

COMMON INTEREST COMMUNITY NO. 026

PLANNED COMMUNITY CONTAINING COMMON ELEMENTS

LAKEVIEW MANOR TOWNHOMES

RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

LAKEVIEW MANOR TOWNHOMES  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS ("DECLARATIONS")

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RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LAKEVIEW MANOR TOWNHOMES

This Declaration is made in the County of LeSueur, State of Minnesota, on \_\_\_\_\_, 20\_\_\_\_ by Lakeview Manor Townhomes, Inc., a Minnesota non-profit corporation, (the “Declarant”) pursuant to the provisions of Minnesota Statutes Chapter 317A (the “Act”).

WHEREAS, the real property located in Le Sueur County, legally described in Exhibit A attached hereto (the “Property”) is subject to that certain Declaration of Covenants, Conditions, and Restrictions dated April 23, 2001, recorded on April 27, 2001 in the Office of the Le Sueur County Recorder, State of Minnesota as Document No. 287359, and amended on October 13, 2017, recorded on November 3, 2017 in the Office of the Le Sueur County Recorder, State of Minnesota as Document No. 412996, (collectively, the “Original Declaration”); and

WHEREAS, the Property constitutes a Common Interest Community pursuant to the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B (“MCIOA”); and

WHEREAS, Lakeview Manor Townhomes, Inc., a Minnesota nonprofit corporation (the “Association”), is the unit owners’ association created under the Original Declaration and empowered to act on behalf of its members; and

WHEREAS, the Association, with the approval of Sixty-seven Percent (67%) of the voting power of the Association, as evidenced by the Affidavit of the Secretary of the Association attached hereto, desires to amend and restate the Original Declaration in its entirety pursuant to Minn. Stat. §§ 515B.2-110 and 515B.2-118; and

WHEREAS, this Restated Declaration is intended to supersede and replace the Original Declaration and all amendments thereto, without intending to create a new common interest community

or to affect a waiver or termination of any existing rights or obligations established under the Original Declaration;

NOW, THEREFORE, the Association hereby adopts the following Restated Declaration of Covenants, Conditions, and Restrictions, which shall apply to and bind the Property and all Persons owning or acquiring any right title, or interest therein, and their heirs, personal representatives, successors and assigns.

## SECTION 1. DEFINITIONS

The following words when used in the governing Documents shall have the following meanings (Unless the context indicates otherwise):

1.0     “Act” the Common Interest Community Act, M.S.A. 515B and amendments thereto.

1.1     “Assessment” - shall mean any monetary amount levied by the Association against an Owner or Unit pursuant to this Declaration, including, but not limited to, annual assessments, special assessments, and individual or specific assessments for expenses incurred by the Association to repair damage or perform maintenance that is the responsibility of an Owner, or to enforce compliance with the Governing Documents.

1.2     “Association” shall mean Lakeview Manor Townhomes, Inc., a Minnesota non-profit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota, whose members consist of all Owners as defined herein.

1.3     “Board” shall mean the Board of Directors of the Association as provided for in the By-laws.

1.4     “By-Laws” shall mean the By-Laws governing the operation of the Association, as amended from time to time.

1.5     “Common Elements” shall mean all parts of the Property except the Units, including all improvements thereon, owned by the Association for the common benefit of the Owner and Occupants. The Common Elements are legally described in Exhibit “B” attached hereto.

1.6     “Common Expenses” shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration or By-Laws.

1.7     “Dwelling” shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.

1.8     “Eligible Mortgagee” shall mean any Person owning a mortgage on any Unit, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.

1.9     “Governing Documents” shall mean this Declaration, the Articles of Incorporation, By Laws and Rules and Regulations of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.10    “Member” shall mean all persons who are members of the Association by virtue of being Owners as defined in the Declaration. The words “Owner” and “Member” may be used interchangeably in the governing Documents.

1.11    “Occupant” shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.

1.12    “Owner” shall mean a Person who owns a Unit, but excluding contract for deed vendors, mortgages and other secured parties. The term “Owner” includes without limitation, contracts for deed vendees and holders of a life estate.

1.13    “Party Wall” shall mean the shared wall between two Dwellings.

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

1.15    “Plat” shall mean the recorded plat depicting the Property, and satisfying the requirement of Minnesota Statutes Chapters 505, 508 or 508A, as applicable, including any amended supplemental Plat recorded from time to time in accordance with the Act.

1.16    “Property” shall mean all of the real property submitted to this Declaration, including the Dwellings and all other structures and improvements located thereon now or in the future. The Property subject to this Declaration is legally described in Exhibit “A” attached hereto.

1.17    “Rules and Regulations” shall mean the Rules and Regulations of the Association as approved from time to time pursuant to section 5.6.

