

SUMMERS LANDING HOMEOWNERS ASSOCIATION

**FIFTH AMENDMENT TO
DECLARATION OF PROTECTIVE COVENANTS,
EASEMENTS AND RESTRICTIONS**

THIS FIFTH AMENDMENT TO DECLARATION ("Fifth Amendment") is dated _____, 2019 by Summergate Development, LLC, a Minnesota limited liability company ("Declarant") and Summers Landing Homeowners Association, a Minnesota non-profit corporation.

RECITALS

WHEREAS, Declarant, as the owner of all of the Property and Common Elements legally described in that said Declaration ("Declaration") dated June 6, 2016, filed the said Declaration for record with the office of the County Recorder for Washington County, Minnesota on June 8, 2016 as Doc. No. 4069983, thereby subjected the said Property to the covenants, easements and restrictions of the said Declaration; and

WHEREAS, the Declaration was duly amended by that certain First Amendment to Declaration of Protective Covenants, Easements and Restrictions dated October 19, 2016, filed for record with the office of the County Recorder for Washington County, Minnesota on February 14, 2017 as Doc. No. 4102745 and by that certain Second Amendment to Declaration of Protective Covenants, Easements and Restrictions dated May 31, 2017, filed for record with the office of the County Recorder for Washington County, Minnesota on June 6, 2017 as Doc. No. 4114527, by that Corrective Third Amendment to Declaration of Protective Covenants, Easements and Restrictions dated May 22, 2018, filed for record with the office of the County Recorder for Washington County, Minnesota on June 5, 2018 as Doc. No. 4156028, by that certain Supplemental Declaration dated as of May 18, 2018, filed for record with the office of the County Recorder for Washington County, Minnesota on July 26, 2018 as Doc. No. 4162550, by that certain Fourth Amendment to Declaration of Protective Covenants, Easements and Restrictions dated October 8, 2018, filed for record with the office of the County Recorder for Washington County, Minnesota on October 11, 2018 as Doc. No. 4171847, by that Second Supplemental Declaration dated May 20, 2019, filed for record with the office of the County Recorder for Washington County, Minnesota on May 22, 2019 as Doc. No. 4194205, and by that Third Supplemental Declaration dated _____, 2019, filed for record with the office of the County Recorder for Washington County, Minnesota on _____, 2019 as Doc. No. _____; and

WHEREAS, Declarant desires to amend the Declaration to prohibit the erection and maintenance of private fencing anywhere on the Property which exceeds six feet (6') in height; and

WHEREAS, there are attached to this Fifth Amendment written consents of the Owners of Lots included within the Property which, in combination with the Lots now owned by Declarant, comprise more than seventy-five percent (75%) of the Lots comprising the Property covered by the Declaration, as amended.

NOW THEREFORE, Declarant, for itself, and as the Owner of its Lots hereinabove described, joined by all the other Lot Owners who have executed the written consents attached hereto, makes this Fifth Amendment for the purpose of amending certain of the provisions of the Declaration as hereinafter set forth.

AMENDMENT AND SUBSTITUTION OF SECTION 15.5 OF THE DECLARATION

Section 15.5 of the Declaration, as amended, is herewith deleted in its entirety, and shall be replaced by the following **Section 15.5**. Henceforth, all references to **Section 15.5** of the Declaration shall mean and refer to the following:

15.5 Fences.

a. Maximum height. The maximum height of any fence, exclusive of decorative post finials, shall be six feet (6').

b. Fence location. With the exception of Lots abutting those portions of the Common Elements which contain the perimeter fencing along Hadley Avenue and/or 95th Street, all side-yard and rear-yard fencing shall be placed upon shared Lot boundary lines, if the adjoining Lot Owners mutually agree as to the color and materials to be used in the fencing, or within six inches (6") of any shared Lot boundary lines, in the absence of mutual agreement as to the color and materials to be used in the fencing. To avoid the creation of areas which cannot be suitably mowed and maintained by reason of a lack of access, the placement of any fencing farther than six inches (6") from a side- or rear-lot line is prohibited. Unless the adjoining Lot Owners mutually agree in writing, no portion of any fencing may be placed upon a shared side- or rear-lot line.

c. Fence materials. Other than any fence permit required by the City of Cottage Grove, if any, an Owner need not obtain any approval from the Board or any abutting Owner to place a rear-yard or side-yard fence to the edge of, and within six inches (6") of, the lot line(s) an Owner's Lot shares with another Lot. If fencing is desired to be placed upon shared side- or rear-lot lines, the Owners of all affected Lots shall agree in writing to the location, style, color, and materials to be selected for the construction of the fencing, and if the cost of the construction of the fencing is to be shared, the affected Owners shall further agree in writing as to the cost to be borne by each and the person(s) or contractor to be employed to install such fencing.

