



City of New Braunfels

POST OFFICE BOX [REDACTED] • NEW BRAUNFELS, TEXAS [REDACTED] • AC 512/ 625-3425
311747 78131-1747

27 July 1989

TO WHOM IT MAY CONCERN:

This will confirm that all streets in Summerwood Subdivision, Unit I, as shown on the plat recorded in the Map and Plat Records of Comal County, Volume 5, Pages 380 and 381, have been accepted by the city of New Braunfels. As such, the city is responsible for maintenance of the streets in Summerwood Subdivision, Unit I, all of which is located in the city limits of New Braunfels.


Mike Shands
Director of Planning

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

SUMMERWOOD SUBDIVISION, UNIT I

THE STATE OF TEXAS
COUNTY OF COMAL

KNOW ALL MEN BY THESE PRESENTS:

THAT this Declaration is made on the date hereinafter set forth by SUMMERWOOD DEVELOPMENT CORPORATION, a Texas corporation (hereinafter referred to as Declarant);

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real property known as Summerwood Subdivision, Unit I, a Subdivision in Comal County, Texas, according to the map or plat thereof recorded in Volume 5, Pages 380-381, of the Map Records of Comal County, Texas; and,

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Summerwood Subdivision, Unit I, that there be established and maintained a uniform plan for the improvement and development of Summerwood Subdivision, Unit I as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above as Summerwood Subdivision, Unit I, shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said real property. These easements, covenants, restrictions and conditions shall run with said real property and be binding upon all parties having or acquiring any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Summerwood Property Owners Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that portion of the Subdivision, owned or acquired by the Association for the common use and enjoyment of the Members of the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler systems, pavement, streets, pipes, wires, conduits and other public utility lines situated thereon. It is specifically understood and agreed that future Units will be added to Summerwood Subdivision and that all such units shall have the use and benefit of the Common Area subject to the same restrictions imposed in Articles I, II, III, IV, and V contained herein. Summerwood Development Corporation shall have sole discretion in adding these units. The Common Area is more particularly described as Exhibit "A" attached hereto and made a part hereof for all purposes.

Section 3. "Declarant" shall mean and refer to Summerwood Development Corporation, a Texas corporation, its successors and assigns.

Section 4. "Purchaser" shall mean and refer to an individual who purchases a lot.

Section 5. "Lot" shall mean and refer to any of the numbered plots of land shown on the recorded map or plat of the Subdivision.

"Corner Lot" is a lot that abuts on more than one street. A Corner Lot shall be deemed to front on the street designated by the Architectural Control Committee.

Section 6. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit.

Section 7. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 8. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, or fee simple title to any Lot which is a part of the Subdivision, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description described in Exhibit "B" attached hereto and made a part hereof.

Section 11. "Assessable Tract" shall mean and refer to any lot in Summerwood Subdivision, Unit I.

Section 12. "Mortgagee" shall mean and refer to a person or entity which has advanced money to an Owner or to Declarant for the purchase or improvement of a lot or other property in the Subdivision.

ARTICLE II

Property Rights

Section 1. Owner's Easement of Access and Enjoyment: Every Owner shall have an easement of access and a right and easement of enjoyment in and to Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;
- (b) The right of the Association to suspend a Member's voting rights and right to use the recreational and other facilities owned or operated by the Association, for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid; and for a period not to exceed thirty

(30) days for any infraction of its published rules and regulations;

- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members;
- (d) The right of the Association to limit the number of guests of Members; and,
- (e) The right of the Association to encumber and secure debts against the Common Areas or a portion thereof to maintain, improve or construct facilities thereon or to refinance any debt secured by such property.

Section 2. Delegation of Use: Any Owner may delegate in accordance with the By-laws of the Association, his right of enjoyment to the Common Area and facilities to members of his family, or his tenants, who reside on the Lot owned by him. If a residence is leased, then the lessee shall have the use of the Common Area, and the lessor shall have no rights to the Common Area. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefor, whether it shall be expressed in the Deed or other evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration of Covenants, Conditions and Restrictions and any rules and regulations published by the Association applicable to the Lot and further providing that non-compliance with these terms of the lease shall be a default thereunder.

Section 3. Title to Common Area: Subject to the terms and provisions of any deed of trust or other lien instrument against the Common Areas or a portion thereof, the Common Area shall remain undivided and shall at all times be owned by the Association or its successors, it being agreed that provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services.

ARTICLE III

Membership and Voting Rights

Section 1. Membership: Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot, except as to a lessee. Ownership of a Lot shall be the sole qualification for membership, except as to a Lessee. Any Mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or non-judicial foreclosure, or by voluntary reconveyance of the property from its debtor shall be a Class B Member of the Association.

