

**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS  
FOR SUMMERS EDGE**

**THIS DECLARATION** ("Declaration") is made of this 2nd day of JUNE, 2015, by Summergate Development, LLC, a Minnesota limited liability company ("Declarant").

**RECITALS**

**WHEREAS**, Declarant is the fee owner of certain real property located in Hennepin County, Minnesota, legally described in attached Exhibit A (the "Property"), and desires to promote thereon a residential community for the pleasure and general benefit of the residents of said community; and

**WHEREAS**, Declarant intends that certain protective covenants, conditions and restrictions shall apply to the individual lots included within the Property.

**NOW, THEREFORE**, Declarant makes this Declaration and hereby declares that this Declaration shall constitute covenants to run with the Property, and further declares that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, and conditions set forth in this Declaration, all of which shall be binding upon, and inure to the benefit of, all persons owning or acquiring any right, title or interest in the Property, and their heirs, personal representatives, successors and assigns.

**SECTION ONE  
DEFINITIONS**

**1.1** "Dwelling" shall mean a building consisting of one or more floors, designed and intended for occupancy as a single-family residence and located within the boundaries of a Lot. The Dwelling includes any garage attached thereto.

**1.2** "Occupant" shall mean any person or persons other than an Owner in possession of, or residing upon, a Lot.

1.3 "Owner" shall mean a Person or Persons who individual or jointly own a Lot, but excluding contract for deed vendors, mortgagees, or other secured parties. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.

1.4 "Person" shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.

1.5 "Property" shall mean all of the real property submitted with this Declaration, including any dwellings and all other improvements located thereon now or in the future. The Property as of the date of this Declaration is legally described in attached Exhibit A.

1.6 "Lot" shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, including all improvements thereon.

1.7 "Structure" shall mean and refer to any thing or device other than trees and landscaping, the placement of which upon any Lot shall affect its architectural appearance including, by way of illustration and not limitation, any building, porch, shed, kennel, play structure, greenhouse, driveway, walk, patio, swimming pool, pool house, tennis or other sports court, fence, mailbox, wall or outdoor lighting structure, and shall also include an excavation or fill, the volume of which exceeds 5 cubic yards, and any excavation, fill, ditch, diversion dam, or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot for which affects or alters the flow of any waters and any natural or artificial stream, wash or drainage way upon or across any Lot.

1.8 "Plat" shall mean and refer to the recorded plat of Summers Edge, Hennepin County, Minnesota.

## **SECTION TWO DESCRIPTION OF LOTS**

2.1 **Lots.** There are thirty-three (33) Lots, all of which are restricted exclusively to those lawful single-family residential uses permitted under applicable municipal zoning ordinances. Each Lot constitutes a separate parcel of real estate. No additional Lots may be created by the subdivision or conversion of Lots. Nothing contained in this Declaration, however, shall prevent the combination of any two (2) or more Lots into a single Lot.

2.2 **Lot Boundaries.** The front, rear, and side boundaries of each Lot shall be the boundary lines of the platted Lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Lot shall have no upper or lower boundaries.

2.3 **Declarant's Easements.** Declarant shall have and be the beneficiary of easements as described in Section Five.

2.4 **Recorded Easements.** The Property shall be subject to such other easements as may be recorded against it or otherwise shown on the Plat.

2.5 **Easements are Appurtenant.** All easements and similar rights burdening or benefitting a Lot or any other part of the Property shall be appurtenant thereto, and shall be permanent, subject only to termination in accordance with the easement. Any recorded easement benefitting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, any easements created by this Declaration, if any.

**2.6 Impairment Prohibited.** No Person shall materially restrict or impair any easement benefitting or burdening the Property.

### **SECTION THREE RESTRICTIONS ON THE USE OF THE PROPERTY**

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Dwelling, covenant and agree that in addition to any other restrictions which may be imposed by the Declarant, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

**3.1 General.** The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to this Declaration, as amended from time to time. All covenants, restrictions and obligations set forth in this Declaration is in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns. The Declarant shall have the power to amend the restrictions contained in this Section 3 in conformity with the provisions of Section 6, below.

**3.2 Subdivision Prohibited.** No Lot may be subdivided or partitioned without the prior written approval of all Owners and all secured parties holding first mortgages on the Lots.

**3.3 Construction Shall be New.** No building previously used at any other location nor any building or structure originally constructed as a mobile dwelling or prefabricated structure, may be moved on to a Lot.

**3.4 Business Use Restricted.** No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted on any Lot, except an Owner or Occupant may keep his or her business records in the Dwelling located on the Lot, and handle matters relating to such business by phone or correspondence from them, provided that no physical alteration of the exterior of a Dwelling is made and that no observable business activity, such as signs, advertising displays, bulk mailings, deliveries, or visitation or use of the Lot or Dwelling by customers or employees is involved. No Structure may be used or employed in any business activity conducted upon any Lot whatsoever, whether for storage or otherwise.