1.18    “Unit” shall mean any platted lot subject to this Declaration upon which a Dwelling is located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements.

Any terms used in the Governing Documents, and defined in the Act and not in this Section, shall have the meaning set forth in the Act.

## **SECTION 2. DESCRIPTION OF UNITS AND APPURTENANCES**

2.1 Units. Each Unit shall constitute a separate parcel of real estate, all of which are restricted exclusively to residential use and are as shown on the Plat and the First Amended Common Interest Community Plat, Lakeview Manor Townhomes, Common Interest Community No. 026, Le Sueur County, Minnesota, which is incorporated herein by reference as set forth on Exhibit "B". There shall be 37 Units except as may be modified pursuant to Section 15 herein.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit shall be the boundary lines of the platted lot upon which the Dwelling is located as shown on the Plat. The Units shall have no upper or lower boundaries. Subject to the Section 2 and Section 3.2, all spaces, walls, and other improvements within the boundaries of a Unit are part of the Unit.

2.3 Access Easements. Each Unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across the Common Elements as shown on the Plat, subject to any restrictions set forth in the Declaration.

2.4 Use and Enjoyment Easements. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements and for use and enjoyment of any Limited Common Elements located to the Unit, subject to any restrictions authorized by the Declaration.

2.5 Utility and Maintenance Easements. Each Unit shall be subject to and shall be the beneficiary of appurtenant easements for all services and utilities serving the Units and the Common Elements, and for maintenance, repair and replacement as described in Section 13.

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

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

2.9 Impairment Prohibited. No person shall materially restart or impair any easement benefiting or burdening the Property subject to the Declaration and the right of the Association to impose reasonable Rules and Regulations governing the use of the Property. Said Rules including but not limited to the provision that no RVs, campers or boats shall be allowed to be parked or located on driveways or yard areas for any period in excess of forty-eight (48) hours within any thirty (30) day period.

### **SECTION 3. COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

3.1 Common Elements. The Common Elements and their characteristics are as follows:

a. All of the Property not included within the Units constitutes Common Elements. The

Common Elements include those parts of the Property described in Exhibit "C" or designated as Common Elements on the Plat. The Common Elements are owned by the Association for the benefit of the Owner and Occupants.

- b. The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, use and enjoyment in favor of each Unit and its Owner and Occupants. The Common Elements shall be further subject to (I) the right of Owners and Occupants in Limited Common Elements appurtenant to their Units, (ii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property and (iii) the City of Elysian shore land zoning provisions which are hereby incorporated by reference. Further, in respect to Lake Tustin access; a) no accessory buildings shall be constructed within the Shoreline Impact Zone, b) no impervious surfaces shall be allowed within the seventy-five (75) foot Shoreline Impact Zone, and c) no more than three (3) docks shall be constructed with said locations and construction of said three (3) docks to be determined by agreement between the Association and City of Elysian and shall be the property of and Common Element of the Association.
- c. Subject to Sections 5, 6 and 9, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.
- d. Common Expenses for the maintenance, repair, replacement, management and operation shall be assessed and collected from the Owners in accordance with Section 6.

3.2 Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Occupants for the Units to which they are allocated, and the rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Units. The Limited Common Elements are described and allocated to the Units as follows:

- a. Chutes, flues, ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components of fixtures lying partially within and partially outside the boundaries of a Unit, and serving only that Unit, are allocated to the Unit they serve. Any portion of such installations serving or affecting the function of more than one Unit or any portion of the Common Elements is a part of the Common Elements, but is not a Limited Common Element.
- b. Improvements such as decks, patios, driveways, balconies, awnings, doorsteps, stoops and sidewalks, perimeter doors and windows, constructed as part of the original construction to serve a single Unit, and authorized replacements and modifications thereof, if located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

## SECTION 4.

### ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

Membership in the Association and the allocation to each Unit of a portion of the votes in the Association and a portion of the Common Expenses of the Association shall be governed by the following provisions:

4.1 Membership. Each owner shall be a member of the Association by virtue of Unit Ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the Unit. An Owner's membership shall be terminated when the Owner's ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be members of the Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Unit nor authorize the division of the voting rights.

4.2 Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Units, except that special allocations of Common Expenses shall be permitted as provided in Section 6.1

4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interest and the title to the Units, shall not be separated or conveyed separately. The allocation of the rights, obligations and interest described in this Section may not be changed except in accordance with the Governing Documents.

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owners, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association; provided, that if there are multiple Owners of any Unit, only the Owner or other Person designated pursuant to the provisions of the By-Laws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the By-Laws.

