

2006-047887

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Stewart Title of Montgomery County
GF# 06410609
Unit 04 / Sheri Pelton

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CORRECTED

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

SUMMERCHASE SECTION ONE

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

KNOW ALL MEN BY THESE PRESENTS:

This Declaration of Covenants, Conditions and Restrictions for **Summerchase, Section One** ("the Declaration") is made on the date hereinafter set forth by Summerchase, LLC, a Texas Limited Liability Corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant owns certain property known as **Summerchase, Section One**, being a replat part of Restricted Reserve "B" of **Point Aquarius**, Section 9, an addition in the Timothy Cude Survey A-12, Montgomery County, Texas, and described by the map recorded in plat cabinet F, sheets 130 B and 131 A, Map Records, Montgomery County, Texas. **Summerchase, Section One** is a subdivision according to the plat of said Subdivision recorded in the office of the County Clerk of Montgomery County, Texas on August 1, 2005, ("Plat") after having been approved as provided by law, and being recorded in Plat Cabinet Y, Sheets 178 and 179 of the Map Records of Montgomery County, Texas (the "Property" or "Subdivision"); and

WHEREAS, it is the desire of Declarant to place certain restrictions, easements, covenants, conditions, stipulations and reservations (the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of lots in said Subdivision.

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon SUMMERCHASE, SECTION ONE, and declares the following reservations, easements, restrictions, covenants and conditions applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1.01 - "Association" shall mean and refer to the Point Aquarius Property Owners Association and its successors and assigns.

Section 1.02 - "Subassociation" shall mean and refer to the Summerchase Property Owners Association, whether or not incorporated, as a non-profit entity, comprised of the Owners within the Subdivision. Each Association shall exist for the purposes of installing, operating and maintaining an irrigation system for part of the Lots and Common Areas within the Subdivision and providing lawn and grounds maintenance for the front and side yards of lots in Summerchase Section One.

The Subassociation shall be comprised of the Owners of this Section One and such other sections of Summerchase the Declarant in its sole discretion determines would be of benefit to the Subassociation by including same by reference in the recorded Declaration of Covenants, Conditions and Restrictions of such other Summerchase sections. The Subassociation shall be operated and managed pursuant to these provisions and the provisions of its Bylaws.

Section 1.03 - "Front Yard" shall mean that part of a Lot normally and commonly understood as the front yard of a home, namely the area between the Owner's home and the street in front of such home. For homes situated on corners and bordering on two streets, the front yard is the portion of the lot between the home and the street with the shorter length bordering such lot (the "Front Street").

Section 1.04 - "Side Yard" applies only to corner lots, namely lots 1 and 51 in Block 1 and Lots 1 and 4 in Block 2, and is the portion of the lot between the home and the street with the longer length bordering such lot (the "Side Street").

Both the Front Yard and the Side Yard shall be subject to the easement assigned to the Subassociation by these Restrictions for the purpose of landscaping and maintenance.

Section 1.05 - "Rear Yard" means the open area shown on the Plat for Summerchase, Section One opposite from the Front Yard.

Section 1.06 - "Owner" means the Owner of a home in Summerchase, Section One, and the members of such Owner's household, the Owner's visitors, guests, tenants, licensees and contractors performing other services at or about the Owner's home.

Section 1.07- "Plant" means any growing plant material normally used for landscaping around residences including but not limited to lawns, grasses, shrubs, flowers and trees of all sizes. For the purpose of these restrictions, "plants" shall not include what is commonly considered as weeds harmful plants and shrubs. The determination of the Subassociation of any plant as permissible for

the areas maintained by the Association shall be final and conclusive for all purposes and the Association shall periodically publish a list of all plants approved for such maintained areas.

Section 1.08 – “Zero Setback Line” or “Zero Building Line” shall mean and refer to the side Lot line on which the wall of any improvement (including a garage) constructed thereon may abut, as approved in writing by Declarant pursuant to (i) the Plat or any amendment or partial replat or (ii) a recordable instrument executed by the Declarant prior to the Transfer Date or by the committee subsequent to the Transfer Date for the purpose of clarifying the proper location of the Zero Setback Line or Zero Building Line of any Lot. Declarant, prior to the Transfer Date and the Committee, subsequent to the Transfer Date, expressly reserve the right to change the existing Zero Setback Line with respect to any Lot or establish a Zero Setback Line for any Lot, in the manner described in (i) or (ii) above, without incurring any liability to any Owner as a result of such change or establishment of a Zero Setback Line.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

2.01 - Recorded Subdivision Map of the Property. The Plat of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the private roads and 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, replats or amendments of the Plat of the Subdivision recorded or hereinafter recorded shall be incorporated herein and made a part of hereof as if fully set forth herein, and shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Declarant, conveying said Property or any part thereof whether specifically referred to therein or not.

