

EDGEWOOD VILLAGE TWIN HOMES OF GRAND FORKS

DECLARATION

5th This Declaration is made in the County of Grand Forks, State of North Dakota, on this day of May, 2022, by EHRE GFK TH01, LLC, a North Dakota limited liability company, with a principal address of 322 Demers Avenue, Suite 300, Grand Forks, North Dakota 58201 (the "Declarant"), for the purpose of creating a planned community known as the Edgewood Village Twin Homes of Grand Forks.

WHEREAS, Declarant is the owner of certain real property located in Grand Forks County, North Dakota, legally described on Exhibit A attached hereto, including all improvements located thereon (collectively, the "Property"); and

WHEREAS, Declarant desires to establish on the Property a plan for a permanent residential twin home community to be owned, occupied and operated for the use, health, safety, and welfare of its Owners and Occupants, and for the purpose of preserving the value, the structural quality, and the architectural and aesthetic character of the Property; and

THEREFORE, Declarant makes this Declaration to establish the Edgewood Village Twin Homes of Grand Forks, Grand Forks County, North Dakota, as a planned community, consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied, and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon and inure to the benefit of 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 this Declaration shall have the following meanings (unless the context indicates otherwise):

- 1.1 **"Affiliate"** shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person

owning or controlling 10% or more of the outstanding voting interests of such Person, (iii) any officer, manager, director, or general partner of such Person, or (iv) any Person who is an officer, manager, director, general partner, trustee, or holder of 10% or more of the voting interests of any Person described in clauses (i) through (iii) of this section 1.1.

- 1.2 **“Articles of Incorporation”** shall mean and refer to the Articles of Incorporation of the Association as may be amended from time to time.
- 1.3 **“Association”** shall mean Edgewood Village Twin Homes of Grand Forks, Inc., a nonprofit corporation which has been created pursuant to the laws of the State of North Dakota and North Dakota Century Code Chapter 10-33, whose members consist of all Owners as defined herein.
- 1.4 **“Board”** shall mean the Board of Directors of the Association as provided for in the Bylaws.
- 1.5 **“Bylaws”** shall mean the bylaws governing the operation of the Association, as amended from time to time. A copy of the Bylaws as in effect on the date hereof is attached hereto as **Exhibit B**.
- 1.6 **“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 Owners and Occupants. Limited Common Elements are Common Elements.
- 1.7 **“Common Expense”** 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 any items specifically identified as Common Expenses in this Declaration or the Bylaws.
- 1.8 **“Declarant”** shall mean and refer to EHRE GFK TH01, LLC, a North Dakota limited liability company, and its successors and assigns, if such successor or assign shall acquire more than one undeveloped Lot from the Declarant for the purpose of development of the planned community as a whole. Notwithstanding the foregoing, no individual or entity acquiring a Lot from the Declarant shall become the Declarant solely by such acquisition, but only by a specific assignment and assumption of the rights and obligations of the Declarant hereunder, which assignment and assumption shall not be effective, unless the instrument of conveyance expressly sets forth the same and is signed by the Declarant. EHRE GFK TH01, LLC intends to assign its rights and obligations, as Declarant, under this Declaration, to Edgewood OpCo, LLC, a North Dakota limited liability company, or one its Affiliates (the “Declarant Assignee”), in which case, the Declarant Assignee will assume the rights and obligations of Declarant under this Declaration and EHRE GFK TH01, LLC shall be released therefrom as of the date such assignment and assumption is recorded in the office of the County Recorder, Grand Forks County, North Dakota.
- 1.9 **“Declarant Services”** shall mean the services provided by or on behalf of the Association or Declarant or any of Declarant’s Affiliates for the benefit of the Owners and Occupants of certain Units, including without limitation any such services provided

pursuant to a contract by and between any such party and a third party provider or vendor. Fees for Declarant Services are considered Common Expenses and may be assessed in accordance with the terms of Subsection 6.1.4, specifically, and Section 6 in general.

- 1.10 **“Declaration”** shall mean this Declaration, as amended from time to time.
- 1.11 **“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.
- 1.12 **“Governing Documents”** shall mean, collectively, this Declaration, the Articles of Incorporation and the Bylaws, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.13 **“Homes”** shall mean the Twin Homes.
- 1.14 **“Limited Common Element”** shall mean those elements designed for use by the Owners of one or more but less than all of the Units in or on the Property. Such elements shall include any portion of any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture, lying partially within and partially outside the boundaries of a Unit that serves only that Unit; and any shutters, awnings, window boxes, doorsteps, stoops, patios, porches, decks, balconies, perimeter doors and windows or other fixtures constructed as part of the original construction to serve a single Unit, and authorized replacements and modifications thereof, but located wholly or partially outside the boundaries of that Unit and the Lot upon which it is situated.
- 1.15 **“Lot”** shall mean any plot of land shown upon any recorded subdivision plat of the Property with the exception of Common Elements, including any plot of land shown upon any replat or resubdivision of a Lot.
- 1.16 **“Member”** shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words “Owner” and “Member” may be used interchangeably in this Declaration, the Articles of Incorporation and the Bylaws.
- 1.17 **“Occupant”** shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.
- 1.18 **“Owner”** shall mean a Person who owns a Unit, but excluding contract for deed vendors, mortgagees and other secured parties. The term “Owner” includes, without limitation, contract for deed vendees and holders of a life estate. The words “Owner” and “Unit Owner” may be used interchangeably in this Declaration, the Articles of Incorporation and the Bylaws.
- 1.19 **“Party Wall”** shall mean the shared wall between two Twin Homes.

- 1.20 **INTENTIONALLY DELETED.**
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- 1.22 **"Person"** shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.
- 1.23 **"Plat"** shall mean the recorded plats depicting the Property, including without limitation any amended or supplemental plat(s) depicting the Property and recorded from time to time.
- 1.24 **"Property"** shall mean all of the real property submitted to this Declaration, including the Twin Homes and all other structures and improvements located thereon now or in the future. The Property as of the date of this Declaration is legally described in **Exhibit A** attached hereto.
- 1.25 **"Rules and Regulations"** shall mean the Rules and Regulations of the Association as amended and approved from time to time pursuant to Section 5.6.
- 1.26 **"Secured Party"** shall mean any person owning a Security Interest.
- 1.27 **"Security Interest"** shall mean a perfected interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a mortgagee's interest in a mortgage, a vendor's interest in a contract for deed, a lessor's interest in a lease intended as security, a holder's interest in a sheriff's certificate of sale during the period of redemption, an assignee's interest in an assignment of leases or rents intended as security, a pledgee's interest in the pledge of an ownership interest, or any other interest intended as security for an obligation under a written agreement.
- 1.28 **"Special Declarant Rights"** shall mean those rights reserved in Section 15 of this Declaration for the benefit of Declarant.
- 1.29 **"Twin Home"** shall mean any attached single-family home sharing a common wall with another home, and located on the Property.
- 1.30 **"Twin Home Lot"** shall mean a Lot upon which a Twin Home is located.
- 1.31 **"Unit"** shall mean each Twin Home Lot, as reflected on the Plat, and the buildings and improvements located thereon, but excluding the Common Elements.

SECTION 2 DESCRIPTION OF UNITS AND APPURTENANCES

- 2.1 **Units.** There are 24 Units, all of which are restricted exclusively to residential use as Twin Homes. No additional Units may be created by the subdivision or conversion of Units except by the Declarant as provided in Section 15.

- 2.2 **Unit Boundaries.** The Unit boundaries are shown on the Plat.
- 2.3 **Use and Enjoyment Easements.** Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements, subject to any restrictions contained in or authorized by this Declaration.
- 2.4 **Utility and Maintenance Easements.** Each Unit shall be subject to and shall be the beneficiary of appurtenant easements for all services and utilities servicing the Units and the Common Elements, and for maintenance, repair, and replacement activities as described in Section 13.
- 2.5 **Encroachment Easements.** Each Unit shall be subject to and shall be the beneficiary of the appurtenant easements for encroachments as described in Section 13.
- 2.6 **Declarant's Easements.** Declarant hereby reserves such easements through the Property as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights as described in Section 15 of this Declaration, and completing the development and construction of the planned community, which easements shall exist as long as reasonably necessary for such purposes.
- 2.7 **Recorded Easements.** The Property shall be subject to such other easements as may be shown on the Plat or recorded now or in the future and from time to time against the Property.
- 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 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 easements created by this Declaration.
- 2.9 **Impairment Prohibited.** No person shall materially restrict or impair any easement benefiting or burdening the Property, subject to this Declaration and the right of the Association to impose reasonable Rules and Regulations governing the use of the Property.