## SECTION 5. ADMINISTRATION

5.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents. The Association shall, subject to the rights of the Owners set forth in the governing Documents, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the governing Documents, the Act and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

5.2 Operation Purposes. The Association shall operate and manage the property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations, (ii) maintaining, repairing, replacing and insuring those portions of the Property for which it is responsible, and (iii) preserving the value and architectural uniformity and character of the Property.

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assignees and all secured parties.

5.4 By-Laws. The Association shall have By-Laws and any amendments thereto shall govern the operation and administration of the Association.

5.5 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents; provided, however, that such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and By-Laws. The Association is not subject to a Master Association.

5.6 Rules and Regulations. The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

5.7 Association Assets; Surplus Funds. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

## **SECTION 6. ASSESSMENTS FOR COMMON EXPENSE**

6.1 General. Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in Sections 6.2 and 6.3 and the requirements of the By-Laws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated equally among the Units according to the Common Expense allocations set forth in Section 4.2, subject to the following qualifications:

- a. Any Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element undertaken by the Association may be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- b. Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.

- c. The costs of insurance may be assessed in proportion to value, risk or coverage, and the costs of utilities may be assessed in proportion to usage.
- d. Reasonable attorneys fees and other costs incurred by the Association in connection with (i) the collection of assessments and (ii) the enforcement of the Governing Documents, or the Rules and Regulations, against an Owner or Occupant or their guests may be assessed against the Owner's Unit.
- e. Fees, charges, late charges, fines and interest may be assessed.
- f. Assessments levied to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered in proportion to their Common Expense liabilities.
- g. If any damage to the Common Elements or another Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the cost of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
- h. If any installment of an assessment becomes more than 60 days past due, then the Association may, upon 10 days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full.
- i. If Common Expense liabilities are reallocated for any purpose, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.
- j. Assessments under Subsections 6.1.a-h shall not be considered special assessments as described in Section 6.3

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board, subject to the limitations set forth in Section 6.2, 6.3 and 6.6. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of maintenance, repair and replacement of the Common Elements and those parts of the Units for which the Association is responsible.

- a. After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board, subject to section 6.2b.
- b. The increase in the annual assessment for any year shall not exceed (i) 5% of the total annual assessment for the Association's previous fiscal year, unless such increase is approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meetings shall be sent, emailed or hand delivered to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

6.3 Special Assessments. In addition to annual assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of the Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meetings shall be sent, emailed or hand delivered to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

6.4 Working Capital Fund. Declarant shall establish a working capital fund to meet unforeseen expenditures.

6.5. Liability of Owners for Assessments. The obligation of an Owner to pay assessments shall commence at the later of (i) the recording of the Declaration or amendment thereto which creates the Owner's Unit, or (ii) the time at which the Owner acquired title to the Unit, subject to the alternative assessment program described in Section 6.6. The Owner at the time an assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. The liability is absolute and unconditional. No Owner is exempt from liability for payment of his or her share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association of its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents. The Association may invoke the charges, sanctions and remedies set forth in Section 14, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

6.6 Assessment Lien. The Association has a lien on a Unit for any assessment levied against that Unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association are liens, and are enforceable as assessments, under this Section. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

6.7 Foreclosure of Lien; Remedies. A lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. The Association, or its authorized representative shall have the power to bid at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other persons claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Unit.

6.8 Lien Property; Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first

mortgage on the Unit, and (iii) liens for real estate taxes and other governmental assessments of charges against the Unit.

6.9 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Unit the buyer shall be personally liable for any unpaid assessments and other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien for such assessments shall remain against the Unit until satisfied. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid assessments against the Unit, including all assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

## **SECTION 7. RESTRICTION ON USE OF PROPERTY**

7.1 General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents, as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

7.2 Use of Common Elements. There shall be no obstruction, littering, defacement or misuse of Common Elements nor shall anything be stored in the Common Elements except in areas designated for such storage by the Board of Directors of the Association.

7.3 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential dwellings, and not for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 7.4. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of less than 7 days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes.

7.4 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Unit or the Common Elements except (i) an Owner or Occupant residing in a Unit may keep and maintain his or her business or professional records in such Unit and handle matters relating to such business by telephone or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve physical alteration of the Unit and do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries, or visitation or use of the Unit by customers or employees, and (ii) the Association may maintain offices on the Property for management and related purposes. The Board has the authority to make exceptions on a case-by-case basis.

7.5 Leasing Prohibited. No Unit or any portion thereof shall be leased, rented, or otherwise occupied by any person other than the Owner, except as otherwise expressly permitted in this Declaration. All Units shall be used solely for owner-occupied purposes. Any attempt to lease or rent a Unit in violation of this provision shall be null and void and shall constitute a material breach of this

Declaration. For purposes of this Section, “leasing” or “renting” shall include any arrangement, whether formal or informal, written or oral, by which possession or occupancy of the Unit, or any portion thereof, is granted to a person or entity other than the Owner, for any consideration or benefit, including but not limited to monetary rent, services, or any exchange of value.

