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COMMON INTEREST COMMUNITY #102
(Planned Community)

SUNSET BEACH COMMUNITY

SECOND AMENDED AND RESTATED DECLARATION

THIS AMENDED AND RESTATED DECLARATION, made as of **THIS 30TH DAY OF AUGUST 2023** by **SUNSET DEVELOPMENT, LLC**, a Minnesota Limited Liability Company, (the "**Declarant**" singular or plural), pursuant to the provisions of *Minnesota Statutes chapter 515B*, known as the Minnesota Common Interest Ownership Act (the "**Act**"), for the purpose of creating SUNSET BEACH COMMUNITY, a planned community.

WHEREAS, Declarant is the fee owner of certain real property located in Otter Tail County, Minnesota, legally described as follows:

All that part of Government Lot 1, Section 28, Township 133, Range 39, Otter Tail County, Minnesota, lying easterly of Line A and lying westerly of Line B.

Line A is described as follows:

Beginning at north quarter corner of said Section 28; thence South 00 degrees 12 minutes 06 seconds West (bearing is based on Otter Tail County Coordinates – 2011 Adjustment) along the west line of the dedicated road as dedicated in SUNSET HEIGHTS, according to the recorded plat thereof, a distance of 33.00 feet; thence South 09 degrees 07 minutes 54 seconds East a distance of 144.62 feet; thence South 14 degrees 18 minutes 54 seconds East a distance of 140.36 feet; thence South 35 degrees 11 minutes 55 seconds West a distance of 268.44 feet to the most easterly corner of SUNSET BEACH FIRST ADDITION, according to the recorded plat thereof; thence South 35 degrees 05 minutes 53 seconds West along southeasterly line of said SUNSET BEACH FIRST ADDITION, a distance of 375 feet more or less to shoreline of West Battle Lake and there terminating.

Line B is described as follows:

Commencing at north quarter corner of said Section 28; thence South 89 degrees 47 minutes 54 seconds East (bearing is based on Otter Tail County Coordinates – 2011 Adjustment) along the north line said Section 28, a distance of 977.02 feet to the most easterly corner of SUNSET HEIGHTS, according to the recorded plat thereof; thence South 31 degrees 21 minutes 02 seconds West along the southeasterly line of said SUNSET HEIGHTS, a

distance of 272.41 feet to the southeasterly corner of Lot 8, Block 1, said SUNSET HEIGHTS; thence South 31 degrees 21 minutes 02 seconds West a distance of 635.11 feet to an angle point in the northwesterly line of a Judgement and Decree recorded in Document No. 961307, as filed in the office of the County Recorder; thence South 31 degrees 18 minutes 15 seconds West along said northwesterly line, a distance of 421 feet more or less to shoreline of West Battle Lake and there terminating.

Except the plat of said SUNSET HEIGHTS.

and Declarant to submit said real property and all improvements thereon (collectively the "**Property**") to the Act as a planned community; *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*

WHEREAS, the Property is presently fully and wholly improved and operating as a seasonal (summer) resort, and includes shore land on West Battle Lake and may be subject to County, Township or Municipal ordinances or rules affecting the development and use of shore land; *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 subjects the Property to this Declaration under the name of "SUNSET BEACH COMMUNITY" consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

SECTION 1

Definitions

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

1.1 "Act" shall mean the *Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B*, as amended.

1.2 "*Allocated Interests*" shall mean the undivided fractional interests in the Common Elements, the common expenses, liabilities, and votes in the association, allocated to Units in the Common Interest Community. The Allocated Interests are described in Section 2 of this Declaration.

1.3 "*Assessments*" shall mean and refer to all assessments levied by the Association pursuant to Section 6 of this Declaration, including annual assessments, special assessments, and limited allocation assessments.

1.4 "*Association*" shall mean the **SUNSET BEACH COMMUNITY ASSOCIATION, INC.**, a Minnesota Non-Profit Corporation to be created pursuant to *Chapter 317A of the laws of the State of Minnesota and Section 515B.3-101 of the Act*, whose members consist of all Unit Owners.