2.02 – Access to Zero Setback Line Easement. All Lots adjacent to Lots with improvements (including the garage) situated on the Zero Setback Line, as permitted hereunder or by the Declarant or Committee, as applicable, shall be subject to a **ten-foot** access easement for the construction, repair and maintenance of improvements located upon any adjacent Lot where said improvements are located on the Zero Setback Line of such adjacent Lot. The Zero Setback Line Owner must replace fencing, landscaping or other items on the adjoining Lot that the Zero Setback Line Owner disturbs as a result of such construction, repair or maintenance. Additionally, this easement when used, must be left clean and unobstructed unless the easement is actively being utilized, and any items removed must be replaced. The Zero Setback Line Owner must notify the Owner of the adjacent Lot of his intent to do any construction, repair or maintenance upon the Zero Setback Line at least **24 hours** before any work is started. The hours that such access easement may be utilized are restricted to between the hours of 8:00 o'clock a.m. and 5:00 o'clock p.m. Monday through Friday and 9:00 o'clock a.m. and 6:00 o'clock p.m. on Saturdays (except in the case of an emergency, as to which no notice need be given and repairs or maintenance can be performed at any necessary time.)

In the event a residence (including attached garage) is constructed in such a manner so that part of the residence (including attached garage) is situated or located on the Zero Setback Line and part of the residence (including attached garage) is situated or located less than **ten feet** from the Zero Setback Line, the lot adjacent to the Zero Setback Line shall be subject to a **ten-foot** access easement for the construction, repair and maintenance of improvements as provided in this section 2.02, above as if the entirety of the residence improvements (including attached garage) was situated or located on the Zero Setback Line.

Subject to the use limitations described in this Section 2.02, each Owner of a Lot in the Subdivision agrees for himself, his heirs, assigns or successors in interest that he will permit free access over and across such Owner's Lot by Owners of adjoining Lots, when such access is essential for the maintenance of drainage facilities, when such access is essential during and in connection with the construction of improvements on adjacent property, and when such access is necessary to make repairs or to provide maintenance on the house or building on adjacent property.

ARTICLE III **USE RESTRICTIONS**

Section 3.01 – Adoption of the Declaration of Covenants, Conditions and Restrictions, Point Aquarius, Section 9. The Declarant specifically adopts and continues the Covenants, Conditions and Restrictions of Point Aquarius, Section 9 as set forth in the instrument dated May 8, 1990 and recorded in the Real Property Records for Montgomery County, Texas at Clerk's file No. 9021170 (the "Point Aquarius Restrictions").

Section 3.02 - Solid Wall Construction Adjacent to Zero Setback Line. Each residential structure and attached garage must have a solid wall (no penetrations), except that "glass brick" or "glass block" or "obscure" glass windows may be installed in such wall on the side of the residence and attached garage adjacent to or facing the Zero Setback Line. Subject to the prior approval of the Committee, portions of residential structures located at least **ten feet** from the Zero Setback Line may have approved penetrations, i.e., windows, doors, etc., located in the wall facing the Zero Setback Line.

Section 3.03 - Irrigation Systems for all Residences.

- (a) At the time of construction of a residence, an irrigation system and landscaping, as approved by the Committee shall be installed by Declarant as set forth in the Guidelines at the sole expense of the Declarant. The water supply for such irrigation must come from the metered water supply of the residence. Each Owner shall maintain the irrigation system and landscaping on that Owner's property at all times and at no cost to the Declarant or to the Association. Each homeowner shall be responsible for maintaining the irrigation and landscaping in the **ten foot** easement and in the rear yard.

- (b) No material improvements or modifications of any kind may be made to the sprinkler and irrigation system unless approved in writing by the Committee. Each Owner shall be responsible for maintaining and keeping in good repair and operating conditions the sprinkler and irrigation system located on that Owner's Lot.
- (c) The sprinkler system installed on each lot shall conform to the rules and regulations of TECQ for protection of water resources and water conservation.

