

COMMON INTEREST COMMUNITY NUMBER 114

A PLANNED COMMUNITY

SIESTA HILLS

DECLARATION

SIESTA HILLS

DECLARATION

TABLE OF CONTENTS

COVER PAGE	1
TABLE OF CONTENTS	2
DECLARATION	4
SECTION 1 DEFINITIONS	4
SECTION 2 DESCRIPTION OF UNITS AND APPURTENANCES	6
SECTION 3 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS	7
SECTION 4 ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS	7
SECTION 5 ADMINISTRATION	8
SECTION 6 ASSESSMENTS FOR COMMON EXPENSES	9
SECTION 7 OFFICERS	11
SECTION 8 OPERATION OF THE PROPERTY	11
SECTION 9 AMENDMENTS TO BY-LAWS	12
SECTION 10 ALTERATIONS	12
SECTION 11 MAINTENANCE	13
SECTION 12 PARTY WALLS	14
SECTION 13 INSURANCE	14
SECTION 14 RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN	16
SECTION 15 EASEMENTS	17
SECTION 16 COMPLIANCE AND REMEDIES	17
SECTION 17 SPECIAL DECLARANT RIGHTS	19
SECTION 18 RIGHTS TO RELOCATE UNIT BOUNDARIES AND ALTER UNIT	20
SECTION 19 AMENDMENTS	21
SECTION 20 RIGHTS OF ELIGIBLE MORTGAGEES	22
SECTION 21 MISCELLANEOUS	23

SECTION 22 RESTRICTIONS ON USE OF PROPERTY	24
SECTION 23 FLEXIBLE COMMON INTEREST COMMUNITY	24
EXHIBIT A LEGAL DESCRIPTION	26
EXHIBIT B UNIT IDENTIFIERS	27
EXHIBIT C DESCRIPTION OF COMMON ELEMENTS	28
EXHIBIT D RESTRICTIONS ON USE OF PROPERTY	29
EXHIBIT E ALTERNATE METHOD OF INSURING PROPERTY	32

**COMMON INTEREST COMMUNITY NUMBER 114
A PLANNED COMMUNITY
SIESTA HILLS
DECLARATION**

This Declaration is made in the County of Blue Earth, State of Minnesota, on this 10th of June, 2020, by Key City Development, LLC, a Minnesota Limited Liability Company, (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), as amended, for the purpose of creating Common Interest Community Number-114 a Planned Community, Siesta Hills, as a flexible common interest community under the Act.

WHEREAS, Declarant is the owner of certain real property located in Blue Earth County, Minnesota, legally described as:

See Attached EXHIBIT A

and Declarant desires to submit said real property and all improvements thereon (collectively, the "Property") to the Act; and

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

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B.1-106 of the Act, governing conversions to common interest ownership, and is not subject to a master association as defined in the Act.

THEREFORE, Declarant makes this Declaration and submits the Property to the Act as a planned community under the name Siesta Hills, consisting of the Units referred to in Section 2, declaring that this Declaration, including all Exhibits, 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 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). Any terms used in the Governing Documents and defined in the Act and not in this Section, shall have the meaning set forth in the Act.

- 1.1 "Association" shall mean the Siesta Hills Association, a nonprofit corporation, which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, whose members consist of all 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 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.

- 1.5 “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 those items specifically identified as Common Expenses in the Declaration or By-Laws.
- 1.6 “Dwelling” shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single-family residence and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.
- 1.7 “Eligible Mortgagee” shall mean any Person or entity 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.
- 1.8 “Flexible Common Interest Community” means a common interest community to which additional real estate may be added.
- 1.9 “Governing Documents” shall mean this Declaration, and the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.10 “Member” shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.
- 1.11 “Occupant” shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.
- 1.12 “Owner” shall mean a Person who owns a Unit, but excluding contract for deed vendors, Mortgagees and other secured parties within the meaning of Section 515B. 1-103 (30) of the Act. The term “Owner” includes, without limitation, contract for deed vendees and holders of a life estate.
- 1.13 “Party Wall” shall mean the shared wall between two Dwellings.
- 1.14 “Person” shall mean a natural individual, corporation, limited liability company, partnership, trustee or other legal entity capable of holding title to real property.
- 1.15 “Plat” shall mean the recorded plat depicting the Property pursuant to the requirements of Section 515B.2-1101 of the Act and satisfying the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- 1.16 “Property” shall mean all of the real property submitted to this Declaration, including the Dwelling and all other structure and improvements located thereon now or in the future. The property as of the date of the Declaration is legally described on EXHIBIT A.
- 1.17 “Rules and Regulations” shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.5.
- 1.18 “Unit” shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements.

SECTION 2
DESCRIPTION OF UNITS AND APPURTENANCES

- 2.1 Required Information pursuant to Minn. Stat. §515B.2-105. The common interest community is not subject to a master association. The name, statement and statutory reference of the Association is in Section 1.1 above. The legal description of the real estate is in Section 1.16 above and EXHIBIT A. The easements are described in Sections 2 and 15. The unit identifiers and boundaries of each Unit are in Sections 2.2 and 2.3. The allocation of assessments to each Unit is in Sections 4.2 and in Section 6. The Unit information and restrictions are in Section 2.2 and EXHIBIT D. Time shares are not permitted. The common interest community does not include any shoreland as defined in Minn. Stat. §103F.205.
- 2.2 Units. There are 69 Units, all of which are restricted exclusively to residential use. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Unit identifiers and location of the Units are shown on the CIC Plat, which is attached hereto as EXHIBIT F and incorporated herein by reference. A sample of Unit Identifiers is set forth on EXHIBIT B. The Unit identifier for a Unit shall be its Unit number, the Common Interest Community Number, and the full name of the Common Interest Community.
- 2.3 Unit Boundaries. The front, rear and side boundaries of each Unit shall be as depicted on the CIC Plat appended to this Declaration, with the actual structure to be constructed within the boundaries. The Units shall have no upper or lower boundaries. Subject to this Section 2.3 and Section 3.2, all spaces, walls and other improvements within the boundaries of a Unit are a part of the Unit.
- 2.4 Restrictions on Use. Restrictions on use of the Units and the Property shall be as set forth on EXHIBIT C, as may be amended from time to time.
- 2.5 Access Easements. Each Unit shall have access to a public street or be the beneficiary of an appurtenant easement for access to a public street on or across the Common Elements as shown on the Plat, subject to restrictions set forth in the Declaration.
- 2.6 Use and Enjoyment Easements. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements and for use and enjoyment of any Limited Common Elements allocated to the Unit, subject to any restrictions authorized by the Declaration.
- 2.7 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 as described in Section 15.
- 2.8 Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of the appurtenant easements for encroachments as described in Section 15.
- 2.9 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 17.
- 2.10 Recorded Easements. The Property shall be subject to such other easements as may be recorded against it or otherwise shown on the Plat.
- 2.11 Easements are Appurtenant. All easements and similar rights burdening or benefitting a Unit or any other part of the Property shall be appurtenant thereto and shall be permanent, subject only to termination in accordance with the Act or the terms of the easement. Any recorded easement benefitting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

- 2.12 Impairment Prohibited. No person shall materially restrict or impair any easement benefitting or burdening the Property; subject to the Declaration and the right of the Association to establish and enforce reasonable Rules and Regulations governing the use of the Property.

