

FILED FOR RECORD THIS 25th  
DAY OF August, 20 06  
AT 11:05 O'CLOCK A.M.  
AS DOCUMENT NO. 0180458

SIGNATURE Virginia Mahoney  
VIRGINIA MAHONEY, COUNTY RECORDER  
BY \_\_\_\_\_ DEPUTY

46002 # 18685

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR  
POMME DE TERRE GOLF CLUB**

This Declaration is made on this 25<sup>th</sup> day of August, 2006, by Pomme De Terre Development, LLC, a Minnesota limited liability company (the "Declarant").

**WHEREAS**, Declarant is the owner of certain real property located in Stevens County, Minnesota, which has been platted as Pomme De Terre Golf Club (Development); and

**WHEREAS**, the Development includes Blocks One, Two, Three, Four, Five, and Six, on which Declarant desires to establish a plan for a permanent residential community which will adjoin Outlots A and B of the Development, which are or will be used for golf course purposes; and

**NOW, THEREFORE**, Declarant hereby declares that Blocks One through Six in the Development 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 all persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

SECTION 1

DEFINITIONS

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

1.1 "Association" shall mean the Pomme De Terre Golf Club Owners Association, a nonprofit corporation which has been created pursuant to Chapter 317A, of the laws of the State of Minnesota, whose members consist of Owners as defined herein.

1.2 "Board" shall mean the Board of Directors of the Association as provided for in the By-Laws.

1.3 "By-Laws" shall mean the By-Laws governing the operation of the Association, as amended from time to time.

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

1.5 "Dwelling" shall mean a building consisting of one or more floors, designed and intended for occupancy as a single family residence, including the garage attached thereto, and located within the boundaries of a Lot.

1.6 "Eligible Mortgagee" shall mean any Person owning a mortgage on any Lot, which mortgage is first in priority, upon foreclosure, to all other mortgages that encumber such Lot, 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.

1.7 "Governing Documents" shall mean this Declaration, the Articles of Incorporation and By-Laws of the Association, and any Rules and Regulations adopted by the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.8 "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" are used interchangeably in the Governing Documents.

1.9 "Occupant" shall mean any person or persons, other than an Owner, in possession of, or residing in a Lot.

1.10 "Owner" shall mean a Person who owns a Lot, but excluding contract for deed sellers, mortgagees and other such secured parties. The term "Owner" includes, without limitation, contract for deed purchasers and holders of a life estate.

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

1.12 "Plat" shall mean the recorded plat depicting Pomme De Terre Golf Club, and satisfying the requirements of Minnesota Statutes Chapter 505, as applicable, including any amended or supplemental Plat recorded from time to time.

1.13 "Property" shall mean all of the Lots in Blocks One through Six, Pomme De Terre Golf Club, Stevens County, Minnesota, including all structures and improvements located thereon, now or in the future.

1.16 "Unit or Lot" shall mean any platted lot in the Property as shown on the Plat, including all improvements thereon, but excluding all Outlots. The Units are Lots 1 through 11, Block One; Lots 1 through 9, Block Two; Lots 1 through 22, Block Three; Lots 1 through 3, Block Four; Lots 1 through 8, Block Five; and Lots 1 through 7, Block Six, Pomme De Terre Golf Club.

## SECTION 2

### EXEMPTION FROM COMMON INTEREST OWNERSHIP ACT

2.1 Exemption. The Property is a planned community as that term is defined in the Minnesota Common Interest Ownership Act (Minn. Stat. Chpt. 515B) (the Act). However, because the Units consist solely of separate parcels of real estate designed or utilized for detached single family dwellings, and the Association has no obligation to maintain Dwellings or any other buildings located on the Units, the Property is exempt from the provisions of the Act, by virtue of Minn. Stat. § 515B.1-102(e)(2); and the Declarant is not electing to be subject to the Act.

2.2 Applicability of Local Ordinance. The Property is not subject to any ordinance as described in Section 515B.1-106 of the Act.

2.3 Incorporation of Provisions of the Act. Notwithstanding that the Property is exempt from the provisions of the Act, wherever this Declaration refers to the Act or to certain provisions thereof, the Act or such provisions are incorporated herein by such reference. Any term used in the Governing Documents shall have the meaning set forth in the Act unless otherwise specifically defined in this Declaration. Notwithstanding the incorporation, by reference, of certain provisions of the Act, Article 4 of the Act shall in no event be applicable to this planned community.