**SECTION 3
COMMON ELEMENTS**

- 3.1 **Common Elements.** The Common Elements and their characteristics are as follows:
 - 3.1.1 All of the Property not included within the Units constitutes Common Elements. The Common Elements are or will be owned by the Association for the benefit of the Owners and Occupants.
 - 3.1.2 The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, and use and enjoyment in favor of each Unit

and its Owners and Occupants; subject to the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.

3.1.3 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.

3.1.4 Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 6.

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 terminate when the Owner's ownership terminates. The Bylaws may provide for the suspension or revocation of a Member's voting rights under certain circumstances. 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 interests, and the title to the Units, shall not be separated or conveyed separately. The allocation of the rights, obligations, and interests described in this Section 4 may not be changed, except in accordance with this Declaration, the Articles of Incorporation and the Bylaws.

4.4 **Authority to Vote.** The Owner, or some natural person designated to act as proxy on behalf of the Owner, 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 a Unit, only the Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Bylaw 5 of the Bylaws and the use of proxy voting is more fully described in Bylaw 7 of the Bylaws.

4.5 **Declarant Control.** Notwithstanding the vote of any Unit Owner to the contrary, the Declarant hereby reserves a period of Declarant control of the Association during which the Declarant, or person designated by the Declarant, may appoint and remove the

officers and directors of the Association. Said reservation of Declarant control is subject to the following:

- 4.5.1 The period of Declarant control shall terminate upon the earlier of (i) voluntary surrender of control by the Declarant, (ii) six months after seventy-five percent (75%) of the Units have been conveyed to Unit Owners other than Declarant, or (iii) three (3) years after the first conveyance of a Unit to a Unit Owner other than Declarant.
- 4.5.2 Not later than the termination of Declarant control, the Unit Owners shall elect a Board of Directors of at least five (5) members. Thereafter, a majority of the directors shall be Unit Owners other than Declarant or an Affiliate of Declarant. The remaining directors must also be Unit Owners. All Unit Owners, including the Declarant or its Affiliates, may cast the vote allocated to any Unit owned by them. The Board shall elect the officers. The directors and officers shall take office upon election.
- 4.5.3 In determining whether the period of Declarant control has terminated under Section 4.5.1, the percentage of the Units which have been conveyed shall be calculated based upon the assumption that all Units which the Declarant has built or reserved the right to build in this Declaration are included in the planned community.
- 4.5.4 Except as otherwise provided in this subsection or the Bylaws, meetings of the Board of Directors must be open to all Unit Owners. To the extent practicable, the Board shall give reasonable notice to the Unit Owners of the date, time, and place of a Board meeting. If the date, time, and place of meetings as provided for in this Declaration, the Articles of Incorporation or the Bylaws, were announced at a previous meeting of the Board, posted in a location accessible to the Unit Owners and designated by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required. "Notice" has the meaning given in North Dakota Century Code Chapter 10-33. Meetings may be closed to discuss the following:
 - (1) personnel matters;
 - (2) pending or potential litigation, arbitration, or other potentially adversarial proceedings between Unit Owners, between the Board or Association and Unit Owners, or other matters in which any Unit Owner may have an adversarial interest, if the Board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the Board or Association or the privacy of a Unit Owner or Occupant of a Unit; or
 - (3) criminal activity arising within the planned community if the Board determines that closing the meeting is necessary to protect the privacy of

the victim or that opening the meeting would jeopardize the investigation of the activity.

Nothing in this subsection imposes a duty upon the Board to provide special facilities for meetings. The failure to give notice as required by this subsection shall not invalidate the Board meeting or any action taken at the meeting.

SECTION 5 ADMINISTRATION

The administration and operation of the Association and the Property, including, but not limited to, the acts required of the Association, shall be governed by the following provisions:

- 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 this Declaration, the Articles of Incorporation, the Bylaws 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 this Declaration, the Articles of Incorporation or the Bylaws. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary. The Association shall have the power to:
- 5.1.1 Adopt, amend and revoke rules and regulations not inconsistent with the Articles of Incorporation, the Bylaws and this Declaration, as follows: (i) regulating the use of the Common Elements; (ii) regulating the use of the Units, and conduct of Unit Owners and Occupants, which may jeopardize the health, safety or welfare of other Owners and Occupants, which involves noise or other disturbing activity, or which may damage the Common Elements or other Units; (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the Common Elements and conduct which may damage the planned community; (v) regulating the exterior appearance of the planned community, including, for example, balconies and patios, window treatments, and signs and other displays, regardless of whether inside a Unit; (vi) regulating the leasing of the Units as provided in this Declaration and the Rules and Regulations; (vii) implementing the Articles of Incorporation, this Declaration and the Bylaws, and exercising the powers granted by this Section 5; and (viii) otherwise facilitating the operation of the planned community;
 - 5.1.2 Adopt and amend budgets for revenues, expenditures and reserves, and levy and collect assessments for Common Expenses from Unit Owners;
 - 5.1.3 Hire and discharge managing agents and other employees, agents, and independent contractors;

- 5.1.4 Institute, defend, or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two or more Unit Owners on matters affecting the Common Elements or other matters affecting the planned community, or (ii) with the consent of the Owners of the affected Units on matters affecting only those Units;
 - 5.1.5 Make contracts and incur liabilities;
 - 5.1.6 Regulate the use, maintenance, repair, replacement and modification of the Common Elements and the Units;
 - 5.1.7 Cause improvements to be made as a part of the Common Elements;
 - 5.1.8 Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property;
 - 5.1.9 Grant public utility easements through, over or under the Common Elements, and, subject to approval by resolution of Unit Owners at a meeting duly called, grant other public or private easements, leases and licenses through, over or under the Common Elements;
 - 5.1.10 Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements, other than Limited Common Elements, and for services provided to Unit Owners;
 - 5.1.11 Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, and the Rules and Regulations of the Association;
 - 5.1.12 Impose reasonable charges for the review, preparation and recordation of amendments to this Declaration, resale certificates if requested by an Owner, statements of unpaid assessments, or furnishing copies of Association records;
 - 5.1.13 Provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance;
 - 5.1.14 Provide for reasonable procedures governing the conduct of meetings and election of directors;
 - 5.1.15 Exercise any other powers conferred by law, or by this Declaration, the Articles of Incorporation or the Bylaws; and
 - 5.1.16 Exercise any of the powers necessary and proper for the governance and operation of the Association.
- 5.2 **Operational 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 this Declaration, the Articles of Incorporation, the Bylaws

and the Rules and Regulations (ii) maintaining, repairing and replacing 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 this Declaration, the Articles of Incorporation and the Bylaws shall be binding upon all Owners and Occupants, and their lessees, invitees, guests, heirs, personal representatives, successors and assigns and all secured parties.
- 5.4 **Bylaws.** The Association shall have Bylaws. The Bylaws 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 this Declaration, the Articles of Incorporation and the Bylaws; 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 this Declaration, the Articles of Incorporation, the Bylaws and by law.
- 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 5.6. 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 in its sole discretion.

SECTION 6 ASSESSMENTS FOR COMMON EXPENSES

- 6.1 **General.** Assessments for Common Expenses shall be determined and assessed against the Units subject to the limitations set forth in Sections 6.2 and 6.3, and the requirements of the Bylaws. Assessments for Common Expenses shall include annual assessments, payable by the Owners of the Units in equal monthly installments, and may include special assessments. Assessments shall be allocated among the Units according to the Common Expense allocations set forth in Section 4.2, subject to the following qualifications:

- 6.1.1 Any Common Expense 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, (iii) the actual cost incurred with respect to each Unit, or (iv) on such other basis as the Association deems to be fair and reasonable under the circumstances.
- 6.1.2 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, (iii) the actual cost incurred with respect to each Unit, or (iv) on such other basis as the Association deems to be fair and reasonable under the circumstances.
- 6.1.3 The costs of insurance may be assessed equally between all Units, or in proportion to value, risk or coverage, as may be determined by the Association, and the costs of utilities, if provided by the Association, may be assessed in proportion to usage.
- 6.1.4 The fees for utilities, the use of Common Element facilities, if any, and for other Declarant Services may be assessed exclusively against the Units benefited by such utilities, facilities and services, in such proportions and amounts as the Board deems to be fair and reasonable under the circumstances. Such assessments shall be payable in advance, monthly, quarterly or annually, as determined by the Board.
- 6.1.5 Reasonable attorneys fees and other costs incurred by the Association in connection with (i) the collection of assessments, and (ii) the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.
- 6.1.6 Fees, charges, late charges, fines, and interest may be assessed exclusively against the Owner's Unit.
- 6.1.7 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.
- 6.1.8 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 costs of repairing the damage may be assessed exclusively against the Owner's Unit to the extent not covered by insurance. In the event any increases to the Association's insurance premium occur that are readily identifiable result from the act or omission of any Owner or Occupant, or their guests, the costs of such additional premiums may be assessed exclusively against the Owner's Unit.