Section 2. Voting Rights: There shall be two classes of membership entitled to voting rights in the Association and they shall be as follows:

- (a) Class A: All Members in the Association, other than Declarant or Mortgagee, shall be considered Class A Members, and for each Lot owned shall be entitled to one vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members, however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.
- (b) Class B: Class B Members shall be those individuals or entities who are herein defined as Declarant or Mortgagee, and for each Lot owned they shall be entitled to fifty votes on each matter coming before the Members at any meeting or otherwise. When a particular Lot is owned by more than one such individual or entity, all such individuals or entities holding an ownership interest in that Lot shall be considered Class B Members, however, for that particular Lot they shall be entitled to a total of no more than fifty votes on each matter coming before the Members at any meeting or otherwise. The fifty votes for such Lot shall be exercised as they among themselves determine. Once a Lot is sold to an individual or individuals who would be classified as Class A Members, the fifty votes attached to that Lot shall be extinguished. All Class B Memberships shall cease and be automatically converted into Class A Memberships on the happening of either of the following events, whichever occurs earlier:
 - (i) When the total number of votes entitled to be cast by the Class A Members at any meeting of the Members or otherwise equals the total number of votes entitled to be cast by the Class B Members; or
 - (ii) Ten (10) years from the date this Declaration of Covenants, Conditions and Restrictions is filed with the County Clerk of Comal County, Texas, for recordation in the Deed Records of Comal County, Texas.

ARTICLE IV

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation for Assessments: The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot which shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be expressed in the Deed or other evidence or the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual or monthly assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in the instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing Vendor's Lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs, and reasonable attorney's fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fell due notwithstanding any subsequent transfer of title to such Lot. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

BEING 3.274 acres of land out of the Henry Foster Survey No. 34 and also being out of a 67.871 acre tract as described in Volume 191, Pages 410-414, of the Deed Records of Comal County, Texas and being more particularly described as follows:

BEGINNING at a point on the East bank of the Guadalupe River, said point being S. 51° 19' 44" E. 810.04 feet from the N. W. corner of above referenced tract, for the N. W. corner of this tract;

THENCE: N. 53° 45' 00" E. 103.00 feet and N. 78° 45' 26" E. 62.81 feet to a point on the side of a bluff for the N. E. corner of this tract;

THENCE: S. 14° 46' 32" E. 142.46 feet to a point for an angle;

THENCE: S. 26° 31' 18" E. 155.32 feet to a point for an angle;

THENCE: S. 64° 33' 09" E. 153.39 feet to a point for an angle;

THENCE: S. 40° 50' 54" E. 96.02 feet to a point for an angle;

THENCE: S. 03° 34' 29" W. 27.38 feet and S. 22° 07' 20" W. 70.81 feet to a point for an interior corner of this tract;

THENCE: S. 70° 52' 22" E. 139.66 feet to a point for a corner;

THENCE: S. 24° 03' 49" W. 57.77 feet to a point for an angle;

THENCE: Along a curve to the left and having a central angle of 07° 27' 07", a radius of 222.05 feet, a tangent of 14.46 feet, a length of 28.88 feet, and a chord bearing and distance of S. 20° 18' 44" W. 28.86 feet to a point for the S. E. corner of this tract;

THENCE: N. 77° 08' 47" W. 86.88 feet to a point for an angle;

THENCE: Along a curve to the left and having a central angle of 30° 01' 37", a radius of 209.46 feet, a tangent of 56.18 feet, a length of 109.77 feet and a chord bearing and distance of S. 86° 48' 01" W. 108.52 feet to a point for a corner;

THENCE: N. 22° 08' 50" W. 120.0 feet and N. 86° 32' 53" W. 220.55 feet to a point on the East bank of the Guadalupe River for the S. W. corner of this tract;

THENCE: Along the meanders of said river bank as follows:

- N. 04° 01' 38" E. 100.0 feet
- N. 06° 30' 04" W. 189.54 feet
- N. 23° 30' 59" W. 55.24 feet
- N. 26° 28' 30" W. 65.30 feet
- N. 05° 14' 56" E. 25.84 feet

to the PLACE OF BEGINNING and containing 3.274 acres of land more or less.