7.6 Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. The use of garages, driveways and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall all be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property.

7.7 Animals. No animals shall be permitted to be kept on the Property by any Owner or occupant of a Unit except conventional domesticated animals kept as pets, and the number of animals permitted per Unit shall not exceed Two (2) animals. Conventional domestic animals specifically exclude among other animals, snakes, reptiles of any sort, and large cats such as tigers, lions, cougars and the like. No kennel, doghouse, or outside run shall be constructed or maintained on the Property. No pet shall be kept for any commercial purpose nor shall pets be bred for a commercial purpose upon the Property. Any cat or dog, whenever outside of a Unit, shall be kept under the direct control of the pet owner or another person able to control the pet. Homeowners must be at home when tethering pets outside. The person in charge of the pet must clean up after it. The Board may adopt more specific rules and regulations and penalties not inconsistent with the foregoing, and may make all or specified portions of the Common Elements off-limits to pets. Upon the petition of seventy-five percent (75%) of the Owners of Units located within sixty-five (65) feet of the Unit in which resides a specified pet, the Board may order the removal of a particular pet for constant and uncontrolled barking, repeated instances of wandering unleashed or other repeated behavior reasonably offensive to others, provided that the Owner of the Unit harboring the pet shall first have thirty (30) days written notice in which to correct the pet’s offensive behavior. Special circumstances may be approved by the Board.

7.8 Quiet Enjoyment: Interference Prohibited. All Owners and Occupants and their guest shall have a right of quiet enjoyment in their respective Units, and shall use the Property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the Property by other Owners and Occupants and their guests.

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

7.10 Alterations. No alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as “alterations”) shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests, in any part of the Common Elements, or in any part of the Unit which affects the Common Elements or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8. The Board, or the appointed committee if so authorized by the

Board, shall have authority to establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied.

7.11 Time Shares Prohibited. The time share form of ownership, or any comparable form of lease, occupancy rights or ownership which has the effect of dividing the ownership or occupancy of a Unit into separate time periods, is prohibited.

7.12 Access to Units. In case of emergency, all Units and Limited Common Elements are subject to entry, without notice and at any time, by an officer or member of the Board of the Association, by the Association's management agents or by any public safety personnel. Entry is also authorized for maintenance purposes under Section 9 and for enforcement purposes under Section 14.

7.13 Subdivision Conversion. Except as allowed under Section 15 herein no Unit shall be subdivided or converted into two or more units.

7.14 Completion of Transactions Prior to Occupancy. No Unit may be occupied by a new Owner until the conveyance of such Unit to the new Owner has been fully completed and documented of record. Any conveyance by Contract for Deed shall be filed of record with Le Sueur County prior to occupancy by the purchaser. Occupancy in violation of this Section shall constitute a material breach of this Declaration, subject to enforcement under Section 14.

## **SECTION 8. ARCHITECTURAL CONTROL**

8.1 Restrictions on Alterations. The following restrictions and requirements shall apply to alterations on the Property:

- a. Except as expressly provided in this Section 8, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, color change, shrubbery, material topographical or landscaping change, nor any other exterior improvements to or alteration of any Dwelling or any other part of a Unit which is visible from the exterior of the Unit (collectively referred to as "alterations") shall be commenced, erected or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board of Directors or a committee appointed by it.
- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to the existing improvements and topography, (ii) comparable or better quality of materials as used in existing improvements, (iii) ease of maintenance and repair, (iv) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations, and (v) compliance with governmental laws, codes and regulations.
- c. Approval of alterations which encroach upon another Unit of the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with

respect to which the alterations are approved; provided that any easement for a deck or patio other than as originally constructed shall be approved by resolution of the Board of Directors and a file of such resolutions shall be maintained permanently as a part of the Association's records.

- d. Alterations described in Section 15 shall be governed by that Section.

8.2 Review Procedures. The following procedures shall govern requests for alterations under this section:

- a. Detailed plans, specifications and related information regarding any proposed alteration in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to the approval.
- b. The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board of Directors, then approval will not be required, and this Section shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specification and related information which were submitted.
- c. If no request for approval is submitted, approval is denied, unless (i) the alterations are reasonably visible and (ii) no written notice of the violation has been given to the Owner in whose Unit the alterations are made, by the Association or another Owner, within six months following the date of completion of the alterations. Notice may be direct written notice or the commencement of legal action by the Association or an Owner. The Owner of the Unit in which the alterations are made shall have the burden of proof by clear and convincing evidence, that the alterations were completed and reasonably visible for at least six months following completion and that the notice was not given.