SECTION 3
COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

- 3.1 Common Elements. The Common Elements and their characteristics are as follows:
- A. All of the Property not included within the Units constitutes Common Elements. The Common Elements include those parts of the Property described in EXHIBIT D or designated as Common Elements on the Plat. The Association owns the Common Elements for the benefit of the Owners and Occupants.
 - B. The Common Elements shall be subject to certain easements as described in Section 2 and to the rights of Owners and Occupants in Limited Common Elements appurtenant to their Units.
 - C. Subject to Sections 5, 6 and 10, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.
 - D. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 6.
- 3.2 Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated and the rights to use and enjoyment thereof are automatically conveyed with the conveyance of such Units. The Limited Common Elements are described and allocated to the Units as follows:
- A. Chutes, flues ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components or fixtures lying partially within and partially outside the boundaries of a Unit, and serving only that Unit, are allocated to the Unit they serve. Any portion of such installations serving or affecting the function of more than one Unit or any portion of the Common Elements is a part of the Common Elements, but is not a Limited Common Element.
 - B. Improvements such as decks, patios, balconies, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors and windows, constructed as part of the original construction to serve a single Unit, and authorized replacements and modification thereof, if located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

SECTION 4
ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

The following provisions shall govern 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:

- 4.1 Membership. Each Owner shall be a member of the Association by virtue of Unit ownership and 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. 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.

Each Consolidated Unit shall only have one vote in Association matters, and the Owners of each Consolidated Unit shall be treated as one Member.

- 4.2 Voting Rights and Common Expenses. Voting rights and Common Expense assessments are allocated equally among the Units, with only one vote and one expense share per Consolidated Unit and other Unit; except that special assessments of Common Expenses shall be permitted as provided in Section 6.1.
- 4.3 Authority to Vote. The voting rights of Owners are more fully described in the By-Laws.

SECTION 5 ADMINISTRATION

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

- 5.1 General. The Governing Documents, the Rules and Regulations and the Act shall govern the operation and administration of the Association and the Property. The Association shall, subject to the rights of the Owners set forth in the Governing Documents and the Act, be responsible for the operation, management and control of the property. The Association shall have all powers described in the Governing Documents, the Act and the statute under which it is incorporated. The Owners shall vest all power and authority of the Association in the Board unless the Governing Documents or the Act specifically requires action or approval. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.
- 5.2 Operational Purposes. The Association shall operate and manage the property for the purpose of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations, (ii) maintaining, repairing 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 Action. All agreements and determinations made by the Association in accordance with the power and voting rights established by the Governing Documents or the Act shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined in the Act.
- 5.4 By-Laws. The Association shall have By-Laws. The By-Laws and any amendments thereto shall govern the operation and administration of the Association.
- 5.5 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 or the Act. The inclusion in other parts of the Governing Documents of Authority to approve Rules and Regulations shall be deemed to be in addition to, and not in limitation of, the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.
- 5.6 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 purpose stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expense and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

SECTION 6
ASSESSMENTS FOR COMMON EXPENSES

- 6.1 General. Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in Section 6.2 and 6.3, and the requirements of the By-Laws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated among the Units according to the Common Expense allocations set forth in Section 4.2, subject to the following qualifications:
- A. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element, if any, 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 (with each Consolidated Unit counted as one Unit), (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
 - B. Any Common Expense or portion thereof benefitting fewer than all of the Units may be assessed exclusively against the Units benefitted, on the basis of (i) equality (with each Consolidated Unit counted as one Unit), (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
 - C. The cost of insurance may be assessed in proportion to value; risk or coverage and the cost of utilities may be assessed in proportion to usage.
 - D. Reasonable attorney's fees and other costs incurred by the Association in connection with (i) the collection of assessments, and (ii) the enforcement of the Governing Documents, the Act or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.
 - E. Fees, charges, late charges, fines and interest may be assessed as provided in Section 16.
 - F. Assessments levied under Section 515B.3-116 of the Act 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 Expenses liabilities.
 - G. If any damage to the Common Elements or another Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
 - H. If any installment of an assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
 - I. If Common Expense liabilities are reallocated for any purpose authorized by the Act, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with reallocated Common Expense liabilities.
 - J. Assessments under Subsection 6.1 A-H shall not be considered special assessments as described in Section 6.3.
 - K. An assessment against fewer than all of the Units must be levied within three (3) years after the event or circumstances forming the basis for the assessment, or shall be barred.
- 6.2 Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the

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

- A. 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 Board, subject to Section 6.2(C), may subsequently increase the annual assessment.
- C. Until the termination of the period of Declarant control described in Section 17.6, 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 year, or (ii) five percent (5%) of the total annual assessment for the Association's previous fiscal year, unless such increase is approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than twenty-one (21) days or more than thirty (30) days in advance of the meeting.

6.3 Special Assessments. In addition to annual assessments and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense (ii) general or specific reserves for maintenance, repair or replacements, and (iii) the maintenance, repair or replacement of any part of the Property and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of 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 twenty-one (21) days or more than thirty (30) days in advance of the meeting.

6.4 Declarant's Obligations Regarding Operating Expenses and Common Expense Assessments.

- A. If a common expense assessment has not been levied, the Declarant shall pay all operating expenses of the common interest community and shall fund the replacement reserve component of the common expenses. The replacement reserve component of the common expenses shall be funded for each Unit in accordance with the projected annual budget required by Section 515B.4-102(23), provided that the funding of replacement reserves with respect to a Unit shall commence no later than the date that the Unit (or any building located within the Unit boundaries) is substantially completed. Substantial completion shall be evidenced by a certificate of occupancy in any jurisdiction that issues the certificate.
- B. If a common expense assessment has been levied as permitted by the Act, the Declarant shall pay the assessment allocated to the Declarant's Units, subject to the following: the common expense assessments, exclusive of replacement reserves, on any Unit owned by the Declarant may be limited to twenty-five percent (25%) of any assessment, exclusive of replacement reserves, until the Unit (or any building located within the Unit boundaries) is substantially completed. Substantial completion shall be evidenced by a certificate of occupancy in any jurisdiction that issues the certificate. The Declarant shall be obligated to make up any operating deficit incurred by the Association during the period of Declarant control within sixty (60) days of the termination of said period of Declarant control.