BEING 23.5656 acres of land out of the Henry Foster Survey No. 34, and also being out of the central portion of a 67.871 acre tract as described in Volume 191, Pages 410-414 of the Deed Records of Comal County, Texas, and being more particularly described as follows:

BEGINNING: At a point in the West R. O. W. line of Loop 337, said point being S. 07° 38' 00" E. 807.79 feet from the Northeast corner of above referenced tract, for a corner of this tract;

THENCE: S. 07° 38' 00" E. 60.0 feet along said R. O. W. line to a concrete highway monument in same for an angle point of this tract, said point also being the beginning of a curve to the left;

THENCE: Along said R. O. W. line and said curve having a central angle of 00° 17' 30", a radius of 3929.80 feet, a tangent of 10.00 feet, a length of 20.00 feet and a chord bearing and distance of S. 07° 47' 09" E. 20.00 feet to a point in same for a corner of this tract;

THENCE: S. 82° 22' 00" W. 60.07 feet to the beginning of a curve to the left;

THENCE: Along said curve having a central angle of 59° 24' 57", a radius of 87.63 feet, a tangent of 50.0 feet, a length of 90.87 feet and a chord bearing and distance of S. 52° 39' 20" W. 86.86 feet to the end of said curve;

THENCE: S. 22° 57' 03" W. 22.0 feet to a point for a corner;

THENCE: S. 07° 56' 55" E. 544.60 feet to a point for a corner;

THENCE: Along a curve to the right having a central angle of 69° 19' 42", a radius of 283.57 feet, a tangent of 196.09 feet, a length of 343.12 feet and a chord bearing and distance of S. 10° 36' 01" E. 322.58 feet to the end of said curve;

THENCE: S. 24° 03' 49" W. 32.80 feet to a point for a corner;

THENCE: S. 28° 38' 28" E. 135.92 feet to a point for an angle point;

THENCE: S. 24° 53' 53" E. 237.05 feet to a point for an angle point;

THENCE: S. 12° 46' 46" E. 237.98 feet to a point for an angle point;

THENCE: S. 32° 52' 51" W. 160.0 feet to a point for an angle point;

THENCE: S. 46° 22' 50" W. 387.04 feet to a point for a corner of this tract;

THENCE: Along a curve to the left having a central angle of 08° 15' 16", a radius of 321.93 feet, a tangent of 23.23 feet, a length of 46.38 feet and a chord bearing and distance of N. 73° 38' 26" W. 46.34 feet to the end of said curve;

THENCE: N. 77° 50' 05" W. 350.20 feet to a point for an angle point;

THENCE: S. 65° 19' 33" W. 73.25 feet to a point for an angle point;

THENCE: N. 84° 50' 01" W. 44.53 feet to a point for an angle point;

THENCE: N. 55° 18' 24" W. 185.00 feet to a point on the East bank of the Guadalupe River for the Southwest corner of this tract;

THENCE: Along the meanders of the Guadalupe River as follows:

N. 31° 12' 24" E. 100.0 feet
N. 23° 25' 48" E. 242.94 feet
N. 14° 18' 57" E. 215.14 feet
N. 09° 24' 05" E. 229.42 feet
N. 04° 01' 50" E. 132.49 feet

to a point in same for a corner of this tract;

THENCE: S. 86° 32' 53" E. 220.55 feet to a point for a corner;

THENCE: S. 22° 08' 50" E. 120.00 feet to a point for a corner;

THENCE: Along a curve to the right having a central angle of 30° 01' 37", a radius of 209.46 feet, a tangent of 56.18 feet, a length of 109.77 feet and a chord bearing and distance of N. 86° 48' 01" E. 108.52 feet to the end of said curve;

THENCE: S. 77° 08' 47" E. 86.88 feet to a point for a corner;

THENCE: Along a curve to the right having a central angle of 07° 27' 07", a radius of 222.05 feet, a tangent of 14.46 feet, a length of 28.88 feet and a chord bearing and distance of N. 20° 18' 44" E. 28.86 feet to the end of said curve;

THENCE: N. 24° 03' 49" E. 57.77 feet to a point for a corner of this tract;

THENCE: N. 70° 52' 22" W. 139.66 feet to a point for a corner of this tract;

THENCE: N. 22° 07' 20" E. 70.81 feet to a point for an angle;

THENCE: N. 03° 34' 29" E. 27.38 feet to a point for an angle;

THENCE: N. 40° 50' 54" W. 96.02 feet to a point for an angle point;

THENCE: N. 64° 33' 09" W. 153.39 feet to a point for an angle;

THENCE: N. 26° 31' 18" W. 155.32 feet to a point for an angle point;

THENCE: N. 14° 46' 32" W. 192.46 feet to a point for an angle point;

THENCE: N. 22° 24' 06" E. 257.69 feet to a point for a corner of this tract;

THENCE: S. 67° 02' 57" E. 170.00 feet to a point for a corner of this tract;
THENCE: N. 22° 57' 03" E. 60.00 feet to a point for a corner of this tract;
THENCE: N. 67° 02' 57" W. 180.0 feet to a point for a corner of this tract;
THENCE: N. 22° 57' 03" E. 247.89 feet to a point for a corner of this tract;
THENCE: S. 61° 18' 03" E. 224.17 feet to a point for a corner of this tract;
THENCE: N. 82° 22' 00" E. 82.44 feet to the PLACE OF BEGINNING and containing 23.5656 acres of land, more or less.

