

DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS  
FOR SUMMERWOOD TRAILS HOMEOWNERS ASSOCIATION, INC.

STATE OF TEXAS                   §  
  §  
COUNTY OF MONTGOMERY   §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 27th day of January, 2020, by MITCHELL OXMAN (hereinafter sometimes referred to as "Declarant").

WHEREAS, Declarant is the owner of a portion of which land has been subdivided as SUMMERWOOD TRAILS, a subdivision in Montgomery County, Texas ("Subdivision"), according to the plats thereof recorded in under Clerk's File 2019118470, in the Real Property Records of Montgomery County, Texas (all of such land so owned and the improvements now or hereafter situated thereon being hereinafter referred to as the "Property"); and

WHEREAS, it is the desire and intention of Declarant to restrict said Property according to a common plan as to use, permissible construction, and common amenities so that all land within the Property shall be benefited and each successive owner of all or a part of said land shall be benefited by preserving the values and the character of said land; and

WHEREAS, Declarant desires to establish a preeminent residential environment which is dependent upon and in furtherance of aesthetic considerations in order to create a residential community having common areas, facilities and landscaping, and to provide for the maintenance, repair, operation and improvement of same; and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth, to be binding upon each owner of a lot or lots within the Property, and which restrictions, covenants and conditions will also comply with the requirements of local governmental authorities and the zoning and subdivision ordinances and regulations of Montgomery County, Texas; and

WHEREAS, Declarant has deemed it desirable, and in the best interests of the residents, owners, and future residents and owners of the Property, for the efficient preservation of the values and amenities in the Property and the maintenance, repair, operation and improvement of the common areas, facilities and landscaping, to create an entity to which would be delegated and assigned the powers of maintaining and administering same and enforcing these restrictions, covenants, easements, assessments and liens, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant will cause to be incorporated the Summerwood Trails Homeowners Association, Inc., a Texas non-profit corporation, and will designate it as such entity;

WHEREAS, Declarant does hereby dedicate the streets, easements, and drives in said SUMMERWOOD TRAILS, for use by the public as such, reserving the right to itself, its successors and assigns, to, at any time, use the same for installation, maintenance, repair and renewal of any and all public utilities.

NOW, THEREFORE, Declarant, for and in consideration of, and expressly for the benefit of, and to bind, its successors in interest, does hereby agree and declare that the Property, including such additions thereto as may hereafter be made shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth which shall run with the land and shall be binding upon all parties having any right, title, or interest in or to the Property, or any part thereof, and their heirs, successors, representatives and assigns. The covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth are covenants running with the land at law as well as in equity.

## ARTICLE I

### DEFINITIONS

Section 1.01 **Definitions.** The following words, when used in this Declaration, unless the context shall prohibit, shall have the following meanings:

Section 1.02 "Architectural Control Committee" shall mean and refer to the committee as provided for in Article IV hereof.

Section 1.03 "Association" shall mean and refer to the Summerwood Trails Homeowners Association, Inc., a Texas non-profit corporation, which will have the power, duty and responsibility of maintaining and administering the Common Areas, Common Property, and all Landscaping in the Common Areas and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing the assessments and charges hereinafter prescribed.

Section 1.04 "Builder" shall mean and refer to any person or entity undertaking the construction of a residence on a Lot for the purpose of selling same for profit.

Section 1.05 "Common Areas" shall mean and refer to areas of land owned or leased by the Association, entryways, access or walkways, recreational buildings and appurtenances, fountains, entry systems, walls, fences, security facilities, parking areas, irrigation systems, lighting facilities, flagpoles, identification markers, playground and appurtenances, swimming pool, if any, and the like, owned, leased, or maintained by the Association in fulfilling its duties and for the benefit of all Members of the Association and other purposes benefiting the Members, including any improvements and Landscaping located thereon, intended, used and designated for the common use, enjoyment and benefit of the Members of the Association.

Section 1.06 "Declarant" shall mean and refer to MITCHELL OXMAN, and his successors and assigns.

Section 1.07 "Declarant Control Period" shall mean the period by which the Declarant is the Owner of at least one or more lots within the Property including any annexed property subject to the Declarations.

Section 1.08 "Landscaping" includes but not limited to growing plants, including grass, plantings, vines, ground cover, trees, hedges, shrubs, flowers and the like.

Section 1.09 "Lot" shall mean and refer to any parcel, plot, or tract of land upon which one (1) single- family residence is intended to be constructed, identified by a lot and block number as shown upon any recorded subdivision map, plat, replat, or revision of the Property, as said recorded subdivision maps or plats may be amended and revised from time to time.

Section 1.10 "Member" shall mean and refer to each Owner of a Lot or an undivided interest therein, who shall be a Member of the Association as provided in Article II hereof.

Section 1.11 "Occupant" shall mean and refer to any person occupying or otherwise using a Lot and/or any house or dwelling situated on such Lot (including lessees).

Section 1.12 "Owner" shall mean and refer to the owner of record (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.13 "Property" shall mean and refer to the real property (including improvements) described in Section 2 of this Article I, and additions thereto, as are subjected to this Declaration or any Supplementary Declaration under the provisions of Section 3 of this Article I.