- 6.1.9 If any installment of an assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full, and reserves the right to file a lien against the Owner's Unit for the same.
- 6.1.10 If Common Expense liabilities are reallocated for any purpose authorized by the Governing Documents, Common Expense assessments and any installments thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.
- 6.1.11 Assessments under Subsections 6.1 shall not be considered special assessments as described in Section 6.3.
- 6.2 **Annual Assessments.** Subject to the limitations set forth in this Section 6.2 and Section 6.3 of this Declaration, annual assessments shall be established and levied by the Board. Each such 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, insurance, and replacement of the Common Elements and those parts of the Units for which the Association is responsible. The annual assessments shall be paid by the Owner(s) of each Unit in equal monthly installments, on the first day of each month.
- 6.2.1 Until a Common Expense assessment is levied, Declarant shall pay all accrued expenses of the planned community.
- 6.2.2 After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board.
- 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 foreseen, 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.
- 6.4 **Working Capital Fund.** Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase additional equipment or services. There shall be contributed on a one-time basis for each Unit sold by Declarant an amount equal to two (2) months installments of the estimated Common Expense assessment for the Unit being conveyed. The contribution to the working capital fund shall be paid at the time of closing of sale of the Unit, whether such closing is an initial or subsequent sale. The amounts paid into this fund are in addition to the regular monthly installments of assessments. The funds shall be deposited into the Association's account, and Declarant may not use the funds to defray any of its expenses, reserve contributions, or construction costs, or to make up any budget deficit while Declarant is in control of the Association. However, upon closing of an unsold Unit, Declarant may reimburse itself from funds

collected at the closing for funds which it contributed to the working capital fund with respect to that Unit.

- 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 this Declaration or amendment thereto which creates the Owner's Unit, or (ii) the time at which the Owner acquires title to the Unit; provided, however, that the obligation to pay assessments shall not apply to any unoccupied Unit owned by Declarant prior to the initial conveyance of such Unit to a Person other than Declarant. 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 or 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 this Declaration, the Articles of Incorporation and the Bylaws 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, regardless of whether such lien has been filed in the public record. 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 6. Recording of this Declaration constitutes record notice and perfection of any lien under this Section 6, 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 in the manner provided for the foreclosure of mortgages by action or under a power of sale in the State of North Dakota. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other Person 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 Priority; Foreclosure.** A lien under this Section 6 is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before this Declaration, (ii) any first mortgage on the Unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if a first mortgage on a Unit is foreclosed and no Owner redeems during any Owner's period of redemption provided by law, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to

unpaid assessments for Common Expenses, which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

- 6.9 **Voluntary Conveyances; Statement of Assessments.** In a voluntary conveyance of a Unit, the buyer shall not 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 of 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 RESTRICTIONS ON USE OF PROPERTY

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

- 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 **Occupancy and Transfer of Interest in Homes.**

7.2.1 **Occupancy of Homes.** The Homes within the Property are intended for the housing of persons 55 years of age or older, although younger persons are not restricted from occupying a Home along with a person 55 years of age or older. In addition, certain exceptions may be made pursuant to Subsection 7.2.2(3). The provisions of this Section 7.2 are intended to be consistent with, and are set forth in order to comply with, the Fair Housing Act, 42 U.S.C. Sec. 3601, et seq., and the North Dakota Housing Discrimination Act (N.D.C.C. Chapter 14-02.5), et seq., as such laws are amended from time to time (collectively, the "Fair Housing Acts"), regarding discrimination based on familial status. Declarant, until termination of the Declarant's period of control (as set forth in Section 15.9 of this Declaration), or the Association, acting through its Board, shall have the power to amend this Section 7.2, without the consent of the Members or any other Person, except the Declarant during the Declarant's period of control, for the purpose of making this Section 7.2 consistent with the Fair Housing Acts, the regulations adopted pursuant thereto, and any judicial decisions arising thereunder

or otherwise relating thereto, in order to maintain the intent and enforceability of this Section 7.2.

7.2.2 Restrictions on Home Occupancy.

- (1) Except as may otherwise be permitted pursuant to this Subsection 7.2.2(1) and Subsection 7.2.2(3), each occupied Home shall at all times have as a permanent Occupant at least one person who is 55 years of age or older (the "Qualifying Occupant"), except that in the event of (1) the death of a person who was the sole Qualifying Occupant of a Home; (2) a legal separation or divorce resulting in the Qualifying Occupant of a Home moving out of the Home; or (3) the removal by reason of incapacitation (e.g., being placed in a nursing home, or being adjudged mentally incompetent) of the Qualifying Occupant, the spouse (or former spouse, in the case of a divorce) and any other members of the household occupying the Home in compliance with this Section 7.2 prior to the death, legal separation or divorce, or incapacitation of such Qualifying Occupant, may continue to occupy the Home provided that the provisions of the Fair Housing Acts and the regulations adopted thereunder are not violated by such occupancy. For purposes of this Section 7.2, an Occupant shall not be considered a "permanent occupant" unless such Occupant considers the Home to be his or her legal residence and actually resides in the Home for at least six months during every calendar year or such shorter period as the Home is actually occupied by any person.
- (2) Nothing in this Section 7.2 is intended to restrict the ownership of or transfer of title to any Home; however, no Owner may occupy the Home unless the requirements of this Section 7.2 are met, nor shall any Owner permit occupancy of the Home in violation of this Section 7.2. Owners shall be responsible for (a) including a statement that the Homes within the Property are intended for the housing of persons 55 years of age or older, as set forth in Subsection 7.2.1, in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Home, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and (b) clearly disclosing such intent to any prospective tenant, purchaser, or other potential Occupant of the Home. Every lease of a Home shall provide that failure to comply with the requirements and restrictions of this Section 7.2 shall constitute a default under the lease, resulting in termination of the lease and eviction from the Home.
- (3) Any Owner, in writing, may request that the Board make an exception to the requirements of this Subsection 7.2.2 with respect to his or her Home. The Board may, but shall in no event be obligated to, grant exceptions in its sole discretion, provided that the requirements for exemption from the Fair Housing Acts would still be met.

7.2.3 Change in Occupancy; Notification. In the event of any change in occupancy of any Home as a result of a transfer of title, a lease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Home shall immediately notify the Board in writing and provide to the Board the names and ages of all current Occupants of the Home and such other information as the Board may reasonably require to verify the age of each Occupant. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines, as determined by the Association in its sole discretion, against the Owner and the Home for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the Occupants continue to meet the requirements of this Section 7.2, in addition to all other remedies available to the Association.

7.2.4 Monitoring Compliance; Appointment of Attorney-in-Fact.

- (1) The Association shall maintain age records on all Occupants of Homes. The Board shall have the power and authority to adopt and publish policies, procedures, and rules to monitor and maintain compliance with this Section 7.2, including policies regarding updating of age records, the granting of exemptions pursuant to Subsection 7.2.2(3), and enforcement. The Association shall distribute such policies, procedures, and rules to Owners and make copies available to Owners, their tenants, and Mortgagees upon reasonable request.
- (2) The Association shall have the power and authority to enforce this Section 7.2 in any legal manner available, and the Board shall take such action as the Board deems necessary and appropriate to monitor compliance and enforce this Section 7.2, in order to preserve its ability to enforce this Section 7.2 and the Property's eligibility for exemption from the Fair Housing Acts. Such action may include, without limitation, conducting a census of the Occupants of the Homes, requiring copies of birth certificates or other proof of age for each Occupant of the Home to be provided to the Board on a periodic basis, and taking action to evict the Occupants of any Home which is not in compliance with the requirements and restrictions of this Section 7.2.

EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT, OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER HOME AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION 7.2.

Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her

Home that, in the judgment of the Board, are reasonably necessary to monitor compliance with this Section 7.2.

- (3) Each Owner shall be responsible for ensuring compliance of its Home with the requirements and restrictions of this Section 7.2 and the rules of the Association adopted hereunder by itself and by its tenants and other Occupants of its Home.
- (4) EACH OWNER, BY ACCEPTANCE OF TITLE TO A HOME, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION THAT MAY ARISE FROM FAILURE OF SUCH OWNER'S HOME TO SO COMPLY.

7.3 **Subdivision Prohibited.** Except as otherwise provided herein, no Unit nor any part of the Common Elements may be subdivided or partitioned without the prior written approval of all Owners and all secured parties holding first mortgages on the Units.

7.4 **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 7.5. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of thirty-one (31) days or less (e.g. "vacation rental by owner"), or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes.

7.5 **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 regular or frequent visitation or use of the Unit by customers or employees, (ii) the Association may maintain offices on the Property for management and related purposes, and (iii) Declarant may use Units and Common Elements in accordance with Section 15.