SAVE AND EXCEPT THEREFROM, the following described tract of land:

BEING a 1.265 acre tract of land situated in the Henry Foster Survey No. 34, being out of a tract called 67.871 acres recorded in Volume 191, Pages 410-414 of the Deed Records of Comal County, Texas, and being more particularly described as follows:

BEGINNING at a point for reference, the Northeast corner of the aforementioned 67.871 acre tract;

THENCE: S 07° 38' 00" E 807.79 feet to the beginning point of a 23.5656 acre tract;

THENCE: S 07° 38' 00" E 60.0 feet along the West right of way line of Loop 337 to a concrete highway monument in same for an angle point and the beginning of a curve to the left;

THENCE: Along said right of way line and said curve having a central angle of 0° 17' 30", a radius of 3929.80 feet, a tangent of 10.0 feet, a length of 20.00 feet and a chord bearing and distance of S 07° 47' 09" E 20.00 feet to a point in same for a corner;

THENCE: S 82° 22' 00" W 60.07 feet along a Southeast line of a 23.5656 acre tract to the beginning of a curve to the left;

THENCE: Along said curve and along a Southeast line of a 23.5656 acre tract, said curve having a central angle of 59° 24' 57", a radius of 87.63 feet, a tangent of 50.0 feet, a length of 90.87 feet, and a chord bearing and distance of S 52° 39' 20" W 86.86 feet to the end of said curve;

THENCE: S 22° 57' 03" W 22.0 feet to the Point of Beginning of the herein described 1.265 acre tract;

THENCE: S 07° 56' 55" E a distance of 544.60 feet to an iron pin set for the South corner of this tract;

THENCE: Along a curve to the left in a Northwesterly direction, said curve having a delta angle of 24° 00' 00", a radius of 283.57 feet, an arc distance of 118.79 feet to a point for the P.C. of a curve to the right;

THENCE: Along the arc of a curve to the right in a Northern direction, said curve having a delta angle of 92° 13' 00", a radius of 157.38 feet, an arc distance of 253.30 feet to the P.T. of this curve;

THENCE: N 22° 57' 03" E a distance of 290.01 feet to the Point of Beginning and containing 1.265 acres of land, more or less.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums, assessments by Summerwood Property Owners Association, Inc., and repair, maintenance and acquisition expenses incurred by the Association and at the option of the Board of Directors of the Association for any or all of the following purposes: lighting, improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; acquiring and maintaining any amenities or recreational facilities that may be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision in neat and good order, or which they consider of general benefit to the Owners or occupants of the Subdivision, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided. It being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith. It is also specifically understood and agreed that First National Bank of New Braunfels, Texas, has advanced to Summerwood Property Owners Association, Inc., the sum of \$40,000.00 for the use and benefit of the Association to construct certain facilities on the common area described as Exhibit "A" attached hereto, and the assessments will be used to repay this indebtedness, and a first lien deed of trust has been executed by the Association against such Common Area to secure the payment of said debt.

Section 3. Basis and Maximum Level of Annual Assessments: Until January 1 of the year immediately following the conveyance of the first Lot to Owner, the maximum monthly assessment shall be Seven and No/100 (\$7.00) Dollars per Lot. From and after January 1 of the year immediately following the conveyance of the first Lot, the maximum annual assessment may be automatically increased, effective January 1 of each year, by Two and No/100 (\$2.00) Dollars per month or by an amount equal to a ten percent (10%) increase over the prior years annual assessment, whichever is greater, without a vote of the Members of the Association. From and after January 1 of the year immediately following the conveyance of the first Lot, any monthly assessment in excess of Two and No/100 (\$2.00) Dollars per month or ten percent (10%) must be approved by the Owners of two-thirds (2/3) of the Lots in the Subdivision. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed with the County Clerk of Comal County, Texas, for recordation in the Deed Records of Comal County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the monthly assessment at an amount not in excess of the maximum amount approved by the Owners.

Section 4. Special Assessments for Capital Improvement: In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or unexpected repair or replacement of a particular capital improvement located upon Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the written approval of the Owners of two-thirds (2/3) of the Lots in the Subdivision.

Section 5. Notice of Quorum for Any Action Authorized Under Sections 3 and 4: Written notice of any meeting of the Members of the Association called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members and shall be posted at a public place within the Subdivision not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of the Members holding fifty percent (50%) of all membership votes entitled to be cast in each membership class or their proxies shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice and quorum requirements. In lieu of such a meeting and notice, a door-to-door canvass may be used to get the required written approval of the Owners as hereinafter provided.