Section 1.14 "Recorded Plat" shall initially mean and refer to the plats of SUMMERWOOD TRAILS, as recorded under File # 2019118470, in the Plat Records of Montgomery County, Texas, as modified by any subsequent amendment, replat, or similar modification thereto.

Section 1.15 "Supplemental Declaration" shall mean and refer to an amendment or supplement to this Declaration executed or consented to by Declarant or by the requisite number of Owners, if applicable, which subjects additional property to this Declaration and/or imposes expressly or by reference additional restrictions and obligations on the land described therein.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 2.01 Membership. Each and every person, persons, or legal entity who shall own any Lot or any Residential Land in the Property, shall automatically be, and must remain, a Member of the Association. Such membership shall be appurtenant to each Lot and may not be severed from or held separately therefrom; PROVIDED, that any person or entity who holds such an interest merely as security for the performance of any obligation shall not be a Member.

Section 2.02 Classes of Members. The Association shall have two classes of membership:

Class A Member. Class A Members shall be all those persons or legal entities who own a Lot with the exception of Declarant. After the Conversion Date (hereinafter defined), Declarant shall also become a Class A Member to the extent that Declarant is the Owner of one or more Lots. When two or more persons or entities hold undivided interests in any Lot, all such persons or entities shall be Class A Members, and the vote for such part of the Property owned by such Members shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to each Lot in which such Members own undivided interests.

Class B Member. The Class B Member shall be Declarant or its successor or assign. The Class B membership of Declarant shall cease and become converted to Class A membership upon the occurrence of the earlier of the following (the "Conversion Date"):

- (a) At January 1, 2036; or
- (b) The date at which the Declarant sells the final lot and ceases to become a Member in the Association; or
- (c) Such earlier date as may be established by Declarant in a written instrument recorded by Declarant in the Official Public Records of Real Property of Montgomery County, Texas.

Section 2.03 Voting Rights. Each Class A Member shall be entitled to one (1) vote for each

Lot in which it holds the interest required for membership. Prior to the Conversion Date, the Class B Member shall be entitled to three (3) votes for each Lot it owns. From and after the Conversion Date, the Class B Member (as a converted Class A Member) shall be entitled to one (1) vote for each Lot in which it holds the interest required for Association membership.

Section 2.04 Termination of Membership. The membership of a person or entity in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, except that such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of ownership, nor impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

### ARTICLE III ASSESSMENTS

Section 3.01 Covenants for Assessments. The Declarant, for each Lot and all Residential Land owned by it within the Property (being all Lots and Residential Land within the Property), hereby covenants to pay, and each purchaser of any such Lot or Residential Land by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay, to the Association the following assessments (to the extent that any assessment pertains to a Lot or owned by the Declarant or that purchaser and becomes due and payable on a date prior to or during the time that the Declarant or that purchaser is the Owner of that Lot): (1) Regular Annual Assessments (2) Special Assessments.

Section 3.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of protecting and promoting the comfort, collective mutual enjoyment, health, and welfare of the Owners of the Property, or any part thereof, and for carrying out the purposes of the Association as stated in its Certificate of Formation and this Declaration. The judgment of the Board of Directors of the Association in determining the functions to be performed by the Association, in determining the amount of Regular Annual Assessments, Special

Assessments and Special Member Assessments, and in the expenditure of funds shall be final and conclusive so long as its judgment is exercised in good faith.

Section 3.03 Regular Annual Assessments. Each Owner of a Lot shall pay Regular Annual Assessments (herein so called) to the Association.

Section 3.04 Purpose. Regular Annual Assessments shall be levied upon each Lot to provide funds for the use and benefit of the Owners of the Property. Regular Annual Assessments may be used to finance in particular, but not by way of limitation, the following:

- (a) Operation, maintenance, repair, and improvement of the Common Areas, including funding of appropriate reserves for future repair, replacement and improvement of same;
- (b) Payment of taxes and premiums for insurance coverage in connection with the Common Areas, Common Facilities, and Common Property and any other property owned by the Association;
- (c) Paying the cost of labor, equipment (including expense of leasing any equipment), material, and any associated management or supervisory services and fees required for management and supervision of the Common Areas, Common Facilities, and Common Property;
- (d) Paying the cost and fees of a manager or firm retained to carry out the duties of the Association or to manage the affairs and property of the Association;
- (e) Paying the cost of Association liability insurance, including, without limitation, directors and officer's liability coverage and fidelity bonds;
- (f) Maintaining or replacing any Landscaping, Common Facilities, or Common Areas and in areas within a public right-of-way where the Association elects to maintain

Landscaping and Common Areas;

- (g) Designing, purchasing and installing any improvements to the Common Areas;
- (h) Mowing and routine maintenance of the Common Areas and in areas within a public right-of-way where the Association elects to maintain Landscaping, Common Facilities, or Common Areas;
- (i) Removing debris from the Common Areas;
- (j) Lighting, improving and maintaining streets, alleyways, sidewalks, and paths in the Common Areas;
- (k) Collecting and disposing of trash, garbage, ashes, rubbish and other similar;
- (l) Payment of legal fees and expenses incurred to collect assessments and enforce deed restrictions;
- (m) Employing policemen or watchmen and/or a security service if deemed necessary, in the sole discretion of the Board;
- (n) Carrying out the duties of the Board of Directors of the Association; and
- (o) Carrying out such purposes of the Association as generally benefit all Members of the Association.