**3.5 Leasing.** Leasing of Dwellings shall be allowed subject to the condition that all leases shall be in writing and shall provide in writing that they are subordinate and subject to the provisions of this Declaration.

**3.6 Compliance with Law.** No use shall be made of any Lot which would violate any then-existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for any Owner or Occupant.

**3.7 Antennae.** No exterior tower, or antennae of any kind, or any satellite communication disk greater than 18 inches in diameter shall be constructed, maintained, or permitted to remain on any Lot. All on-site utility connections and services shall be underground.

**3.8 Alterations.** No alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "alterations") to any Dwelling or Structure shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests, in any part of a Lot unless made in compliance with all applicable laws, ordinances and building codes.

**3.9 Outdoor Lighting.** Outdoor lighting on any Lot shall be designed and operated in such a manner as not to spill over onto any other Lot.

**3.10 Land Use.** No Lot shall be used except for private, residential purposes and no improvements shall be commenced, erected, altered, placed, or permitted to remain on any Lot except a detached single family Dwelling or other Structure permitted by this Declaration. The Dwelling shall have an attached garage for not fewer than two (2) nor more than four (4) automobiles, the exterior of which shall be constructed of the same material used or to be used on the exterior of the main portion of the residential dwelling. In any event, the design and construction of the Dwelling shall be in such manner so as to accommodate the construction of a third stall on a garage if desired.

**3.11 Exterior Storage.** Except as set out below, outdoor storage is prohibited. No building materials shall be stored on any Lot, except temporarily during continuous construction of a residence, or its alteration or improvement. Storage of equipment, trash, firewood or garbage containers other than within the Dwelling shall not be allowed. Detached garages, sheds, and out-buildings are not permitted to be constructed or maintained on any Lot, and no motor vehicles, boats, recreational vehicles, or trailers, and no construction or other commercial equipment, may be stored other than in a garage attached to the Dwelling.

**3.12 Storage Tanks.** No temporary or permanent storage tanks of any kind shall be erected, place, or permitted on any Lot, either above or below ground.

**3.13 Signage.** No sign of any kind shall be displayed to the public view on a Lot that is not in compliance with applicable municipal ordinances and except as follows:

- a. During the development and sale of Lots within the property, Declarant or its assigns, may erect marketing signs as deemed necessary by Declarant.
- b. In the case of a house owned by a licensed builder and advertised as a model home, one sign not larger than 8 feet by 4 feet in size shall be permitted on each model home lot.
- c. After the Declarant has completed its development and lot sales, or in the event of a re-sale by a homeowner that occurs prior to that time, all home and/or lot marketing signs shall be limited to one sign not larger than 7.5 square feet.
- d. Notwithstanding the foregoing, the Declarant may maintain signs denoting wetland boundaries anywhere upon the Property as required by the municipality.

**3.14 Pets and Animals.** No horses, cows, goats, sheep, poultry, fowl, or insects of any kind, or any other livestock will be permitted to be kept on any Lot with the exception of dogs, cats and other common household pets ("Permitted Pets"). Proper control must be exercised over all Permitted Pets so that they do not (i) enter upon any other Lot, and (ii) are under the Owner's immediate control whenever outside the Dwelling or other Structure. If a Permitted Pet requires a kennel, it must be screened from outside view and located and referenced in the Plans and Specifications approved by the ACC. The keeping of dogs, cats, and other common household pets anywhere upon the Property must meet any applicable requirements of the governmental authorities. No animals of any kind may be kept, bred or maintained for any commercial purposes.

**3.15 Swimming Pools.** Above ground swimming pools are prohibited. In-ground swimming pools, including pool houses, decking and security fencing or other associated Structures may not be located in the front yard of any Lot and must be installed in compliance with all applicable laws, ordinances and building codes.

**3.16 Trash and Refuse Collection.** Trash, recycling, and lawn waste receptacles shall be utilized for their intended purposes on all Lots, and shall be stored inside the garage at all times other than on scheduled pick up days.

**3.17 Parking.** Exterior parking of commercial automobiles, commercial trucks, boats, equipment, motor homes, recreational vehicles, motorcycles, trailers, campers, inoperable motor vehicles, or any other vehicles anywhere upon the Property, and upon any public street serving the Property, is prohibited. Parking of not more than a total of four (4) personal motor vehicles (i.e., a regularly driven, operable, and currently licensed personal automobile, pick-up truck, or sport utility vehicle, provided that such automobile, pick-up truck, or sport utility vehicle shall have no visible exterior commercial markings or advertisement whatsoever) owned by the Owner or Occupant of a Lot may be parked overnight on that portion of the driveway between the front elevation of the garage and the fronting street. The construction or use of any parking "apron" along the side of any dwelling is strictly prohibited. A driveway on a house with a side entry garage is not considered an "apron", so long as the driveway does not extend beyond the front elevation of the garage.

