

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
SUMMER MOUNTAIN RANCH

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HAYS

This Declaration, effective on the date of recording, made by SUMMER MOUNTAIN RANCH PROPERTY OWNERS ASSOCIATION, a Texas corporation, duly authorized to conduct business in the State of Texas (hereinafter referred to as "association").

WITNESSETH

WHEREAS, Summer Mountain Ranch is a 995.78 acre residential subdivision developed by PROPERTIES OF THE SOUTHWEST (hereinafter referred to as "Original Developer") which is located in Hays County, Texas, according to plats of two phases of the Subdivision development, Section One and Section Two, and one plat amendment as recorded in the Map Records Section of the County Clerk's Office, Hays County, Texas, after having been approved as provided by law, with the Section One Plat being recorded on the 12<sup>th</sup> day of August, 1992, in Volume 5, Page 353, the Section Two Plat being recorded on the 16<sup>th</sup> day of October, 1992, in Volume 5, Page 375 and the plat amendment being recorded on the 13<sup>th</sup> day of May, 1994, in Volume 6, Page 158 (hereinafter referred to as "Property" of the "subdivision"); and

WHEREAS, following the Original Developer to Association transfer of Subdivision jurisdiction, the Association acted to continue the reservations, easements, covenants, conditions and restrictions in order to preserve a uniform scheme of land use and development benefits for present and future Property owners of the Subdivision by means of an owner-approved, updated Declaration of Covenants, Conditions and Restrictions, recorded on the 15<sup>th</sup> day of October, 2004, in Volume 2561, Pages 765-782, and amended by recorded instrument on the 9<sup>th</sup> day of April, 2007, in Volume 3142, Pages 560-561; and amended by recorded instrument on the 15<sup>th</sup> day of November, 2012, in Volume 4486, Pages 35-51;

NOW, THEREFORE, the Association membership declares and imposes upon Summer Mountain Ranch the following reservations, easements, covenants, conditions and restrictions applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and which will run with the Property and title or interest therein, or any part thereof, and inuring to the benefit of each owner thereof.

CONTINUITY OF DECLARATIONS

To the extent this Declaration may conflict with the Original Developer Declaration or the Association Declaration of 2004, as amended in 2012, (hereinafter referred to as "Previous

Declarations”), this Declaration will be considered superior. All business transactions completed, agreements entered into, property plans approved or, in general, anything approved and executed by or between the Association, its members or the Original Developer under the auspices of the Previous Declarations will remain in force and unchanged by this Declaration. Conversely, all unapproved transactions, agreements and buildings will remain unapproved. All Association activity conducted after approval of this Declaration will fall under its auspices. Any substantive conflicts between Previous Declarations and this Declaration which complicate Association business transactions, agreements or development approvals pending on the effective date of this Declaration will be resolved by the Board of Directors or Architectural Control Committee, as applicable, with all practical deference being given to the guidelines established by this Declaration.

The following documents are hereby superseded and shall be used for reference only as they pertain to Association activity conducted prior to approval of this Declaration.

1. Declaration of Covenants, Conditions and Restrictions, Section One – recorded August 13, 1992, in Volume 942, Pages 310-325
2. Declaration of Covenants, Conditions and Restrictions, Section Two – recorded October 16, 1992, in Volume 953, Pages 654-670
3. Amendment of Restrictions for Summer Mountain Ranch, Sections One and Two – recorded March 12, 1993, in Volume 981, Page 616
4. Amendment of Restrictions for Summer Mountain Ranch, Sections One and Two – recorded August 22, 2001, in Volume 1864, Pages 579-580
5. Resolution to Define Single Family – recorded May 10, 2002, in Volume 1995, Page 766
6. Resolutions to Clarify Interpretations of Restrictions – recorded May 10, 2002, in Volume 1995, Pages 759-765
7. Declaration of Covenants, Conditions and Restrictions – recorded October 15, 2004, in Volume 2561, Pages 765-782
8. First Amendment to Declaration of Covenants, Conditions and Restrictions – recorded April 9, 2007, Pages 560-561
9. Declaration of Covenants, Conditions and Restrictions – recorded November 15, 2012, in Volume 4486, Pages 35-51

The Association adopts by reference any mandatory changes to the Texas Property Code as it may be changed by the legislature and affects the Association, and does not require specific amendments to these DCCRs to affect the change.

## ARTICLE I

### DEFINITIONS

Section 1.01 “Association shall mean and refer to the Summer Mountain



Ranch Property Owners Association, a Texas corporation, its successors and assigns. When legally acceptable, the full Association name may be abbreviated to "SMRPOA".

Section 1.02 "Summer Mountain Ranch" shall mean and refer to this Subdivision and any other land or development areas hereafter made subject to the jurisdiction of the Association.

Section 1.03 "Board of Directors" or "Association Officers" shall mean and refer to the Board of Directors and officers of the Summer Mountain Ranch Property Owners Association. For purposes of reference, the words "directors" and "officers" are considered as synonymous and interchangeable terms.

Section 1.04 "Architectural Control Committee" shall mean and refer to the Architectural Control Committee of the Association, commonly shortened and referred to as the "ACC".

Section 1.05 "Common Area" shall mean and refer to all real property, including all improvements thereto, within the Subdivision owned by the Association for the common use and enjoyment of the owners.

