

Prepared by:
Dale A. Dettmer, Esquire
KRASNY AND DETTMER
304 South Harbor City Blvd., Suite 201
Melbourne, FL 32901

**AMENDED AND RESTATED
BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this _____ day of _____, 20__ between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County") and **PIONEER POINTE, LLC**, a Florida limited liability company ("Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property ("Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, being the successor in interest to SOUTHGATE INVESTMENTS, INC., a Florida corporation, by virtue of that certain Warranty Deed recorded in Official Records Book 8834, Page 1620, and Official Records Book 8834, Page 1689, both of the Public Records of Brevard County, Florida; and

WHEREAS, this instrument is intended to amend and replace in its entirety that certain Binding Development Plan for the Property recorded in Official Records Book 7620, Page 1574, Public Records of Brevard County, Florida; and

WHEREAS, Developer/Owner desires to develop the Property as a commercial development to include "automobile washing" pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the

Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. Developer/Owner agrees to limit the uses of the Property so that none of the uses shown and ~~crossed through~~ and ~~struck through~~ in the recorded manner on attached Exhibit "B" shall be allowed as a permitted use, accessory building or use or conditional use of the Property, but instead of each of those uses shown in a ~~struck through~~ manner shall be prohibited as a use of the Property. Exhibit "B" hereto includes "automobile washing" as a permitted use.
3. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
4. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
5. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on _____. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
6. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
7. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

8. Developer/Owner owns fee simple to the Property and that all mortgagees, if any, have joined in and consented to this Agreement.
9. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

Rachel Sadoff, Clerk of Court
(SEAL)

Rita Pritchett, Chair
As approved by the Board on _____

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 20____, by Rita Pritchett, Chair_of Board of County Commissioner of Brevard County, Florida, who is personally known to me or who has produced _____ as identification.

My commission expires
SEAL
Commission No.:

Notary Public

(Name typed, printed or stamped)

WITNESSES:

PIONEER POINTE, LLC, a Florida limited liability
company, as DEVELOPER/OWNER

By: _____

Kim R. Welsh, Manager

(Witness Name typed or printed)

Address: 3845 West Eau Gallie Blvd., Suite 101
Melbourne, FL 32934

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of ____ physical presence or
____ online notarization, this ____ day of _____, 20____, by Kim R. Welsh, Manager
of Pioneer Pointe, LLC, a Florida limited liability company, who is personally known to me or who has
produced _____ as identification.

My commission expires

SEAL

Commission No.:

Notary Public

(Name typed, printed or stamped)

Exhibit "A"

Legal Description:

Begin at the northeast corner of the northwest (nw 1/4) quarter of the southwest (sw 1/4) quarter of section 14, township 24 south, range 36 east, thence s 89°44'30" w along the north line of said nw 1/4 of the sw 1/4, a distance of 78.48 feet to the east edge of the right of way of state road no. 3 as at present located; thence s 09°16'30" e along east edge of said right of way, a distance of 493.55 feet to the intersection of said right of way and the east line of said nw 1/4 of the sw 1/4 in section 14 aforesaid; thence n 00°07'30" w along said east line of said nw 1/4 of the sw 1/4, a distance of 487.45 feet to the point of beginning. Said land lying and being in the nw 1/4 of the sw 1/4 of said section 14, township 24 south, range 36 east. And the north 1/2 of the northeast 1/4 of the southwest 1/4 of section 14, township 24 south, range 36 east, Brevard county, Florida, except ditch and highway right of way

Sec. 62-1482. General retail commercial, BU-1.

The BU-1 general retail commercial zoning classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community. Where this zoning classification is presently located or is proposed to be located adjacent to the lagoonal water edge or fronts on the ocean, water-dependent uses such as fish, shellfish and wildlife production, recreation, water-dependent industry and utilities, marinas and navigation shall have the highest priority. The next highest priority for uses along the waterfront include water-related uses such as utilities, commerce and industrial uses. Water-enhanced uses such as restaurants and tourist attractions shall have the next highest use priorities. Of lowest priority are those uses which are nonwater-dependent and nonwater-enhanced, and those which result in an irretrievable commitment of coastal resources.

(1) Permitted uses.

- a. All business uses and all material and products shall be confined within substantial buildings completely enclosed with walls and a roof; however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the buildings. Such retail items include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.*
- b. The following uses, or other uses of a similar nature compatible with the character of the uses specifically described in this subsection, are permitted, and shall be limited to retail only:*

Administrative, executive and editorial offices.

Antique shops.

~~Aquariums.~~

Art goods and bric-a-brac shops.

Artists' studios.

~~Auditoriums.~~

Automobile hire.

~~Automobile parts, if confined within a structure.~~

~~Automobile repairs, minor (as defined in section 62-1102).~~

~~Automobile sales and storage, provided sales are from a permanent structure and the storage area meets the requirements of article VIII of this~~

~~chapter, pertaining to site plans, and article XIII, division 2, of this chapter, pertaining to landscaping.~~

~~Automobile tires and mufflers (new), sales and service.~~

Automobile washing.