8.3 Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner causing or permitting the violation all attorneys' fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Dwelling or Unit to its prior condition if any alterations were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Unit.

## SECTION 9. MAINTENANCE

9.1 Maintenance by Association. The Association shall provide for improvement, maintenance, repair or replacement (collective referred to as "maintenance") of the Common Elements. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall:

- a. provide exterior maintenance of each Unit as follows: replace roofs, garage doors (except hardware), and exterior siding and other building surfaces,
- b. provide lawn maintenance on all Units excluding Owner established planter boxes, grass plots, flower beds, trees and shrubs, vines and fenced in areas etc. adjacent to Owner Units,
- c. provide snow removal and/or plowing when necessary.

The Association's obligation to maintain exterior building surfaces shall exclude patios, porches, entry doors, door hardware, air conditioning equipment, window glass and frames, retaining walls, decks, sidewalks, generators, awnings, gutters, downspouts and any other items not specifically referred to in this Section unless otherwise approved under Section 9.2. The necessity, timing and standards of quality of service to be provided by the Association shall be determined by the Board in its sole discretion. The Association shall have easements as described in Section 13 to perform its obligations under this Section 9.

**9.2     Optional Maintenance by Association.** In addition to the maintenance described in this Section the Association may, with the approval of a majority of votes cast in person or by proxy at a meeting called for such purposes, undertake to provide additional exterior maintenance to the Units or Dwellings, or maintenance of water and sewer systems with the Units.

**9.3     Maintenance by Owner.** Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.2, all maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. However, the Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to the specific uniform criteria established by the Board. The Association may also undertake any exterior maintenance which the responsible Owners fail to or improperly performs and assess the Unit and the Owner for the cost thereof.

**9.4     Damage Caused by Owner.** Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, or by a condition in a Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Unit to do so), and the cost thereof may be assessed against the Unit of the Owner responsible for the damage. In the case of party walls between Dwellings, the Owners of the affected Dwellings shall be liable as provided in Section 10.

## **SECTION 10. PARTY WALLS**

**10.1     General Rules of Law to Apply.** Each wall built as part of the original construction of the Dwellings and located on the boundary line between Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

10.2 Repair and Maintenance. The Owner of the Units which share the party wall shall be responsible for the maintenance and repair and replacement of party wall in proportion with their use; provided (i) that any maintenance, repair or replacement necessary due to the acts or omissions of a certain Owner or Occupant sharing such party wall shall be paid for by such Owners, and (ii) that the Association may contract for and supervise the repair of damage caused by Owner or Occupant and assess the Owners for their respective shares of the cost to the extent not covered by insurance.

10.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has use of the wall may, with the consent of the Association, restore it, and the other Owners shall promptly reimburse the Owner who restored the wall for his or her share of the cost of restoration thereof; provided, however, that the cost of restoration resulting from destruction or other casualty resulting from the acts or omissions of certain Owners shall be the financial responsibility of such Owners, and the Association may assess the responsible Owners for their share of the costs, without prejudice to the right of an Owner who recovers a larger contribution from the other Owner. Insurance claims shall be made promptly following any casualty.

10.4 Weatherproofing. Notwithstanding any other provision of this Section, any Owner who, by his negligent or willful act, causes a party wall to be exposed to the elements shall bear the whole cost of the repairs necessary for protection against such elements.

10.5 Right to Contribution Runs With Land. The right of any Owner to contribution from another Owner under this Section shall be appurtenant to the Unit, run with the land, and shall pass to such Owner's assigned and successors in title.

10.6 Arbitration. In the event of any dispute arising concerning a party wall, and if the same is not resolved within thirty (30) days of the event causing the dispute, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association, upon the written demand of the Association or any Owner whose Dwelling shares the party wall. Each party agrees that the decision of the arbitrators shall be final and conclusive of the questions involved. The fees of the arbitrators shall be shared equally by the parties, but each party shall pay its own attorney fees or other costs to prove its case.

## SECTION 11. INSURANCE

11.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act (M.S.A. 515B 3-111(c) and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

- a. Property insurance in broad form covering risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverages and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the FHA or Federal National Mortgage

Association (FNMA) as a precondition to their insuring, purchasing or financing mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA or FNMA, obligating the Association to keep certain specified coverages or endorsements in effect.

- b. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of \$1,000,000 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverages and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as precondition to their insuring, purchasing or financing a Mortgage on a Unit.
- c. Fidelity bond or insurance coverage against dishonest acts on the part of the directors, officers, manager, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulations of the FHA or FNMA as a precondition to the purchase or financing of a mortgage on a Unit. The fidelity bond or insurance shall name the Association as the named insured and shall, if required by the regulations of the FHA or FNMA, as a precondition to their insuring, purchasing or financing of a mortgage on a Unit, be written in an amount equal to be greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force, or (ii) a sum equal to three months aggregate assessments on all Units plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.
- d. Workers' Compensation insurance as required by law.
- e. Directors and officers' liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- f. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

11.2 Premium; Improvements; Deductibles. All insurance premiums shall be assessed and paid as a Common Expense. The insurance need not cover improvements and betterments to the Units installed by Owners, but if improvements and betterments are covered, any increased cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a

Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.