Section 1.06 "Lot" shall mean and refer to any plot of land on plats of the Subdivision, excluding any portions of the Common Areas or Unrestricted Reserves shown on plats of the Subdivision, regardless of the use made of such areas. This term is used interchangeably with the term "tract". No lot shall be smaller than five (5) acres in size.

Section 1.07 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any lot which is part of the Subdivision.

Section 1.08 "Member" shall mean and refer to every record owner or entity entitled to membership in the Association.

Section 1.09 "On-Site Waste Water Treatment Facility" shall mean and refer to facilities formerly termed "septic tanks". Such facilities are abbreviated herein as "OSWWTF".

Section 1.10 "Single Family" shall mean and refer to any number of individuals living together as a single unit in which not more than two individuals are unrelated by blood, marriage or legal adoption.

Section 1.11 "Residential Dwelling" shall mean and refer to the structure on a lot in which owners conduct the majority of their daily non-employment functions such as cooking, eating, sleeping, toileting, relaxing, etc.

Section 1.12 "Building Setback Zone" shall mean and refer to territorial buffers between Subdivision lots and public property, free of development, intended to ensure an uncluttered visual appeal of the Subdivision and physical privacy of individual property owners. Specific dimensions of the zones are explained in Article III.

Section 1.13 "Permanent Residence" shall mean and refer to physical residence in the same building for a period in excess of sixty (60) cumulative days during any span of one hundred twenty (120) consecutive days.



## ARTICLE II

### RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 Recorded Subdivision Map of the Property. The Plat of the Subdivision dedicates for use as such, subject to the limitations set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat or amendments to the Plat of the Subdivision recorded or hereafter recorded shall be construed as being included in each contract, deed or conveyance executed or to be executed which transfers ownership of said Property or any part thereof whether specifically referred to therein or not.

Section 2.02 Easements. Reserves for public use in the form of utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Hays County, Texas, are for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone lines, storm surface drainage, cable television or any other public utilities. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Areas or lots. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the owners of the lots affected by the request, without the joinder of any other owner, shall have the right to grant such easement on said lots without conflicting with the terms hereof. Any utility company serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair or maintenance of their respective facilities. No utility company, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees or servants to fences, shrubbery, trees or any other property of the owner of the property covered by said easements.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood the title conveyed to any of the lots by any conveyance shall be subject to any easement affecting same for roadways, drainage, electric lighting, electric power, telephone or telegraph purposes and other easements hereafter granted affecting the tracts. Owners of the respective lots shall not be deemed to own pipes, wires, poles, conduits or other service lines running through their lots which are utilized for or service other lots, but each owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of their property.

Section 2.04 Utility Easements. Utility ground and aerial easements have been dedicated in accordance with the Plat of the Subdivision and by recorded easement documents. No building shall be located over, under, upon or across any portion of any utility easement. The owner of each lot shall have the right to construct, keep and maintain concrete driveways, fences and similar improvements across any utility easement and shall be entitled to cross such easements at all times for purposes of gaining access to and from lots, provided however, any concrete driveway, fence or similar improvement placed upon such utility easement by the owner shall be constructed, maintained and used at owner's risk and, as such, the owner of each lot subject to said utility easement shall be responsible for any and all repairs to concrete driveways, fences and similar improvements which cross or are located upon such utility easements and repairing any damage to said improvements caused by any utility in the course of installing, operating, maintaining, repairing or removing its facilities located with the utility easement.



Section 2.05 Nature Trails. Nature Trails, formerly designated as Bridle Paths, are easements on, over and across Reserves A & B on the recorded Plat of the Subdivision and any amendments thereto. These easements are for the use of all owners, their families and guests for hiking, jogging, equestrian, mountain biking, nature study and related activities. No owner or other person shall be permitted to fence or obstruct any portion of any Nature Trail. No building or other structure shall be constructed or maintained on any part of any Nature Trail. Nature Trails shall be left in a natural state. Personal safety is the responsibility of the user and not the association or adjacent landowner. Owners may voluntarily enhance Nature Trail safety on segments adjacent to their own property through minor brush clearing and rock removal. However, no cutting of any tree, major clearing of brush or landscaping shall be done on the Nature Trails except as authorized and coordinated by the Board of Directors. No motorized vehicle of any type, including without limitation, motorcycles, go-carts, tractors, automobiles, All Terrain Vehicles or other motorized vehicles shall be permitted on any Nature Trail.