7.6 **Leasing.** Leasing of the Units is prohibited, provided, however, that the leasing of one or more Units owned by the Declarant, Edgewood Healthcare, or their Affiliates shall be permitted, and such Unit(s) may be leased without restriction, provided that such lease complies in all other aspects with the requirements of Section 7. Such authorization for Declarant, Edgewood Healthcare or their Affiliates to lease Units under this Section 7.6 is further subject to the following conditions: (i) that no Unit shall be leased for transient or hotel purposes, (ii) that no Unit may be subleased, (iii) that all leases shall comply with the age occupancy requirements set forth in Section 7.2, (iv) that all leases shall be in

writing, and (v) that all leases shall provide that they are subordinate and subject to the provisions of the Governing Documents and the Rules and Regulations and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease, resulting in termination of the lease and eviction from the Unit by the Declarant, Edgewood Healthcare, or their Affiliates. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures to permit the leasing of Units by parties other than Declarant, Edgewood Healthcare, or their Affiliates, consistent with Section 7, provided, however, that no rule or regulation adopted by the Association shall impair or otherwise restrict the rights of Declarant, Edgewood Healthcare, or their Affiliates under this Section 7.6.

- 7.7 **Parking.** Garages and parking areas on the Property, if any, 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 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.
- 7.8 **Animals.** No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. However, the Board shall have the exclusive authority to prohibit, or to allow and regulate, by Rules and Regulations, the keeping of animals on the Property. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans.
- 7.9 **Quiet Enjoyment; Interference Prohibited.** All Owners and Occupants and their guests 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.
- 7.10 **Compliance with Law.** No use shall be made of the Property which would violate any then existing local 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.
- 7.11 **Alterations.** Except for those made by Declarant in consideration of its initial sale of a Unit, 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 the authority to establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied.

- 7.12 **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.
- 7.13 **Access to Units.** In case of emergency, all Units are subject to entry, without notice and at any time, by an officer or member of the Board, 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.
- 7.14 **Limitation on Outside Investors.** No more that twenty percent (20%) of the Units may be owned by Unit Owners who or whose spouse, parents (including stepparents), and/or children (including stepchildren) are not also Occupants. In addition, no Person, other than Declarant, shall own more than ten percent (10%) of the Units.

SECTION 8 ARCHITECTURAL CONTROL

- 8.1 **Restrictions on Alterations.** The following restrictions and requirements shall apply to alterations on the Property:
- 8.1.1 No structure, building, addition, deck, patio, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other exterior improvements to or alteration of any Twin Home 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. Notwithstanding the foregoing, Declarant's written consent shall also be required for alterations until Declarant no longer owns any unsold Unit. As a general matter, the placement of fences of any material on the Property (aside from privacy partitions between Units provided for in the original Unit plan) by any party other than the Declarant is prohibited.
- 8.1.2 The criteria for approval shall include and require, at a minimum, without limitation, (i) substantial uniformity of color, size, location, type and design in relation to 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.
- 8.1.3 Approval by the Board of Directors (or a committee appointed by it) of alterations which encroach upon another Unit or 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.

8.1.4 This Section 8 shall not apply to improvements or alterations to the buildings of the planned community made by Declarant or to the Units owned by Declarant prior to initial conveyance.

8.2 **Review Procedures.** The following procedures shall govern requests for alterations under this Section 8:

8.2.1 Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board of Directors (or a committee appointed by it), shall be submitted to the Board of Directors (or a committee appointed by it) at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.

8.2.2 The Board of Directors or such committee shall give the Owner written notice of approval or disapproval. If the Board of Directors or such committee 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 or such committee, then approval will not be required, and this Section 8 shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted.

8.3 **Remedies for Violations.** The Association may undertake any measures, legal, equitable, or administrative, to enforce compliance with this Section 8 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 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 Unit to its prior condition if any alterations were made in violation of this Section 8, and the cost of such restoration shall be a personal obligation of the Owner as well as a lien against the Owner's Unit.

SECTION 9 MAINTENANCE

9.1 **Maintenance by Association.** The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements, if any. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall (i) provide for exterior maintenance upon each Unit that is subject to assessment, limited to the following: paint and replace roofs, gutters, downspouts, decks, garage doors (except hardware), and exterior siding and other building surfaces; (ii) provide for lawn, shrub and tree maintenance on all Units; and (iii) provide for snow removal from driveways,

walkways and parking areas, if any, for all Units. The Association's obligation to maintain exterior building surfaces shall exclude patios, entry doors, door hardware, air conditioning equipment, glass and window frames, and any other items not specifically referred to in this Section 9, unless otherwise approved under Section 9.3. The Association shall have easements as described in Section 13 to perform its obligations under this Section 9.

- 9.2 **Maintenance of Common Elements.** The Common Elements shall be maintained by the Association. The cost of such maintenance shall be assessed pro-rata against all Units on the Property in accordance with Section 6 of this Declaration.
- 9.3 **Optional Maintenance by Association.** In addition to the maintenance described in this Section 9 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 maintenance of water and sewer systems within the Units.
- 9.4 **Maintenance by Owner.** Except for the exterior maintenance required to be provided by the Association, all maintenance of the 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 specific uniform criteria established by the Association. The Association may also undertake any exterior maintenance which the responsible Owner fails to perform or improperly performs and assess the Unit and the Owner for the cost thereof.
- 9.5 **Damage Caused by Owner.** 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, the Owners of the affected Twin Homes shall be liable as provided in Section 10.
- 9.6 **Services.** The Association may obtain and pay for the services of any persons or entities to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. The Association may arrange with others to furnish trash collection and other common services to each Unit.

**SECTION 10
PARTY WALLS**

- 10.1 **General Rules of Law to Apply.** Each wall built as part of the original construction of the Twin Homes 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 10, 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 Owners of the Units which share the Party Wall shall be responsible for the maintenance, repair and replacement of the 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 Owner, and (ii) that the Association may contract for and supervise the repair of damage caused by an 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 Party Wall may, with the consent of the Association, restore it, and the other Owner shall promptly reimburse the Owner who restored the Party 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 to recover 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 10, any Owner who, by his or her 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 any other Owner under this Section 10 shall be appurtenant to the Unit and shall pass to such Owner's assigns 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 first to mediation, and if no resolution is made through mediation, to binding arbitration under the rules of the American Arbitration Association, upon the written demand of the Association or any Owner whose Twin Home 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 of insurance, issued by a reputable insurance company or companies authorized to do business in the State of North Dakota, which policy shall include the following:

11.1.1 Property insurance in broad form covering all risks of physical loss to the Property including, without limitation, the Units themselves, in an amount equal to 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 cover personal property owned by the Association. 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 a 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.

11.1.2 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 of 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 a precondition to their insuring, purchasing or financing a mortgage on a Unit.

11.1.3 Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, managers, 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 the 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 one month aggregate assessments on all Units plus reserve. 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.

11.1.4 Workers' Compensation insurance as required by law.

11.1.5 Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.

11.1.6 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 **Premiums; 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. In the case of a claim for damage to a Unit, the Association shall (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 relating to the Property and maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by the Association) 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 the Association, shall have exclusive authority to negotiate, settle, and collect upon any claims or losses under any such insurance policy.

11.4 **Waivers of Subrogation.** All policies of insurance shall contain waivers of subrogation by the insurer against the Association, Owners, members of the Owner's household, and 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 relating to the Property and maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least thirty (30) days' prior written notice to the Association, to the FHA or FNMA (if applicable), all of the insureds and all Eligible Mortgagees.

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

- 11.7 **No Contribution**. All policies of insurance relating to the Property and maintained by the Association shall be the primary insurance where there is no other insurance in the name of the Owner covering the same property, and may not be brought in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by the Owners or their Eligible Mortgagees.
- 11.8 **Effect of Acts Not Within Association's Control**. All policies of insurance relating to the Property and 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 within 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 Unit Owner shall obtain adequate insurance, at the Unit Owner's own expense, affording coverage for fire and other casualty within the Unit as to personal property, additions and alterations including, without limitation, ceiling and wall finishing materials, floor coverings, cabinetry, finished millwork, electrical or plumbing fixtures serving the Unit, and built-in appliances; additional living expense; home loss assessment; personal liability; and any other coverages obtainable to the extent and in the amounts that such Unit Owner deems necessary or prudent. Each Unit Owner, at its expense, shall also obtain personal liability insurance in a reasonable amount. Each Owner shall deliver proof of such coverage to the Association at least annually. All policies shall provide that the policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and to the first mortgagees of record of the Units. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.