1.5 "Board" shall mean the Board of Directors of the Association as provided for in the Bylaws.

1.6 "Bylaws" shall mean the Bylaws governing the operation of the Association, as amended from time to time.

1.7 "Cabin Sites or Cabin Units" Cabin sites/units shall mean the SEVEN (7) Cabins located on Units ONE (1) through FIVE (5), and Units TEN (10) and THIRTY-THREE (33).

1.8 "Common Elements" shall mean all parts of the Property except Units described herein, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The common element includes the dock and equipment thereon or part thereof except the personal property of the owners.

1.9 "Common Expenses" shall mean all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation of the Common Interest Community, including Assessments and items otherwise identified as Common Expenses in the Declaration or Bylaws.

1.10 "Common Expense Assessments" shall mean the funds required to be paid by each Unit Owner in payment of the Owner's Common Expense liability.

1.11 "Common Interest Community" shall mean the planned community located upon the real property in Otter Tail County, Minnesota, as hereinbefore described and as depicted on the Plat thereof.

1.12 "Declarant" or "Declarants" shall mean SUNSET DEVELOPMENT, LLC, a Minnesota Limited Liability Company, or its successors as defined in the Act.

1.13 "Declaration" shall mean this document, including any amendments.

1.14 "Director" shall mean a member of the Board of Directors of the Association.

1.15 "Disclosure Statement" shall mean the most current document prepared pursuant to Sections 4-101 and 4-102 of the Act as it may be amended from time to time and provided to purchasers prior to the time of execution of a binding purchase agreement.

1.16 "Eligible Insurer" shall mean an insurer or guarantor of a first Security Interest in a Unit which has notified the Association in writing of its name, address and informs the Association that it has insured or guaranteed a first Security Interest in the Unit. It must provide the Association with a Unit number and address of the Unit on which it is the insured or guarantor of a Security Interest. Such notice shall be deemed to include a request that the eligible insurer be given the notices and other rights described in Section 15.

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

1.18 "Environmental Control Committee" shall mean a Committee created by the

Association pursuant to this Declaration to serve the Association and carry out the obligation assigned to it under the Documents. Unless otherwise established by Association resolution, the Association Board of Directors shall serve as the Environmental Control Committee.

1.19 "Excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for planting) which destroys any vegetation or results in the removal of earth, rock, sand, or other substances.

1.20 "Improvements" shall mean any construction, structure, fixture, or facilities existing or to be constructed on the land which is included in the common interest community, including, but not limited to: buildings, trees, and shrubbery planted by the Declarants or the Association, paving, roads, driveways, parking areas, retaining walls, stairs, decks, signs, utility wires, pipes, and light poles.

1.21 "Declarant Control Period" shall mean the time period during which Declarant has the exclusive right to appoint the members of the Board as described in Section 16 of this Declaration.

1.22 "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.

1.23 "Members" 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.

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

1.25 "Owner" shall mean a Person who owns a Unit, but excluding contract for deed vendors, mortgagees, holders of reversionary interests in life estates and other secured parties within the meaning of *Section 515B.1-103(30) of the Act*. The term "Owner" includes, without limitations, contract for deed vendees and holders of a life estate.

1.26 "Person" shall mean a natural individual, corporation, Limited Liability Company, partnership, trustee, or other legal entity capable of holding title to real property.

1.27 "Plat" shall mean the recorded plat depicting the Property pursuant to the requirements of *Section 515B.2-110(d) 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.

1.28 "Property" shall mean all of the real property subject to this Declaration, now or in the future, including all other structures and improvements located thereon.

1.29 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.

1.30 "Shoreland". The Property includes shoreland as defined in *Minnesota Statutes § 103F.205, subd. 4*. ACCORDINGLY, THIS COMMON INTEREST COMMUNITY MAY BE SUBJECT TO THE COUNTY, TOWNSHIP OR MUNICIPAL ORDINANCES OR RULES AFFECTING THE DEVELOPMENT AND USE OF THE SHORE LAND AREA.

1.31 "Structure" shall mean anything constructed or erected, the use of which requires a location on the ground.