Section 3.05 Basis for Assessment. Regular Annual Assessments shall be levied equally against each Lot by the Board of Directors of the Association on an annual basis. After consideration of current costs and future needs of the Association, the Board shall fix the Regular Annual Assessment at any amount not in excess of the hereinafter stated maximum.



Section 3.06 Maximum Annual Assessment. Until December 31, 2020, the maximum Regular Annual Assessment rate shall be \$550. From and after December 31, 2020, the maximum Regular Annual Assessment rate may be increased each year not more than ten percent (10%) (with such percentage being cumulative from year to year) above the maximum assessment for the previous year by the Board of Directors of the Association without a vote of the Members. The maximum Regular Annual Assessment rate may be increased above such amount with the approval of a majority of the total eligible votes of each class of the membership of the Association by Members voting in person or by proxy at a meeting called for such purpose.

Section 3.07 Special Assessments. In addition to the Regular Annual Assessments the Association may, by vote of its members in any year or years, levy Special Assessments (herein so called).

Section 3.08 Purpose. Special Assessments may be levied for the following purposes:

- (a) Defraying the cost of any new construction or reconstruction, unexpected repair or extraordinary maintenance, or replacement of capital improvements for and within the Common Areas, and Common Facilities, including the necessary fixtures and personal property related thereto;
- (b) Responding to unusual or emergency needs of the Association as a whole as may be expected to occur from time to time;
- (c) Satisfying the obligation and responsibility of replenishing all or part of any escrow funds held by any other third party which have been withdrawn to pay for obligations incurred or assumed by the Association under agreements with such third party and/or any other governmental authorities;
- (d) Indemnifying a director, officer, agent or employee of the Association pursuant to the

indemnification provision of the Certificate of Formation and Bylaws of the Association or this Declaration;

- (e) Carrying out any other purposes that benefit the Association as a whole as stated in its Certificate of Formation, Bylaws or as stated herein.

Section 3.09 Basis for Assessment. Special Assessments shall be allocated and prorated among the Owners at the date each such Special Assessment is levied in the same manner as Regular Annual Assessments are allocated and prorated among the Lots.

Section 3.10 Vote Required for Special Assessments. The Special Assessments must be approved by sixty-seven (67) percent of the total eligible votes of each class of the membership of the Association by Members voting in person or by proxy at a meeting duly called for such purpose, a written notice of which shall be given to all Members at least fifteen (15) days in advance and shall set forth the purpose of such meeting.

Section 3.11 Commencement Date of Annual Assessments. The first Regular Annual Assessment provided for herein shall commence on a date in 2020 fixed by the Board of Directors of the Association and shall continue thereafter from year to year. The assessment for 2020 shall be adjusted according to the number of months remaining in such year and shall be due and payable thirty (30) days after notice of assessment is sent to the Owners.

Section 3.12 Owner's Personal Obligation for Payment of Assessments. The Regular Annual Assessments and all Special Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot (including but not limited to Builders) during the time the Owner is the record owner of the Lot covered by such assessments. No Owner may, for any reason, exempt himself from liability for such assessments. In the event that any assessment or installment thereof is not paid when due, then the unpaid amount of any such assessment or installment thereof shall become delinquent and shall, together with interest thereon as herein provided, costs of collection thereof, late fees, any delinquent deed restriction violation fees and attorney fees be a

continuing personal obligation and debt of the non-paying Owner secured by the continuing lien imposed by this Declaration on the Lot, including all improvements thereon, to which such assessment or installment thereof pertains.

The unpaid amount of any assessment shall bear interest from its due date at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is lesser. In addition, the Board of Directors of the Association may elect to charge a fee for its administrative cost (or for the administrative cost paid to a third party) in handling delinquent accounts, and to retain the services of an attorney of its choice for the purposes of collecting any unpaid assessment, late fees, and interest charges thereon, and/or to foreclose the lien imposed by this Declaration against the property subject thereto and/or to pursue any other legal or equitable remedy which the association may have and there shall be added to the amount of the unpaid assessment, interest charges, any delinquent deed restriction violation fees, any late fees thereon, any and all collection costs incurred by the Association, whether judicial or non-judicial, and including, but not limited to, reasonable attorney's fees and costs of legal suit.

Section 3.13 Assessment Lien and Foreclosure. Declarant hereby imposes upon each and every Lot within the Property a continuing lien enforceable by the Association to secure the payment to the Association of the Regular Annual Assessments and Special Assessments (together with interest and the cost of collection, late fees, delinquent deed restriction violation fees, and reasonable attorneys' fees as provided in Section 3.12 hereof) attributable to the Owner of that portion of the Property (the "Association's Lien"). Each Owner of each Lot, by acceptance of the deed therefor and whether or not it shall be so expressed in such deed, is deemed to covenant and agree to accept such property subject to the Association's Lien. Each Owner of each Lot, by acceptance of the deed therefor and whether or not it shall be so expressed in such deed, hereby expressly vests in the Board of Directors of the Association, or its agents, the right and power to bring all actions against each such Owner personally for the collection of all such assessments as a debt and to enforce the aforesaid Association's Lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to §51.002 of the Texas Property Code, as same presently exists or as it is subsequently amended; and each such Owner hereby expressly grants to the Board of