SECTION 12

DAMAGE AND RECONSTRUCTION, EMINENT DOMAIN AND TERMINATION

- 12.1 **Damage and Reconstruction**. If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, subject to the following provisions:
- 12.1.1 The Association or an insurance trustee, as the case may be, shall represent the Unit Owners in any related proceedings or in negotiations, settlements and agreements.
- EACH UNIT OWNER HEREBY GRANTS THE BOARD AND ANY INSURANCE TRUSTEE (DESIGNATED BY THE BOARD), AS THE CASE MAY BE, AN IRREVOCABLE POWER OF ATTORNEY FOR SUCH PURPOSE.
- 12.1.2 Any loss covered by the property insurance policy in Section 11 shall be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association, as the case may be, shall hold any insurance proceeds in trust for Unit Owners and Secured Parties as their

interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements and Units. If there is a surplus of proceeds after the Common Elements and Units have been completely repaired or restored or the planned community is terminated, the Board may retain the surplus for use by the Association or distribute the surplus among the Owners on an equitable basis as determined by the Board.

12.1.3 Any portion of the Property which is damaged or destroyed and results in a loss covered by insurance shall be promptly repaired or replaced by the Association unless (i) the planned community is terminated and the Association votes not to repair or replace all or part thereof, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) eighty percent (80%) percent of the Unit Owners, including every Unit Owner and holder of a first mortgage on a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the Common Elements, if any, in excess of insurance proceeds and reserves shall be paid as a Common Expense, and the cost of repair of a Unit in excess of insurance proceeds shall be paid by the respective Unit Owner if so required by the Association.

12.1.4 If less than the entire Property is repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community, (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units, including Units to which the Limited Common Elements were assigned, and the Secured Parties of those Units, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners and Secured Parties as their interests may appear in proportion to their Common Expense liability.

12.1.5 Any repair or reconstruction of the Property shall be substantially in accordance with the plans and specifications of the Property as initially constructed and as subsequently improved in compliance with the terms and provisions of this Declaration.

12.2 **Eminent Domain.** The following provisions shall apply in the event of a taking of any part of the Property by eminent domain:

12.2.1 If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit owner with a remnant which may not practically or lawfully be used for any material purpose permitted by this Declaration, the award shall compensate the Unit Owner and any Secured Party in the Unit as their interests may appear, whether or not any Common Element interest is acquired. If part of a Unit is acquired by eminent domain, the award shall compensate the Unit Owner and the Secured Party for the reduction in value of the Unit as their interests may appear, whether or not any Common Element interest is acquired.

Any remnant of a Unit remaining after part of a Unit is taken under this Section 12.2.1 is thereafter a Common Element.

12.2.2 If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken shall be paid to the Association. In an eminent domain proceeding which seeks to acquire a part of the Common Elements, jurisdiction may be acquired by service of process upon the Association. Unless this Declaration provides otherwise, any portion of the award attributable to the acquisition of a Limited Common Element shall be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition and their Secured Parties, as their interests may appear or as provided by this Declaration.

12.2.3 In any eminent domain proceeding the Units shall be treated as separate parcels of real estate for valuation purposes, regardless of the number of Units subject to the proceeding.

12.2.4 Any distribution to a Unit Owner from the proceeds of an eminent domain award shall be subject to any limitations imposed by this Declaration or the Bylaws.

12.2.5 The court order or final certificate containing the final awards shall be recorded in Grand Forks County, North Dakota.

12.3 **Notice.** All Eligible Mortgagees shall be entitled to receive notice of any eminent domain proceedings or substantial destruction of the Property, and the Association shall give written notice thereof to an Eligible Mortgagee pursuant to Sections 17.7 and 17.9.

12.4 **Termination.** Any distribution of funds in connection with the termination of the planned community must be made on a reasonable and equitable basis to the Unit Owners and the Secured Parties as their interests appear. In the event the planned community is terminated for reasons other than substantial destruction or condemnation of the Property, approval of such termination by a Secured Party is implied if the Secured Party fails to submit an objection to the termination within thirty (30) days after such Secured Party receives written notice of the termination, provided that the notice was delivered by certified or registered mail, with a "return receipt" requested.

SECTION 13 EASEMENTS

13.1 **Easement for Encroachments.** Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to an 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 of the adjoining Unit or the Property, or (ii) which are added pursuant to Section 8. If there is an encroachment by a building or improvement located in a Unit, upon another Unit 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 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 as 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 Owner and Occupants thereof, shall be subject to the rights of the Association to an 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 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 an easement in favor of the other Units for all such utilities and services, including without limitation, any sewer or water lines servicing other Units. Each Unit shall also be subject to an 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 13 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 maintenance, repair, replacement and reconstruction.
- 13.5 **Structural Encroachments.** Except as otherwise specifically provided in this Declaration, no structural encroachments shall be allowed within easements.
- 13.6 **Declarant and Association Access Easements.** Each Unit, and the rights of the Owner and Occupants thereof, shall be subject to a non-exclusive easement in favor of the Declarant and the Association, their directors, officers, agents, and employees, including without limitation any management agent or service vendor retained by the Declarant or the Association, for access on and across the Common Elements, for the purpose of performing their respective duties; provided, however that the Declarant and the Association, their directors, officers, agents, and employees, including without limitation any management agent or service vendor retained by the Declarant or the Association, as the case may be, shall have access to the Units to the extent that access is required to render the Declarant Services to the Owners and Occupants of such Units. Except in the event of emergencies, this easement shall be exercised only during normal business hours

and then, whenever practicable, only upon advance notice to the Owner or Occupant directly affected.

- 13.7 **Easements for Project Monuments.** Each Unit, and the rights of the Owner and Occupants thereof, shall be subject to such non-exclusive easements in favor of the Declarant and the Association, their directors, officers, agents, and employees, including without limitation any management agent or service vendor or contractor retained by the Declarant or the Association, for the purpose of installing, maintaining, repairing and replacing monument signs for the planned community.

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 and the decisions of the Association. A failure to comply shall entitle the Association to the relief set forth in this Section 14, in addition to the rights and remedies authorized elsewhere by the Governing Documents and by law.

- 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 this Declaration, the Articles of Incorporation, the Bylaws, or available at law or in equity. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, or the decisions 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 or 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 provisions of the Governing Documents or the Rules and Regulations:
- 14.2.1 Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- 14.2.2 Impose late charges of up to 15% of each late payment of an assessment or installment thereof, with any such late charges being characterized as an assessment against the Unit.
- 14.2.3 In the event of default of more than thirty (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.

- 14.2.4 Impose reasonable fines, penalties or charges for each violation of the Governing Documents or the Rules and Regulations as may be determined by the Association in its sole discretion.
 - 14.2.5 Suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities; provided, that this limitation shall not apply to any deck, balcony or patio easements appurtenant to the Unit, and those portions of the Common Elements providing utility 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 thirty (30) days thereafter, for each violation.
 - 14.2.6 Restore any portions of the 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 or the Rules and Regulations, and to assess the cost of such restoration against the responsible Owners and their Units.
 - 14.2.7 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 Twin Home or other part of the Property or the property of any other Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing, or condition in the Unit 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.
 - 14.2.8 Foreclose any lien arising under the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the State of North Dakota.
- 14.3 **Rights to Hearing.** In the case of imposition of any of the remedies authorized by this Section 14 (with the exception of the remedies afforded in Section 14.2.7), the Board shall, upon written request of the offender, grant to the offender a hearing. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (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 14 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, mediator, 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 attorneys' 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.** If required by the Association, 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, or on behalf of, the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rate resulting from the Owner's acts or omissions (or resulting from acts or omissions of Occupants or guests in the Owner's Unit) may be assessed against the Owner responsible for the condition and against his or her Unit.
- 14.7 **Enforcement by Owners.** The provisions of this Section 14 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 SPECIAL DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following Special Declarant Rights for as long as it owns at least one (1) Unit, or for such shorter period as may be specifically indicated:

- 15.1 **Complete Improvements.** To complete all the Units and other improvements indicated on the Plat, or otherwise included in Declarant's development plans or allowed by this Declaration, and to make alterations in the Units and Common Elements to accommodate its sales facilities.

- 15.2 **Create Units.** To create Units by this Declaration.
- 15.3 **Relocate Unit Boundaries.** To relocate boundaries between Units.
- 15.4 **Subdivide or Convert.** To subdivide units or convert Units into Common Elements, Limited Common Elements and/or Units.
- 15.5 **Merge or Consolidate.** To merge or consolidate the planned community with another planned community of the same form of ownership.
- 15.6 **Sales Facilities.** To construct, operate, and maintain a sales office, management office, model Units and other development, sales and rental facilities within the Common Elements and any Units owned by Declarant from time to time, located anywhere on the Property.
- 15.7 **Signs.** To erect and maintain signs and other sales displays offering the Units for sale or lease, in or on the Property.
- 15.8 **Easements.** To have and use easements for itself, its employees, contractors, representatives, agents, and prospective purchasers through and over the Property for the purpose of exercising its Special Declarant Rights.
- 15.9 **Control of Association.** To control the operation and administration of the Association, including, without limitation the power to appoint and remove the members of the Board, until the earliest of: (i) voluntary surrender of control by the Declarant, (ii) six months after seventy-five percent (75%) of the Units have been conveyed to Unit Owners other than Declarant, or (iii) three (3) years after the first conveyance of a Unit to a Unit Owner other than Declarant.
- 15.10 **Consent to Certain Amendments.** As long as Declarant owns any unsold Unit, Declarant's written consent shall be required for any amendment to this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations which directly or indirectly affects or may affect Declarant's rights under the Governing Documents.