6.5 Liability of Owners for Assessment. The obligation of any Owner to pay assessments shall commence at the later of (i) the time at which the Owner acquires title to the Unit, or (ii) the due date of the first

assessment levied by the Board. 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 said liability.

SECTION 7 OFFICERS

The Officers shall be appointed as designated in the By-Laws of the Association.

SECTION 8 OPERATION OF THE PROPERTY

- 8.1 Assessment Procedures. The first Board of Directors shall annually prepare a budget of Common Expense for the Association, but may elect not to levy a Common Expense assessment for up to sixty (60) days, after the conveyance of the first Unit, in which case Declarant shall pay all expenses of the Unit until the first assessment is levied. Following the expiration of the terms of the members of the first Board of Directors, the Board of Directors shall annually prepare a budget of Common Expense for the Association and assess such Common Expense against the Units according to their respective Common Expense liability as set forth in the Declaration.
- A. The Board of Directors shall fix the amount of the annual assessment against each Unit, levy the assessment (with one expense share levied against each Consolidated Unit) and advise the Owners, in writing, of the assessment at least thirty (30) days prior to the beginning of the Association's fiscal year when the first annual assessment installment shall be due. The failure of the Board of Directors to timely levy an annual assessment shall not relieve the Owners of their obligation to pay such assessment when finally levied, or their obligation to continue paying assessment installments in the amount currently levied as well as any increases subsequently levied.
 - B. If an annual assessment proves to be insufficient, the Board of Directors may amend the budget and levy an additional assessment at any time. The levy shall occur upon the date specified in the resolution, which fixes the assessment.
 - C. The annual budget shall include a general operating reserve and an adequate reserve fund for maintenance, repair and replacement of those Common Elements and parts of the Units that must be maintained, repaired and replaced by the Association on a periodic basis.
 - D. The Association shall furnish copies of each budget on which the assessment is based to an Owner or to any eligible Mortgagee, upon request of such persons.
- 8.2 Payment of Assessments. Annual assessments shall be due and payable in monthly installments in advance on the first day of each month of the year or other period for which the assessments are made, and special assessments shall be due when designated by the Board of Directors. All Owners shall be absolutely and unconditionally obligated to pay the assessments. No Owner or Occupant shall have any right of withholding, offset or deduction against the Association with respect to any assessment, or related charge or cost of collection, regardless of any claims alleged against the Association or its officers or directors. Any rights or claims alleged by an Owner may be pursued only by separate action.
- 8.3 Default in Payment of Assessment. If any Owner does not make payment on or before the date when any assessment or installment thereof is due, subject to such grace periods as may be established, the Board of Directors may assess, and such Owner shall be obligated to pay, a late charge as provided in the

Declaration for each such unpaid assessment or installment thereof, together with all expenses, including reasonable attorney's fees, incurred by the Board of Directors in collection any such unpaid assessment.

- A. If there is a default of more than thirty (30) days in payment of any assessment, the Board of Directors may accelerate any remaining installments of the assessment upon prior written notice hereof to the Owner, and the entire unpaid balance of the assessment and late charges shall become due and payable upon the date stated in the notice, unless all past due amounts, including late charges, costs of collections and expenses incurred are paid in full prior to said date.
 - B. The Board of Directors shall have the right and duty to attempt to recover all assessments for Common Expenses, together with any charges, attorney's fees or expenses relating to collection thereof.
 - C. Upon written request of an Owner or an Eligible Mortgagee of any Unit, notice of a default of more than thirty (30) days in payment of any assessment or installment of an assessment for Common Expense or any other default in the performance of an obligation to the Association by the Owner shall be given in writing to such Eligible Mortgagee.
 - D. The rights and remedies referred to herein shall in no way limit the remedies available to the Association under the Declaration or By-Laws.
- 8.4 Foreclosure of Liens for Unpaid Assessments. The Association has the right to foreclose its assessment lien against a Unit for assessments imposed by the Association, as more fully described in the Declaration and the Act.
- 8.5 Enforcement of Obligations. All Owners and Occupants and their guests are obligated and bound to observe the provisions of the Governing Documents, the Rules and Regulations and the Acts. The Association may impose any or all of the charges, sanctions, and remedies authorized by the Governing Documents, the Rules and Regulations or By-Laws to enforce and implement its rights and to otherwise enable it to manage and operate the Association.

SECTION 9 AMENDMENTS TO BY-LAWS

The By-Laws shall be amended as set forth in the By-Laws.

SECTION 10 ALTERATIONS

- 10.1 Alterations. The following provisions shall govern alterations along with Section 18.1.
- A. Except as expressly provided in this Section and except for alterations made by Declarant in consideration of its initial sale of the Unit, no structure, building, addition, deck, patio, fence, 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 dwelling or any other part of a Unit which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board of Directors or a committee appointed by it. Notwithstanding the foregoing, Declarant's written consent shall also be required

for alterations until Declarant no longer owns any unsold Unit and has no further rights to add additional Real Estate to the Property.

SECTION 11 MAINTENANCE

- 11.1 **Maintenance by Association.** The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements. In addition, for the purpose of preserving the architectural character, equality and uniform and high standards for appearance of the Property, the Association shall (i) provide for lawn, shrub and tree maintenance on all units, including watering of areas which have underground sprinkling systems, and (ii) provide for snow removal from the driveways, front sidewalks and front entries of each Unit. The Association's obligations shall **exclude** exterior maintenance, repair and replacement of roof and gutter, patios, decks, garage doors and door hardware, entry doors, door hardware, air conditioning equipment, glass and window frames, foundations and foundation walls, structural members and any other items not specifically referred to in this Section, unless otherwise approved by the Association to be performed under this Section.
- 11.2 **Optional Maintenance by Association.** In addition to the maintenance described in this Section, the Association may, with the approval of a majority of votes cast in person or by proxy at a meeting called for such purpose, undertake to provide additional exterior maintenance to all Units or dwellings or maintenance of water and sewer systems within the Units.
- 11.3 **Maintenance by Owner.** Except for the maintenance required to be provided by the Association under Section 11.1 or 11.2, all maintenance of the dwellings and Units shall be the sole responsibility and expense of the Owner hereof. However, the Owner 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 that the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof. Owner shall be responsible for maintaining the Unit free of hazardous substances, vermin, cockroaches, pests, and debris which may pose a threat to the health or safety of the occupants of other Units. Without limiting the generality of the foregoing, the Association may require an owner to remove offending items, or to use a professional exterminator, and upon failure of the Owner to do so, the Association with reasonable notice may enter the unit with a professional exterminator or other appropriate contractor and take corrective action, charging the owner of such Unit for the reasonable cost. An owner shall do no act or work that will impair the structural soundness or integrity of the building, or impair any easement or hereditament, or do any act or allow any condition to exist which will adversely affect the common elements, the other units or their owners.
- 11.4 **Utilities.** Each unit owner shall pay all utility charges for gas, electricity, water, garbage service, and any other basic utility service supplied to their own unit, and any other basic utilities supplied on the premises on a pro rata basis.
- 11.5 **Damage Caused by Owner.** Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, or by a condition in a Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Unit to do so), and the cost thereof may be assessed against the Unit of the Owner responsible for the damage. In the case of party walls between dwellings, the Owners of the affected dwellings shall be liable as provided in Section 12.