## SECTION 3

### DESCRIPTION OF LOTS AND EASEMENTS

3.1 Lots. There are sixty (60) Lots, all of which are restricted exclusively to residential use. Each Lot constitutes a separate parcel of real estate. No additional Lots may be created by the subdivision or conversion of Lots. The Lot identifiers and locations of the Lots are as shown on the Plat, which is incorporated herein by reference. The Lot identifier for a Lot shall be its lot and block number and the subdivision name.

3.2 Lot Boundaries. The front, rear and side boundaries of each Lot shall be the boundary lines as shown on the Plat. The Lots shall have no upper or lower boundaries.

3.3 Easements – Lots. Each Lot shall be subject to the following easements:

- a. An exclusive easement on and over the Lots in favor of the Association, for any purposes necessary to fulfill the Association's obligations under the Governing Documents.
- b. An exclusive easement in favor of the Declarant for construction and sales activities as described in Section 14.

3.4 Other Easements. The Property is subject to such other easements that are of record or otherwise shown on the Plat.

## SECTION 4

### NO COMMON ELEMENTS/EASEMENT FOR SIGNAGE

4.1 Common Elements. There are no Common Elements.

4.2 Easement/Sign. Declarant has or will install and/or construct a permanent sign or signs on a portion of Outlot E and/or Outlot F, Pomme De Terre Golf Club, identifying the Property and/or Development and the entrance to same. The Association shall have an easement over and across Outlots E and F for the purposes of maintaining, repairing and replacing the sign (Signage Easement).

## SECTION 5

### ASSOCIATION MEMBERSHIP; ALLOCATION OF VOTING RIGHTS AND COMMON EXPENSES

5.1 Membership. Each Owner shall be a member of the Association by virtue of Lot ownership. Such membership shall not be separated or conveyed separately from Lot ownership, but shall be transferred with the conveyance of the Owner's interest in the Lot. An Owner's membership shall terminate when the Owner's Lot ownership terminates. When more than one Person is an Owner of a Lot, all such Persons shall be members of the Association, but multiple ownership of a Lot shall not increase the voting rights allocated to such Lot nor authorize the division of the voting rights.

5.2 Voting and Common Expenses Allocation. Voting rights and Common Expense obligations are allocated equally among the Lots, provided that special allocations of Common Expenses shall be permitted as provided in Section 3-115 of the Act.

## SECTION 6

### ADMINISTRATION

6.1 General. The Association shall have all powers described in the Governing Documents, the Act and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents or the Act. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

6.2 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 other Governing Documents. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

## SECTION 7

### ASSESSMENTS FOR COMMON EXPENSES

7.1 General. Except as specifically set forth herein, assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion, subject to the limitations set forth in Sections 7.2 and 7.3, and the requirements of the Act and By-Laws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated among the Units according to the Common Expense allocations set forth in Section 5.2.

7.2 Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Section 7.2 and 7.3. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year.

- a. Until a Common Expense assessment is levied, Declarant shall pay all accrued expenses of the common interest community.
- b. After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board, subject to Section 7.2.c.
- c. Until the termination of the period of Declarant control described in Section 14.6, the increase in the annual assessment for any year shall not exceed the greater of (i) the increase in the U. S. Department of Labor Revised Consumer Price Index for Urban Wage Earners and Clerical Workers for All Items for the prior year; or (ii) 5% of the total annual assessment for the Association's previous fiscal year, unless such increase is approved by the vote of a majority of those Owners voting, in person or proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

7.3 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 the cost of any unforeseen or unbudgeted Common Expense. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

7.4 Liability of Owners for Assessments. The obligation of an Owner to pay levied assessments shall commence at the later of (i) the recording of the Declaration or amendment thereto which creates the Owner's Unit, or (ii) the time at which the Owner acquires title to the Unit. 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.

7.5 Assessment Lien. The Association has a lien on a Unit for any assessment levied against that Unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association pursuant to Section 515B.3-102(a)(10), (11) and (12) of the Act are liens, and are enforceable as assessments, under this Section. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

7.6 Foreclosure of Lien; Remedies. A lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. The Owner and any other Person claiming an 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.

7.7 Lien Priority: Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the Unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if a first mortgage on a Unit is foreclosed, and no Owner redeems during the Owner's period of redemption provided by Chapters 580, 581 or 582, 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 the lien for unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-115(a), (e)(1) to (3), (f), and (h) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

7.8 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 8

### RESTRICTIONS ON PROPERTY

8.1 Single Family Residential Use Requirement. The Lots shall be used by Owners and Occupants, and their guests, exclusively as private single family residential dwellings.