SECTION 16 AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Units (including Declarant with respect to any Units owned by Declarant) to which are allocated at least 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 (iii) Declarant as to certain amendments as provided in Section 15.10. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees and the Declarant shall be in writing. The amendment shall be effective when recorded in the office of the County Recorder, Grand Forks County, North Dakota. 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

Subject to the Special Declarant Rights set forth in Section 15 and any greater requirements of any applicable 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 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 this Declaration, the Articles of Incorporation, or the Bylaws which are of a “material nature”. An amendment to this Declaration shall be of a “material nature” if it causes any change in one or more of the following: (i) the provisions governing voting rights; (ii) increases in assessments that raise the previously assessed amount by more than 25%; (iii) the provisions governing assessment liens, or priority of assessment liens; (iv) reductions in reserves for maintenance, repair and replacement of Common Elements; (v) responsibility for maintenance and repairs; (vi) reallocation of interests in the Common Elements, or rights to their use; (vii) redefinition of any Unit boundaries; (viii) convertibility of Units into Common Elements or vice versa; (ix) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property, except following casualty or condemnation in accordance with the provisions of Section 12; (x) hazard or fidelity insurance requirements; (xi) imposition of any restrictions on the leasing of Units; (xii) imposition of any restrictions on an Owner’s right to sell or transfer his or her Unit; (xiii) a decision by the Association to establish self management when professional management is in effect as required previously by this Declaration, the Articles of Incorporation, the Bylaws, or an Eligible Mortgagee; (xiv) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration, the Articles of Incorporation and the Bylaws; (xv) any action to terminate the legal status of the planned community after substantial destruction or condemnation occurs; or (xvi) any provisions 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 67% of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required to (i) abandon or terminate the planned community created hereby and by the Plat; (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 **Consent to Subdivision.** No Unit may be partitioned or subdivided without the prior written approval of the Owner and Eligible Mortgagee thereof, Declarant and the Association.

- 17.4 **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.
- 17.5 **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 free of any claims for 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 6.8, and (ii) except that any unreimbursed assessments or charges may be reallocated among all Units in accordance with their Common Expense allocations.
- 17.6 **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.
- 17.7 **Priority for Condemnation Awards.** No provision of this Declaration, the Articles of Incorporation, or the Bylaws 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 eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.
- 17.8 **Access to Books and Records/Audit.** Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice for proper purposes 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 120 days after 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 or a mortgage on a Unit, and the Unit number or address, the holder, insurer or guarantor shall be entitled to timely written notice of:
- 17.9.1 a condemnation loss or any casualty loss which affects a material portion of the Property or the Unit encumbered by the mortgage;
 - 17.9.2 a 60-day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
 - 17.9.3 a lapse, cancellation or material modification of any insurance policy maintained by the Association; and

- 17.9.4 a proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

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 the feminine or neutral gender, or vice versa, and the singular of any word used herein shall mean the plural, or vice versa.
- 18.3 **Tender of Claims.** In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to any applicable law, the Association shall promptly render the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.
- 18.4 **Notice.** Unless specifically provided otherwise in the Governing Documents, 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 properly addressed with postage prepaid and deposited in the United States mail; except that notifications made pursuant to Bylaw 3 of the Bylaws shall be effective upon receipt by the Association.
- 18.5 **Conflicts Among Documents.** In the event of any conflict among the provisions of this Declaration, the Bylaws and Rules and Regulations, this Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.
- 18.6 **Variances.** The restrictions applicable to the Property as specified in Section 7 of this Declaration are intended for the benefit of all Owners. The Declarant, however, acknowledges that exceptional conditions of a particular Unit may create peculiar and practical difficulties mitigating against the strict enforcement of a provision contained in Section 7. In the event an Owner believes that such exceptional conditions on a Unit create a hardship or special situation, an Application for Variance may be made by an Owner through the Board in accordance with Section 8.2 of this Declaration. An Application for Variance shall state on the application the reasons for allowing the variance, including: (i) there are special circumstances or conditions affecting the Unit such that the strict application of a provision of this Declaration would deprive the Owner of the reasonable use of the Unit; (ii) the variances are necessary for the preservation and enjoyment of a substantial property right of the Owner; (iii) the granting of the variance will not be detrimental to the public welfare or injurious to other Owners or Property subject to this Declaration; and (iv) the issuance of the variance will not have an adverse effect upon the health, welfare and safety of the Owners benefited by this Declaration. In

considering a request for a variance from the strict application of Section 7 of this Declaration, the Board shall make a finding showing that all of the foregoing conditions exist and the Board may impose any reasonable condition in the granting of such variance in order to protect the Property and the Owners.

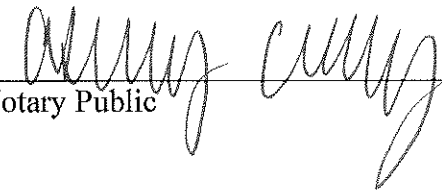
IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first set forth above.

EHRE GFK TH01, LLC,
a North Dakota limited liability company

By: 
Philip Gisi, President

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF GRAND FORKS)

The foregoing instrument was acknowledged before me this 5th day of May, 2022, by Philip Gisi, the President of EHRE GFK TH01, LLC, a North Dakota limited liability company, on behalf of said limited liability company.


Notary Public

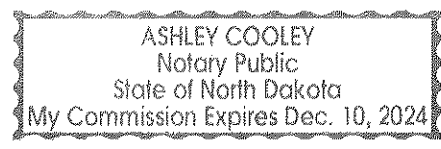


EXHIBIT A

Description of the Property

Lots D, E, F, G, H, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, and BB of the Replat of Lot C, Block 1, of the Replat of Lots 1, 2, 3 and 4, Block 1, Edgewood Village First Resubdivision to the City of Grand Forks, Grand Forks County, North Dakota.

EXHIBIT B

Bylaws

**BYLAWS
OF
EDGEWOOD VILLAGE TWIN HOMES OF GRAND FORKS, INC.**

A North Dakota nonprofit corporation

These are the Bylaws of Edgewood Village Twin Homes of Grand Forks, Inc., a North Dakota nonprofit corporation (the "Association") organized under Chapter 10-33 of the North Dakota Century Code (the "Act"), the Articles of Incorporation (the "Articles") of which have been filed in the office of the North Dakota Secretary of State as of the 6th day of April, 2022.

DEFINITIONS

Bylaw 1. Definitions. Any words or terms used in these Bylaws which are defined in the Declaration of Edgewood Village Twin Homes of Grand Forks, filed for record in the office of the County Recorder for Grand Forks County, North Dakota (the "Declaration"), shall have the meaning there ascribed to them.

MEMBERS AND VOTING

Bylaw 2. Membership. Each Owner of a Unit in the Edgewood Village Twin Homes of Grand Forks, shall be a Member of the Association, subject to any restrictions or requirements for continued membership contained herein, and no other person or entity shall be entitled to membership. The Declarant, or its successors in interest or assigns, shall be entitled to membership in the Association only so long as the same is the Owner of one or more Units in the Edgewood Village Twin Homes of Grand Forks.

Bylaw 3. Transfer of Membership. Each membership is appurtenant to the Unit on which it is based and shall transfer automatically by voluntary or involuntary conveyance of the ownership of that Unit, however, such transfer does not guarantee the continued qualification of membership of the transferee. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a Member, in its sole discretion. In the event the Owner of any Unit should fail or refuse to transfer the membership to the transferee of title of such Unit, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Bylaw 4. Multiple Owners. When more than one person holds an ownership interest in a Unit, the vote for such Unit shall be exercised as they between or among themselves determine and jointly signify in writing to the Secretary of the Association from time to time, but in no event shall more than the assigned voting power be cast with respect to any Unit nor shall the voting power allocated to a Unit be split or otherwise cast separately by the several Unit

Owners. In the event multiple Owners of a Unit cannot agree on the exercise of voting power for such Unit, any one of the Owners may apply to the Board of Directors of the Association, which, after hearing all parties at a special meeting, shall determine the manner of exercise of the voting power for said Unit by a majority vote of the Directors voting at the special or regular meeting. A Director shall not vote upon such determination with respect to a Unit of which said Director is one of the multiple Owners.