SECTION 12
PARTY WALLS

- 12.1 General Rules of Law to Apply. Each dwelling wall built as part of the original construction of the dwelling and located on the boundary line between Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereof.
- 12.2 Repair and Maintenance. The Owners of the Units which share the party wall shall be responsible for the maintenance, repair and replacement of party walls in proportion with their use: provided (i) that any maintenance, repair and 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.
- 12.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, an Owner who has use of the wall may, with the consent of the Association, restore it, and the other Owner shall promptly reimburse the Owner who restored the wall for his or her share of the cost of restoration thereof: provided, however, that the cost of restoration resulting from destruction or other casualty resulting from the acts or omissions of certain Owners shall be the financial responsibility of such Owners, and the Association may assess the responsible Owners for their share of the costs, without prejudice to the right of Owner to recover a larger contribution from the other Owner. Insurance claims shall be made promptly following any casualty.
- 12.4 Weatherproofing. Notwithstanding any other provision of this Section, any Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of the repairs necessary for protection against such elements.
- 12.5 Right to Contribution to Run With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Unit and shall pass to such Owner's assigns and successors in title.
- 12.6 Arbitration. In the event of any dispute arising concerning a party wall and if the same is not resolved within thirty (30) days of the event causing the dispute, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association, upon the written demand of the Association or any Owner whose dwelling shares the party wall. Each party agrees that the decision of the arbitrators shall be final and conclusive of the questions involved. The parties shall share the fees of the arbitrators equally, but each party shall pay its own attorney's fees or other costs to prove its case.

SECTION 13
INSURANCE

- 13.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act 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, provided the Association may elect to insure Units as provided in the attached EXHIBIT E.
- A. Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall 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, coverage 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 guarantor, including, without limitation, the FHA or FNMA, obligating the Association to keep certain specified coverage or endorsements in effect.

- B. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of \$1,000,000.00 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement, which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverage 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.
 - C. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officer, manager, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulation of the FHA or FNMA as a precaution 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 three months aggregate assessments on all Units plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or waiver of defense based upon the exclusion of persons serving without compensation, shall be added.
 - D. Worker's Compensation insurance as required by law.
 - E. Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- 13.2 Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as a Common Expense. The insurance need not cover improvements and betterment to the Units installed by Owners, but if improvements and betterment are covered, any increase cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.
- 13.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, including Eligible Mortgagees, which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy by the Association.
- 13.4 Waiver of Subrogation. All policies of insurance shall contain waiver of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waiver of any defense based on co-insurance or of invalidity from any acts of the insured.

- 13.5 Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be 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.
- 13.6 Restoration in Lieu of Cash Settlement. All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable (i) without the prior written approval of the Association (or any insurance trustee), or (ii) when in conflict with provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.
- 13.7 No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property and may not be brought into contribution with any insurance purchased by Owners or their Eligible Mortgagees.
- 13.8 Effect of Acts not Within Association's Control. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner or eligible Mortgagee, unless acting 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.
- 13.9 Owner's Personal Insurance. Each Owner may obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.
- 13.10 Indemnification. The Association shall, to the extent the alleged liability is not covered by insurance, indemnify every individual acting in any official capacity on behalf of the Association, pursuant to the provisions of Minnesota Statutes Section 317A. 521.

SECTION 14
RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

- 14.1 Reconstruction. The obligation and procedures for the repair, reconstruction or disposition of the Property following damage or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be subsequently approved. The Association shall have all authority necessary to cause the Property to be reconstructed, including, without limitation, the authority (i) to require the Owners to enter into reconstruction contracts on their respective Units, or (ii) to contract for the reconstruction of the Units on behalf of the Owners. Notice of substantial damage or destruction shall be given pursuant to Section 20.
- 14.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern: (provided, that notice shall be given pursuant to Section 20). Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and the Governing Documents, as their interests may appear.
- 14.3 Notice. All Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property, and the Association shall give written notice thereof to an Eligible Mortgagee pursuant to Section 20.

SECTION 15
EASEMENTS

- 15.1 Easement for Encroachments. Each Unit and the Common elements, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, decks, porches, 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 10. If there is an encroachment by a dwelling or other building or improvement located in a Unit, upon another Unit or dwelling as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of any encroaching dwelling, building or improvement, and for the maintenance thereof, shall exist unless the same have been approved and the proposed improvements constructed, as required by this Declaration. Such easement shall continue for as long as the encroachment exists and shall not affect the marketability of title.
- 15.2 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purpose of maintenance, repair, replacement and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligation under the Governing Document.
- 15.3 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Unit for all such services, including, without limitation, any sewer or water lines servicing other Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utilities companies providing service to the Units for the installation and maintenance of utilities metering devices.
- 15.4 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 service thereto. The easement set forth in this Section shall supplement and not limit any easement described elsewhere in this Declaration, or recorded, and shall include reasonable access to the easement areas through the Units and the Common Elements for purpose of maintenance, repair, replacement and reconstruction.

SECTION 16
COMPLIANCE AND REMEDIES

- 16.1 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, 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.
- 16.2 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 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, Rules and Regulations, the Act 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, the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

- 16.3 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, Rules and Regulations, or the Act:
- A. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
 - B. Impose late charges of up to the greatest of \$50.00 or fifteen (15%) of the amount due, for each past due assessment or installment thereof, and interest at up to the highest rate permitted by law.
 - C. In the event of default or 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 cost of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
 - D. Impose reasonable fines, penalties or charges for each violation of the Act, the Governing Documents or the Rules and Regulations of the Association.
 - E. Suspend the rights of any Owner or Occupant and their guest to use any Common Element amenities; provided, that this limitation shall not apply to Limited Common Elements, if any or deck, balcony, porch or patio easements, appurtenant to the Unit, and those portions of the Common Elements providing utilities service and access to the Unit. Such suspensions shall be limited to periods of default by such Owner or Occupants in their obligations under the Governing Documents and for up to thirty (30) days, thereafter, for each violation.
 - F. Restore any portions of the Common Elements or Limited Common Elements, if any, damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
 - G. Enter any Units or Limited Common Element, if any, in which, or as to which a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any dwelling or other part of the Property or the property of the 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 or Limited Common Elements, if any, 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 to the Owner.
 - H. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state where the Property is located.
- 16.4 Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 16.3(D), (E), (F) or (G) 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 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.