11.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, The Association (or qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, including Eligible Mortgagees, which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association.

11.4 Waivers of Subrogation. All policies of insurance shall contain waivers of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured.

11.5 Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be cancelled or substantially modified, for any reason, without at least 30 days prior written notice to the Association, to the FHA or FNMA (if applicable), all of the insured and all Eligible Mortgagees.

11.6 Restoration in Lieu of Cash Settlement. All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of cash settlement, such option shall not be exercisable (i) without the prior written approval of the Association (or any Insurance Trustee) or (ii) when in conflict with provisions of an insurance trust agreement to which the Association may be a party, or any requirement of the law.

11.7 No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners or their Eligible Mortgagees.

11.8 Effect of Acts Not Within Association's Control. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner or Eligible Mortgagee, unless acting with the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

11.9 Owner's Personal Insurance. Each Owner shall obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit. Each Owner must have a personal policy (HO6), to cover the structures within the Owner's unit, personal property and liability insurance, as well as an endorsement for "loss assessments." Each Owner's policy shall include a an "additional interest" clause listing the Association as an additional interest. The Board may require that Owners provide evidence of personal insurance coverage upon reasonable request and may adopt policies regarding minimum required coverage levels and coordination with Association policies.

Notwithstanding any other provision in this Declaration and in accordance with Minn. Stat. 515B.3-113, if the Association is unable, after good faith and commercially reasonable efforts, to obtain or maintain the insurance coverage required under this Declaration or Minnesota law, then each Unit Owner shall be responsible for obtaining and maintaining property insurance for the full insurable replacement cost of the entire unit, inside and out, including all fixtures, improvements and betterments located within the Unit, and for liability coverage arising from ownership and use of the Unit.

The Board shall provide written notice to the Owners of such inability to obtain coverage, and may adopt reasonable rules establishing uniform standards for Owner-obtained insurance, including minimum policy limits permitted deductibles, required coverages (such as loss assessment or ordinance and law coverage), and naming the Association as an additional insured or loss payee, if appropriate.

Each Owner's policy shall include waivers of subrogation against the Association and other Owners to the extent reasonably available. The responsibility of the Unit Owners to insure under this Section shall continue until such time as the Association is again able to obtain and maintain the coverage required by law or this Declaration, as determined by the Board in its reasonable discretion.

## **SECTION 12. RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN**

12.1 Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage to or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved upon. Notice of substantial damage or destruction shall be given pursuant to Section 17.1.

12.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern; provided that the notice shall be given pursuant to Section 17.1. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priority established by the Act and the Governing Documents, as their interests may appear.

12.3 Notice. All Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property, and the Association shall give written notice thereof to an Eligible Mortgagee pursuant to Section 17.1.

## **SECTION 13. EASEMENTS**

13.1 Easements for Encroachments. Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, decks, balconies, patios, utility installations and other appurtenances (i) which are part of the original construction on the adjoining Unit or the Property or (ii) which are added pursuant to Section 8. If there is an encroachment by a Dwelling, or other building or improvement located in a Unit, upon another Unit, Dwelling or Common Property as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of any encroaching Dwelling, building or improvement, and for the

maintenance thereof, shall exist; provided that with respect to improvements or alterations added pursuant to Section 8, no easement shall exist unless the same have been approved and constructed was required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

13.2 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.

13.3 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Units for all such services, including without limitation any server or water lines servicing other Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utility companies providing service to the Units for the installation and maintenance of utility metering devices.

13.4 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this Section shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of construction, maintenance, repair, replacement and reconstruction.

## **SECTION 14. COMPLIANCE AND REMEDIES**

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Governing Documents, the Rules and Regulations, the decisions of the Association, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents.

14.1 Entitlement to Relief. The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the governing Documents or available at law or in equity.

Legal relief may be sought by the Association against an Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, or the decision of the Association. However, no Owner may withhold any assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents, the Rules and Regulations, as a measure to enforce such Owner's position, or for any other reason.