~~Bait and tackle shop.~~

Bakery sales, with baking permitted on the premises.

Banks and financial institutions.

Barbershops and beauty parlors.

Bed and breakfast inn.

Bicycle sales and service.

~~Billiard rooms and electronic game arcades (soundproofed).~~

Bookstores.

~~Bowling alleys (soundproofed).~~

~~Cafeterias.~~

~~Ceramics and pottery; finishing and sales; no production or firing except accessory to on-site sales only.~~

~~Civic, philanthropic or fraternal organizations.~~

~~Coin laundromats.~~

~~Colleges and universities.~~

~~Commercial schools offering instruction in dramatic, musical or other cultural activity, including martial arts.~~

Confectionery and ice cream stores.

~~Conservatories.~~

Contractors' offices, with no outside storage.

Convenience stores, with or without gasoline sales.

Curio shops.

~~Dancing halls and academies (soundproofed).~~

Child or adult day care centers.

Display and sales rooms.

~~Dog and pet hospitals and beauty parlors, with no outside kennels or runs.~~

Drug and sundry stores.

~~Dyeing and carpet cleaning.~~

Electrical appliance and lighting fixtures.

Employment agencies.

~~Fraternities and sororities.~~

Florist shops.

~~Foster homes.~~

~~Fruit stores (packing on premises).~~

~~Funeral homes and mortuaries.~~

Furniture stores.

~~Furriers.~~

Gift shops.

Grocery stores.

~~Group homes, levels I and II.~~

Hardware stores.

~~Hat cleaning and blocking.~~

Hobby shops.

~~Hospitals.~~

Interior decorating, costuming and draperies.

Jewelry stores.

~~Laboratories.~~

~~Laundries.~~

~~Lawn mower sales.~~

Leather good stores.

Luggage shops.

Mail order offices.

~~Meat, fish and seafood markets.~~

Medical buildings and clinics, and dental clinics.

Messenger offices.

Millinery stores.

~~*Motorcycle sales and service.*~~

Music, radio and television shops and repairs.

Newsstands.

~~*Non-overnight commercial parking.*~~

~~*Nursing homes.*~~

Optical stores.

Paint and wallpaper stores.

Parks and public recreational facilities.

~~*Pawnshops.*~~

~~*Pet shops, with property enclosed to prevent any noxious odors.*~~

Photograph studios and galleries.

~~*Plant nurseries (no outside bulk storage of mulch, topsoil, etc.).*~~

Post offices.

Printing services.

Professional offices and office buildings.

~~*Resort dwellings.*~~

Restaurants.

Sale of alcoholic beverage, package only.

Schools for business training.

~~*Schools, private or parochial.*~~

Shoe repair shops.

Shoe stores.

Single-family residence.

~~*Soft drink stands.*~~

Souvenir stores.

Stationery stores and bookstores.

Tailor shops.

Tearooms.

~~*Telephone and telegraph stations and exchanges.*~~

~~*Television and broadcasting stations, including studios, transmitting stations and towers and other incidental uses usually pertaining to such stations.*~~

~~*Theaters, but no drive-ins.*~~

~~*Ticket offices and waiting rooms for common carriers.*~~

Tobacco stores.

~~*Upholstery shops.*~~

Wearing apparel stores.

Worship, places of.

- c. *Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):*

Assisted living facility.

~~*Automobile and motorcycle repair (major) and paint and body work.*~~

~~*Boat sales and service.*~~

~~*Cabinetmaking and carpentry.*~~

~~*Dry cleaning plants, accessory to pickup stations.*~~

~~*Farm machinery sales and service.*~~

Gasoline service stations.

~~*Manufacturing, compounding, processing, packaging, storage, treatment or assembly of certain products.*~~

Outdoor restaurant seating.

~~*Outside sale of mobile homes.*~~

Preexisting use.

~~*Substations, and transmission facilities.*~~

~~*Security mobile home.*~~

Self storage mini-warehouses.

Tourist efficiencies and hotels and motels.

~~*Treatment and recovery facility.*~~

(2) *Accessory buildings or uses. Accessory buildings and uses customary to commercial and residential uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5). Additional accessory uses are as follows:*

a. ~~*Completely enclosed lumber sales are permitted as an accessory use to hardware and supply stores.*~~

b. ~~*A roadside stand used as provided in chapter 86, article IV, is permitted as an accessory use.*~~

(3) *Conditional uses. Conditional uses are as follows:*

Alcoholic beverages for on-premises consumption.

~~*Change of nonconforming agricultural use.*~~

~~*Commercial entertainment and amusement enterprises (small scale and large scale).*~~

~~*Commercial/recreational and commercial/industrial marinas.*~~

Land alteration (over five acres and up to ten acres).

~~*Overnight commercial parking lot.*~~

~~*Performance overlay districts.*~~

~~*Plant nurseries (with outside bulk storage of mulch, topsoil, etc.)*~~

~~*Security mobile home.*~~

~~*Substantial expansion of a preexisting use.*~~

~~*Trailer and truck rental.*~~

Wireless telecommunication facilities and broadcast towers.