**3.18 Nuisances.** No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

**3.19 Quiet Enjoyment; Interference Prohibited.** All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Dwellings, and shall use the Property, and their respective Lots and Dwellings in such a manner as will not restrict, interfere with, or impede the use of the Property by other Owners and Occupants and their guests.

**3.20 Damage to Dwelling.** If all or any part of a Dwelling shall be materially damaged or destroyed by fire or other casualty, within ninety (90) days after investigation is completed, the Owner shall either (i) commence repair or reconstruction and thereafter diligently pursue completion, or (ii) raze the Dwelling, remove all debris and rough grade and sod the Lot.

**3.21 Sidewalk Maintenance and Repair.** Some, but not all, Lots comprising the Property have had concrete sidewalk abutting those portions of the Lot having public street frontage(s), with such sidewalk installed by the Declarant at the direction of the City of Plymouth. In all instances in which a Lot abuts installed concrete sidewalk, the Owner of each said Lot shall have the continuing duty and obligation to repair and maintain that portion of sidewalk abutting the Owner's Lot and keep that portion of the sidewalk free and clear of all obstructions and impediments to its continuous use for pedestrian purposes, which obligation shall include a duty to keep the said sidewalk cleared of seasonal accumulations of ice and snow. In addition to its enforcement by other Persons, the provisions of this Section 3.21 may also be enforced by the City of Plymouth, in its discretion, in conformity with the provisions of Section Six, below.

## **SECTION FOUR ARCHITECTURAL RESTRICTIONS**

**4.1 Original Construction.** Declarant, for as long as Declarant owns any Lot, shall have the sole and exclusive authority and discretion to impose restrictions and limitations upon the architectural design, exterior materials used, and construction of new Dwellings and Structures upon all Lots. No application for any building

permit for new construction on any Lot shall be submitted by any Person unless and until Declarant's written approval of detailed architectural and construction plans and specifications for construction of a Dwelling ("Plans") shall have been obtained. Declarant shall, in Declarant's sole and exclusive judgment, and on a case-by-case basis determine (i) what Plans shall be required to be submitted to Declarant for approval; (ii) whether or not to approve submitted Plans; and (iii) what alterations, additions, and/or revisions to such Plans shall be required as a condition precedent to any Declarant approval thereof. The construction of the Dwelling shall thereafter proceed in strict compliance with the Plans approved by Declarant in writing. In the event of any deviation from the Plans in the actual construction of the Dwelling, or in the event any Dwelling construction is commenced without written approval by Declarant of the Plans therefore, Declarant shall be entitled to initiate suit for temporary and/or permanent injunctive requiring the immediate suspension of all construction activity, the obtaining of written consent by Declarant to construction Plans, and/or requiring full compliance with any approved Plans. In any such suit, Declarant shall further be entitled to a recovery of Declarant's attorney's fees, expert witnesses' fees, Court fees, and all other costs and disbursements, and Declarant shall further be entitled to seek the recovery of money damages.

**4.2 Alterations.** No exterior alteration to any completed Dwelling or other Structure, and no additional Structures, shall be made or installed unless done so in strict compliance with all applicable laws, ordinances and building codes.

## **SECTION 5 EASEMENTS**

**5.1 Utility Easements.** The Property shall be subject to non-exclusive, appurtenant easements for all utilities, including water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, as otherwise described in this or any other Declaration recorded against the Property. Such easements shall all include a further and reasonable right of access for maintenance and repairs.

**5.2 Easements for Signage.** During the development and sale of Lots within the Property, Declarant or its assigns may erect marketing signs as deemed necessary by Declarant upon any Lot then owned by Declarant.

**5.3 Easements for Wetland Buffers.** Portions of the Property shall be made subject to easement(s) to maintain buffers between Dwellings and other Structures and improvements upon Lots and designated wetlands situated upon the Property. The nature and scope of such buffer easement(s) shall be the subject of another recorded Declaration affecting all of the Property.

**5.4 Continuation and Scope of Easements.** The easements set forth or referenced in this Section shall supplement and not limit any easements described elsewhere in this Declaration or otherwise of record, and shall include reasonable access to the easement areas for purposes of maintenance, repair, replacement and reconstruction. No Owner, Occupant or other Person shall take any action which shall have the effect of disturbing or adversely affecting any lawful easement.

## **SECTION SIX SPECIAL DECLARANT RIGHTS**

Declarant hereby reserves exclusive and unconditional authority to exercise the following Special Declarant rights for as long as it owns any Lot subject to this Declaration, or for such shorter period as may be specifically indicated:

**5.1 Complete Improvements.** To complete all the Lots and other development improvements indicated on the plat for the Property.