- 16.5 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 give 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.
- 16.6 Costs of Proceeding and Attorney's Fees. With respect to any collection measures, or any measure 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 attorney's fees and interest (at the highest rate allowed by law) on the delinquent amount owed to the Association.
- 16.7 Liability for Owners and Occupants. 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 Occupant 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 rates, resulting from the Owner's acts or omissions may be assessed against Owner responsible for the condition and against his or her Unit.
- 16.8 Enforcement of 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 17 SPECIAL DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following special Declarant's rights within the meaning of Section 515B. 1-103 (32) of the Act for as long as it owns a Unit, or for such shorter period as may be specifically indicated.

- 17.1 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 the Declarant, and to make alterations in the Units and Common Elements to accommodate its sales facilities.
- 17.2 Relocate Boundaries and Alter Units. To relocate boundaries between Units and to otherwise alter Units owned by it to the extent permitted by Section 18.
- 17.3 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.
- 17.4 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 and on the Common Elements.
- 17.5 Easements. To have and use easements, for itself, its employees, contractors, representative, agents and

prospective purchasers through and over the Common Elements for the purpose of exercising its special Declarant rights.

- 17.6 Control 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) FIVE (5) years after the date of the first conveyance of a Unit to a Unit Owner other than a Declarant; (ii) the Declarant's voluntary surrender of control by giving written notice to the Unit Owners pursuant to Section 515B.1-115; (iii) conveyance of seventy-five percent (75%) of the Units to Unit Owners other than a Declarant. The Board shall call a meeting of the Unit Owners which shall be held within sixty (60) days after termination of the period of Declarant control as set out above, at which meeting the Board shall be elected by all Unit Owners and Declarant, subject to the requirements of Section 515B.3-103(e). Notwithstanding the foregoing, the Owners, other than a Declarant or an affiliate of Declarant, shall have the right to nominate and elect not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the directors at a meeting of the Owners which shall be held within sixty (60) days following the conveyance by Declarant of fifty percent (50%) of the total number of Units authorized to be included in the Property.
- 17.7 Consent to Certain Amendments. As long as Declarant owns any unsold Unit for sale, 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 or the Act.
- 17.8 Additional Property. To add additional real estate to the common interest community, pursuant to the Act and Section 23 of this Declaration.

SECTION 18 RIGHTS TO RELOCATE UNIT BOUNDARIES AND ALTER UNIT

- 18.1 Rights to Relocate Boundaries and Alter Units. Existing or future Units may be altered and Unit boundaries may be relocated only in accordance with the following conditions:
- A. Combining Units. An Owner may make improvements or alterations to such Unit or, may, after acquiring an adjoining Unit, remove or alter any intervening partition or create apertures therein in accordance with Section 515B.2-113 of the Act and Subsection D of this Section.
 - B. Relocation of Boundaries. The boundaries between adjoining Units may be relocated in accordance with Section 515B.2-114 of the Act and Subsection D of this Section.
 - C. Subdivision or Conversion. No additional Units may be created by the subdivision or conversion of a Unit (within the meaning of the Act) into two or more Units, or into other Units, Common Elements or Limited Common Elements, if any.
 - D. Requirements. The alteration, relocation of boundaries or other modification of Units or the dwellings or other structures located therein (collectively referred to herein as "alteration" or "alterations") pursuant to this Section, Section 10 and the Act may be accomplished only in accordance with the following conditions:
 - 1. No Unit may be altered if, thereafter, the dwelling located therein or any other dwelling affected by the alteration, would no longer be habitable or practicably useable for its intended purpose or would violate any law, code or ordinance of any governmental authority having jurisdiction over the Property.
 - 2. No alteration may be made which adversely affects the structural or functional integrity of any building system or the structural support or weather tight integrity of any portion

of any building or other structure.

3. The prior written consent of the Association shall be required for any alteration, except alterations by Declarant. Where required, such consent shall be requested in writing by each Owner whose Unit is proposed to be altered, accompanied by such explanation, drawings and specifications relating to the proposed alterations as may be reasonably required by the Association or the first mortgagee of the Unit. The Association shall give such Owner(s) notice in an expeditious manner, granting, denying or qualifying its consent.
4. As a precondition to consenting to alterations, the Association may require, among other things, the following: (i) that all alterations will be done in a workmanlike manner and without impairing the structural, mechanical or weather tight integrity of the building; (ii) that the Common Elements and altered Units will be repaired and/or restored in the future as required by the Association; (iii) that the construction of the alterations will not create dangerous conditions for any Owner or Occupant; (iv) that the Property, the first mortgagees and the Owners and Occupants will be protected from liens and other liability arising from the alterations; and, (v) that the alterations will be done in compliance with applicable laws, regulations and ordinances of the governmental authorities having jurisdiction over the Property.
5. The Association may require that the Owners of the Units to be altered pay all costs of proceeding and documentation for the request and the preparation and recording of any necessary amendment to the Governing Documents, including, without limitation, such costs as filing, architects and attorney's fees, incurred by the Association in connection with the alterations.

SECTION 19 AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty-seven (67%) percent of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 20 as to matters prescribed by said Section, and (iii) the consent of Declarant to certain amendments as provided in Section 17.7, except for those matters which require unanimous written consent of the unit owners under §515B.2-118(a)(3). Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consent 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 of the Secretary of the Association as to the outcome of the vote or the execution of the foregoing agreement or consent shall be adequate thereof for all purposes, including, without limitation, the recording of the amendment. Notwithstanding anything herein to the contrary, so long as the Construction Lender holds a mortgage lien on any portion of the Property, including without limitation on one or more of the Units, or a lien on the additional real estate to be added pursuant to Section 23, and until all such liens are satisfied, this Declaration and the Governing Documents may not be amended without the consent of the Construction Lender. In addition to the above requirements for amendment of this Declaration and the By-Laws of the Association, the written joinder and consent of the Declarant shall be required for any amendment of either the Declaration or By-Laws which shall abolish, diminish, or restrict the Declarant's rights hereunder until the last conveyance of a Unit to an owner other than Declarant. This right may be waived in whole or in part at any time by recording a written waiver executed and acknowledged by Declarant.