Directors of the Association a power of sale in connection with said Association's Lien. The Board of Directors of the Association may designate a trustee in writing from time to time to post or cause to be posted the required notices and to conduct such non-judicial foreclosure sale. The trustee may be changed at any time and from time to time by an instrument in writing signed by the President or a Vice-President of the Association and attested by the Secretary or any Assistant Secretary of the Association and filed for record in the official public records of real property of Montgomery County, Texas. The initial designation of a trustee by the Board of Directors of the Association shall be by an instrument in writing that is executed and filed in the same manner as an instrument changing the designated trustee. In any foreclosure proceedings, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred by the Association, and the Association shall have the right and power to bid on the property being foreclosed. The aforesaid Association's Lien shall be superior to all other liens and charges against the Property, except only for ad valorem tax liens and all sums unpaid on a first mortgage lien or first deed of trust lien of record, securing in either instance sums borrowed for the improvement and/or purchase of the property in question, to which said liens, and any renewals, extensions, supplements, and modifications thereof, the Association's Lien shall be subordinate and inferior. Provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a foreclosure sale of any such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. Any foreclosure and sale of a portion of the Property pursuant to said superior liens shall not relieve any such Owner of personal liability for the sums owing under this Article nor the new Owner thereof from liability for the amount of any assessments thereafter becoming due nor from the continuing lien imposed hereby securing payment of any such subsequent assessments. The Association, acting through its Board of Directors, shall have the power to subordinate the aforesaid Association's Lien to any other lien.

Section 3.14 Exempt Property. Lots owned by the Declarant, Common Areas and any common areas of any other association which may merge or consolidate with the Association, any common areas contained or defined within a Supplementary Declaration filed as provided in Article I, Section 14 of this Declaration, and all portions of the Property owned by or otherwise dedicated to any political subdivision or municipal utility district (excluding portions of public or private utility

easements located upon or within the boundaries of the Lots, which shall not be not be exempt), shall be exempted from the assessments and lien created, reserved, or contemplated herein.

#### ARTICLE IV ARCHITECTURAL REVIEW COMMITTEE

Section 4.01 Designation of Committee. The Association shall have an Architectural Review Committee appointed by the Board of Directors as set forth below, which shall consist of three (3) members who shall be Members of the Association. Members of the Board of Directors may also be members of the Architectural Review Committee. So long as Declarant owns ten or more Lots the appointment of the members of the Architectural Review Committee must be approved in writing by Declarant, and any and all members of such committee may be removed and replaced by the Declarant without cause. Once Declarant owns fewer than ten (10) Lots the Board of Directors shall have the exclusive right and power at any time and from time to time to appoint, remove and fill vacancies on the Architectural Review Committee.

Section 4.02 Function of Architectural Review Committee. No Improvement, as that term is hereinafter defined, shall be erected, constructed, placed, altered (by addition or deletion), maintained or permitted to remain on any Lot until plans and specifications, in such form and detail as the Architectural Review Committee may deem necessary, shall have been submitted to and approved in writing by such committee. The Architectural Review Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decision of the Architectural Review Committee shall be final, conclusive, and binding upon the applicant.

Section 4.03 Content of Plans and Specifications. The plans and specifications required by the Architectural Review Committee to be submitted and approved may include, without limitation, the following:

- (a) A topographical plat showing existing contour grades and showing the location of all improvements, structures, walks, patios, driveways, fences and walls. Existing and finished

grades shall be shown at Lot comers and at comers of proposed improvements. Lot drainage provisions shall be indicated as well as cut and fill details if any applicable change in the Lot contours is contemplated.

- (b) Exterior elevations.
- (c) Exterior materials, colors, textures, and shapes.
- (d) Structural design.
- (e) Landscaping plan, including walkways, fences and walls, elevation changes, watering systems, vegetation and ground cover.
- (f) Parking area and driveway plan.
- (g) Screening, including size, location and method.

The Architectural Review Committee may, at its discretion, grant the approval required by this Article for one set of plans and specifications submitted by a Builder for Improvements on multiple Lots, and such approval shall be effective for each Lot on which such Improvements are constructed.

Section 4.04      Definition of "Improvements." Improvements shall mean and include all buildings, any roofed structures, waterfront structures, parking areas, fences, walls, hedges, mass planting, poles, fountains, driveways, ponds, swimming pools, tennis and other sport courts, changes in any exterior color or shape, and any new exterior construction or exterior improvement which may not be specified in any of the foregoing, whether such items are constructed initially or are added subsequent to the initial construction. "Improvements" do not include garden shrub or tree replacements or any other replacements or repairs of a minor nature that do not change exterior colors or exterior appearance.

Section 4.05        Basis of Approval. Approval of plans and specifications shall be based, among other things, on adequacy of site dimensions, structural design, conformity and harmony of external design and of location with neighboring structures and sites, relation of finished grades and elevations to that of neighboring sites, and conformity to both the specific and general intent of the protective covenants and restrictions.

Section 4.06        Failure of the Committee to Act. If the Architectural Review Committee fails to approve or disapprove such plans and specifications or to reject them as being inadequate within thirty (30) days after submittal thereof, it shall be conclusively presumed that such committee has approved such plans and specifications, EXCEPT that the Architectural Review Committee has no right or power, either by action or failure to act, to waive, or to grant any variance from, the requirements of the protective covenants, conditions, and restrictions contained in Article IV hereof, except as specifically provided therein.