1.32 "RV Units" shall mean the Recreational Vehicle sites designated as Units: SIX (6), SEVEN (7), EIGHT (8), and NINE (9); Units ELEVEN (11) through THIRTY-TWO (32); Units THIRTY-FOUR (34) through SIXTY (60) on the Plat.

1.33 "Road" shall mean any vehicular way designated on the survey map or plat as a road.

1.34 "Security Interest" shall mean an interest in real estate or personal property, created by contract or conveyance, which secures the payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge or an ownership in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

1.35 "Special Declarant Rights" shall mean the rights reserved for the benefit of the Declarant to (1) Complete improvements indicated on plat filed with the Declaration; (2) Exercise any of the Declarants' rights as set forth in Section 16 of this Declaration; (3) Maintain sales offices, management offices, signs advertising the Common Interest Community; (4) Use easements through the Common Elements for the purpose of making improvements within the Common Interest Community; or (5) Appoint or remove an officer of the Association or any Board member during any period of Declarant control.

1.36 "Unit" shall mean any platted Unit subject to this Declaration upon which a Cabin or RV site is located as described in Section 2.1 and shown on the Plat, including all improvements thereon, but excluding the Common Elements.

1.37 "Unit Owner" shall mean the Declarant or other person who owns Units One (1) through SIXTY (60). Unit Owner does not include a person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of all Units created by this Declaration.

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

SECTION 2

Description of Units, Boundaries and Related Easements

2.1 There are SIXTY (60) Units consisting of Cabins sites (Units ONE (1) through FIVE (5), and Units TEN (10) and THIRTY-THREE (33)); RV sites (Units SIX (6), SEVEN (7), EIGHT (8), and NINE (9); Units ELEVEN (11) through THIRTY-TWO (32); Units THIRTY-FOUR (34) through SIXTY (60)), as hereinbefore defined. Each Unit constitutes a separate parcel of real estate. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference. The Unit identifier for a Unit shall be its Unit number and the subdivision name.

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

2.3 Access Easements. Each Unit shall be the beneficiary of a perpetual appurtenant easement for

access to a public street or highway on or across those portions of the Common Elements designated for use as streets, as shown on the Plat, subject to any restrictions set forth on the Governing Documents or the Rules and Regulations.

2.4 Use and Enjoyment Easements. Each Unit shall be the beneficiary of perpetual 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 Governing Documents.

2.5 Utility and Maintenance Easements. Each Unit shall be subject to and shall be the beneficiary of perpetual appurtenant easements for all services and utilities servicing the Units and the Common Elements, and for maintenance, repair, and replacement as described in Section 12.

2.6 Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of perpetual appurtenant easements for encroachments as described in Section 12.

2.7 Declarants Easements. Declarant shall have and be the beneficiary of easements for activities described in Section 16.

2.8 Roadway Access Easements. The Common Elements shall be subject to an appurtenant easement for roadway access in favor of the owners and occupants.

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

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

2.11 Impairment Prohibited. No person shall materially restrict or impair any easement benefiting 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.

2.12 Benefit of Easements. All easements benefiting a Unit shall benefit the Owners and Occupants of the Unit, and their families and guests. However, an Owner who had delegated the right to occupy the Unit to an Occupant or Occupants, whether by a lease or otherwise, does not have the use and other easement rights in the Property during such delegated occupancy, except as a guest of an Owner or Occupant or in connection with the inspection of the Unit or recovery of possession of the Unit from the Occupant pursuant to law.

SECTION 3 *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, but are not limited to, all areas and items listed in this Section 3 and designated as Common Elements on the Plat or in the Act. The Common Elements are owned by the Association for the benefit of the Owners and Occupants. The Common Elements shall include

the water well and water supply system lines, including the lines for said system running within the Common Elements area up to a Unit. The Common Elements shall also include the lakeshore, beach front, docking system, and all other areas as depicted on the Plat.

b. The Common Elements shall be subject to (i) certain easements described in this Declaration, (ii) the rights of Owners and Occupants in Limited Common Elements appurtenant to their respective Units, and (iii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.

c. Except as otherwise expressly provided in the Governing Documents, 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.

e. Simultaneously with the recording of this Declaration the Declarant shall record a duly executed Quit Claim Deed that conveys all of its title and interest in the Common Elements and Limited Common Elements to the SUNSET BEACH COMMUNITY ASSOCIATION, INC.