### ARTICLE III

#### DEVELOPMENTAL AND USE RESTRICTIONS

Section 3.01 Single Family Residential Construction. Any structure to be used for any purpose must receive written approval from the ACC prior to being erected, altered or placed on Subdivision lots. All residential dwellings constructed in the Subdivision shall be used as single family dwellings only. The term "dwelling" does not include single or doublewide manufactured homes or trailers and they are not permitted within the Subdivision. No mobile homes, prefabricated homes, modular homes or any manufactured home built off site will be allowed. It is the intent of this section to allow only custom on site constructed homes in the Association. All foundations must be concrete slab or concrete pier and beam or otherwise approved by the ACC. As used herein, the term "single family" shall be construed to prohibit use of Subdivision lots for duplex houses, condominiums, townhomes, apartment houses or fraternal organizations. Only one (1) primary residential dwelling shall be erected, altered, placed or permitted to remain on one (1) lot or Composite Building Site, as defined in Section 3.03. All primary residential dwellings must contain at least one thousand four hundred (1400) square feet of living area, excluding porches, garages or carports and be built with new construction material. One (1) guest/servants house may be constructed provided such house contains a minimum of five hundred (500) square feet of living area and be built after or while the primary residential dwelling is being built. Guest/servants houses shall not be used for permanent residence purposes except by no more than two (2) persons employed as bona fide servants or assisted living/medical care employees or by no more than one (1) member of the single family unit occupying the primary residential dwelling. An owner may petition the Association for the purpose of increasing the number of members of such single family units using a guest/servants house for permanent residence purposes to no more than two (2) persons. Approval of such petitions will be based on compassionate needs, relief of hardship or other compelling/practical reasons stated by the property owner and the overall intent of preserving a single family residential subdivision. All dwellings, including guest/servants houses, must be served with water and electricity and equipped with an OSWWTF or other sewage disposal systems meeting all applicable laws, rules, standards and specifications. Garages, workshops, barns and other outbuildings may be constructed on a lot prior to the primary residential dwelling being built so long as they are of good construction, kept in good repair and are not used for any permanent or temporary residential purposes including weekend or vacation lodging. A camper or recreational vehicle, actively being used for recreational purposes only, may be kept



on Subdivision lots for no longer than fourteen (14) consecutive days out of a thirty (30) day period without the express written consent of the ACC. Lot 1 is the only Subdivision lot approved for commercial purposes. No junk yard, pipe yard, wrecking yard, auto sales or other similar business activity shall be allowed on Lot 1. No machine parts, appliances or any other such materials are allowed on Lot 1 without being enclosed in a work shop, storage building or garage.

Section 3.02 Construction Time Limitations. Construction activity related to structures of any type or for any purpose on any Subdivision lot shall be complete as to exterior finish, including roofing, doors, windows, siding, trim and paint within six (6) months from the commencement of construction. The six (6) month exterior finish completion window begins the first day the foundation concrete is poured. Site preparation activities such as rock/tree removal, leveling, etc. are not considered as permanent foundation work. Following the ACC approval of a building plan but prior to the start of work on any permanent foundation, assistance/counsel from the ACC is available to ensure conformance with approved building plans. Such ACC contact is not mandatory but is highly recommended out of an abundance of caution for all concerned. The owner shall be responsible for any and all expenses incurred to correct violations of defined building setback zones or minimum square footage requirements due to deviations from ACC approved plans which result in such violations. All construction equipment and trash shall be cleared from the lot or be appropriately stored immediately upon exterior construction completion.

Section 3.03 Composite Building Site. With prior ACC written approval, an owner of two (2) adjoining lots may consolidate such lots into one (1) building site with the privilege of placing or constructing improvements on the resulting larger site. In such case, the building setback zone shall be measured from resulting side and rear property lines and disregard original lot property lines between the two lots as indicated on the plat. All matters pertaining to easements established on original plats and associated with such property dividing lines are specifically to be resolved by the owners and the respective utility or drainage management entities which have been granted such easements. If, for any reason whatsoever, an owner subsequently elects to dissolve an established Composite Building Site, both lots involved shall be returned to their original status so as to restore validation of all original property lines as indicated on their respective plats. Such action will require full recognition of any and all building setback zones, as defined in Section 3.04, on both lots. Any and all improvements placed within original building setback zones of either or both original lots shall be demolished or displaced. Alternatively, a surveyed replat approved by the Hays County Commissioners Court and with accompanying recorded plat changes, copies of which shall be provided to the Association free of charge, shall be performed to alter the original property dividing line between the two lots so as to establish compliance with any and all building setback requirements as defined in Section 3.04 and to maintain the minimum lot size integrity as defined in Section 1.06. All expenses of such dissolution of the Composite Building Site and its return to two separate and distinct lots shall be borne by the owners involved. The Association shall bear no expense whatsoever in such endeavors and is expressly relieved of any liability whatsoever in enforcing provisions of this Section. The ACC has the right to review any redrawn lines and improvements to confirm setbacks required in Section 3.04.

Section 3.04 Location of Improvements on Lots. With a singular exception explained in Section 3.05 below, no structure of any kind or intended for any purpose including, without limitation, dwellings, garages, carports, well houses, barns, stables, workshops, kennels, large dog houses, tree houses, play houses, potting sheds, nurseries, swimming pools, hobby shops or stored recreational vehicles or units shall be located on any lot nearer than fifty (50) feet from



side or rear property lines or nearer than one hundred (100) feet from property lines adjacent to any public road. Owners who elect to locate structures in any natural floodplain as may be indicated on the plat or as may be identified in the future by various regulatory agencies do so at their own risk and the Association shall not be held liable in any way whatsoever for any damage to such structures regardless of ACC building approval or otherwise. Floodplain management and policy enforcement are functions of Hays County. Unless otherwise approved by the ACC due to lot size, configuration or topography, outbuildings of any type with (a) any exterior foundation dimension larger than twenty (20) feet, (b) containing in excess of four hundred (400) square feet or (c) with elevations in excess of twenty (20) feet shall be located no nearer than two hundred (200) feet from any property line adjacent to any public road or no nearer to a property line adjacent to any public road than the primary residential dwelling, whichever distance is the shortest. The ACC, at its sole discretion, may approve a variance of any setback zone distance if a variance is necessary to permit effective utilization of a lot. Any such variance must be in writing and recorded in the Official Public Records of Hays County, Texas. It is the property owner's responsibility to record and pay costs and provide to ACC a filed copy.