8.2 Restriction on Business Use. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Lot, except (i) an Owner or Occupant residing in a Dwelling may operate a daycare facility within such Dwelling provided that such use is in compliance with all appropriate laws, ordinances or regulations, is incidental to the primary residential use of the Dwelling, and does not involve physical alteration of the Dwelling (ii) an Owner or Occupant residing in a Dwelling may operate and maintain a home-based business in such Dwelling and handle matters relating to such business therein by telephone, e-mail, mail or other similar means, provided that such business use is in compliance with all laws, ordinances and regulations, is incidental to the residential use, does not involve physical alteration of the Dwelling, and does not involve observable business activity such as signs, advertising displays, bulk mailings, frequent deliveries, visitation or use of the Dwelling by customers or employees and (iii) the Association may maintain offices on the Property for sales, management and related purposes.

8.3 Signs. No sign of any kind shall be displayed to the public view on any Lot except:

- a. Declarant may erect and display no more than two professional signs of not more than 8' x 16' advertising Lots in the Property.
- b. Permanent signs identifying the entrances to the Property may be erected by the Declarant.

- c. One sign of not more than 6 square feet in size advertising such Lot for sale may be placed upon such Lot.

8.4 Restrictions Relating to Dwellings – Construction, Size and Style.

- a. Approval by Declarant. So long as Declarant owns any Lot, no Dwelling shall be constructed upon a Lot until the plans and specifications for same shall have been approved in writing by the Declarant. The procedures for such approval shall be governed by the provisions of Section 9.1c and 9.2 except that wherever therein there is a reference to Board or Association, such reference shall be deemed to refer to Declarant for purposes of this section.
- b. Minimum Square Footage. Any Dwelling constructed on a Lot shall have not less than 1,400 square feet of enclosed living space.
- c. Completion of Construction. The exterior of a Dwelling erected upon a Lot must be completed within 12 months of the commencement of construction of said Dwelling.
- d. Sodding. All portions of the Private Yard Areas of a Lot lying between the public street abutting the Lot, and the Dwelling constructed thereon, shall be sodded or seeded within 60 days of substantial completion of the Dwelling unless substantial completion occurs between October 1 and May 1 in which case such sodding or seeding shall be completed by the following July 1.
- e. Garages. All Dwellings shall be constructed with an attached garage with a minimum of a double garage and a maximum of triple garage. No detached garages shall be allowed.
- f. Exterior Front of Dwelling. A minimum of 30% of the front of each Dwelling, that is, that portion of the Dwelling that faces the public road adjoining the Lot on which the Dwelling is constructed shall be covered with brick, natural stone, thin cut veneer, or other cultured stone product as approved by Declarant.
- g. Driveways. All Lots shall contain driveways made of concrete which shall be installed within 15 months of the date of commencement of construction of the Dwelling on such Lot.

- h. Roof Pitch. All Dwellings must be constructed with a minimum of an 6/12th roof pitch.
- i. Building Materials/Color. All Dwellings shall be covered with horizontal lapped siding, wood shingles, brick, cement, stone, or grooved v-jointed materials for walls, the color of which shall be an earth tone unless otherwise approved by Declarant. The roofs of Dwellings shall be asbestos, wood, asphalt, or fiberglass.

8.5 Outbuildings, Temporary Structures, Prefabricated and Used Dwellings, Fences. No outbuilding shall be constructed or installed on a Lot. No structure of any kind of a temporary nature shall be used upon any Lot at any time as a residence. No trailer, mobile home, manufactured home, prefabricated home, rebuilt or used Dwelling or garage shall be constructed, installed or located on any Lot. No fence shall be installed, constructed or placed on any Lot without the prior written approval of Declarant, so long as Declarant retains any ownership interest in a Lot.

8.6 Inoperable Motor Vehicle. No Owner or Occupant shall allow a motor vehicle to remain on such Lot for a period of more than 15 days if such motor vehicle lacks vital component parts or is in inoperable condition, unless the same is kept in an enclosed garage.

8.7 Subdivision. No subdivision shall be made of any Lot.

8.8 Nuisance. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become a nuisance or any annoyance to the neighborhood.

8.9 Pets. The following provisions, together with any Rules and Regulations adopted by the Association, shall govern the keeping of pets or animals on or in the Units:

- a. Except as otherwise provided herein, no pets or animals of any type shall be kept or allowed on or in any of the Units, and in no event shall they be kept, bred, or maintained for any commercial purpose.
- b. Animals generally recognized as household pets may be kept in a Dwelling provided that any Dwelling shall not contain more than two such household pets at anytime.