3.2 Limited Common Elements. The Limited Common Elements are those parts of the Common Elements (if any) reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated, as described in the Act. The rights to the use and enjoyment of the Limited Common Elements (if any) are automatically conveyed with the conveyance of such Units. There is a common sewage disposal system, which serves all Units. The sewage disposal system shall be considered as a Common Element for the benefit of the respective Units. If the sewage disposal systems currently serving their respective units needs to be expanded, repaired, or replaced, the Owners of said units shall share equally in the costs of any such service, and to the extent necessary, shall grant easements amongst themselves over and across their respective Units for proper placement of the sewage disposal system lines. Owners of the Units shall be responsible for the costs of running the sewage disposal lines within their respective Units. Save and except, the Association shall be responsible and pay all costs and expenses for any repair or replacement of the septic service to and for the Shower House located within the common elements. There is ONE (1) Well serving all Units. The Well, the Well equipment and service line systems are common elements, the maintenance and softener salt and regular well maintenance or repair or replacement in case of failure of any part of the system shall be shared by the Units and Unit owners. The Owners of the Units shall be responsible for the costs of running the water lines within their respective Units.

a. In the event of a clogged sewer line between a unit and the tank, if the clog is found to be the fault of the Unit owner (such as too much toilet tissue or a foreign object) that Unit and Unit owner shall be responsible for paying to have the line cleared.

b. Beach. The use of that portion of the Common Elements designated as the beach area shall be limited to the following uses by Unit Owners and other permitted users of that area:

a. Swimming.

b. Fishing.

- c. Boat and watercraft docking and mooring with a Boat Lift Rental Agreement. Boat and Mooring without a Boat Lift Agreement shall be limited to the East inside of the Dock System, and restricted to daytime hours, with no overnight docking or mooring.
- d. Such other uses may be permitted by the Association from time to time.

3.3 Dock. The dock system is part of the common element. The Association is responsible for all maintenance, insurance, placement, and removal of the dock system. The Association is responsible for placing and removing boat lifts in the spring and fall. If an owner wants a lift in or out at any time other than designated by the Association, it is the owner's responsibility and owner's additional cost to do so. A boat lift must be provided by the Unit owner at the Unit owner's sole expense. Unit owners must use a boat lift or sea legs within the dock slip area. Boat lift or sea legs must be in good condition and compliant with all rules and regulations of the Association and any relevant laws and ordinances. No boat lift with a canopy may be left empty for more than TWENTY-FOUR (24) hours. No unattended boats shall be moored at the docks overnight.

Use of the beach and dock areas by Owners and other authorized persons shall be at the user's own risk. All said persons shall indemnify the Association, its officers, directors, and other members and shall hold them free of any liability resulting from their use of the areas.

SECTION 4

Association Membership: Rights and Obligations

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

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

4.2 Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Units, subject to Sections 6.4 and 6.7 hereunder.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interests, and the title to the Units, shall not be separated or conveyed separately, and any conveyance, encumbrance, judicial sale, or other transfer of any allocated interest in a Unit, separate from the title to the Unit shall be void. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents and the Act.

4.4 Authority to Vote. The Owner, or some natural person designated as a proxy on behalf of the Owner, and who need not be the Owner, may cast the vote allocated to such Unit at meetings of the Association. However, if there are multiple Owners of a Unit, the Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote. The Association may provide a system for the Owners to Vote by mail or electronic mail. The voting rights of Owners are more fully described in Section 5 of the Bylaws.

SECTION 5
Administration

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

5.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents, the Rules and Regulations, and the Act. 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 the Association is incorporated. All power and authority of the Association shall be vested in the Board unless action or approval by the individual Owner is specifically required by the Governing Documents or the Act. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

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

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents 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 Bylaws. The Association shall have Bylaws. The Bylaws shall govern the operation and administration of the Association and shall be binding on all Owners and Occupants.