SECTION 20
RIGHTS OF ELIGIBLE MORTGAGEES

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

- 20.1 **Consent of Certain Amendments.** The written consent of Eligible Mortgagees representing at least seventy - five percent (75%) of the units that are subject to first mortgages held by Eligible Mortgagees based upon one vote per mortgage owned shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or priority of assessment liens; (iii) reductions in reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or Limited Common Elements, if any, or rights to their use; (vi) redefinition of any Unit's boundaries; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property, provided no such consent will be required for annexation of the additional real estate pursuant to Section 23 unless necessary, and then only to the extent necessary, to comply with regulations of the Federal Housing Administration; (ix) hazard or fidelity insurance requirements; (x) leasing of Units; (xi) imposition of any restriction on leasing of Units; (xii) if the common interest community consists of fifty (50) or more Units, a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or by Eligible Mortgagee; (xiii) restoration or repair of the Property after a hazard damage or partial condemnation in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the common interest community after substantial destruction or condemnation occurs, or (xv) any provisions that expressly benefit mortgage holders or insurers or guarantors of mortgages. Notwithstanding the foregoing, implied approval of a proposed amendment shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided that the notice was delivered by certified mail with a return receipt requested, or was personally served upon the Eligible Mortgagee as required in any civil action.
- 20.2 **Consent to Certain Actions.** The written consent of Eligible Mortgagees representing at least seventy –five percent (75%) of the Units that are subject to first mortgages (based upon one vote per first mortgage owned) shall be required to abandon or terminate the common interest community, subject to any requirements contained in the Act.
- 20.3 **Consent of Subdivision.** No Units may be partitioned or subdivided without the prior written approval of the Owner and Eligible Mortgagee thereof, and the Association.
- 20.4 **Right of First Refusal.** The right of an Owner to sell, transfer, or otherwise convey his or her Unit shall be subject to any right of first refusal in favor of Declarant.
- 20.5 **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 the possession of the Unit by said first mortgage holder or purchaser, (i) except as provided in Minnesota Statutes Section 515B.3-116(b), and (ii) except that any unpaid assessments or charges with respect to the Unit may be reallocated among all Units and with their interest in the Common Elements.
- 20.6 **Priority of Taxes and Other Charges.** All taxes, assessments and charges that 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.

- 20.7 **Priority for Condemnation Awards.** No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses related to a taking by condemnation or eminent domain, of that Unit and/or a Common Element. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceedings affecting the Property promptly upon receipt of notice from the condemning authority or governmental entity.
- 20.8 **Notice Requirements.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a mortgage on a Unit, and the Unit number or address, the holder, insurer or guarantor shall be entitled to a timely written notice of (i) a condemnation loss or any casualty loss that affects a material portion of the Property or the Unit securing the mortgage; (ii) a sixty (60) day delinquency in the payment of assessments or charges owned by the Owner of a Unit on which it holds a mortgage; (iii) a lapse, cancellation or material modification of any insurance policy maintained by the Association; and (iv) a proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

SECTION 21 MISCELLANEOUS

- 21.1 **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.
- 21.2 **Construction.** Where applicable, the masculine gender of any word used herein shall mean the feminine and neutral gender, or vice versa and the singular of any word used herein shall mean the plural, or vice versa. References to the Act, or any section thereof, shall be deemed to include any statutes amending or replacing the Act, and the comparable sections thereof.
- 21.3 **Tender of Claims.** In the event that any incident occurs which reasonably gives rise to a demand by the Association against Declarant for indemnification pursuant to the Act, the Association shall promptly tender 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.
- 21.4 **Notices.** Unless specifically provided otherwise in the Governing Documents or the Act, all notices required 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 registration pursuant to the By-Laws shall be effective upon receipt by the Association.
- 21.5 **Conflicts Among Documents.** In the event of any conflicts among the provisions of the Act, the Declaration, the By-Laws or any Rules and Regulations approved by the Association, the Act shall control. As among the Declaration, By-Laws and Rules and Regulations, the Declaration shall control, and as between the By-Laws and Rules and Regulations, the By-Laws shall control.
- 21.6 **Association Acts through Board.** The power and authority of the Association as provided in the applicable Statutes, this declaration, By-Laws, and Rules and Regulations shall be vested in a Board of Directors elected by the owners in accordance with the By-Laws of the Association. The Association shall act through the Board of Directors and the officers elected by the Board; accordingly, all references in this Declaration and the By-Laws to action by the Association shall mean the Board of Directors acting for the association, unless action by the vote of the owners, members or mortgagees is expressly required by this

declaration or the By-Laws.

SECTION 22
RESTRICTIONS ON USE OF PROPERTY

In addition to such restrictions placed upon the Property in the foregoing Sections, the Property, and all Owners, Occupants, Eligible Mortgagees and secured parties, shall be subject to the additional restrictions contained in the attached Exhibit C, which is incorporated by this reference and made a part of this instrument.

SECTION 23
FLEXIBLE COMMON INTEREST COMMUNITY

- 23.1 Reservation of Rights. The Declarant hereby reserves the right to add additional real estate to the common interest community, pursuant to the Act.
- 23.2 Time Limit. The time limit for adding additional real estate to this common interest community shall be ten (10) years from the date of the recording of this Declaration. The time limit set out in this section may be extended in accordance with §515B.2-106(2) of the Act.
- 23.3 Limitations on Rights Reserved. There are no limitations on any rights reserved under Section 23.1, other than limitations created by or imposed pursuant to law.
- 23.4 Legal Description. The legal description of the additional real estate that may be added to this common interest community is presently described as: Outlots A, E and G, Common Interest Community Number 114, A Planned Community Siesta Hills, CIC Plat, Blue Earth County, Minnesota
- 23.5 Real Estate Added in Phases. The real estate to be added herein may be added to the common interest community in portions or phases at such varying times as Declarant determines.
- 23.6 Units to be Added. The maximum number of units to be added is 46 all of which shall be restricted to residential use.
- 23.7 Buildings and Units to be Compatible. Any buildings and units erected upon the additional real estate, when and if added, will be compatible with the other buildings and units in the common interest community in terms of architectural style, quality of construction, principal materials employed in construction, and size.
- 23.8 Restrictions. All restrictions in this Declaration affecting use, occupancy and alienation of units will apply to units created in the additional real estate, when and if added.
- 23.9 If Real Estate Not Added. The assurances made in Sections 23.5, 23.6, 23.7, and 23.8 will not apply if the real estate is not added to the common interest community.