Section 3.05 Water Wellhead Protective Shelters. With prior ACC written approval, small shelters to protect water wellhead pipes shall be allowed anywhere inside individual property lines. If these shelters are placed within building setback zones, as defined in Section 3.04, they shall be limited to three (3) feet in any horizontal or vertical dimension. These shelters are to protect water wellhead pipes only and shall be no larger than necessary to protect the pipes, specifically excluding any reservoir/pressure tanks associated with the water supply system. A water storage tank to be pumped into directly from the well's submersible pump is allowed to be next to the wellhead.

Section 3.06 Use of Structures. No buildings of any kind shall be used for residential purposes except buildings approved for such use by the ACC. ACC approval of a building development plan assumes the building will be used for its approved purpose whether specifically noted on the approval or not. Significant changes in the use or purpose submitted on an approved building plan shall require a written change request to and approval from the ACC after appropriate consultation with the Board of Directors. A camper or recreational vehicle, located so as to comply with the building setback requirements defined in Section 3.04, may be used as a temporary residence on a lot during the active construction phase of a residential dwelling for a period of not more than six (6) months. Such campers or recreational vehicles must be serviced by an approved OSWWTF. Upon completion of the dwelling construction or at the end of the six (6) month exterior finish completion period, whichever occurs first, the campers or recreational vehicles may be stored on a lot. All campers and recreational vehicles shall be considered as outbuildings when stored on a lot and located on the lot as described in Section 3.04 above. They may not be used as a temporary or permanent residence.

Section 3.07 Walls and Fences. Walls and fences are allowed after approval of the ACC. Walls and fences shall not extend beyond lot property lines as indicated on the plat. Wire, wooden, split rail, pipe, plastic, electric, barbed wire and stone fences are permitted. Fences constructed of concertina or razor wire or other such material which create or may create a safety hazard to persons or animals are not permitted in the Subdivision. Fence or wall colors shall not detract from the visual appeal of the Subdivision. Fences and walls or any portion shall not be higher than 5 ½ feet from the ground unless excess height is approved by the ACC. All fences and walls will be maintained in good condition.

Section 3.08 Prohibition of Offensive Activities. None of the lots or the improvements thereon



shall be used for anything other than single family residence purposes. Businesses that require ingress and egress to the subdivision by customers or the general public are not permitted. No business or commercial activity shall be conducted on any lot except for lot 1 which is classified commercial and lot 2 which has the fire station. Business and commercial uses include, but are not limited to, hotels, motels, tourist home, tourist house, tourist courts, vacation rentals, boarding houses, fraternity houses, lodging house, inn, rooming house, or bed and breakfast, rentals of less than 30 days, transient housing, and similar uses. Home offices are allowed so long as they meet the requirements of (a) no additional exterior signs of activity are created, (b) no additional traffic is created which would not normally be there and (c) nothing dangerous is present or created by the activity. This restriction is waived in regard to the customary sales activities required to sell homes or lots in the Subdivision. No noxious or offensive activity shall be allowed upon any lot or shall anything be allowed thereon which may be or become an annoyance or nuisance to the neighborhood. The discharge or use of firearms using gunpowder is expressly prohibited unless an extreme life-or-death or self-defense situation exists at the time of firearm usage. The Association shall have the sole and absolute discretion in determining what constitutes a nuisance, annoyance or offensive activity.

Section 3.09 Garbage and Trash Disposal. Garbage and trash or other refuse shall not be allowed to accumulate or be dumped at any place upon Subdivision property where a nuisance to an owner is or may be created. No property shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other refuse shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All expenses, including legal costs incurred by the Association in the process of enforcing provisions of this Section shall be reimbursed by the property owner. Such charges are secured by the vendor's lien provided for in section 6.05 below. For purposes of this Section, the normal debris resulting from tree management, brush clearing and other land management activities shall not be considered as trash, garbage or refuse provided it is not mixed with household or other inappropriate wastes. In the interest of maintaining the visual appeal of the Subdivision, owners are encouraged to dispose of such naturally occurring debris as soon as possible. If a property owner has received approval to build a barn or storage facility on his lot prior to home construction, it is permissible to store building supplies and materials in that structure. However, no materials may be stored prior to construction outside in the open. During construction, normal construction materials may be stored.

Section 3.10 Junk Prohibition. No property shall be used as a depository for abandoned or junked vehicles. Neither junk of any kind or character nor dilapidated structures or buildings of any kind or character shall be kept on any lot.