d. Fence maintenance. Once any side- or rear-yard fencing has been installed or constructed, it shall be maintained by the Owner erecting the fencing. If any such fencing has been installed on shared Lot lines by mutual agreement of abutting Owners, the abutting owners shall each be responsible for one half of the cost, and one half of the duties, of such maintenance. Owners shall all mow and maintain their respective lawns, landscaping and Lots up to the edge of any fencing. No Owner who has not ratably contributed to the original cost of installation of an agreed-upon fence placed on a shared Lot boundary line shall have any right whatsoever to the continuing placement of the said fence, and the Owner who originally bore the cost of such fence installation, and that Owner's successors and/or assigns, shall have the right and exclusive discretion to remove the fence at will. The risk of any impairment or adverse impact to any landscaping or other exterior improvement caused by such elective fence removal by the Owner (and successors) originally installing the fence shall be upon the Lot Owner who elected not to contribute to the cost of original fence construction. Conversely, if adjoining owners, or their predecessors-in-interest, jointly contributed to the cost of construction of a fence placed upon a shared Lot boundary line, such fencing may not be removed except with the mutual written agreement of each. If parallel fencing installations have been erected by adjoining Lot Owners, each shall have a continuing responsibility to take reasonable measures to control the growth of weeds and noxious vegetation beneath and between the fencing installations.

e. Special provisions for Limited Common Elements fencing. No rear-yard fence may be constructed or installed on or parallel to the rear-lot boundary line of any Lot which abuts any Limited Common Elements and thus contain the Association-owned and maintained perimeter fencing along Hadley Avenue and/or 95th Street. In the event an Owner of a Lot abutting a portion of the Limited Common Elements desires to have a fenced-in yard, then (i) the Association owned perimeter fencing itself must constitute the “rear-yard” fence and (ii) the side-yard fencing installed by the Owner (or Owners) on a Lot’s side-yard boundary line must be placed in conformity with the provisions of subsection b., above, and be extended from the Lot’s rear corners (and parallel to the side-lot line fencing) to the Association-maintained perimeter fence. A Lot Owner thus required to extend fencing over and upon the Common Elements (and the Owner’s successors and assigns) shall thereafter enjoy a continuing easement for the installation, maintenance and encroachment of the extension of side-yard fencing into and upon the Limited Common Elements, and an exclusive easement for the occupation and enjoyment of that portion of the Limited Common Elements within the fenced-in area for (i) as long as the Owner’s fencing is maintained, or (ii) until such time as the Association elects to remove the perimeter fencing pursuant to Section 7, above, and also subject to the exercise by the Association of its rights of access as set forth in Section 8.1, above, and elsewhere in this Declaration. The above-referenced exclusive easement notwithstanding, no improvements, no structures, and specifically no irrigation lines nor equipment of any kind, may be maintained or installed upon any portion of the Limited Common Elements. The foregoing shall under no circumstances give rise to any right or claim of right to any other encroachment onto or easement over any other portions of the Limited Common Elements, nor shall any right of exclusive occupation ever be construed to exist with regard to any of the Common Elements which do not contain in-place, Association-owned, perimeter fencing.

APPLICABILITY AND BINDING EFFECT

Except as specifically modified by this Fifth Amendment, the Declaration, as amended, shall remain in full force and effect. Unless otherwise specifically set forth herein, all words and terms used in this Fifth Amendment shall have the same meaning as set forth in the Declaration.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first set forth.

DECLARANT:

SUMMERGATE DEVELOPMENT, LLC
a Minnesota limited liability company

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ___ day of _____, 2019, by _____, the _____ of Summergate Development, LLC, a Minnesota limited liability company, on behalf of the company

Notary Public

**SUMMERS LANDING HOMEOWNERS
ASSOCIATION**
a Minnesota non-profit corporation

By: _____

Its: _____

STATE OF MINNESOTA)
) **ss.**
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of Summers Landing Homeowners Association, a Minnesota non-profit corporation, on behalf of the corporation.

Notary Public

This instrument was drafted by:

S. Todd Rapp, P.A.
P. O. Box 441
Rosemount, MN 55068
(651)-379-3000

SUMMERS LANDING

EXHIBIT A TO DECLARATION

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 through 21, inclusive, Block 1;

Lots 1 through 32, inclusive, Block 2,

Lots 1 and 2, Block 3;

And

Outlots A, B, C, D, and E

SUMMERS LANDING, Washington County, Minnesota

And

Lots 1-13, Block 1

Lots 1-7, Block 2

Lots 1-16, Block 3

Lots 1-15, Block 4

Lots 1-16, Block 5

Lots 1-16, Block 6

Lots 1-8, Block 7

And

Outlots A, B, D, F, G, H, and I,

SUMMERS LANDING 2ND ADDITION, Washington County, Minnesota

SUMMERS LANDING

EXHIBIT B TO DECLARATION

LEGAL DESCRIPTION OF COMMON ELEMENTS

Outlots A, B, C, D, and E, SUMMERS LANDING, Washington County, Minnesota

EXCEPT:

All that part of Outlot B, SUMMERS LANDING, according to the recorded plat thereof, Washington County, Minnesota, lying southeasterly of a line drawn from a point on the south line of said Outlot B distant 69.00 feet westerly of the southeast corner of said Outlot B to a point on the east line of said Outlot B distant 87.00 feet northerly of the southeast corner of said Outlot B.

And

Outlots A, B, D, F, G, H, and I,

SUMMERS LANDING 2ND ADDITION, Washington County, Minnesota

CONSENT BY OWNER

_____ the owner(s) of Lot _____, Block _____,
Summers Landing / Summers Landing 2nd Addition / Summers Landing 3rd Addition (circle one) Washington
County, Minnesota, herewith joins and consents to the foregoing First Amendment.

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by

_____.

Notary Public