Section 6. Rates of Assessment: Both monthly and special assessments shall apply to all Lots, except those owned by the Declarant or Mortgagee and must be fixed at uniform rates.

Section 7. Date of Commencement and Determination of Annual Assessment: The monthly assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot to a Purchaser. The first assessment shall be adjusted according to the number of months remaining in the calendar year. On or before the 30th day of November in each year, the Board of Directors of the Association shall fix the amount of the monthly assessment to be levied against each Lot in the next calendar year. Written notice of the figure at which the Board of Directors of the Association has set the monthly assessment shall be sent to every Owner of a Lot on January 1st and July 1st of each year in advance for the six (6) month period, or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association: Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the due date at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Lot Owner personally obligated to pay the same, or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such Lot Owner by his acceptance of a Deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Lot Owner personally for the collection of such assessments and charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien foreclosure on a real property, and such Lot Owner expressly grants to the Association a power of sale and non-judicial foreclosure in connection with said lien. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien Mortgages: As hereinabove provided, the title to each Lot shall be subject to the Vendor's Lien securing the payment of all assessments and charges due the Association, but this Vendor's Lien shall be subordinate to any valid purchase money lien or mortgage created for improvements covering a Lot. Sale or transfer of any Lot shall not affect this Vendor's Lien. However, the sale or transfer of any Lot which is subject to any valid purchase money lien or mortgage, pursuant to a judicial or non-judicial foreclosure under such lien or mortgage shall extinguish the Vendor's Lien securing such assessment or charge as to payments which became due prior to such sale or transfer. So long as Mortgagee owns a lot or lots acquired through a judicial or non-judicial foreclosure, or by voluntary reconveyance from its debtor no charges or assessments shall accrue with respect thereto; however, upon a sale of such lot or lots to an Owner as herein defined, such lots and the new Owner thereof shall be responsible and liable for the payment of any charges or assessments thereafter becoming due in accordance with the terms hereof.

In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance,

subject to such limitations, if any, each Board may determine.

Section 10. Exempt Property: All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which has been sold shall be exempt from said assessments and charges.

ARTICLE V

Insurance

The Association, through the Board of Directors, or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

- (a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or the equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, and any such other risk as shall customarily be covered with respect to projects similar in construction, location and use;
- (b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (but with coverage of not less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location, and use; and
- (c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners.

Premiums for all such insurance policies carried by the Association shall be a common expense payable by assessments on all Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds on a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, they shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency. This shall be done only after compliance with all the requirements for imposition of special assessments.

ARTICLE VI

Permitted Uses and Restrictions

LOT USE: Said land and premises shall be used solely for single family residential purposes. The term "Residential Purposes", as used herein, shall be held and construed to exclude duplexes, or any other type of multi-family dwelling. No Lot shall be used for more than one residence, and its outbuildings. No Lot shall be used or occupied for trade or business of any kind.

EXISTING STRUCTURES: No existing structure shall be moved on said land and premises, and all improvements erected thereon shall be of a permanent type, character and construction. No building previously constructed elsewhere shall be moved on any Lot.

SET-BACK LINES: The residences on all Lots in this Unit shall have a minimum set-back of twenty-five (25) feet from the property line, and the front wall thereof shall not be farther back than fifty (50) feet from the front property line. And such residences shall be set-back a minimum distance of eight (8) feet from the side or adjoining property lines, except Lots in Block I and Block II where the minimum distance shall be six (6) feet, and provided further that where driveways are located in side yards, no obstructions such as, but not limited to, entrance platforms, steps and chimneys shall be nearer to the side property line than six (6) feet. No residence building shall be located nearer to the rear property line than thirty (30) feet. No other building shall be located nearer to the rear property line than ten (10) feet. On all corner Lots, no building shall be located nearer than fifteen (15) feet to any side street line, and a detached garage on a corner Lot may not be nearer the side street line than the wall of the main residence. For the purpose of this covenant, eaves and steps shall not be considered as a part of the building provided, however, that there be a minimum of ten (10) feet between edges of overhangs of structures on adjacent lots and provided that this shall not be construed to permit any encroachment on another Lot or on a street. The maximum area of a Lot which may be used for buildings shall not exceed forty percent (40%) thereof. The Building area includes the total ground area of each building and accessory building but does not include the area of uncovered entrance platforms, terraces and steps.

MINIMUM LIVING AREA: The minimum floor living area of the main structure of any dwelling exclusive of porches, terraces, garages and detached accessory buildings shall be 1600 square feet of heated living area for Block I and Block II, 1700 square feet for Block III and Block IV, and 1800 square feet for Block V. The minimum ground floor living area of one and one-half story and two-story residences, exclusive of porches, terraces, garages and detached accessory buildings shall be 1000 square feet of heated living area.