Section 3.11 Signs. No signs, advertisements, billboards or advertising structures of any kind may be erected or maintained on any property without the written consent of the ACC except any or all of (a) one (1) professionally made sign not more than forty-eight inches (48") on any side, advertising a property for sale or rent, (b) one (1) sign identifying the property owner's name and/or address or (c) conservatively sized signs announcing security or trespassing issues not to exceed twenty-four inches (24") in any dimension. Reflective house numbers designed to increase visibility and access by emergency vehicles are excluded from these restrictions. Construction company signs of appropriate size and design are temporarily allowed on lots during construction activities but such signs will be removed immediately upon completion of construction or when the signs no longer serve any purpose at the discretion of the ACC. Political signs are limited to one sign per candidate or ballot item, permitted only on



or after the ninetieth (90<sup>th</sup>) day before the date of the related election and must be removed before the tenth (10<sup>th</sup>) day after the date of such election. No signs of any kind shall be allowed to be placed in the Common Areas or on Hays County Road right-of-ways without specific written approval from the ACC. Such approvals will contain a "remove no later than" date clause. All expenses, including legal costs, incurred by the Association in the process of enforcing provisions of this Section shall be reimbursed by the property owner. Such charges are secured by the vendor's lien provided for in Section 6.05 below.

Section 3.12 Animals and Pets. No types of swine, fowl or wild animals shall be kept or raised on any Subdivision lot under any circumstances or programs. Dogs, cats and other common household pets may be kept or raised on Subdivision lots. Any combination of domesticated animals other than dogs, cats or other common household pets may be kept or raised on Subdivision lots provided the total number of such adult animals does not exceed one (1) animal per acre of lot size. Newborns are considered adults when they are weaned. Under the above conditions, 4-H school sponsored animal husbandry programs are allowed on Subdivision lots. No animals, domestic or household, shall be allowed to run loose in the Subdivision and shall be confined to their owner's property by fencing, kennels, runs or other suitable means. All animals are subject to Hays County leash laws and other laws or regulations that affect ownership and confinement of pets; Hays County will enforce these laws.

Section 3.13 Mineral Development. No commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any property. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon the property.

Section 3.14 Drainage. Established drainage patterns of streets, lots or roadway ditches shall not be impaired by any person or persons. Driveway culverts must be installed when necessary to comply with this requirement and will be of sufficient size to afford proper drainage of ditches without backing water up into ditches or diverting flow. Drainage culvert requirements and installations are subject to monitor by the ACC and enforcement by Hays County.

## ARTICLE IV

### ARCHITECTURAL CONTROL COMMITTEE

Section 4.01 Basic Control. No building or other improvements of any character or for any purpose shall be erected or placed, or the erection or placing thereof commenced, or other than minor changes be made thereto after original construction, or demolition/destruction by voluntary action be made thereto after original construction on any lot in the Subdivision until obtaining written approval from the ACC of construction plans and specifications for the construction/alteration of such improvements or demolition/destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on compliance with the provisions of this Declaration. Each application made to the ACC shall be accompanied by two (2) sets of plans and specifications for all proposed construction, initial or alteration, to be done, including plot plans showing location on the lot, exterior dimensions and square footage of residential dwellings. Additionally, all plans submitted for approval of the ACC shall be accompanied by a written statement from the applicant confirming they either (a) possess a copy of this Declaration or (b) do not possess a copy of this Declaration and are requesting such a copy be forwarded to them. The ACC shall ensure the applicant receives a copy of this



Declaration if so requested. Final ACC approval of plans shall be delayed, without automatic consequences established by Section 4.03 below, until an applicant validates possession of a copy of this Declaration. All plans approved by the ACC and related correspondence concerning such plans shall be maintained by the ACC in perpetuity and one set of approved plans returned to the property owner after approval.

Section 4.02 Architectural Control Committee. The sole authority to grant or withhold architectural control approval as referred to above is vested in the Architectural Control Committee which shall be composed of at least three (3) members of the Association. A property owner may appeal an ACC opinion to the Board of Directors. Members of the ACC shall be appointed to serve the Association by the Association's Board of Directors. The ACC shall be a permanently standing committee of the Association. A majority vote by the board can remove any ACC member or members. The ACC will be renamed or affirmed at the board meeting following the annual board election.

Section 4.03 Effect of Inaction. Approval or disapproval of architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing. Except for building setback requirements defined in Section 3.04, if the ACC fails to approve or disapprove in writing any plans, specifications or plot plans received by it in compliance with the preceding provisions within thirty (30) days following the postmarked date or the witnessed date of receipt of such submissions, such plans, specifications or plot plans shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans, specifications and plot plans and all of the other terms and provisions hereof. The failure of the ACC to provide written approval or disapproval within thirty (30) days does not approve any violations of the Declarations or building development within the building setback zones defined in Section 3.04. In no case is there to be construction in setback areas without an affirmative approval to do so from the ACC. Dates of written ACC approval or disapproval shall be recognized as the postmarked date or witnessed receipt thereof.

Section 4.04 Effect of Approval. Any granting of the aforesaid approval, whether in writing or by lapse of time, shall constitute only an expression of opinion by the ACC that the terms and provisions of this Declaration shall be complied with if the building and/or other improvements are erected in accordance with said plans, specifications or plot plans. Such approval shall not constitute any nature of waiver or estoppels either as to the persons expressing such approval or any other person in the event such building and/or other improvements are not constructed in accordance with approved plans, specifications or plot plans, but, nevertheless, fail to comply with the provision of this Declaration. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reasons of the good faith exercise thereof.