14.2 Sanctions and Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and Occupants and/or their guests who violate the provision of the Governing Documents or the Rules and Regulations;

- a. Commence legal action for damages for equitable relief in any court of competent jurisdiction.
- b. Impose late charges of up to 5% of each late payment for an assessment or installment thereof.
- c. In the event of default of more than 30 days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- d. Impose reasonable fines, penalties or charges for each violation of the Governing Documents or the Rules and Regulations of the Association.
- e. Suspend the rights of any Owner or Occupant and their guests to use any Common Element's amenities; provided, that this limitation shall not apply to Limited Common Elements or deck, balcony or patio easements appurtenant to the Unit and those portions of the Common Elements providing utilities service and access to the Unit. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents, and for up to 30 days thereafter for each violation.
- f. Restore any portions of the Common Elements or Limited Common Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
- g. Enter any Unit or Limited Common Element in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Dwelling or other part of the Property or the property of the Owner and Occupants and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit or Limited Common Elements which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner.

- h. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale.

14.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 14.2.d., e. or f. of this Section, The Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least ten (10) days prior written notice to the offender. If the offending Owner fails to appear at the hearing then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten (10) days following the hearing, if not delivered to the offender at the hearing.

14.4 Lien for Charges, Penalties, Etc. Any assessments, charges, fines, penalties or interest imposed under this Section shall be a lien against the Unit of the Owner or Occupant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as assessments under Section 6. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board gives written notice following the hearing. All remedies shall be cumulative, and the exercise of, or failure to exercise any remedy shall not be deemed a waiver of the right to pursue any others.

14.5 Costs of Proceeding and Attorneys Fees. With respect to any collection measures or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorney's fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

14.6 Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rates, resulting from the Owner's or Occupant's acts or omissions may be assessed against the Owner of the Unit responsible for the condition and against his or her Unit.

14.7 Enforcement by Owners. The provisions of this Section shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents and the Rules and Regulations, as provided therein

## **SECTION 15.** **RIGHTS TO RELOCATE BOUNDARIES; ALTER UNITS; FLEXIBILE COMMON INTEREST COMMUNITY**

15.1 Rights to Relocate Boundaries and Alter Units. Existing Units may be altered and Unit boundaries may be relocated only in accordance with the following conditions:

- a. Combining Units. An Owner may make improvements or alterations to such Unit or, may, after acquiring an adjoining Unit, remove or alter any intervening partition or create apertures therein in accordance with Subsection d of this Section.
- b. Relocation of Boundaries. The boundaries between adjoining Units may be relocated in accordance with Subsection d of this Section.
- c. Subdivision or Conversion. No additional Units may be created by the subdivision or conversion of a Unit (within the meaning of the Act) into two or more Units, nor into other Units, Common Elements or Limited Common Elements.
- d. Requirements. The alteration, relocation of boundaries or other modification of Units or the Dwellings or other structures located therein (collective referred therein as "alteration" or "alterations") pursuant to this Section, Section 8, and the Act may be accomplished only in accordance with the following conditions:
  - (1) No Unit may be altered if, thereafter, the Dwelling located therein, or an other Dwelling affected by the alteration, would no longer be habitable or practicably usable for its intended purpose or would violate any law, code or ordinance of any governmental authority having jurisdiction over the Property.
  - (2) No alteration may be made which adversely affects the structural or functional integrity of any building system or the structural support or weather-tight integrity of any portion of any building or other structure.
  - (3) The prior written consent of the Association shall be required for any alteration. Where required, such consent shall be requested in writing by each Owner whose Unit is proposed to be altered, accompanied by such explanation, drawings and specification relating to the proposed alterations as may be reasonably required by the Association or the mortgagee of the Unit. The Association shall give such Owner(s) notice in an expeditious manner, granting, denying or qualifying its consent.
  - (4) As a precondition to consenting to alterations the Association may require, among other things, the following: (i) that all alterations will be done in a workmanlike manner and without impairing the structural, mechanical or weather-tight integrity of the building; (ii) that the Common Elements and altered Units will be repaired and/or restored in the future as required by the Association; (iii) that the construction of the alterations will not create dangerous conditions for any Owners or Occupants; (iv) that the Property, the first mortgagees and the Owners and Occupants will be protected from liens and

other liability arising from the alterations; and (v) that the alterations will be done in compliance with the applicable laws, regulations and ordinances of the governmental authorities having jurisdiction over the Property.

(5) The Association may require that the Owners of the Units to be altered pay all costs of processing and documentation for the request and the preparation and recording of any necessary amendment to the Governing Documents, including without limitation such costs as filing, architects fees and attorney fees, incurred by the Association in connection with the alterations.

**15.2 Flexible Common Interest Community**. Declarant hereby reserves, for itself and its successors and assigns, the right to add additional real estate to the Common Interest Community established by this Declaration pursuant to the authority granted under the Minnesota Common Interest Ownership Act, Minn. Stat. 515B.2-111. This right may be exercised at any time within twenty-five (25) years from the date this Restated Declaration is recorded.