ARCHITECTURAL CONTROL COMMITTEE: There is herewith created an Architectural Control Committee, hereinafter referred to as the Committee, and is composed of S. D. DAVID, JR., EDWARD BADOUH, JR., M. ROB EVERSBERG, and EDWARD BADOUH, all of New Braunfels, Texas. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any

member of the Committee, the remaining shall have full authority to designate a successor. At any time after January 1, 2000, a majority of the lot owners in SUMMERWOOD SUBDIVISION, to include all units, may change the membership of the Committee or may withdraw or restore to the Committee any of the powers and duties.

APPROVAL OF PLANS: No building shall be erected, placed or altered on any lot until the construction plans and specifications, plan showing the location of the structure and the landscaping plan, have been approved by the Architectural Control Committee as to harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. A copy of such plans and specifications shall be delivered to SUMMERWOOD DEVELOPMENT CORPORATION, for its permanent files. The Committee's approval or disapproval required in these covenants shall be in writing. A final inspection upon completion of construction is required to insure compliance with plans and specifications as submitted to the Architectural Control Committee.

ANIMALS: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided they are penned or leashed at all times, and that they are not kept, bred or maintained for any commercial purposes.

DISPOSAL OF GARBAGE AND TRASH: No Lot shall be used or maintained as a dumping ground. No rubbish, trash, garbage or any other waste, shall be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean sanitary condition. No trash, ashes or other refuse may be thrown or dumped on any vacant lot in said addition. Trash, garbage and any other waste shall be kept in covered containers and as prescribed by the City Ordinances of the City of New Braunfels, Texas. Grass, weeds and vegetation on each Lot sold shall be mowed regularly and drainage areas over and across any part of a lot shall be kept clean and open so as to maintain the same in a neat and attractive manner. Dead trees, shrubs, vines and plants shall be removed within a reasonable time from the property. Until a home or residence is built on a Lot, SUMMERWOOD DEVELOPMENT CORPORATION, may have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment and may have dead trees, shrubs and plants removed and the owner or buyer under contract or deed of such Lot shall be obligated to reimburse SUMMERWOOD DEVELOPMENT CORPORATION, for the cost of such work, and such cost may be assessed and be declared a lien on the land.

SIGNS: No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, except signs used by a builder to advertise the property during the construction and sales period.

DRILLING AND MINING: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil well, tanks, tunnels, mining excavations or shafts be permitted upon or in any Lot.

GARAGE: Any residence constructed on said premises shall be required to have a garage, sufficient to store a minimum of two (2) cars. The exterior of the garage shall be constructed of the same material as that of the main residence. At the time of the erection of a residence on any Lot, a garage sufficient to store a minimum of two (2) cars shall be erected thereon. Garages attached to residences may be converted to living areas provided that sufficient driveway space in side yards remains, as is elsewhere provided for herein, and that an additional garage sufficient to store a minimum of two (2) cars must be build in compliance with these restrictions within three (3) months after such conversion, all to be subject to the written approval of the Architectural Control Committee.

OBSTRUCTION OF VIEW: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines, and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No structure shall be erected within such easements and no fence shall be constructed across such easement.

EXTERIOR WALLS: The exterior walls on all residences shall be of brick, stone, rock or wood. No asbestos siding in present form can be used on the exterior walls. The outer walls of the main residence building shall be at least sixty percent (60%) by area composed of rock, brick, stucco on tile, or stucco over wood framing, however, in the case of one and one-half story, two-story dwellings or a split level dwelling, part of which is two-story, the outer walls of the upper story area thereof may be exempted from the above masonry requirements provided that the plans and the materials specified for such upper story outer walls are approved in writing by the Architectural Control Committee named or referred to in said restrictions.

ROOFING: The use of asphalt rolled roofing of any type, or corrugated metal roofing is prohibited on any dwelling erected in this Subdivision, unless said prohibited materials be completely covered with some type of stone, rock, gravel, tile or composition roofing or shingles.

NOXIOUS OR OFFENSIVE ACTIVITY: No noxious or offensive activity shall be carried on upon any Lot, or shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

COMMERCIAL VEHICLES AND HOUSE TRAILERS: No commercial vehicle with more than four (4) wheels shall be parked in this Subdivision excepting temporary parking of moving and storage trucks and vehicles necessary for construction of improvements on said Subdivision, and no house trailers, or "campers" may be parked on any lots or in the streets of said Subdivision permanently.

MOBILE HOMES: No mobile homes shall be placed on any lot either temporarily or permanently. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any lot at any time as a residence, either temporarily, or permanently.