5.5 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act. However, such a delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and by law.

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

5.7 Association Assets. Surplus Funds. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents.

SECTION 6

Assessments

6.1 General. Assessments shall be determined and assessed against the Units by the Board, at its discretion, subject to the requirements and procedures set forth in this Section 6, and the requirements of the Bylaws. Assessments shall include annual Assessments under Section 6.2 and may include special Assessments under Section 6.3 and limited allocation Assessments under Section 6.4. Annual and special Assessments shall be allocated among the Units equally, in accordance with the allocation formula set forth in Section 4.2.

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared equally by all Units in accordance with the allocation set forth in Section 4.2. Annual Assessments shall be payable in annual or semiannual equal installments. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair, and replacement of the Common Elements (if any).

6.3 Special Assessments. In addition to annual Assessments, the Board may levy in any Assessment year a special Assessment against all Units equally in accordance with the allocation formula set forth in Section 4.2. Special assessments shall be used for the purpose of defraying in whole or in part the cost of any unforeseen and unbudgeted Common Expense.

6.4 Limited Allocation Assessments. In addition to annual Assessments and special Assessments, the Board may, at its discretion, levy and allocate limited allocation Assessments among only certain Units in accordance with the following requirements and procedures:

a. Any Assessment associated with the maintenance, repair, or replacement of a Limited Common Element may be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned.

b. Any Assessment or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Unit or Units benefited.

c. Any Common Element improvement over two times the annual budget shall require SEVENTY-FIVE PERCENT (75%) voting owners' approval.

d. The costs of utilities, insurance, and the Real Estate Taxes attributable to the Common Elements will be assessed equally to each Unit. However, utilities on unit meters that benefit all owners such as outside lighting, laundry, fish cleaning house will be assessed equally to each Unit.

e. Reasonable attorneys' fees and other costs incurred by the Association in connection with (i) the collection of Assessments and (ii) the enforcement of the Governing Documents, the Act, or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.

f. Late charges, fines and interest may be assessed as provided in Section 13.

g. Assessments levied under *Section 515B.3-116(a) 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 Expense liabilities.

h. 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. Owners are required to carry Unit insurance to include \$1,000,000 liability coverage with a loss payable clause to the Association.

i. If any Assessment or installment of an Assessment becomes more than THIRTY (30) days past due, then the Association may, upon TEN (10) days written notice to the Owner, declare the entire amount of the Assessment immediately due and payable in full.

j. If Common Expenses liabilities are reallocated for any purpose authorized by the Act, Assessments, and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Assessments levied under Section 6.4 a. through g. may, at the Board's discretion, be assessed as a part of, or in addition to, the other Assessments levied under Section 6.

6.5 Working Capital Fund. There shall be established a working capital fund to meet unforeseen expenditures or to purchase additional equipment or services during the Association's beginning years of operation. The Board shall include in each subsequent annual budget a reasonable amount of working capital, based upon the anticipated needs of the Association for the year in question. Each Unit sold shall contribute on a one-time basis the amount of \$ 0.00 to the Association. The purchaser shall pay the contribution at the time of closing of sale of the Unit or by the Declarant at the time of termination of the Declarant Control Period if the Unit is unsold. The contributions to this fund are in addition to the regular semi-annual or annual installments of Assessments. The funds shall be deposited into a segregated Association account no later than the termination of the Declarant Control Period. Declarant may not use the funds to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficit while Declarant is in control of the Association. However, upon the closing of the sale of an unsold Unit, Declarant may reimburse itself from funds collected from the purchaser at the closing for any contributions made by Declarant to the working capital fund with respect to that Unit.

6.6 Liability of Owners for Assessments. The obligation of an 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, subject to the alternative Assessment program described in Section 6.7. 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, subject to Section 6.7. 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 Assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 13, in addition to any remedies provided elsewhere in the Governing Documents, the Rules and Regulations, or by law, for the purpose of enforcing its rights hereunder.