Section 4.07        Limitation of Liability. The Architectural Review Committee has no liability or obligation whatsoever in connection with any plans and/or specifications and no responsibility for the adequacy thereof or for the construction of any improvements contemplated by any such plans and/or specifications. The Architectural Review Committee has no duty to inspect any improvements; and, if the Architectural Review Committee should inspect any improvements, the Architectural Review Committee shall have no liability or obligation to any party arising out of such inspection. The Architectural Review Committee expressly shall have no liability or responsibility for defects in or omissions from any plans and/or specifications or for defects in or omissions from the construction of any improvements. Notwithstanding any covenant, condition or term contained in this Declaration or provision of the Bylaws of the Association to the contrary, the Architectural Review Committee shall not have any liability to any Owner arising or resulting from any act or omission of the Architectural Review Committee taken or omitted pursuant to this Declaration or the Bylaws of the Association. Each Owner, by accepting a conveyance of any Lot or of any portion of the Property, shall be deemed conclusively to have unconditionally and irrevocably waived all claims against the Architectural Review Committee arising or resulting from acts or omissions pursuant to this Declaration or the Bylaws of the Association.

## ARTICLE V

### USE RESTRICTIONS

Section 5.01 Covenants Applicable. The following provisions shall be applicable to any and all construction, improvement, alteration, or addition to the Lots.

Section 5.02 Use. Each Lot shall be used exclusively for single-family residential purposes only. For purposes of this Declaration, "single-family residential" use means no more than one dwelling unit shall be constructed on any Lot, and the residents thereof shall be members of the same family, i.e., related to each other by blood or adoption. No building or structure intended for or adapted to business purposes, and no apartment house, hospital, sanatorium or doctor's office, or any multi-family dwelling shall be erected, placed, permitted or maintained on any Lot, or on any part thereof. Except for normal construction activity, sale, and re-sale of the Lots, no commercial or business activity shall be conducted within the Property, including without limitation, within any residence. No Owner may actively engage in any solicitations for commercial purposes within the Property. No solicitors of a commercial nature are allowed within the Property. No day care center or facility may be operated out of a residence. No improvement or structure whatsoever, other than a high-quality private dwelling house, patio walls, swimming pool, garage, waterfront structure, or guesthouse, may be erected, placed, or maintained on any Lot.

It is permitted for Owners to lease a Dwelling in the Subdivision, so long as Occupants are leasing the entire land and improvements comprising the Property. Leasing a Dwelling for residential purposes shall not be considered a "business", provided the terms herein are satisfied. This provision shall not preclude the Association or an institutional lender from leasing a Dwelling upon taking title following foreclosure of its security interest in the Dwelling or upon acceptance of a deed in lieu of foreclosure. "Leasing" for the purposes of this Declaration, is defined as occupancy of a Dwelling by any person other than the Owner, for which the Owner receives consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Provided however, "leasing" for purposes of this Declaration shall not include vacation rental by Owner, boarding



house, "Airbnb", or bed and breakfast and such uses are prohibited. All leases must be in writing and shall contain such terms as the Board may prescribe from time to time. All leases shall provide that they may be terminated in the event of a violation of the Declaration or the Dedicatory Instruments by an Occupant or Occupant's family, and the Board, in its sole discretion may require termination by the Owner and eviction of the Occupant in such event. Rental or lease of the Lot and Dwelling shall not relieve the Owner from compliance with this Declaration or the Dedicatory Instruments. Single-family residential purpose does not include a Lease to tenants temporarily (less than ninety (90) days) or where the tenants do not intend to make the Lot/Dwelling their primary residence. No Dwelling may be occupied by more than one single family.

Section 5.03 Subdivision. No Lot shall be further divided or subdivided, nor shall the boundary line of any Lot be modified after a subdivision plat including such Lot has been approved and filed of record; provided, however, Declarant shall be permitted to subdivide or change the boundary line of any Lot owned by the Declarant.

Section 5.04 Signs. No sign of any kind shall be displayed to the public view on or from any part of any Lot, except signs temporarily used by Declarant or any Owner, of not more than five square feet, advertising the Lot for sale or rent, or signs of architects and builders during the period of construction and sale of improvements on any Lot.

Section 5.05 Animals. No animals, livestock, or poultry shall be raised, bred, or kept upon any Lot, or portion thereof, except that no more than a total of three (3) dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and provided that they do not create a nuisance.

Section 5.06 Nuisance. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 5.07 Trash. No Lot shall be used or maintained as a dumping ground for rubbish,

nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors. Trash, garbage, or other waste shall not be kept except in sanitary containers. Such containers shall be kept out of sight and away from view of the street. All structures erected to store trash cans must be approved by the Architectural Control Committee. All incinerators, containers, or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

Section 5.08 Building Material. No building material of any kind or character shall be placed or stored upon a Lot until the Owner is ready to commence improvements and then such materials shall be placed within the property lines of the Lot upon which the improvements are to be erected, and shall not be placed in the street. No stumps, trees, underbrush, or any refuse of any kind, nor scrap material from the improvements being erected on any Lot shall be placed on any adjoining Lots or streets. All such material, if not disposed of immediately, must remain on the Lot on which construction work is in progress, and at the completion of such improvements, such material must be immediately removed from the Property.