Bylaw 5. Voting. Each Unit shall be entitled to the voting power set forth in Section 4.2 of the Declaration. Cumulative voting shall not be permitted. A majority of a quorum of those voting at any regular or special meeting shall govern all determinations of the Unit Owners, except where a greater vote is required by the Declaration, or these Bylaws. No vote shall be cast with respect to any Unit while it is owned by the Association. During any period when the assessments against a Unit are unpaid for more than sixty (60) days after due and payable, the Unit's voting rights may be suspended by the Association. The Association further reserves the right to suspend or revoke the voting rights of a Member in the event the Member is found to be in violation of the terms of the Declaration, the Articles, these Bylaws, or any Rules and Regulations promulgated by the Board of Directors or Members pursuant to Bylaw 50, utilizing policies of uniform application. Upon curation of any violation state above, the suspended or revoked Member may petition the Association for the reinstatement of the Member's voting rights. All suspensions, revocations, and reinstatements of voting rights under these Bylaws shall be effectuated by the approval of a simple majority of the Board of Directors.

Bylaw 6. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners representing 50% of the voting power of the Association shall constitute a quorum. If the voting power of a Unit is suspended by reason of delinquency in payment of assessments, such voting power shall be deducted from the pool of eligible voting power from which the quorum is calculated.

Bylaw 7. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting and in no event shall be effective for a period greater than eleven (11) months. A person designated by a proxy to act for a Member need not be a Member.

MEETINGS

Bylaw 8. Place of Meetings. Meetings of the Association shall be held at the Property or such other suitable place within the City of Grand Forks, North Dakota, and convenient to the Unit Owners as may be designated by the Board of Directors.

Bylaw 9. Annual Meetings. The first annual meeting shall be set by the Board of Directors. At such first annual meeting of the Members, the Members may designate a regular date for successive annual meetings. If the Members fail to designate such a regular date, the Board of Directors may continue to designate the date of the next annual meeting until such a designation is made by the Members. If any designated date falls upon a legal holiday, it shall be understood that the actual date of the meeting shall be the next business day succeeding such designated date. At such meetings in accordance with the requirements of Bylaw 18 of these Bylaws, Directors shall be elected by ballot of the Unit Owners. The Unit Owners also may

transact such other business of the Association as properly may come before them. In all events, a meeting of the Members shall be held at least once each year. If a regular meeting of the Members has not been held during the preceding 15 months, ten percent (10%) or more of the Members with voting rights may demand a meeting.

Bylaw 10. Special Meetings. It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon the presentation to the Secretary of the Association of a petition therefor signed by Owners of ten or more Units or by three Directors. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless all of the Members with voting rights have waived notice of the meeting under the Act. One or more special meetings may be held before there has been a first annual meeting.

Bylaw 11. Notice of Meetings. It shall be the duty of the Secretary of the Association to send to each Unit Owner, at least twenty-one (21) days, and not more than sixty (60) days, in advance of an annual meeting of the Unit Owners, and not less than seven (7) days and not more than thirty (30) days in advance of any other meeting, notice of the date, time, place, and complete agenda of the meeting and the procedures for appointing proxies. The notice shall be hand-delivered or sent by United States mail, postage prepaid, to all Unit Owners of record at the address of their respective Units or to such other address or addresses as any of them may have designated in writing to the Secretary.

Bylaw 12. Adjourned Meetings. If any meeting of Unit Owners cannot be organized because a quorum is not present, the Unit Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours nor more than sixty (60) days from the time the original meeting was called, with no further notice than that given at such adjourned meeting, and the quorum at such adjourned meeting shall be one-half of the ordinary quorum.

Bylaw 13. Order of Business. The order of business at all annual meetings of the Unit Owners shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of committees.
- (f) Designation of regular date for annual meetings (if necessary).
- (g) Election of Board of Directors.
- (h) Unfinished business.

- (i) New business.
- (j) Open forum.
- (k) Announcement of date, time and place of organization meeting of new Board of Directors.
- (l) Announcement of members of Nominating Committee.
- (m) Adjournment.

Bylaw 14. Fair Voting Procedures. The following shall be considered minimum standards to assure fair voting procedures:

- (a) All proxies should be available for inspection prior to and during a meeting of the Members, so that a reasonable opportunity is afforded to challenge and count proxies.
- (b) All mail ballots and all proxies cast at a meeting should be first opened at the time the votes on an election or issue are counted and tallied.
- (c) In the case of an election of a Director, every candidate or designee of a candidate may observe the counting and tallying of votes; and on any other issue, a reasonable number of observers from both sides of each issue shall observe the counting and tallying of votes.
- (d) The vote count on each election and issue shall be announced before adjournment of the meeting, and shall be available to all Members in written form, signed by the Secretary of the Association, within seven (7) days of the meeting.
- (e) A Member who is delinquent in the payment of assessments may reinstate voting rights for a meeting by payment of the delinquency by delivering a cashier's check to the Secretary, Treasurer or President of the Association before the meeting is called to order, unless a different requirement is adopted by the Board and the delinquent Member is given written notice thereof at least fifteen (15) days before the meeting.

BOARD OF DIRECTORS

Bylaw 15. First Board of Directors. The first Board of Directors shall consist of three (3) persons designated in the Articles, who need not be Unit Owners, and who shall serve until the first annual meeting of the Members or until their successors are elected and qualified. Should any vacancy occur in the first Board of Directors it shall be filled by Declarant. The first Board of Directors shall have the power to adopt the Bylaws of the Association, to elect officers, to establish a schedule of assessments which shall be effective until December 31st of the year in which the first annual meeting of the Association occurs, and shall have generally the powers and duties as set forth in Bylaw 19.

Bylaw 16. Number and Qualification. The number of Directors constituting the Board of Directors after the first Board of Directors shall be five (5); provided, however, that the number of Directors may be increased to seven (7) by amendment to or in the manner provided in the Articles or these Bylaws. All Directors elected by the Unit Owners shall themselves be Unit Owners, officers or employees of a corporate Unit Owner, partners of a partnership Unit Owner, or members of a limited liability company Unit Owner who are in good standing with the Association.

Bylaw 17. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Bylaw 18. Term and Election. The term of office of each Director shall be fixed at one year. Directors shall be elected by plurality. A Director may be an individual Unit Owner, or an officer, partner, member or employee of an entity Unit Owner. Each Director shall hold office until his or her respective successor has been elected.

Bylaw 19. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the planned community known as the Edgewood Village Twin Homes of Grand Forks, and may act on behalf of the Association and do all such acts and things except as by the Act or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Unit Owners.

Bylaw 20. Vacancies. Any vacancy in the Board arising by death or resignation of a Director elected or appointed by Declarant shall be filled only by appointment made by Declarant. Any other vacancy shall be filled by act of the remaining directors, whether or not constituting a quorum, and a Director so appointed shall serve for the unexpired term of his predecessor in office.

Bylaw 21. Removal of Directors. At any regular or special meeting of the Unit Owners duly called, any one or more of the Directors may be removed with or without cause by a majority of the Unit Owners authorized to elect such Director present in person or by proxy, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Unit Owners shall be given an opportunity to be heard at the meeting.

Bylaw 22. Organizational Meeting. The first meeting of the Board of Directors each year following the annual meeting of Unit Owners shall be held within ten (10) days after the annual Owners' meeting, and if the date, time and place are announced at the annual Owners' meeting, no further notice shall be necessary.

Bylaw 23. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place within the City of Grand Forks, State of North Dakota, as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each calendar year. Written notice of regular meetings of the Board of Directors shall be given to each Director, at least ten (10) days prior to the day named for such meeting.

Bylaw 24. Special Meetings. Special meetings of the Board of Directors may be called by the President on not less than seven (7) days' written notice to each Director, which notice shall state the time, place within the City of Grand Forks, State of North Dakota, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) Directors.

Bylaw 25. Open Meetings. Except as otherwise provided in the Act or the Declaration, meetings of the Board of Directors must be open to the Unit Owners, but shall not otherwise be open to the public. In the event an executive session is called during a meeting of the Board of Directors, and provided that executive session is noted on the agenda for said meeting, such executive session shall be closed to the public and other Unit Owners not serving on the Board of Directors. To the extent practicable, the Board shall give reasonable notice to the Unit Owners of the date, time, and place of a board meeting. If the date, time, and place of meetings are announced at a previous meeting of the Board, posted in a location accessible to the Unit Owners and designated by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required.

Bylaw 26. Telephone Conference. A meeting of the Directors or any committee of the Board may be conducted by a telephone conference or any means of communication through which the participants may simultaneously hear each other during the meeting, if notice of the meeting has been given as would be required for a meeting and if the number of persons participating in the conference is sufficient to constitute a quorum. Participating in a conference constitutes personal presence at the meeting. A Director may participate in a Board meeting by means of communication through which the Director, other Directors participating, and all other Directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting, and such presence shall count towards the quorum at a meeting.