6.7 Declarant's Alternative Assessment Program. The Declarant has elected not to follow the Alternative Assessment Program as established pursuant to *Section 515B.3-115(a)(2) of the Act.*

6.8 Assessment Lien. The Association has a lien on a Unit for any Assessment levied against that Unit from the time the Assessment becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines, and interest charges imposed by the Association pursuant to *Section 515B.3-102(a)(10), (11) and (12) of the Act* are liens, and are enforceable as Assessments, under this Section 6. Recording of the Declaration constitutes record notice and perfection of any lien under this Section 6, and no further recordation of any notice of or claim for the lien is required. The release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

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

6.10 Lien Priority, Foreclosures. A lien for Assessments is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the Unit, and (iii) liens for real estate taxes and other governmental Assessments or charges against the Unit. Notwithstanding the foregoing, if (1) a first mortgage on a Unit is foreclosed, (2) the first mortgage was recorded on or after the date of recording of this Declaration, and (3) no Owner redeems during the Owner's period of redemption provided by *Minnesota Statutes Chapters 580, 581, or 582*, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid Assessments for Common Expenses levied pursuant to *Sections 515B.3-115(a), (e)(1) to (3), (f), and (i) of the Act* which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption.

6.11 Voluntary Conveyances, Statement of Assessments. In a voluntary conveyance of a Unit, the buyer shall not be personally liable for any unpaid Assessments and other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such Assessment shall remain against the Unit until released. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid Assessments against the Unit, including all Assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

SECTION 7

Restrictions On Use of Property

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

conveyance of the Property shall be subject to the following restrictions:

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

7.2 Subdivision Prohibited. Except as permitted by the Act, no Unit nor any part of the Common Elements may be subdivided or partitioned without the prior written approval of all Owners and all secured parties holding first mortgages on the Units.

7.3 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential Cabins, and not for transient, hotel, commercial, business, or other non-residential purposes, except as permitted by Section 7.4.

7.4 Business Use Restricted. No business, trade, occupation, or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained, or permitted in any Unit or the Common Elements except:

- a. The Association may maintain offices on the Property for management and related purposes.
- b. Declarant may maintain offices, sales facilities, and other business facilities on the Property in connection with the exercise of its special Declarant rights.

7.5 Leasing. Leasing of the Units owned by Declarants shall be permitted. Leasing of Units not owned by the Declarants shall not be allowed.

7.6 Delegation of Use. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Unit to persons living in the Unit pursuant to a legal right of possession, provided, that such persons shall be subject to the Governing Documents and the Rules and Regulations. If other persons other than the Owner or the Owner's family, have been given the legal right to possess the Owner's Unit, then those persons shall have the right to use any common recreational facilities, parking, storage, and other amenities on the Property in lieu of the Owner and the Owner's family.

7.7 Parking. Vehicles shall be parked in designated parking areas. Unit owners shall have priority for the parking areas closest to their Unit. No more than two vehicles per Unit may be parked within or near a Unit. 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 parking and related uses as may be authorized by the Rules and Regulations. The use of driveways and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property. Watercraft on trailers and bare trailers shall be parked in designated trailer parking areas.

7.8 Animals. No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. However, subject to the previous restriction, the Board shall have the

exclusive authority to prohibit, or to allow and regulate, by Rules and Regulations, the keeping of animals on the property. This authority may be exercised so as to permit or prohibit different types of animals, but those animals which are permitted (if any) shall be limited to common domestic house pets such as dogs, cats, fish, birds and the like. All pets shall be under owner's control at all times. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans. However, the animals allowed shall be only those allowed by and covered by unit owners' liability insurance policy. Each Unit shall be allowed up to two animals as above named. Any of the above allowed pets that cause or creates a nuisance or unreasonable disturbance, to include but not limited to excessive dog barking, shall be permanently removed from the property upon three days written notice of the Board. Any animal waste deposited anywhere in the common elements or public roadways or on a Unit or property of another shall be promptly removed and the area cleaned by the owner of the offending pet. Unit owners may restrict pets to their respective Units.

