumber its interest in the ST on the Brazos Declaration or the Second Declaration so long as this Assignment is in effect.

4. Power of Attorney. Assignor hereby irrevocably constitutes and appoints Assignee as its attorney-in-fact, effective upon the occurrence of an Event of Default, to demand, receive and enforce Assignor's rights as Declarant under the ST on the Brazos Declaration or the Second Declaration for and on behalf of and in the name of Assignor or, at the option of Assignee, in the name of Assignee with the same force and effect as Assignor could do if this Assignment had not been made.

5. Remedies Cumulative. Upon the occurrence of any Event of Default, Assignee may, after written notice given to Assignor, without affecting any of its rights or remedies against Assignor under any other instrument, document or agreement, exercise its rights under this Assignment as Assignor's attorney-in-fact or in any other manner permitted by law, and, in addition, Assignee shall have and possess, without limitation, any and all rights and remedies otherwise provided at law or in equity and any rights and remedies specified in the other Loan Documents.

6. Assumption by Assignee. Assignor agrees that Assignee does not assume any of Assignor's obligations or duties concerning the ST on the Brazos Declaration or the Second Declaration unless and until an Event of Default shall exist and Assignee shall expressly assume the obligations of Declarant under the ST on the Brazos Declaration or the Second Declaration by written notice to Assignor. Upon giving such notice, if any, Assignee shall assume the obligations of Assignor under the ST on the Brazos Declaration or the Second Declaration from and after the date of such notice. Assignor agrees that: (a) any such assumption by Assignee of Assignor's obligations under the ST on the Brazos Declaration or the Second Declaration shall be solely prospective, (b) Assignee shall have no liability for the antecedent obligations, duties and defaults of Assignor prior to the date of such express assumption, and (c) Assignor shall be released from such prospective obligations that occur after the date of such express assumption.

7. Liability of Assignor and Assignee. Except as set forth in Section 6 above, nothing in this Assignment shall relieve Assignor of any obligation or liability under or with respect to the ST on the Brazos Declaration or the Second Declaration or be construed to impose any liability or obligation upon Assignee under or with respect to the ST on the Brazos Declaration or the Second Declaration. Assignee shall not be liable for any default by Assignor under the ST on the Brazos Declaration or the Second Declaration including without limitation, failure to pay assessments or other amounts due and owing by the "Declarant" under the ST on the Brazos Declaration or the Second Declaration prior to the date that Assignee assumes the obligations of the "Declarant" in writing.

8. Further Instruments. Assignor agrees to execute upon demand by Assignee such other documents and perform such other acts as may be necessary: (a) to enforce the rights

assigned hereunder, including, without limitation, any and all documents required by Assignee to reflect, perfect, or continue Assignee's security interest in, or other rights with respect to the ST on the Brazos Declaration or the Second Declaration, (b) to carry out the purpose and intent of this Assignment, or (c) to enforce any right or rights hereunder.

9. Governing Law. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

10. Binding on Successors; Assignments by Assignee. Subject to the limitation on further assignment by Assignor set forth in Section 3 hereof, this Assignment shall be binding upon and inure to the benefit of the assigns and successors-in-interest of the Assignor and Assignee (including, but not limited to, any purchaser of the Mortgaged Property at a foreclosure sale or by conveyance in lieu of foreclosure and any purchaser of the Mortgaged Property from Assignee following a foreclosure sale or conveyance in lieu of foreclosure). In connection with the sale of all or any part of Assignee's interest in the Loan, Assignee may, in Assignee's sole discretion, assign its rights, title and interests in, to and under the ST on the Brazos Declaration or the Second Declaration to any persons or entities upon notice to Assignor, but without any further requirement for Assignor's consent, and any such reassignment shall be valid and binding upon Assignor as fully as if it had expressly approved the same. In the event of such assignment, all obligations and liabilities of Assignee under this Assignment shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Assignee's interest is assigned or transferred. If Assignor shall fully repay the Loan, and shall duly, promptly and fully perform, discharge, complete, comply with and abide by the terms, covenants and conditions of the Note and the other Loan Documents, then this Assignment, and the rights and interests hereby granted and created, shall terminate, and Assignee, upon request by Assignor and at Assignor's expense, shall execute a release of this Assignment.

11. Notice. Any notice required or permitted to be given hereunder shall be in writing and shall be delivered in accordance with the notice provisions contained in the Deed of Trust.

12. Headings. Section headings and captions are inserted for convenience of reference only and shall in no way alter or modify the text of such sections.

13. Severability. The invalidity or unenforceability of any one or more provisions of this Assignment shall in no way affect any other provision.

14. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

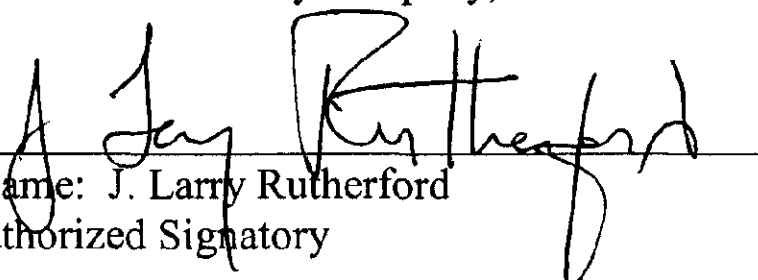
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SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignor has executed this Collateral Assignment of Declarant's Rights as of the day and year first set forth above.

ASSIGNOR:

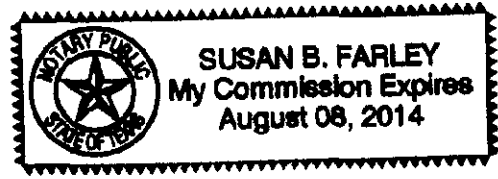
SOUTHSTAR AT SUGAR TREE, LLC,
a Texas limited liability company

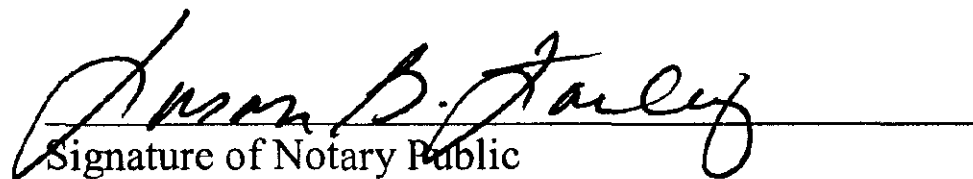
By: SOUTHSTAR COMMUNITIES, LLC,
a Delaware limited liability company, its sole member

By: 
Printed Name: J. Larry Rutherford
Title: Authorized Signatory

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on May 1, 2012, by J. Larry Rutherford, the Authorized Signatory of Southstar Communities, LLC, a Delaware limited liability company, the sole member of SouthStar at Sugar Tree, LLC, a Texas limited liability company, on behalf of said company.

[SEAL] 


Signature of Notary Public

REPUBLIC TITLE
2626 Howell Street, 10th Floor
Dallas, Texas 75204-4064