Section 5.09 Temporary Structures. No trailer, tent, shack, garage, or any structure of a temporary character shall at any time be erected or used on any Lot as a residence or business, either temporarily or permanently, except during actual construction of a building being erected thereon, and then such temporary structure must be on the Lot on which construction is in progress and not on adjoining Lots, streets, or easements, and at completion of construction, the temporary structure must be removed immediately. No such temporary structure shall be used for residential purposes during construction. No garage or outbuilding shall ever be used as a residence or business, either temporarily or permanently. Notwithstanding the foregoing, nothing contained herein shall prohibit the location of a trailer, mobile home, or other temporary structure on any part of the Property for use temporarily as a sales office for homes erected or to be erected by builders or developers. The size, location, and period of occupancy of such temporary sales offices shall be subject to the prior written approval of the Architectural Review Committee, which approval may

be given or withheld at such Committee's sole discretion, and if withheld, then the location and use of such trailer, mobile home or temporary structure for a sales office at the requested location shall be prohibited. Immediately upon the expiration of the period of occupancy permitted by the Architectural Review Committee for such temporary sales office, such trailer, mobile home or temporary structure shall be removed.

Section 5.10 Vehicle Storage. No owner of any Lot shall be permitted to perform work on automobiles or other vehicles in driveway or streets abutting such Lot other than work of an emergency or temporary nature on the Owner's vehicle. No motor vehicle or non-motorized vehicle, boat, trailer, marine craft, recreational vehicle, camper, rig off the truck, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of the Lot, easement, right-of-way, or Common Areas or in the street adjacent to such lot, easement, right-of-way, or Common Areas unless such vehicle or object is completely concealed from public view inside a garage, enclosure approved by the Architectural Control Committee or an area adequately screened by planting or fencing so as not to be seen at ground level from any other Lot. The foregoing prohibition does not apply to passenger automobiles, passenger vans, motorcycles, or pickup trucks that are in operating and in attractive condition, having no commercial advertising thereon that has not been approved by the Board of Directors of the Association, having current license plates and inspection stickers, are in daily use as motor vehicles on the streets and highways of the State of Texas, and which do not exceed six feet, six inches in height or seven feet, six inches in width, or twenty-one feet in length, unless approved by the Board (each a "permitted vehicle"). No vehicle shall be parked such as to obstruct or block a public sidewalk. No vehicle shall be parked on the grass or lawn of a Lot. No vehicle may be repaired on a Lot where such vehicle is not concealed from view inside a garage or other approved enclosure. This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity. No more than two (2) permitted vehicles owned or being used by occupants or residents of a Lot may be parked on the street adjacent to such Lot.

Section 5.11 Window units and/or window covering. Window units are strictly prohibited. Sheets are not permitted as window coverings. Owners may use two-inch blinds for

privacy.

Section 5.12 Fences. Fence pickets shall be four (4) or six (6) inches in width and each picket shall be uniform throughout the entire construction of the fence. Each picket shall be dog eared, natural wood in color, and homeowners may seal their pickets with a clear sealant. All lots facing the lake shall have an ornamental wrought iron fence along the rear property line. All wrought iron fences shall be four (4) feet tall and no shorter than four (4) feet tall.

Section 5.13 Owner's Duty of Maintenance. The Owners and Occupants of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of the Property so owned or occupied including buildings, improvements and grounds in connection therewith, in a well- maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse, and wastes.
- (b) Lawn mowing.
- (c) Tree and shrub pruning.
- (d) Watering.
- (e) Keeping lawn and garden areas alive, free of weeds, and attractive.
- (f) Keeping parking areas and driveways in good repair.
- (g) Complying with all government health and policy requirements.
- (h) Repair of exterior damage to buildings and improvements and repainting of buildings and improvements when necessary.

- (i) Keeping side yards free and clear of any Landscaping, fences, or other improvements that would impede or interfere with the flow of stormwater to a street or storm inlet.

Section 5.14 Enforcement. The covenants, conditions and restrictions set forth herein are enforceable by the Association or the Owner of any Tract through a proceeding brought at law or in equity, including, but not being limited to, an action for actual damages, which shall include, but being without limitation, damages or penalties provided for by the Texas Property Code or under other applicable law, or through proceedings for a temporary restraining order, temporary or permanent injunction. Each Tract Owner agrees that should the Association seek injunctive relief hereunder, the Association need not prove that it has no adequate remedy at law relative to the violation or injury complained of.

Specifically, The Association (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member. Without limiting the generality of the foregoing, the Association by any one or more of the following means:

- (i) by entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without-notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person, without liability by the Association to the Owner thereof, for the purposes of enforcement of the Declaration or the Rules and Regulations;

- (ii) by commencing and maintaining actions and suits to restrain and enjoy any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations;

- (iii) by exclusion after notice and hearing of any Member from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues;

(iv) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member which assessment shall reimburse the Association for the costs incurred by the Association in connection with such breach;

(v) by levying and collecting, after notice and hearing reasonable and uniformly applied fines and penalties (all of which are to be paid Summerwood Trails HOA) (including attorney's fees), according to the following fee schedule: A fine of \$250.00 will be assessed for the first violation; a fine of \$500.00 daily will be assessed each day thereafter until the violation is cured or abated, from any Member or for breach of this Declaration or such Rules and Regulations by such Member; and

(vi) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorney's fees incurred by the Association with respect to exercising such remedy.