Section 4.05 Variance. The ACC may authorize variances from compliance with any construction or lot development provisions of this Declaration or minimum acceptable construction standards when circumstances such as topography, natural obstructions, tract configuration, tract size, hardship, aesthetic or environmental considerations may require a variance to ensure effective use of lots. The ACC, at its sole discretion, may grant variances as to building setback lines, minimum square footage of residential dwellings and other items affecting architectural development on a lot. Variances must be evidenced in writing and shall become effective when signed by a majority of the members of the ACC. If a variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect only to the specific matter for which the variance is granted. Additionally, the granting of any variance shall not affect in any way the owner's obligation to comply with all



governmental laws and regulations affecting the property concerned and the Plat. Required filing and associated expenses are property owner's responsibility. Property owner is responsible to provide a filed copy to the ACC.

## ARTICLE V

### SUMMER MOUNTAIN RANCH PROPERTY OWNERS ASSOCIATION

Section 5.01 Membership. Every record owner or entity which is a record owner of any lot subject to the Maintenance Charge and other assessments provided herein shall be a member of the Association. The foregoing does not include persons or entities holding an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. Memberships shall be appurtenant to and may not be separated from the ownership of lots. Ownership of a lot shall be the sole qualification for membership. Regardless of the number of record owners of any lot there shall be but one voting membership for each lot. Specifically, each lot shall have only one (1) vote in Association matters. The voting rights of members are set forth in the Association Bylaws.

Section 5.02 Nonprofit Corporation. Summer Mountain Ranch Property Owners Association, Inc., a nonprofit corporation, shall be governed by the Articles of Incorporation and Bylaws of said Association. All duties, obligations, benefits, liens and rights hereunder in favor of the Association are vested in said corporation.

Section 5.03 Bylaws. The Association has adopted Bylaws to govern the organization and operation of the Association. Such Bylaws shall not conflict with or detract from the terms and provisions of this Declaration.

Section 5.04 Owner's Right of Enjoyment. Every owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- the right of the Association, with respect to the Common Areas, to limit the number of guests of owners;
- the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving and maintaining the Common Areas and facilities;
- the right of the Association to suspend a member's right, after written notice, to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against such member's lot remains unpaid;
- the right of the Association to suspend a member's right to use recreational facilities within the Common Areas, after notice and hearing by the Board of Directors, for the infraction or violation by such member of this Declaration. Such suspension shall continue for the duration of an infraction or violation and may be continued for a period not to exceed sixty (60) days following the cessation or curing of the infraction or violation.



## ARTICLE VI

### MAINTENANCE FUND

Section 6.01 Maintenance Fund Obligation. Each owner accepting a deed to a lot, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay the Association an annual Maintenance Charge and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the lots and shall be a continuing lien upon the lots against which Maintenance Charge and other charges and assessments are made.

Section 6.02 Basis of the Maintenance Charge. The Maintenance Charge shall be used to create a fund to be known as the "Maintenance Fund", which shall be used as herein provided. Maintenance Charges shall be paid by the owners of each lot to the Association. The Maintenance Charge for the year of purchase shall be pro-rated at closing and then shall be due for payment annually, in advance, on the first day of January of each calendar year. Therefore, the Maintenance Charge assessments shall be calculated and levied for lots as follows:

- All Subdivision lots shall be assessed an annual Maintenance Charge. Owners shall be allowed one (1) vote in Association voting matters for each lot owned.
- A Maintenance Charge is levied on each lot owned regardless of the number of lots owned, except if two or more lots have been re-platted and the re-plat approved by the county and filed with the county and a copy provided to the ACC, then a Maintenance Charge is due for each re-platted lot.

Section 6.03 Maintenance Charge Enforcement. Any Maintenance Charge not paid prior to the end of the month of January of any calendar year shall bear interest from the due date at the lesser rate of eighteen percent (18%) or the maximum rate permitted by law. The Association's recorded payment plan policy will be followed, when applicable. The Association may bring an action at law against the owner personally obligated to pay the Maintenance Charge or foreclose the hereinafter described lien against the owner's lot. No owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by owners of the lots or by abandonment of such lots.

Section 6.04 Changes in Maintenance Charges. All matters related to the collection of Maintenance Charges and the expenditures or administration of the Maintenance Fund shall be determined by the Board of Directors, subject to the provisions stated herein. The Association shall have the right, at any time, to alter or adjust Maintenance Charges. The Board of Directors shall determine and recommend exact alterations in Maintenance Charges as deemed proper to meet the reasonable operation expenses and reserve requirements of the Association in order to carry out its duties. The recommended alterations to Maintenance Charges will require a majority vote of approval of all Association members prior to implementation.

Section 6.05 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge and other charges and assessments hereby levied, a vendor's lien for benefit of the Association was reserved in the deed from the Original Developer to the purchaser of each lot. This lien shall be enforceable through appropriate judicial proceedings by the Association. As additional security for the payment of the Maintenance Charges and other charges and assessments hereby levied, each owner, by accepting a deed to a lot in the



Subdivision, grants to the Association a contractual lien on such lot which may be foreclosed in accordance with Texas property laws. Following any such foreclosure, and any applicable period for redemption, all persons in possession of the foreclosed property shall be deemed to be tenants at sufferance subject to removal from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of possession thereunder. It is the intent of this Section to comply with the Texas Property Code as it may be amended from time to time. In cases of conflict between this Section and the Code, the provisions of the Code shall apply.