The addition of real estate shall be accomplished by recording a Supplemental Declaration that identifies the additional real estate, describes any new or modified Common Elements, Units or Limited Common Elements, and incorporates the additional real estate into the Common Interest Community. A supplemental CIC plat complying with Minn. Stat. § 515B.2-110 must also be recorded.

Any real estate so added shall be subject to the provisions of this Declaration and all related Governing Documents, unless otherwise specified in the Supplemental Declaration adding such real estate. Declarant's right to add real estate may be exercised in one or more phases, and no assurance is given that all or any additional real estate will be added.

## **SECTION 16. AMENDMENTS**

This Declaration may be amended by the consent of: (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 17 as to matters prescribed by said Section and consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consents of Eligible Mortgagees shall be in writing. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

## **SECTION 17. RIGHTS OF ELIGIBLE MORTGAGEES**

Notwithstanding anything to the contrary in the Governing Documents, and subject to any greater requirements of the Act or other laws, Eligible Mortgagees shall have the following rights and protections:

17.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least fifty-one percent (51%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessments, assessment liens, or priority of assessment liens; (iii) reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs, (v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use; (vi) redefinition of any Unit boundaries; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (ix) insurance or fidelity bonds; (x) leasing of Units; (xi) imposition of any restrictions of an Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or an Eligible Mortgagee; (xiii) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the townhome after substantial destruction or condemnation occurs; or (xv) any provision that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

17.2 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Units that are subject to first mortgages held by Eligible Mortgages (based upon one vote per first mortgage owned) shall be required to (i) abandon or terminate the Townhomes; (ii) change the allocations of voting rights, Common Expense obligations or interest in the Common Elements; (iii) partition or subdivide a Unit except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Common Elements; or (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

17.3 No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restrictions in favor of the Association.

17.4 Priority of Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit's unpaid assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgage holder or purchaser, (i) except as provided in Section 6.7 and the Act and, (ii) except that any unreimbursed assessments or charges may be reallocated among all Units in accordance with their interest in the Common Elements.

17.5 Priority of Taxes and Other Charges. All taxes, assessments and charges which may become liens prior to the first mortgage under state law shall relate only to the individual Units and not to the Property as a whole.

17.6. Priority for Condemnation Awards. No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and/or the Common Elements. The Association shall give written

notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

17.7. Management Agreements. The term of any agreement for professional management of the Property may not exceed two (2) years. Any such agreement must provide at a minimum for termination without penalty or termination fee by either party, (i) with cause upon thirty (30) days prior written notice, and (ii) without cause ninety (90) days prior written notice.

17.8. Access to Book and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, including those which are audited shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. If a request is made by FNMA or any institutional guarantor or insurer of a mortgage loan against a Unit, for an audit of the Association's financial statements for the preceding year, the Association shall cause an audit to be made and deliver a copy to the requesting party.

17.9. Notice Requirements. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a mortgage on a Unit, and the Unit number of address, the holder, insurer or guarantor shall be entitled to timely written notice of:

- a. A condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;
- b. A 60 day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
- c. A lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- d. A proposed action which requires the consent of a specified percentage of Eligible Mortgages.

## SECTION 18. MISCELLANEOUS

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

18.2 Construction. Where applicable the masculine gender of any word used herein shall mean and include the feminine or neutral gender, or vice versa, and the singular of any word used herein shall mean and include the plural, or vice versa. References to the Act, or any sanction thereof, shall be deemed to include any statutes amending or replacing the Act, and the comparable sections thereof.

18.3 Notices. Unless specifically provided otherwise in the governing Documents or the Act, all notices required to be given by or to the Association, the Board of Directors, the Association officers

or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if proper addressed with post prepaid and deposited in the United States mail; except those registrations pursuant to Section 2.2 of the By-Laws shall be effective upon receipt by the Association.

18.4 Conflicts Among Documents. In the event of any conflict among the provisions of the Declaration, By-Laws and Rules and Regulations, the Declaration shall control, and as between the By-Laws and the Rules and Regulations, the By-Laws shall control.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first set forth in accordance with the requirements of the Act.

LAKEVIEW MANOR TOWNHOMES, Inc.

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By: Geri Svaleson - President

STATE OF MINNESOTA )

) ss.

COUNTY OF LE SUEUR )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by  
Geri Svaleson of Lakeview Manor Townhomes, Inc a Minnesota non-profit corporation, on behalf of the  
corporation.

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Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
JONES LAW OFFICE  
212 Madison Avenue, Suite 100  
Mankato, MN. 56001  
507-385-4488

ATTACHMENT TO RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR LAKEVIEW MANOR TOWNHOMES,  
COMMON INTEREST COMMUNITY NO. 026, A PLANNED COMMUNITY