TERMINATION OF COVENANTS: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, unless changed in whole or in part by an instrument signed by a majority of the then owners of the Lots, after which time such covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of Lots have been recorded, agreeing to change said covenants in whole or in part. These Protective Covenants or any provision hereof or any covenant, condition or restriction contained herein may be modified, amended, terminated or extended with the written consent of the owners of seventy-five percent (75%) of the Lot owners within SUMMERWOOD SUBDIVISION, UNIT I; provided, however, that so long as the Declarant owns at least five percent (5%) of the Lots within SUMMERWOOD SUBDIVISION, UNIT I, no such amendment, modification, termination or extension shall be effective without the written approval of Owner. No such modification, amendment, termination or extension shall be effective until a proper instrument in writing has been executed and acknowledged and filed for record in the real property records of Comal County, Texas.

MAINTENANCE OF LOTS: All Lots shall be maintained in a neat, tidy and trim condition at all times. All Lots with residences

constructed upon them shall be maintained in a neat, tidy and trim condition at all times.

The owner and lessee of any property within SUMMERWOOD SUBDIVISION, UNIT I, shall have the responsibility of keeping the premises, building, improvements, appurtenances and landscaping in a well maintained, safe, clean and attractive condition at all times. If, in the opinion of the Architectural Control Committee, any such owner or lessee shall fail in his duty and responsibility of maintenance, the Architectural Control Committee may give such owner or lessee, or both, notice of such fact, and thereupon such owner or lessee, shall, within ten (10) days of such notice, undertake the care and maintenance required to restore said owner's or lessee's property to a safe, clean and attractive condition. Should any such owner or lessee fail to fulfill this duty and responsibility after such notice, the Architectural Control Committee shall have the right and power to perform such care and maintenance and the owner and the lessee, if any, of the property upon which said maintenance work is performed, and such Owner and Lessee shall be liable for the cost of such work and shall promptly reimburse the Architectural Control Committee for the cost thereof. Entry by the Architectural Control Committee, its agents or employees upon the property of the owner or lessee and all action taken thereupon in connection with the care and maintenance of such property shall not be deemed a trespass and all claims for damages by reason thereof are hereby expressly waived. If any owner or lessee shall fail to reimburse the Architectural Control Committee within thirty (30) days after being billed for the services herein set forth by such committee, then the cost of such services shall be a debt of such owner and the lessee, if any, payable to the Architectural Control Committee and shall be a lien against such owner's and lessee's interest in said property. If any legal or equitable proceeding for the collection of any such debt are instituted, the losing party or parties shall pay the attorney's fees of the prevailing party or parties in such amount as may be fixed by the court in such proceedings. The owner or occupant, as the case may be, agrees by the purchase or occupation of any Lot in this Subdivision to pay such statement immediately upon receipt thereof. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

RIGHT TO ENFORCE: Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain or to recover damages.

DRIVEWAYS: All driveways in the addition shall be concrete. No boat, trailer, or any portion thereof shall be parked on any Lot in front of the front main wall line of the respective house unless same be parked in a garage constructed as specified in these restrictions. The parking or standing of motor vehicles on any lot in front of any residence, other than on the driveway and in the garage, is prohibited.

NUISANCE: No nuisance of any kind shall be created or permitted.

VIOLATION OF RESTRICTIONS AND COVENANTS: If any person or persons shall violate or attempt to violate any of the restrictions and covenants herein, it shall be lawful for any other person or persons owning any real property situated in SUMMERWOOD SUBDIVISION, UNIT I, to prosecute proceedings at law or in equity against the person violating or attempting to violate any such restriction and covenant, and either prevent him or them from so doing, or to correct such violation, or to recover damages or other dues for such violation. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter against any person who has violated a covenant or expressed an intent to violate a covenant or is in the process of violating a covenant. Invalidation of any one or any part of these restrictions by judgment or Court order shall in no way affect any of the other provisions or part of provisions which shall remain in full force and effect.

MAILBOXES: Mailboxes shall be under the control of the Architectural Control Committee.

REMODELING OF RESIDENCES: Remodeling of a residence shall comply with these restrictions and may be performed only with the written approval of the Architectural Control Committee.

RESUBDIVIDING OF LOTS: No Lot shall be resubdivided or Lot lines changed without permission in writing from the Architectural Control Committee.

COMPLETION OF BUILDINGS: All buildings must be completed not later than six (6) months after laying foundation.

FENCES OR WALLS: No fences or walls taller than six (6) feet shall be erected, placed or altered on any lot, nor nearer to any street than the minimum set-back lines, unless approved by the Architectural Control Committee.

BUILDING HEIGHT: No building shall exceed the lessor of two and one-half (2-1/2) stories, or thirty-five (35) feet in height.