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

Key City Development, LLC

BY: Stephen T. Kibble
Stephen T. Kibble President/Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF BLUE EARTH)

This instrument subscribed and sworn to before me, a notary public, this 10th day of June, 2020, Stephen T. Kibble, as President and Chief Manager of Key City Development, LLC, a Minnesota Limited Liability Company, the Declarant herein, who acknowledged that he signed the same on behalf of the Company.

Stacey R. Edwards Jones
Notary Public

This instrument drafted by:
Stacey R. Edwards Jones
Jones Law Office
212 Madison Ave., Suite 100
Mankato, MN 56001

COMMON INTEREST COMMUNITY NUMBER 114

A PLANNED COMMUNITY

SIESTA HILLS

EXHIBIT "A" TO DECLARATION

LEGAL DESCRIPTION

COMMON INTEREST COMMUNITY NUMBER 114

A PLANNED COMMUNITY

SIESTA HILLS

EXHIBIT "B" TO DECLARATION

UNIT IDENTIFIERS

Each Unit's unit identifier is its Unit number, Common Interest Community Number, and the full name of the common interest community.

Example:

Unit 101, CIC Number 114, A planned Community, Siesta Hills, Blue Earth County, Minnesota.

COMMON INTEREST COMMUNITY NUMBER 114

A PLANNED COMMUNITY

SIESTA HILLS

EXHIBIT "C" TO DECLARATION

RESTRICTIONS ON USE OF PROPERTY

All Owner 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 Acts or the Governing Documents, the occupancy, use, operation, alienation and conveyance of the property shall be subject to the following restrictions.

General

The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents and the Act, as amended from time to time. All covenants, restrictions and obligations set forth on the Governing Documents are in furtherance of 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 representative, successors and assigns.

- A. Subdivision Prohibited. Except as permitted by the Acts or the foregoing Declaration, 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 holding first mortgage on the Units.
- B. Residential Use. Owners and Occupants and their guests shall use the Units exclusively as private, single family residential dwellings or private residential dwellings for up to maximum amount of unrelated individuals allowed by governing ordinance by the City of Mankato and not for transient, hotel, commercial business or other non-residential purposes. Any lease of a Unit for a period of less than seven (7) days, or any occupancy which includes any service customarily furnished to hotel guest, shall be presumed to be for transient purposes and shall not be allowed.
- C. Business Use Restricted. No business, trade, occupation or profession of any kind whether carried for profit or otherwise, shall be conducted, maintained or permitted in any Unit or the Common Element: 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, email or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve physical alteration of the Unit and do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries or visitation or use of the Unit by customers or employees, and (ii) the Association may maintain offices on the Property for management and related purposes.
- D. No Short Term Rental. Short term rentals, such as VRBO and Air B and B, are strictly prohibited.
- E. Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. The use of garages, driveways and other parking areas on the property and the type 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.

- F. Animals. Owners and Occupants shall be permitted to have animals or pets only as allowed by the Rules and Regulations of the Association. No livestock, poultry or other commercial animals shall be permitted. No animals may be bred, kept or maintained for business or commercial purposes anywhere on the Property. Permitted animals or pets shall be leashed at all times when they are outside their Owner's Unit, or in an approved dog run, which shall be cleaned and maintained by the Owner. Pet Owners shall be responsible for cleaning up after their pets whenever the pets are outside their Owner's Unit. Failure to promptly clean up after a pet will subject the pet's owner to an assessment from the Association for the cost of such clean up.
- G. 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.
- H. Compliance With Law. No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owners or Occupant.
- I. Time Shares Prohibited. The time-share form of ownership, or any comparable form of lease, occupancy rights or ownership that has the effect of dividing the ownership or occupancy of a Unit into time periods, is prohibited.
- J. Access to Units. In case of emergency, all Units and Limited Common Elements are subject to entry, without notice and at any time, by an officer or member of the Board of the Association, management agents or by any public safety personnel. Entry is also authorized for maintenance purposes and for enforcement purposes.
- K. No Antennas or Dishes. Unless otherwise permitted under FCC rules and regulations, television, radio antennas and satellite receiving dishes may not be erected or placed upon Lots or on the exterior of Dwelling unless prior written approval is given by the Association.
- L. No Vegetable or Flower Gardens. The planting or maintenance of vegetable or flower gardens on Lots is not permissible unless prior written approval is given by the Association.
- M. Storage. Outside storage of boats, recreational vehicles, trailers, inoperable cars and trucks or other property shall not be allowed in excess of forty eight hours; however, outdoor cooking equipment and patio furniture may be kept on a Unit's property. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weeds or other noxious natural substance, and the harboring of any source of unreasonable noise or activity which disturbs the peace, comfort or serenity of Owners or Occupants, is prohibited. Usual trash and garbage shall be kept in sanitary containers in a neat and clean condition, shall be regularly collected.
- N. Structures. No structures of a temporary character, trailer, tent or shack shall be maintained on the Property except by the builder during the period of construction of a Unit on a Lot. No windmill may be placed on a Lot. No Owner shall construct, relocate, heighten, lower or otherwise move or change any fence, wall, deck or patio or other improvement without prior approval by the Association in writing. No sheds or outbuildings shall be maintained on the Property by any Owner or Occupant. The Association can place and maintain sheds, garages or other structures on

the Common Elements.

- O. Plan and Design Approval. As to any home, dwelling or Unit not built by a Declarant, the plans for the location and design, including color, shall be submitted in written form to the Association prior to the construction of such home, dwelling or Unit on these lots. Approval of the plans shall be given or withheld in the interest of a sightly development of the Property as an attractive residential area and shall be based upon due consideration of topography, grade elevation and harmony of design, including color, with existing residences in the common interest community. Plans must be submitted at least thirty (30) days in advance of the start of construction. Any changes to such plans after initial approval must be resubmitted to the Association. The Association may establish an Approval Committee to perform these functions and select its members and determine the number of members therein.

- P. Construction and Materials. Any home, dwelling or Unit built by someone other than the Declarants, including any attached garage, must be erected with standard or better quality of workmanship and materials, and shall be completed within one year from the commencement of construction of that Unit. All materials must be new materials. Roof pitch shall be a minimum of 5/12.

- Q. Maintenance of Lot Prior to Construction. Units/Lots may remain undeveloped for a maximum period of ten years from the date of the purchase of the lot by anyone other than Declarant. Commencing on the fifth anniversary of the purchase close date, the owner shall be subject to any normal and customary Association Fees as any other Unit Owner. All lawn maintenance shall be performed by Owner prior to the commencement of Association Dues being paid. The Rules and Regulations and By-Laws of the Association shall set forth the terms for lawn maintenance during the time from purchase to completion of construction.

- R. Developer Fee to Be Paid. Upon completion of a structure being built upon each Unit, the Owner of such Unit shall pay to Declarant a 3% builders fee. Declarant has the right to waive or negotiate such fee.