Bylaw 27. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving and receipt of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by such Director of the time, place and purpose thereof, unless objection is made by such Director at the start of the meeting that notice was improper. If all the Directors are present at any meeting of the Board and no objection is otherwise made, no notice shall be required and any business may be transacted at such meeting.

Bylaw 28. Board of Directors Quorum and Voting. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present shall

be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there is less than a quorum present, the meeting may be adjourned from time to time until a quorum is present. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Bylaw 29. No Proxies. Voting by proxy by Directors is prohibited.

Bylaw 30. Action Without a Meeting. Notwithstanding anything contained in these Bylaws or implied herein to the contrary, any action which may be taken at a meeting of the board of directors or executive committee may be taken without a meeting if a writing setting forth and approving the action taken shall be signed by all of the directors or executive committee members entitled to vote on such action. Such action shall be effective on the date on which the last signature is placed on such writing or such earlier effective date as is stated in the writing.

Bylaw 31. Compensation. The Directors will receive no compensation for their services as Directors. However, when authorized by the Board, Directors and officers may be reimbursed for actual expenses incurred in connection with the business of the Association, and officers may be compensated for bookkeeping or recordkeeping functions.

OFFICERS

Bylaw 32. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. All principal officers shall be elected by and from the Board of Directors. The offices of Treasurer and Secretary may be filled by the same person. The Board may from time to time appoint an Assistant Secretary and such other officers, with such duties, as in their judgment may be desirable, and such officers need not be Directors, but who also shall not have the authority to legally bind the Association in any way.

Bylaw 33. Election of Officers. The principal officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board. All officers shall hold office at the pleasure of the Board.

Bylaw 34. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall see that all orders and resolutions of the Board are carried out, and shall sign all leases, contracts, mortgages, deeds, checks, and other written instruments (except to the extent that the Board of Directors authorizes or mandates the delegation of such authority).

Bylaw 35. Vice President. The Vice President shall act in the place of the President and perform the President's duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Director to act on an interim basis. The Vice President also shall perform such other duties as shall from time to time be required by the Board of Directors.

Bylaw 36. Secretary. The secretary shall attend all meetings of the Board of Directors and all meetings of the members, all votes and keep minutes of all proceedings. The Secretary shall keep a complete record of all meetings of the Association and of the Board and

shall have general charge and supervision of the books and records of the Association. The Secretary shall serve all notices required by law and by these Bylaws including notices of meetings and shall make a full report of all matters and business pertaining to his or her office to the members at the annual meeting. The Secretary shall keep complete membership records and maintain a list of qualified voters. The Secretary shall make all reports required by law and shall perform such other duties as may be required of him or her by the Association or the Board.

Bylaw 37. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall sign all checks and shall be responsible for the deposit of all monies and valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors, except to the extent that the Board of Directors authorizes or mandates the delegation of such authority to a manager or agent.

Bylaw 38. Committees. The Board shall appoint members of a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors may establish other committees on an ad hoc or standing basis, and appoint their members as deemed appropriate in carrying out its purposes. Provided, however, that if an executive committee is established, such committee shall consist of at least three (3) members, one of whom must be the President.

ANNUAL REPORT

Bylaw 39. Annual Report. The Association shall prepare and provide to each Unit Owner at or prior to each annual meeting a report of the affairs of the Association including at least the following information:

- (a) A statement of any capital expenditures in excess of two percent (2%) of the current budget or \$5,000.00 (whichever is greater) approved by the Association for the current year or succeeding two fiscal years;
- (b) A statement of the balance of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board of Directors;
- (c) A copy of the statement of revenues and expenses for the Association's last fiscal year and a balance sheet as of the end of said fiscal year;
- (d) A statement of the status of any pending litigation or judgments to which the Association is a party;
- (e) A statement of the insurance coverage provided by the Association; and
- (f) A statement of the total past due assessments on all Units, current as of not more than sixty (60) days prior to the date of the meeting.

MISCELLANEOUS

Bylaw 40. Right of Corporate or Partnership or Limited Liability Company Unit Owner to Substitute. Whenever a Director or officer of the Association is an officer or owner of a corporate Unit Owner or a partner of a partnership Unit Owner or a member of a limited liability company Unit Owner, the respective corporation, partnership or limited liability company may by written notice to the Association remove such Director or officer of the Association and designate another such person to serve the unexpired balance of the term.

Bylaw 41. Indemnification of Officers and Directors. To the full extent permitted by the Act, as amended from time to time, or by other provisions of law, each person who was or is a party or is threatened to be made a party to any proceeding by reason of a former or present official capacity in the Association shall be indemnified, to the extent allowed under Section 10-33-84 of the Act.

Bylaw 42. Notice. "Notice" has the meaning given in Section 10-33-01 of the Act.

Bylaw 43. Amendments to Articles and Bylaws. Until the second Board has been constituted pursuant to these Bylaws, an amendment to the Articles and these Bylaws shall be considered adopted upon its receiving a unanimous vote of the Directors constituting the first Board at a meeting thereof, notice of which containing the proposed amendment having been given to each of said Directors at least three (3) days prior to said meeting. After the second Board has been constituted pursuant to these Bylaws, an amendment to the Articles and these Bylaws shall be adopted upon its receiving an affirmative vote of the Members who have authority to cast at least sixty-seven percent (67%) of the total votes in the Association, in writing, at any regular, special or annual meeting of the Association. The provisions of this Bylaw 43 are subject to any approval rights of Eligible Mortgagees and the Declarant as provided in the Declaration.

Bylaw 44. Conflicts. In case any of these Bylaws conflicts with the provisions of the Act, the provisions of the Act will apply. In case any of these Bylaws conflicts with the provisions of the Declaration or the Articles, the provisions of the Declaration or Articles will apply.

Bylaw 45. Inspection of Books and Records. Current copies of the Declaration, Bylaws, other rules concerning the Association and the planned community, and the books, records, and financial statements of the Association shall at all times, during reasonable and normal business hours, and for a proper purpose stated by the Unit Owner, be available for inspection by any Unit Owner, prospective purchaser, Unit lender or the holder, insurer and guarantor of a mortgage on any Unit at the principal office of the Association, and copies of the same may be purchased at reasonable cost.

Bylaw 46. Audited Statements. The Association shall make an audited financial statement for the preceding fiscal year available to the holder, insurer or guarantor of any first mortgage that is secured by a Unit in the planned community upon submission of a written request for it, at the expense of the requesting party. The audited financial statement shall be made available within (120) days after the Association's fiscal year end. Any unaudited financial statement shall be furnished free of charge within a reasonable time upon request from

any such Owner, lender, holder, insurer or guarantor or any prospective Owner, lender, holder, insurer or guarantor.


Bylaw 47. Notice to Association. An Owner who mortgages the Owner's Unit shall notify the Association through the management agent, if any, or the President or the Board of Directors in the event there is no management agent, of the name and address of the mortgagee and the Association shall maintain such information in a book entitled "Mortgagees of Units."

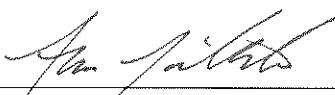
Bylaw 48. Compliance. Each Unit Owner, Occupant and Secured Party shall be governed by and shall comply with the terms, conditions, obligations, and provisions of the Act, the Declaration, the Articles, these Bylaws, and the Rules and Regulations of the Association, as any of the same may be amended from time to time.

Bylaw 50. Rules and Regulations. The Board may from time to time promulgate such rules and regulations as it deems reasonable and necessary, governing the administration, management, operation and use of the Common Elements and any other areas, facilities and improvements which Members of the Association are entitled to use, so as to promote the common use and enjoyment thereof by Unit Owners and Occupants, and for the protection and preservation thereof, and may in addition adopt such reasonable rules and regulations as it may deem necessary with respect to Units to provide for the common good and enjoyment of all Unit Owners and Occupants, including, without limiting the generality of the foregoing, the right to adopt such rules and regulations with reference to children, animals and leases. Copies of all such rules and regulations and any amendments thereto shall be furnished to all Members, and a copy shall be posted or otherwise made available to Members at the office of the Association. However, failure to furnish or post such rules or regulations shall not affect their validity or enforceability. Subject to obtaining the consent of Declarant pursuant to Section 15.10 of the Declaration, any such rule or regulation may be amended, modified or revoked, and new and additional rules and regulations may be adopted, by the Members at an annual or special meeting of the Members.

Bylaw 51. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, the Act, or applicable law. The chairman of any meeting shall have the authority to appoint a parliamentarian.

EDGEWOOD VILLAGE TWIN HOMES
OF GRAND FORKS, INC.

By: 
Its President

By: 
Its Secretary