Section 3.04 - Landscaping and Grounds Maintenance. Save and except the private, enclosed Rear yards of homes built in Summerchase, Section One, all grounds and exterior areas in **Summerchase, Section One** (the "Open Area") shall be under the sole and exclusive care and custody of the Subassociation. This includes all front yards of all homes, all esplanades, boulevards, and other, open areas. There is **reserved** in each deed conveying a home to an Owner, a landscaping easement over the front yard of such home as well as the side yard of all homes which have streets along the sides of such homes. By such easement the Subassociation, its agents, licensees, contractors and assigns may enter such landscaping areas at any time or times for the purpose of performing the landscaping functions provided in these Restrictions. In such Open Areas the Subassociation shall control and determine all aspects of the landscape design, plant selection, plant placement, care, custody and maintenance, including mowing, feeding, weed control, debris removal, plant removal and plant replacement. The Subassociation may from time to time, contract for such functions with one or more contractors to be determined by the Subassociation. Owners purchasing homes in Summerchase, Section One acknowledge that they are purchasing in a community characterized by neighborhood-controlled landscaping design, care and maintenance for certain areas, including the Owner's front yard, being the area between the street and the Owner's front door. Homes having streets along their sides shall be subject to control of the side yards by the Subassociation to the same extent.

Section 3.05 - Owners' Responsibilities. All Owners of homes in **Summerchase, Section One** shall continuously provide adequate and proper quantities of water to maintain in a healthy condition all landscaping and plants in the Owner's front yard, at the Owner's sole expense. Homeowners may, at any time, select annual and perennial plants with prior approval of the Committee. It shall be a violation of these Restrictions for any Owner to do any of the following in the areas subject to the control of the Subassociation:

- (a) remove, kill, cut, trim, damage any plants, shrubs, trees, and the like placed in the open areas by the Subassociation.
- (b) fail to provide water sufficiently to maintain the plants in the area served by the Owner's sprinkler system.
- (c) provide excessive amounts of water for the plants in the areas covered by the Owner's sprinkler system.

Section 3.06 - Rear yards. Owners shall maintain their Rear Yards to provide an attractive and well-cared-for appearance. No Owner may use that Owner's Rear Yard in a way that may be unhealthy or harmful to residents of the Subdivision, such as growing poisonous plants, poison oak, or the like, or any plants commonly known as "predator" or "invasive" plants capable of growing or spreading into areas outside of the Owner's Rear yard, damaging, injuring or killing landscaped areas maintained by the Subassociation or other Owners. Such plants are conclusively deemed nuisances and the Subassociation as well as any other injured Owner shall be entitled to obtain injunctive relief, damages, penalties, attorney's fees and court costs against any Owner keeping such plants in the Subdivision.

Section 3.07 - Penalties, Liens and Remedies for Breach.

- (a) Each Owner breaching these Restrictions pertaining to the landscaping functions to be conducted by the Association shall be liable to the Association for the actual damages caused by such Owner to the landscaping areas of the Owner's lot that are controlled by the Subassociation. Such damages shall include, but not be limited to, the value of plants lost or destroyed, the cost of removing and replacing plants damaged by such Owner, repairs to the landscaping area including repairs to the Owner's sprinkler system, and the reasonable attorney's fees, expert witness fees and court costs reasonably incurred by the Subassociation in any suit to enforce these provisions by any Owner. No Owner, however, shall be liable for damages caused by persons other than the Owner, and other than the Owner's guests, invitees, licensees and contractors. All Owners shall be responsible for promptly notifying the Subassociation of any damages or injury to the areas or plants being maintained by the Subassociation.
- (b) All sums due and owing the Association by any Owner for damages caused to the landscape areas being maintained by the Subassociation, and all attorney's fees and court costs assessed by a court on account of any damages caused by an Owner, shall be secured by the Lien described in these Restrictions as securing payment of the Maintenance Charge. Such Lien shall apply in addition to all other liens and encumbrances that may be held by the Subassociation on account of any final judgment for damages caused by such Owner.