**5.2 Relocate Boundaries and Alter Lots.** To relocate boundaries between Lots, and to otherwise alter Lots owned by it provided that any such Lot, as altered by the Declarant, shall be restricted to single family residential use.

**5.3 Sales Facilities.** To construct, operate and maintain a sales office, management office, model Dwellings and other development, sales and rental facilities within the Lots owned by Declarant from time to time, located anywhere on the Property.

**5.4 Easements.** To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Lots and Common Elements for the purpose of developing the additional real estate and exercising its special Declarant rights.

**5.6 Amendments.** This Declaration may be amended by Declarant, so long as Declarant owns one or more Lots contained within the Property. Any Amendment by the Declarant shall be in writing. The Amendment shall be effective when recorded.

## **SECTION SIX ENFORCEMENT**

**6.1 Compliance.** Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, including but not limited to Declarant, and any homeowners association created or governed by any other instrument recorded against the Property, shall be governed by and comply with the provisions of this Declaration and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Declarant or any other of person(s) referenced above to the relief set forth in this Section. In addition, the City of Plymouth shall have the right to enforce compliance by any Lot Owner with the provisions of Section Three, paragraph 3.21, above.

**6.2 Relief.** Declarant or any Owner shall, in the event of a failure by any Person to observe and obey the covenants and restrictions contained in this Declaration, shall have the right to initiate suit in Hennepin County District Court for the purposes of enforcement. In any such suit, the initiating party or parties shall be entitled to seek the following judicial relief:

- a. temporary and/or permanent injunctive relief;
- b. actual damages, not including punitive, incidental or consequential damages;
- c. equitable relief;
- d. a lien on one or more Lots as an aid to the recovery of damages or other costs awarded.

**6.3 Cure Period.** Except in the event of the commencement of construction without Declarant written Plan approval, or in contravention of approved Plans (in which case Declarant shall immediately be entitled to seek and obtain injunctive relief), no action shall be commenced in District Court for the enforcement of any right or remedy hereunder without having the aggrieved party or parties first providing written notice of a breach of the covenants and restrictions set forth herein to the defaulting party, and the giving of not less than thirty (30) days for the defaulting party to cure or rectify the conditions constituting the alleged breach(es). If the breach or default under this Declaration for which such written notice is given is/are not cured or rectified within thirty (30) days after the said written, then the aggrieved party may commence legal action for such relief as is authorized in paragraph 6.2, above.

**SECTION SEVEN  
AMENDMENTS**

This Declaration may be amended by the written consent of the Owners of at least sixty seven percent (67%) of the Lots, provided that as long as Declarant owns any Lot, this Declaration shall not be amended without Declarant's written consent and, provided further, that any amendment of the provisions of Section 3.21 shall also require the written consent of the City of Plymouth by and through its Public Works Director. Any authorized amendment of this Declaration shall be effective when recorded.

**SECTION NINE  
MISCELLANEOUS**

**9.1 Severability.** If any term, covenant, or provision of this instrument, or of any exhibit attached hereto, is held to be invalid or unenforceable for any reason whatsoever, such a determination shall not be deemed to alter, effect, or impair in any manner whatsoever any other portion of this instrument or exhibits.

**9.2 Construction.** Where applicable, the masculine gender of any word used herein shall mean the feminine or neutral gender, or vice-versa, and the singular of any word used herein shall mean the plural or vice-versa.

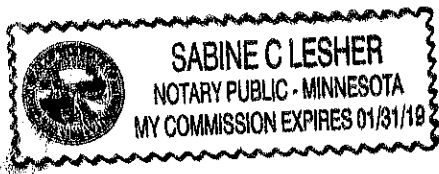
IN WITNESS WHEREOF, the undersigned has executed this instrument as of the day and year first above-referenced.

**DECLARANT:** **SUMMERGATE DEVELOPMENT, LLC**  
**a Minnesota limited liability company**

By: [Signature]  
Its: CASEY WOLLSCHLAGER  
GOVERNOR/CHIEF MGR.

STATE OF MINNESOTA )  
                                    ) ss.  
COUNTY OF                     )

The foregoing instrument was acknowledged before me this 2nd day of June, 2015, by Casey Wollschlager the Governor/Chief Manager of Summergate Development, LLC, a Minnesota limited liability company, on behalf of the company.



[Signature: Sabine C Leshner]  
Notary Public



This instrument was drafted by:

S. Todd Rapp, P.A.  
P.O. Box 1619  
Burnsville, MN 55337

After recording, return to:

S. Todd Rapp  
P.O. Box 1619  
Burnsville, MN 55337

## **EXHIBIT A**

### **Legal Description of the Property**

Lots 1 through 10, inclusive, Block 1; and  
Lots 1 through 6, inclusive, Block 2; and  
Lots 1 through 17, inclusive, Block 3,  
Summers Edge, Hennepin County, Minnesota