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

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

7.11 Alterations. Except for those made by the Declarant in consideration of its initial sale of a Unit, no alterations shall be made, or caused or allowed to be made, in any part of the Common Elements, or in any part of the Unit which affects the Common Elements or another Unit or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8. The Board, or the appointed committee if so, authorized by the Board, shall have authority to establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied.

7.12 Environmentally Sensitive Areas. Ponds, marshes, wetland areas, vegetation and trees located within the Common Elements and whether natural or otherwise, shall be maintained in substantially the same condition as originally established or constructed by the Declarant, subject to the following:

- a. Changes may be authorized by the Association, but only if (i) consistent with all statutes, requirements, rules, and regulations imposed on such areas and items by governmental authorities having jurisdiction and (ii) the prior written approval of any such governmental authorities is obtained, if required.
- b. No cutting, mowing, trimming, draining, dredging or other alteration of such environmentally sensitive areas shall be permitted, except as authorized by this Section.

7.13 Vegetation within Units. All vegetation within any Unit shall be planted or maintained in such a manner as to prevent or retard shifting or erosion and to encourage the growth of indigenous ground cover. Owners may place plants, shrubs, and flowers within a Unit or within a 5-foot radius thereof.

7.14 Restrictions on Mobile Home and Travel Trailers. Except for the R V Units on

which recreational vehicles are allowed, no mobile home, travel trailer, house trailer or similar facility or any boat or trailer shall be placed upon the Units for storage purposes in strict accordance with Association Rules in effect from time to time. No stripped down, wrecked, junk or unlicensed motor vehicles should be kept, parked, stored, or maintained on any part of the Common Element.

7.15 Time Shares Prohibited. The time-share 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 separate time period, is expressly prohibited.

7.16 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, by the Association's management agents or by any public safety personnel. Entry is also authorized for maintenance purposes under Section 9 and for enforcement purposes under Section 13.

7.17 Tree Removal. No tree removal shall be permitted without Association approval.

7.18 Use of Beach Area. No watercraft of any kind shall be parked on the beach. All users of the beach area must clean up after themselves. Each owner shall keep all exterior walls of his or/her Dwelling Unit in good condition and repair at his or her sole cost and expense. No owner shall do or commit to be done any act or thing that would tend to depreciate the value of the building (i.e., variance of design, colors, roofing, etc.). Each owner shall maintain the roof over his or/her Dwelling Unit in good condition and in such manner so as not to damage other portions of the building.

SECTION 8

Architectural Standards

8.1 Restrictions on Alterations. A primary purpose of this Declaration is to ensure that those parts of the Units that are visible from the exterior be kept architecturally attractive. Therefore, the following restrictions and requirements shall apply to alterations on the Property:

a. Except as otherwise related in this Section, all structures constructed on any Unit shall be constructed with a substantial quality of new materials and no used structures shall be relocated or be placed on any Unit.

b. The Board may establish criteria for approval of improvements, provided that the following minimum criteria shall apply to the Cabins Units if replaced or substantially remodeled. Said minimum criteria may only be changed by a SEVENTY-FIVE PERCENT (75%) vote of the owners of said Cabin Units.

(1) Comparable or better quality of materials shall be used in remodeling or replacing existing Cabins.

(2) There shall be adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the construction of the Improvements.

(3) There shall be substantial preservation of other Owners' sight lines.

(4) There shall be compliance with governmental laws, codes, and regulations.

Except as otherwise provided in this Section 8, the Board shall have sole discretion of whether the criteria are satisfied.

- c. Approval of alterations that encroach upon another Unit or the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the alterations are approved, notwithstanding any contrary requirement in the Governing Documents of the Act. A file of the resolutions approving all alterations shall be maintained permanently as a part of the Association's records.
- d. Alterations described in Section 16 shall be subject also to the requirements of that Section.

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

- a. Detailed plans, specifications, and related information regarding any proposed alteration, form, and content acceptable to the Board, shall be submitted to the Board at least SIXTY (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. The Board shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within SIXTY (60) days after receipt of *said* plans and specifications and all other information requested by the Board, then approval shall be deemed to be granted, provided that the alterations are done in accordance with the plans, specifications and related information that were submitted.
- c. If no request for approval is submitted, approval shall be deemed to be denied.