Before the Board may invoke the remedies provided above, it shall give registered notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Developer, or of any Owner to take any action upon any breach or default with respect to any of the forgoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach of default.

## ARTICLE VI

### RESERVATION AND GRANT OF EASEMENTS

Section 6.01 Utilities. Easements for installation, construction, reconstruction, patrolling, inspection, maintenance, repair, removal, and/or addition of utility systems or facilities and for ingress and egress to or from and upon such utility easements are reserved by Declarant as shown on the plats of the Property, the provisions of said plats pertaining to the use of land situated within such utility easements being hereby referred to and incorporated herein for all purposes. Full right of ingress and egress shall be had by Declarant, any municipal authority which provides utilities to

the Property, at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. All claims for damages, if any, arising out of the construction, reconstruction, patrolling, inspection, maintenance, repair removal and/or addition of utilities or on account of temporary or other inconvenience caused thereby, against the Declarant, or any utility company or municipality, or any of its agents or servants, are hereby waived by the Owners.

## ARTICLE VII COMMON PROPERTIES

Section 7.01 Easements of Enjoyment. Subject to the provisions of Section 3 hereof, every Member of the Association shall have a non-exclusive right of easement of enjoyment in and to the Common Areas.

Section 7.02 Title to Common Areas. Except as otherwise provided herein, Declarant shall convey to the Association fee simple title to the Common Areas owned in fee by Declarant, and the Association shall be responsible for their operation, repair and maintenance in accordance with this Declaration.

Section 7.03 Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to establish rules and regulations governing the Members' use and enjoyment of the Common Areas, and to suspend the enjoyment rights of any Member for any reasonable period of time for any infraction of such rules and regulations.
- (b) The right of the Association to sell, convey or dedicate to the appropriate governmental authority the Common Areas, or any part thereof, provided such sale, conveyance or

dedication is approved by a majority of the total eligible votes of each class of the Members of the Association, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the meeting and shall set forth the purpose of the meeting.

- (c) The right of the Association to borrow money for the purpose of improving, maintaining, or repairing the Common Areas, or any part thereof, and to mortgage the Common Areas, or any part thereof, provided the mortgaging of the Common Areas is approved by a majority of the total eligible votes of each class of Members of the Association voting in person or by proxy, at a meeting duly called for such purpose.
- (d) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas, or any part thereof, against foreclosure.
- (e) The right of the Association to suspend the voting rights and right to use the Common Areas of any Member for any period during which any assessment or other amount owed by the Member to the Association remains unpaid or during which such Member is in violation of any of the provisions of this Declaration.
- (f) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities that may be a part of the Common Areas.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

Section 8.1   Duration. This Declaration and the covenants, restrictions, conditions, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every Owner of any part of the Property, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including



December 31, 2037, after which time said covenants, restrictions, conditions, charges, and liens shall be automatically extended for successive periods of five (5) years unless a change (the word "change" including additions, deletions or modifications thereto, in whole or in part) is approved by a majority of the total eligible votes of the Members of the Association (regardless of class) voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the meeting and shall set forth the purpose of such meeting, or by the written consent of Members holding a majority of the total eligible votes of the Members of the Association (regardless of class).

Section 8.2    Amendment. This Declaration may be amended or terminated at any time by a majority of the total eligible votes of each class of membership of the Association voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty days in advance of the meeting and shall set forth the purpose of such meeting, or by the written consent of Members holding a majority of the total eligible votes of the Members of the Association (regardless of class); provided, however, that Declarant must consent thereto if Declarant owns one or (1) or more of the Lots or any portion of the Residential Land. Any such amendment or termination shall become effective when an instrument is filed for record in the Official Public Records of Real Property of Montgomery County, Texas, with the signatures of the requisite number of Members (and the signature of Declarant if Declarant owns one (1) or more of the Lots) or any portion of the Residential Land.

Section 8.3    Waiver. The Association, every Owner of any part of the Property, Declarant, and their respective legal representatives, heirs, successors and assigns, shall have the right (but not the duty) to enforce this Declaration and the covenants, restrictions, conditions, charges and liens contained herein. Lack of Enforcement by the Association or any respective legal representative, successors, and assigns does not constitute a waiver of such Enforcement of any part of the Declarations.

Section 8.4    Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be illegal, null or void for any reason or shall be held by any court

of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 8.5    Titles. The titles, headings and captions that have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 8.6    Number of Gender of Words. Whenever used in this Declaration, the singular number shall include the plural where appropriate, and vice versa; words of any gender shall include each other gender, where appropriate.

Section 8.7    Assignment. Declarant shall have the right to assign and/or delegate its rights, privileges, duties and obligations hereunder.

Section 8.8    Insurance. The Board of Directors of the Association shall obtain insurance in case of destruction or damage to Common Areas, Common Facilities and Detention/Drainage Areas (the premiums for which shall be a common expense payable from property assessments). The Board of Directors shall also obtain director and officer's insurance.