ENCLOSURE OF FOUNDATION: The foundation of any structure must be enclosed at the perimeter with masonry or wood construction which is in harmony with the remainder of the main dwelling.

STORAGE OF MATERIAL: No storage of any material shall be allowed except during construction of a residence.

WATER WELLS: No water well may be drilled on any Lot.

DIRT: The digging of dirt or the removal of any dirt from any Lot is expressly prohibited, except when necessary in conjunction with construction being done on such Lot.

TREES: No trees shall be cut on any lot except to provide room for construction of buildings or to remove dead or unsightly trees.

CLOTHES LINES: No clothing or other materials shall be aired or dried except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from other Lots or adjacent streets.

RADIO OR TELEVISION ANTENNAE: No radio or television aerial wires or antennae shall be maintained on any portion of any Lot forward of the front of the building; nor shall any free standing antennae of any style be permitted upon the Lot which extends more than ten (10) feet above the height of the roof of the living unit on said Lot.

WORK ON AUTOMOBILES: No owner of any Lot nor any visitor or guest of any owner of any Lot shall be permitted to perform work on automobiles or other vehicles in driveways or streets abutting such Lots.

WINDOW UNITS: No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any building so that the same is visible from the streets.

LANDSCAPING: All open, unpaved space, including, but not limited to, front, side and rear building set-back areas, shall be planted and landscaped and such landscaping shall be maintained in a manner determined to be adequate by the Architectural Control Committee. Landscaping in accordance with approved plans and specifications must be completed within thirty (30) days following the occupancy or completion of any building, whichever occurs first. This 30-day period may be extended in writing by the Architectural Control Committee, acting in its sole good faith discretion, in the event of delays caused by adverse weather conditions or other causes beyond the reasonable control of the property owner requesting such an extension. The Owner of each Lot used for a living unit, shall spot, sod or sprig with grass the area between the front of his living unit and the curb line

of the abutting street. Trees and bushes will be required. The grass shall be of a type and within the standards prescribed by the Architectural Control Committee.

BUILDING MATERIAL: For the purposes of these protective covenants, when construction material is specified herein, another material may be used in lieu thereof, provided that such substituted material is determined by the Architectural Control Committee to be of equivalent or better quality than the specified material.

EXTENSION OF RESTRICTIONS: The owner does not intend hereby nor shall any provision of these Protective Covenants be construed to impose any restriction or limitation upon any other property not specifically described herein; and it is expressly understood and agreed in this connection that while other property has heretofore been sold or developed by owner or owner's successors or assigns, these Protective Covenants shall not affect any such other property not described herein.

APPROVED CONTRACTORS: No construction of a building, structure, fence, wall, or other improvements shall be commenced in SUMMERWOOD SUBDIVISION, UNIT I, until the contractor to perform such construction shall have been approved in writing by the Architectural Control Committee.

SEVERABILITY: Invalidation of any one or more of the foregoing Protective Covenants, restrictions, conditions or charges by judgment or Court shall not affect the validity of any other covenant, restriction, condition or charge set forth herein, which shall remain in full force and effect for all purposes.

Notwithstanding any of the above provisions, the Architectural Control Committee is hereby given the authority to waive in writing, any other restriction or covenant herein contained, when in the opinion of said Committee, the proposed waiver will add to the appearance and value of the subject property and to the subdivision as a whole and will not detract from the appearance or value of other properties in the subdivision.

SIDEWALKS: Sidewalks will be required to be installed on all Lots as per city specifications and subject to approval by the Architectural Control Committee.

EXECUTED this the 5th day of July, A. D., 1979.

A T T E S T:

SUMMERWOOD DEVELOPMENT CORPORATION

By: Sandra Moncrief Secretary

By: Edward Badouh, Jr. EDWARD BADOUH, JR., President

A T T E S T:

SUMMERWOOD PROPERTY OWNERS ASSOCIATION, INC.

By: Deezy Likao Secretary

By: Edward Badouh, Jr. EDWARD BADOUH, JR., President

THE STATE OF TEXAS
COUNTY OF COMAL

BEFORE ME, the undersigned authority, on this day personally appeared EDWARD BADOUH, JR., President of SUMMERWOOD DEVELOPMENT CORPORATION, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 5th day of July, A. D., 1979.

Sherry Henke
Notary Public In and For
Comal County, T E X A S
SHERRY HENKE
Comm. Exp. 10-7-79

THE STATE OF TEXAS
COUNTY OF COMAL

BEFORE ME, the undersigned authority, on this day personally appeared EDWARD BADOUH, JR., President of SUMMERWOOD PROPERTY OWNERS ASSOCIATION, INC., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

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Sherry Henke
Notary Public In and For
Comal County, T E X A S
SHERRY HENKE
Comm. Exp. 10-7-79