COMMON INTEREST COMMUNITY NUMBER 114

A PLANNED COMMUNITY

SIESTA HILLS

EXHIBIT D

DESCRIPTION OF COMMON ELEMENTS

Common Elements A-F, CIC Number 114, A planned community, Siesta Hills, Blue Earth County, Minnesota

COMMON INTEREST COMMUNITY NUMBER 114

A PLANNED COMMUNITY

SIESTA HILLS

EXHIBIT "E" TO DECLARATION

ALTERNATE METHOD OF INSURING PROPERTY

If the Association makes a determination that the insurance described in Minn. Stat. §515B.3-113(a) and (b) is not reasonably available, the Association will promptly cause notice of that fact to be hand delivered or mailed by U.S. Mail to all unit owners. In that event, the unit owners shall purchase and maintain their own policies of insurance on their individual unit, as follows:

Section 1. Maintenance of Insurance. Each Owner of any Lot, by acceptance of a deed therefor, whether or not expressed, covenants to carry, maintain, and timely pay the premium or premiums on a policy of fire, extended coverage, vandalism, and malicious mischief with all risk endorsement insurance. Said insurance is to cover a minimum of the entire replacement cost of the Unit located on each such Lot, including any Party Wall or common wall with any other Unit. Said insurance shall be in the form satisfactory to the Association and shall be issued in the name of the Association as insurance trustee for such Owner, and shall provide that losses shall be payable to said trustee and the mortgagee of record of such Lot, if any.

Section 2. Association as Insurance Trustee. In the event that any Unit or Units are destroyed or damaged by causes covered by the insurance referred to above, all proceeds of said insurance coverage shall be payable to the Association as insurance trustee for such Owner of said Unit or Units, and to the mortgage or mortgagees of record of said Unit or Units. Said insurance proceeds shall be applied and administered as follows:

- A. In the event of an insured loss to a Unit or Units, all insurance proceeds paid to the insurance trustee and mortgagee or mortgagees of record shall be deposited by said trustee and mortgagees in escrow with a bank or title insurance company acceptable to them, as hereinafter provided.
- B. In the event of an insured loss to a Unit, such Owner of the Unit with respect to which the insurance loss occurs shall within thirty (30) days after the insurance company has deposited the insurance proceeds in escrow in accordance with paragraph A. above, enter in to a firm contract with a qualified builder providing for the reconstruction or remodeling of the Unit, to substantially the same condition as existed immediately prior to the insured loss, provided, however, that no contract shall be entered into by such Owner for an amount in excess of the insurance proceeds then held in the bank or title insurance company for said Unit until such additional funds are deposited in escrow as above provided by such Owner sufficient to cover all construction as determined by the Association. Said reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall said work be completed later than one hundred eighty (180) days after said insurance proceeds are deposited in escrow as aforesaid. The Association and mortgagee of record of the Unit affected shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit construction as herein provided.
- C. In the event such Owner fails to enter into a contract as provided in paragraph B above for the reconstruction or remodeling of the Unit as provided above, or in the event that reconstruction or remodeling is not commenced or completed as provided above, then the Association with consent of the mortgagee of record, or the mortgagee of record with the consent of the Association, shall have the right, but not the obligation, to enter in to those contracts which it deems necessary to complete said reconstruction or remodeling of the Unit, and the Association or mortgagee shall

have the right to have said insurance proceeds applied in satisfaction of any obligations incurred pursuant to said contract, without liability of any kind to the Owner, including but not limited to without liability for interest on said insurance proceeds. The Association or the mortgagee may employ any bonded party or parties as its agent in exercising those functions given to it in this Section 2. The Association or the mortgagee shall be empowered to pay said agent a reasonable fee for the services rendered by said agent and collect said charge from the Owner or Owners, as the case may be, and in the same manner as that which is provided in Section 4 below for the collection of an insurance premium paid by the Association.

- D. Disbursement of funds on deposit pursuant to paragraph A above for contracts for construction or remodeling entered in to under paragraphs B and C above shall be made by the bank or title insurance company selected as herein above provided, subject to the following:
- (1) Receipt by the bank or title insurance company of written consent of the first mortgagee.
 - (2) Receipt by the bank or title insurance company of such sworn construction statements, lists of sub-contractors, lien waivers, and receipts as it shall determine to be appropriate. Disbursements may be periodical or progress payments, and the bank or title insurance company may make such inspections and withhold such payments as it deems necessary to insure completion in compliance with the plans and specifications. The bank or title insurance company shall be entitled to charge and the Association shall be empowered to pay a reasonable fee for the services rendered by the bank or title insurance company, and the Association may collect such charge from the Owner or Owners, as the case may be, and in the same manner as that which is provided for in Section 4 below for the collection of insurance paid by the Association.
 - (3) In the event a contract is entered into pursuant to paragraph B above, the written consent of such Owner to said payment or payments.
- E. Nothing contained in this Section 2. shall be construed to make the Association or the mortgagee or mortgagees of record, if any, responsible for collection or non-collection of any insurance proceeds, said Association or mortgagees being responsible solely for the insurance proceeds which come into their hands. Such Owner of each Unit damaged or destroyed by causes referred to above shall collect or cause to be collected from the insurance carrier involved the proceeds of the policy covering such Owner's Unit for the use of the Association and mortgagee as herein above provided.
- F. In the event that a remodeling or reconstruction contract is, for any reason, not entered into pursuant to the provisions of paragraphs B and C above, within one hundred eighty (180) days after deposit of insurance proceeds with the bank or title insurance company for a damaged or destroyed Unit as herein provided, said bank or title insurance company shall disburse said proceeds to each mortgagee of record of the affected Lot or Unit as its interest appears to retire the indebtedness secured under said mortgage, and disburse the remaining deposits, if any, to such Owner.

Section 3. Waiver of Subrogation. To the extent permitted by the standard Minnesota form of fire and extended coverage insurance and to the extent benefits are paid under such policy, each Owner and the Association do hereby mutually release each from the other, and their respective heirs, personal representatives, officers, agents, employees, and invitees, from all claims for damage or destruction of their respective physical properties if such damage or destruction results from one or more of the perils covered by the standard Minnesota form of fire and extended coverage insurance.

Section 4. Lien for Premiums. The Association may but shall not be required to make payment of insurance

premiums on behalf of any Owner who becomes delinquent in such payment. In the event that the Association does make such payment, then such payment and the cost thereof shall be treated as if it is part of the annual assessment as described in Section 6.2 of the Declaration herein and shall be a charge on the land and a continuing lien on the property for whose benefit such premium payment is made and also the personal obligation of the Owner of such property at the time when such premium payment is made.