- c. One outdoor kennel or cage per Lot shall be permitted, provided that (i) that such kennel or cage is located no closer than 50 feet from any portion of the Lot that adjoins Outlots A and B or any other adjoining property that is used for golf course purposes, and (ii) that such kennel or cage does not exceed the size necessary to house more than two household pets, and is constructed or installed in a manner that is esthetically pleasing and in conformity with normal and customary kennels or cages as used in the area.
- d. Pets shall be kept on a leash when outside of a Dwelling and any cage or kennel. No pet shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance to others. Owners shall be responsible for immediately cleaning all waste materials left by their pet in other Lots, other portions of the Property, or the adjoining golf course property.

8.10 Rubbish. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other wastes. Refuse shall not be kept except in sanitary containers.

8.11 Personal Property/Storage. Subject to any rules and regulations adopted by the Association, the following shall govern the keeping or storage of personal property on the Property:

- a. Except as otherwise provided herein no Owner or Occupant may store personal property of any nature upon any portion of a Lot outside the Dwelling or garage.
- b. Personal property used on a seasonal basis, such as grills, picnic tables, patio furnishings may be stored and kept outdoors on the yard area of the Lot.
- c. Parking or storage of boats, trailers, motor homes, campers, snowmobiles, or other recreational vehicles shall be allowed only on designated parking or driveway areas and only on a temporary basis as shall be determined by rules and regulations adopted by the Association.

8.12 Time Share. 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.

8.13 Parking. Parking of vehicles shall be allowed only on those portions of the Property designated for such purposes. Parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests and such other incidental uses as may be authorized in writing by the Association. The use of 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.

8.14 Notice of Continuation of Farming Practices. Land adjoining the Development or located in the vicinity of the Development is agricultural land. Notice is hereby given, as set forth in that certain Easement recorded in the office of the County Recorder for Stevens County on June 28, 2006, as Document No. 0180034, that it is anticipated that the owners of such lands will continue with normal and customary farming practices on such agricultural lands, which use may impact the use and occupancy of the Lots, including without limitation, odors, noise and lights arising from such farming practices.

## SECTION 9

### ALTERATIONS/ARCHITECTURAL CONTROL

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

- a. Except for improvements made by the Declarant prior to or as part of its initial sale of the Unit, and except for improvements approved by Declarant as provided in Section 8, none of the foregoing shall be permitted unless same have been approved in writing by the Board or a committee appointed by the Board:
  - i. The alteration or addition to the exterior of any Dwelling or any part of the Dwelling which is visible from the exterior, including without limitation the change in the color of the exterior or the type of materials located on the exterior of the Dwelling.
  - ii. The construction, placement or erection of a structure of any type or any deck, patio, fence, wall, gazebo, display or decoration.

- iii. The addition of trees, shrubbery or other landscaping, or a material change in existing trees, shrubbery and landscaping.
- iv. Any other improvement, alteration or addition to the private yard area or exterior of a Dwelling.

(Collectively all of the foregoing are referred to as Alterations)

- b. Notwithstanding the foregoing, Declarant's written consent shall also be required for Alterations until Declarant no longer owns the Unit.
- c. The criteria for approval of Alterations shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to existing improvements and topography, (ii) that the alteration will not create dangerous conditions for any Owners or Occupants (iii) comparable or better quality of materials as used in existing improvements, (iv) ease of maintenance and repair, (v) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations, and (vi) compliance with governmental laws, codes and regulations, and these covenants.

9.2 Review Procedures. The following procedures shall govern requests for Alterations under this Section:

- a. Detailed plans, specifications and related information regarding any proposed Alteration, in form and content acceptable to the Board, shall be submitted to the Board at least sixty (60) days prior to the projected commencement of construction. No Alterations shall be commenced prior to approval.
- b. The Board shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board, then approval will not be required, and this Section shall be deemed to have been fully complied with so long as the Alterations are done in accordance with the plans, specifications and related information which were submitted.

- c. The Association may require that the Owners of the Units to be altered pay all costs of processing and documentation related to the request and the preparation and recording of any necessary amendment to the Governing Documents, including without limitation such costs as filing, architects' and attorneys' fees, incurred by the Association in connection therewith.

9.3 Prohibited Alterations. Notwithstanding any provision herein to the contrary, no Unit may be altered if, thereafter, the Dwelling located therein, would no longer be habitable or practicably usable for its intended purpose or would violate any law, code or ordinance of any governmental authority having jurisdiction over the Property.