ARTICLE IV
SUMMERCHASE POA

Section 4.01 - Creation of Subdivision. The Declarant shall form a Subassociation, called Summerchase Property Owners Association ("Summerchase POA"), a Texas non-profit corporation which shall have as its primary purpose the benefit of the Owners. The Subassociation may be formed by filing Articles of Incorporation with the Secretary of State of Texas or by filing an amendment to the Declaration, without the necessity of the joinder of any other person or entity, whereupon all duties, obligations, benefits, liens and rights hereunder in favor of the Subassociation

shall vest in said corporation or other entity. The Subassociation may adopt whatever By-Laws it may choose to govern the organization or operation of the Subassociation and the use and enjoyment of the Lots and Common Areas, provided same are not in conflict with the terms of the Subassociation, the Subassociation alone shall be entitled to exercise the rights of the Subassociation created hereunder with respect to the Subassociation Fund without any further consent or authorization from the Association, and the Subassociation alone shall perform all of the duties created hereunder to be performed by the Association with respect to the Common Areas, the Subassociation Charge and the Subassociation Fund.

ARTICLE V
SUBASSOCIATION CHARGE

Section 5.01 - Basis of the Subassociation Charge.

- (a) The Subassociation Charge shall be used to create a fund to be known as the "Subassociation Fund," which shall be used as hereinafter provided and such Subassociation Charge shall be paid by the Owner of each Lot (or residential building site) to the Subassociation annually, in advance. The Board of Trustees shall designate the due date of the Subassociation Charge from time to time by written notice to the Owner, which notice may consist of a statement for the Subassociation Charge, or on such other basis (monthly, quarterly or semi-annually, as the Board of Trustees may designate in its sole discretion). The Subassociation Charge payable during the first year of an Owner's ownership of a Lot shall be prorated and be payable at the closing of said Owner's purchase of the Lot or when invoiced by the Association. All of the rights and remedies of the Association with respect to the Maintenance Charge also shall apply to the Subassociation Charge prior to the time that a Subassociation is created for the Subdivision and upon the creation of a Subassociation, the Subassociation thereafter shall be entitled to exercise the same rights and remedies with respect to the Subassociation Charge that the Association exercises with respect to the Maintenance Charge.
- (b) The Subassociation Charge that has not paid within thirty **30 days** after the due date shall bear interest from the due date at the lesser of (i) the rate of **18%** per annum or (ii) the maximum rate permitted by law. The Subassociation may bring an action at law against the Owner personally obligated to pay the same, or foreclose the thereafter described lien against the Owner's Lot and then file suit to collect any deficiency. No Owner may waive or otherwise escape liability for the Maintenance Charge, Subassociation Charge or any other charge or assessment by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his or her Lot.
- (c) The exact amount of the Maintenance Charge and Subassociation Charge applicable to each Lot will be determined by the Board of Trustees not less than a month

preceding the due date of the Maintenance Charge. All other matters relating to the Maintenance Charge and the collection, expenditure and administration of the Maintenance Fund shall be determined by the Board of Trustees, subject to the provisions hereof. Subsequent to the creation of a Subassociation, all matters relating to the Subassociation Charge and the collection, expenditure and administration of the Subassociation Charge shall be determined by the Board of Trustees of the Subassociation. The Association shall establish a separate bank account for the Subassociation Fund and shall not commingle any other maintenance charges with the Subassociation Charge.

Section 5.02 - Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, Subassociation Charge, Utility Charge and other charges and assessments hereby levied, a maintenance assessment lien, shall be and is hereby reserved in the deed from the Declarant to the purchaser of each Lot or portion thereof for the benefit of the Association, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for the payment of the Maintenance Charge, Subassociation Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a contractual lien on such Lot, which lien may be foreclosed on by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute), and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. The Association shall have the right to bid on and purchase such foreclosed upon Lot at such foreclosure sale.

As provided above, the Association shall have the right to assign the lien described in Article V securing the payment of the Utility Charge and other charges and assessments to: (i) the Subassociation (in the case of the Subassociation Charge), (ii) the Utility District (in case of the said Utility Charge), and (iii) the other applicable entities collecting said other charges and assessments. The assignment of said liens shall be evidenced in writing and filed for record in the Real Property Records of Montgomery County, Texas. Upon the recordation of said assignment instrument, the Assignee shall be entitled to exercise the same rights with respect to said entity's collection of the charge or assessment that is payable directly to said entity as the Association may exercise hereunder with respect to its collection of the Maintenance Charge.