Section 6.06 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge, or other charges and assessments, levied hereunder, the Association may file a claim or lien against the lot of the delinquent owner by recording a Notice of Lien setting forth (a) the amount of the claim of delinquency, (b) the interest and costs on the amount of the claim of delinquency, (c) the interest and costs of collection which have accrued thereon, (d) the legal description and any existing street address of the lot against which the lien is claimed and (e) the name of the owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

Section 6.07 Liens Subordinate to Mortgages. The liens described in this Article and the superior title herein reserved shall be deemed subordinate to a first lien or other liens, including home equity loan liens, of any bank, insurance company, savings and loan association, university pension and profit sharing trusts or plans or a bona fide third party lender which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any lot or any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a lot who obtains title to such lot pursuant to the remedies provided in the Deed of Trust, mortgage or by foreclosure shall take title to the lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such lot which accrued prior to the time such mortgage holder acquiring title to a lot. No such sale or transfer shall relieve a mortgage holder acquiring title to a lot from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from a lien thereby generated. Any other sale or transfer of a lot shall not affect an Association's lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each mortgagee sixty (60) days advanced written notice of the Association's proposed judicial proceeding to enforce any lien described above in this Article. The written notice shall be sent to the nearest office of such mortgagee through the United States Postal Service by postage prepaid, registered or certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article.

Section 6.08 Purpose of the Maintenance Charge. The Maintenance Charge levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of Subdivision lot owners. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the



Association's duties described in Article VII including the maintenance of the Common Areas, any drainage easements and the establishment and maintenance of a reserve fund for maintenance of the Common Areas and drainage easements. The Maintenance Fund may be expended by the Association for any purpose which, in the judgment of the Board of Directors, will tend to maintain Subdivision property values, including providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, and replacement and maintenance of the Common Areas as may be from time to time be authorized by the Board of Directors. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the Association's Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood the judgment of the Board of Directors as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith and in conformity with this Declaration.

Section 6.09 Exempt Property. No Subdivision lot shall be exempt from said Maintenance Charges. However, the following Subdivision property shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all land areas dedicated to and accepted by a local public authority, (b) the Common Areas, and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas.

Section 6.10 Administration of Maintenance Fund. The collection of the Maintenance Charge or other charges or assessments levied hereunder and the management of the Maintenance Fund thereby formed shall be performed by the Association. The Association shall maintain special accounts for these funds and owners shall be provided at least annual status reports on the Maintenance Fund.

Section 6.11 Financial Operation of Maintenance Fund. The Association must operate within its annual revenue on a balanced budget basis. The Board of Directors may approve expenditures in excess of revenue only if the excess expenditure will be a one-time item or one-time calendar period issue, and not connected to a contract requiring payment over any term. Continued deficit spending year after year is not allowed. Either revenue must be increased or expenditures eliminated. Surplus funds may be and are accumulated so the board will have funds to be used for approved capital expenditures or major repairs to Common Areas and funding litigation. Other uses may be made of surplus capital if approved by Board members.

## ARTICLE VII

### DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 7.01 General Duties and Powers of the Association. The Association has been formed to further the common interest of the owners. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers, and subject to the provisions of the Association Bylaws, shall have the duties and powers hereinafter set forth and, in general, the power to do anything necessary or desirable to further the common interest of the owners, to maintain, improve or enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.



Section 7.02 Duty to Manage and Care for the Common Areas. Subject to section 2.05, the Association shall manage, operate, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the members. The duty to manage, operate and maintain the Common Areas shall include, but not be limited to the following: management, maintenance and repair of the Subdivision entrances and other Common Areas and anything the Board deems necessary to fulfill this section.

Section 7.03 Duty to Acquire Insurance Bonds. The Association shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 7.04 Duty to Prepare Budgets. The Association shall prepare Association budgets which shall include a reserve fund for the purpose of guaranteeing the Association's performance of all obligations.

Section 7.05 Duty to Levy and Collect Maintenance Charges. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

Section 7.06 Duty to Provide Annual Review. The Association shall provide for an annual independent review of the accounts of the Association performed by at least two (2) members of the Association who are not members of the Board of Directors or the ACC. Results will be independently reported to the members at the Association's annual owners meeting and to the Board of Directors at their meeting prior to the annual owners meeting. Copies of the review shall be made available to any member who requests a copy upon payment by such member of the reasonable cost of copying.

Section 7.07 Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in property, including leases, for the common benefit of owners including improvements and personal property. The Association may construct improvements on the property and may demolish existing improvements.