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

## SECTION 10

### MAINTENANCE

10.1 Maintenance by Association. The Association shall provide for the maintenance, repair, and/or replacement of the sign, Signage Easement Area, and any landscaping associated therewith. The Association shall have easements as described in Section 3 to perform its obligations hereunder.

10.2 Maintenance by Owner. All maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. 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 or improperly performs, and assess the Unit and the Owner for the cost thereof.

## SECTION 11

### INSURANCE

11.1 Association Insurance. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

- a. Casualty Insurance on the Sign in a form, manner, and amount deemed appropriate by the Board.
- b. Commercial general liability insurance in accordance with 3.13-113(a)(2) of the Act, with minimum limits of one million dollars per occurrence.
- c. 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.
- d. Workers' Compensation insurance as required by law.
- e. Directors and officers liability insurance with such reasonable limits and coverage as the Board shall determine from time to time.
- f. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

11.2 Common Expense. All insurance premiums and deductibles paid by the Association shall be assessed and paid as a Common Expense.

## SECTION 12

### 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 Act, the Governing Documents, the Rules and Regulations, the decisions of the Association, and such



amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

12.1 Entitlement to Relief. The Association may commence legal action (i) to recover sums due, (ii) for damages, (iii) for injunctive relief, (iv) to enforce compliance with the Governing Document, the Act or the decisions of the Association, (v) to foreclose a lien owned by it, or (vi) any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. 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 Act, as a measure to enforce such Owner's position, or for any other reason.

12.2 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 Act:

- a. Impose late charges of up to 15% of each late payment of an assessment or installment thereof.
- b. In the event of default of more than 30 days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- c. Impose reasonable fines, penalties or charges for each violation of the Act or the Governing Documents.
- d. Enter any Unit 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 the safety and soundness of any Dwelling or other part of the Property, or the property of the 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.

12.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 12.2.c. or d. of this Section, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty days of receipt of the hearing request by the Board, and with at least 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 days following the hearing, if not delivered to the offender at the hearing.

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

12.5 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 Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys, fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

12.6 Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the

Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rates, resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

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

## SECTION 13

### SPECIAL DECLARANT RIGHTS

Notwithstanding any other restriction or provision herein to the contrary, Declarant hereby reserves exclusive and unconditional authority to exercise the following special Declarant rights, within the meaning of Section 515B.1-103(31) of the Act, for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

13.1 Complete Improvements. To complete all improvements included in Declarant's development plans or allowed by the Declaration.

13.2 Sales Facilities. To construct, operate and maintain a sales office, management office, model Units and other development, sales and rental facilities within the Property.

13.3 Lease. To lease or rent any Unit it owns on any terms and conditions it may desire.

13.4 Signs. To erect and maintain signs and other sales displays offering the Units for sale or lease, in or on any Unit owned by Declarant.

13.5 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Units for the purpose of exercising its special Declarant rights.

13.6 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 pursuant to Section 515B.3-103 of the Act, until the earliest of: (i) voluntary surrender of control by Declarant, (ii) an Association meeting which shall be held within 60 days after conveyance of 75% of the total number of Units authorized to be included in the Property or (iii) the date three (3) years following the date of the first conveyance of a Unit to

an Owner other than a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall have the right to nominate and elect not less than 33 1/3% of the Directors at a meeting of the Owners which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Property.

13.7 Consent to Certain Amendments. As long as Declarant owns any unsold Unit, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects or may affect Declarant's rights under the Governing Documents.

## SECTION 14

### AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 16 as to matters prescribed by said Section and (iii) the consent of Declarant to certain amendments as provided in Section 14.7. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consents of Eligible Mortgagees and the Declarant shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

## SECTION 15

### RIGHTS OF ELIGIBLE MORTGAGEES

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

15.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least fifty-one percent (51%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be

required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessments, assessment liens, or priority of assessment liens; (iii) responsibility for maintenance and repairs; (v) redefinition of any Unit boundaries; (vi) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (vii) insurance or fidelity bonds; (viii) leasing of Units; (ix) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (x) a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or an Eligible Mortgagee; (xi) restoration or repair of the Property (after a hazard damage or partial condemnation in a manner other than that specified in the Governing Documents; (xii) any action to terminate the legal status of the planned community after substantial destruction or condemnation occurs; or (xii) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

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

15.3 Consent to Subdivision. No Unit may be partitioned or subdivided without the prior written approval of the Owner and Eligible Mortgagee thereof, and the Association.

15.4 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.

15.5 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 the Act and (ii) except that any unreimbursed assessments or charges may be reallocated among all Units in accordance with their interests in the Common Element.

15.6 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.