Section 5.03 - Purpose of the Subassociation Charge. The Charge levied by the Association or Subassociation, as applicable, shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the Owners of the Subdivision. In particular, the Subassociation Charge shall be used for the maintenance and repair of the Subdivision entrance,

maintenance and repair of the landscaping and other improvements within the Common Areas of the Subdivision, such as green areas, reserves and parks, and maintenance and repair of mailboxes and streets and roads within the Subdivision (to the extent not maintained by the Association), and establishment and maintenance of a security system exclusively for Subassociation at Summerchase if established by the Declarant, Association or Subassociation. The Subassociation Charge also shall be used to establish and maintain a reserve fund for the above described uses. The Subassociation Fund may be expended by the Association or Subassociation, as applicable, for any purposes which, in the judgment of the Association or Subassociation, as applicable, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association or Subassociation, as applicable, of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Areas in the Subdivision as may from time to time be authorized by the Board of Trustees of the Association or Subassociation, as applicable, including, but not limited to, all construction, maintenance and operational matters involved in maintaining, care for or operating said Common Areas or both, including but not limited to, payment of all legal and other expenses incurred in connection with the enforcement of this Declaration and Rules and Regulations relating to such Common Areas, and the payment of all reasonable and necessary expenses in connection with the collection and administration of the Subassociation Charge that the Board of Trustees of the Association or Subassociation, as applicable, shall determine to be necessary to meet the primary purposes with respect to the Subassociation Charge. Except for the Association's or Subassociation's, as applicable, use of the Subassociation Charge to perform its duties described in this Declaration, the use of the Subassociation Charge for any of these purposes is permissive and not mandatory. It is understood that the judgment of the Association or Subassociation, as applicable, as to the expenditure of the Subassociation Fund shall be final and conclusive so long as such judgment is exercised in good faith.

The Association or the Subassociation, in connection with the operation, management and administration of the Subassociation Charge, shall have the responsibility of the maintenance of the grounds and landscaping in the Landscape Easement portion of each Lot after a house is constructed thereon. Owners shall have the responsibility of replacing any grass, trees, shrubbery, or other plants that have died, including the grass, trees, shrubs or other plants as well as the labor and materials necessary for installation of same at Owner's sole cost and expense.

Owner, at Owner's expense, shall have the responsibility of removing any trees that have died which are larger than three inches in diameter at Owner's sole cost and expense. Additionally, Owner shall have the responsibility at his expense of providing necessary maintenance and repair of Owner's irrigation system as provided for in Section 3.03 of these restrictions.

In the event of any default by Owner or other occupant of any Lot in observing the above requirements, which default is continuing after 10 days written notice thereof to the Owner or occupant, as applicable, the Association or Subassociation, or their designated agents have the rights but not the obligation, without liability to the Owner, Contractor or any other occupants of the Lot in trespass or otherwise, to enter upon and/or authorize one or more others to enter upon said Lot and replace any dead grass, trees, shrubbery or other plants that have died and remove and/or replace any

annuals, perennials and other seasonal color plants, or any part thereof, so as to maintain Owner's landscaped area in a good quality appearance. The Association or Subassociation may charge the Owner, Builder or occupant of such Lot for the cost of such work and associated materials. Payment thereof shall be collected by adding the charges to the Maintenance Charge (secured by a maintenance lien, as described in Section 6.03) and shall be payable on the first day of the next calendar month with the regular monthly Maintenance Charge payment.

In addition to the Subassociation Charge, the Association or the Subassociation, as applicable, may levy, in any assessment year, a supplemental Subassociation Charge ("Supplemental Subassociation Charge") applicable to that year only, for the purpose of defraying, in whole or in part, any unexpected cost incurred by the Association or Subassociation to replace landscaping or other improvements in the Common areas damaged by freeze, hail storm, fire, disease, deterioration caused by age, or other acts of God requiring the removal and replacement or repair of such landscaping and improvements.

ARTICLE VI

STATEMENT OF CORRECTIONS

This Corrected Declaration of Covenants, Conditions and Restrictions is made solely for the purpose of correcting certain portions of the original Declaration of Covenants, Conditions and Restrictions made on November 10, 2005 and recorded in the Real Property Records of Montgomery County, Texas, at Clerk's File No. 2005-127363 and File Code No. 956-10-2657 solely for the following purpose:

1. To correctly state the Reserve of Point Aquarius Section 9 to be Restricted Reserve "B".
2. To correct Section 1.08 – "Zero Setback Line" or "Zero Building Line", by removing an erroneous reference to an Exhibit and to correctly state the meaning to such terms.
3. To place page 10 in its proper location.

All provisions not so corrected shall stand as they were originally written.