Section 7.08 Power to Enforce Restrictions. The Association shall have the power to enforce the provisions of this Declaration and shall take such actions as the Board of Directors deems necessary or desirable to cause compliance by each owner. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration by any one or more of the following means: (a) by entry upon 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 any notice 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 purpose of enforcement of this Declaration, (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, (c) by exclusion, after notice and hearing, of any member from the use of any recreational facilities within the Common Areas during and up to sixty (60) days following any breach of this Declaration by such member, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues, (d) by levying and collecting, after notice and hearing, an assessment against any member for breach of this Declaration by such member in order to reimburse the Association for the costs incurred



by the Association in connection with such breach, (e) fines and penalties may be levied and collected pursuant to Texas Property Code section 202.004(c) up to \$200 per day and under Texas Property Code sections 209.008 and 5.006 for attorney fees and other recoverable fees. If these issues are modified by future changes of the Texas Property Code, those changes will prevail and (f) by taking action itself to cure or abate such violation and to charge the expense thereof, if any, to such violating member, plus attorney's fees incurred by the Association with respect to exercising such remedy. Before the Board of Directors may invoke the remedies provided above in this Section, it shall give registered notice of alleged violations to an owner and shall afford the owner a hearing. If, after the hearing, a violation is found to exist, the Board of Directors may proceed by taking any action authorized by Texas laws. Each day a violation continues shall be deemed a separate violation. Failure of the Association or any owner to take action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default. The Association must use the Justice Court, County Court or District Court to levy fines if fines are needed. The intent of this requirement is to be sure property owners and the Association are dealt with fairly at all times.

Section 7.09 Power to Grant Easements. In addition to any blanket easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over and under the Common Areas.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.01 Term. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each unless it is amended in accordance with Section 8.02 below.

Section 8.02 Amendments. This Declaration may be amended or changed, in whole or in part, at any time by signed ballots of owners entitled to cast not less than sixty-seven percent (67%) of the votes of all owners. If the Declaration is amended by signed ballots by those owners entitled to cast not less than sixty-seven percent (67%) of all of the votes of the owners, such amendment must be approved by said owners within three hundred sixty-five (365) days of the date the first owner approves, by signature, such amendment. The date an owner's signature is acknowledged shall constitute prima facie evidence of the date of approval of said amendment by such owner. Those owners entitled to cast not less than sixty-seven percent (67%) of all of the votes of the owners may also vote to amend this Declaration, in person or by proxy, at a meeting of the owners duly called for such purposes, written notice of which shall be given to all owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum for purposes of such meeting, shall consist of not less than sixty-seven percent (67%) of all owners, in person or by proxy, entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Hays County, Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of owners approved, by signature, the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Written instruments or ballots pertaining to such amendment shall be retained by the Association for a period of not less than (3) years



after the date of filing of the amendment.

Section 8.03 Severability. Each provision of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 8.04 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 8.05 Successors and Assigns. The provisions of this Declaration shall be binding upon and inure to the benefit of the owners, the Association and their respective heirs, legal representatives, executors, administrators, successors and assigns.

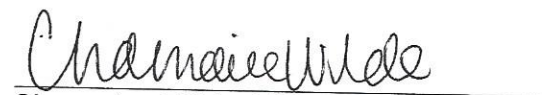
Section 8.06 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed on record or otherwise affecting the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust. Any such mortgage, lien or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

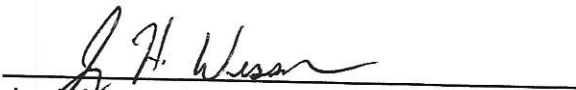
Section 8.07 Terminology. All personal pronouns used in this Declaration, and all exhibits attached thereto, whether used in the masculine, feminine or neuter gender, shall include all other genders. A singular wording use shall include the plural and vice versa. Titles of Articles and Sections are for convenience only and do not limit or amplify the provisions of this Declaration itself. The terms "herein", "hereof" and similar terms, as used in this Declaration, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear.

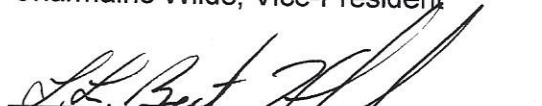
The undersigned members of the Summer Mountain Ranch Property Owners Association (SMRPOA) Board of Directors certify a vote was conducted in accordance with Section 8.02 of the Summer Mountain Ranch Declaration of Covenants, Conditions and Restrictions, dated November 15, 2012. The above document was approved to replace said Declaration by sixty-seven percent (67%) of all property owners by signature on a written agreement beginning November, 2016, and reaching 67% June, 2017.

SMRPOA BOARD OF DIRECTORS

  
Karen Thormalen, President

  
Charmaine Wilde, Vice-President

  
Jay Wesson, Vice-President

  
Bert Hofer, Treasurer

  
Ron Carman, Secretary

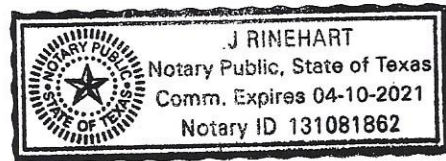


The Summer Mountain Ranch Declaration, dated November 15, 2012, is hereby replaced in its entirety by the above document. Executed this 21<sup>st</sup> day of June, 2017.

Ronald Carman  
Ron Carman, Secretary

STATE OF TEXAS  
COUNTY OF HAYS

This instrument was acknowledged before me on the 21st day of June, 2017, by Ron Carman, Secretary of Summer Mountain Ranch Property Owners Association, a Texas Corporation, on behalf of said Corporation.



J Rinehart  
Notary Public, State of Texas  
6-21-17

Instrument # 17021362 Number of Pages: 18  
Filed and Recorded: 6/22/2017 9:57 AM  
Liz Q. Gonzalez, Hays County Clerk, Texas  
Rec \$94.00 Deputy Clerk: KHOBBS