Section 8.9    Bylaws of the Association. This Declaration contemplates and refers to Bylaws of the Association. No rights of Members created or described herein, and no provision hereof, shall impair, invalidate or limit the power and authority of the Bylaws to (i) determine or set standards for determining which votes of Members of the Association are "eligible votes," (ii) set quorum requirements for the effective conducting of meetings of Members, the Board or any committee, authorize actions to be taken by Members, the Board or any committee by written consent of appropriate percentages, even without a meeting or prior notice, (iv) set meeting and

notice requirements for subject matters addressed in the Bylaws, and (v) otherwise to limit, enhance, impair and modify the voting rights and procedures provided for in this Declaration or under the Texas Non Profit Corporation Act; provided that, the Bylaws cannot (i) alter the prescribed percentage of votes necessary to amend a specific clause of this Declaration (subject to the determination of quorum and of "eligible votes"), (ii) alter the prescribed percentage of affirmative votes required for action to be taken under and as prescribed by this Declaration (subject to the determination of quorum and of "eligible votes") or (iii) remove, revoke or modify any right or privilege of the Declarant hereunder.

To the extent that the Bylaws provide for a method of delivery (and the effectiveness thereof) of a notice to a Member, a director or the Association for a purpose stated in the Bylaws, and such method or effectiveness is inconsistent or in conflict with the methods of delivery (or the effectiveness thereof) allowed or prescribed by this Declaration, the provisions of the Bylaws shall be controlling.

Section 8.10    Formation of the Association.    Declarant shall cause the initial Certificate of Formation of the Association to be prepared and filed. After the Certificate is approved and filed with the Texas Secretary of State, that Certificate may be amended by Declarant on its own motion at any time prior to the Conversion Date. Alternatively, the Certificate may be amended by the vote of Members holding a majority of the total eligible votes of each class of Members voting in person or by proxy at a meeting duly called for such purpose, or by the written consent of Members holding a majority of the total eligible votes of the Members of the Association (regardless of class), provided that Declarant must consent thereto if Declarant owns one (1) or more of the Lots or any portion of the Residential Land.

Section 8.11    Property Subject to Declaration.    The real property covered by this Declaration is all of the real property described on Exhibit "A" attached hereto and incorporated herein by reference, a portion of which land is currently subdivided as SUMMERWOOD TRAILS, a subdivision in Montgomery County, Texas, according to the Recorded Plats thereof. All of the Property and any right, title or interest therein shall be owned, held, leased, sold, transferred and/or

conveyed by Declarant, and any subsequent owner of all or any part thereof, subject to this Declaration and the covenants, restrictions, conditions, easements, charges and liens set forth herein. The covenants, restrictions, conditions, easements, assessments and liens herein set forth are covenants running with the land at law as well as in equity, and shall constitute a general plan for the benefit of and be enforceable by all present and future Owners of any Lot or Lots in the Property and their heirs, personal representatives, successors and assigns, as well as by Declarant and the Association.

Section 8.12 Additional Property Subject to Declaration. Additional property may be added to, or made subject to this Declaration and the covenants, restrictions, conditions, easements, charges and liens set forth herein, in the following manner:

Additional property may be annexed by Supplemental Declaration into the jurisdiction of the Association with the consent of sixty-seven (67) percent of the total eligible votes of the Members (regardless of class) of the Association voting in person or by proxy at a meeting called for such purposes; provided, however, additional phases or sections of Summerwood Trails may be annexed by Declarant without such approval by the Members. The Owners of Lots in such annexed property shall be entitled to the use and benefit of all Common Areas, provided that the Lots in such annexed property shall be impressed with and subject to assessments by the Association as herein specified on a uniform, per Lot basis.

Section 8.13 Merger and Consolidation. Upon a merger or consolidation of the Association with another non-profit corporation organized for the same purposes, the Association's properties, rights, and obligations may be transferred to the surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions and restrictions established by this Declaration, together with the covenants, conditions and restrictions applicable to the properties of the other association as one scheme. However, such merger or consolidation shall not affect any revocation, change or addition to the covenants established by this Declaration

and no merger or consolidation shall be permitted except with the consent of the holders of sixty-seven (67) percent of the total eligible votes of each class of Members of the Association voting in person or by proxy at a meeting called for such purpose.

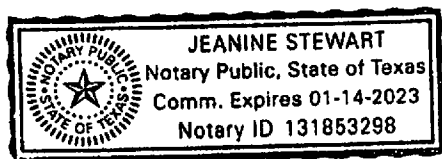
Section 8.14 Winding Up. The Association may be wound up and terminated with the assent given in writing and signed by not less than sixty-seven (67) percent of the total eligible votes of each class of Members voting in person or by proxy at a meeting called for such purpose. Upon winding up of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization devoted to such similar purposes.


EXECUTED to be effective as of the date set forth above.

  
Mitchell Oxman

STATE OF Texas §  
COUNTY OF Montgomery §

This instrument was acknowledged before me on the 27<sup>th</sup> day of January, 2020, by Mitchell Oxman.



  
Notary

**E-FILED FOR RECORD**

**01/27/2020 03:52PM**



COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS,  
COUNTY OF MONTGOMERY

I hereby certify that this instrument was e-filed in the file number  
sequence on the date and time stamped herein  
by me and was duly e-RECORDED in the Official Public  
Records of Montgomery County, Texas.

**01/27/2020**



County Clerk  
Montgomery County, Texas