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

8.4 Hold Harmless. The Owner who causes an alteration to be made, regardless of whether the alteration is approved by the Board, shall be solely responsible for the construction standards and specifications relating to the alteration, and the construction work. The Owner, and not the Association, is responsible for determining whether any alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. The Owner shall hold the Association harmless and indemnify the Association, and its officers and directors, from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorneys' fees and costs of litigation, arising out of (i) any alteration which violates any governmental laws, codes, ordinances or regulations, (ii) the adequacy of the specifications for construction of the alterations, and (iii) the construction of the alterations.

SECTION 9

Maintenance

9.1 Maintenance by Association. The Association shall provide for all maintenance, repair, or replacement (collectively referred to as "*maintenance*") of the Common Elements, including all improvements thereon. The Association may also, at its discretion, provide for lawn, shrub, and tree maintenance on the yard areas of all Units as originally installed and for the watering of lawns on some or all of the Units. The Association shall have easements as described in Section 12 to perform its obligations under this Section. The Association has no obligation to maintain any Cabins.

9.2 Maintenance by Owner. Except for the maintenance required to be provided by the Association under Section 9.1, all maintenance of the Cabins and Units shall be the sole responsibility and expense of the Owners thereof. However, the Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any exterior maintenance, which the responsible Owner fails to or improperly performs, and charge and assess the Unit for the cost thereof. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit. The Association is obligated to winterize the water and sewer lines.

9.3 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 the yard area of upon any Unit to do so), and the cost thereof may be charged and assessed against the Unit of the Owner responsible for the damage. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit.

9.4 Sewage Disposal System. Owners and purchasers of Units are hereby put on notice that if the use of the Units becomes greater than typical use the system may need to be expanded or otherwise upgraded.

9.5 Utilities. Each of the Cabin Units have separate utility electrical meters and connections and the Owner or Occupant thereof shall be responsible for the payment of such utilities.

SECTION 10

Insurance

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

- a. Property insurance in broad form covering all risks of physical loss in an amount equal to ONE HUNDRED PERCENT (100%) of the insurable "*replacement cost*" of the improvements to the Common Elements, less deductibles, exclusive of land and other items normally excluded from coverage. 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. The Association may also enter into binding written agreements with a mortgagee, insurer or loan service obligating the Association to keep certain specified coverages or endorsements in effect.

Comprehensive public liability insurance covering the use, operation, and maintenance of the Common Elements, with minimum limits of TWO MILLION DOLLARS (\$2,000,000.00) 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 may include such additional endorsements, coverages, and limits with respect to such hazards as may be required by the regulations of the FHA, VA, or FNMA as a precondition to their insuring, purchasing, or financing a mortgage on a Unit.

- b. Fidelity insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or other personal responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board as a precondition to the purchase or financing of a mortgage on a Unit. The fidelity bond or insurance shall name the Association as the named insured.
- c. Workers' Compensation insurance as required by law.
- d. Directors' and officers' liability insurance if deemed advisable by the Board.
- e. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

10.2 Premiums, Improvements, Deductibles. All insurance premiums shall be assessed and paid as an annual Assessment and allocated equally among the Units as determined by the Board consistent with the Governing Documents. The insurance shall not cover the Cabins or Limited Common Elements attributable to a Unit, but if the Cabins are covered, any cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a Unit or Units, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, and (iii) require the Owners of the Units affected to pay the deductible amount directly.

10.3 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 maintained by the Association.

10.4 Required Policy Provisions. All policies of property insurance carried by the Association shall provide that:

- a. Each Owner and secured party are an insured Person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

b. The insurer waives its rights to subrogation under the policy against any Owner or member of the Owner's household and against the Association and members of the Board.

c. No act or omission by any Owner or secured party, unless acting within the scope of authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy.

d. If at the time of a loss under the policy there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy is primary insurance.

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

10.6 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.

10.7 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.

10.8 Effects 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.

10.9 Owner's Personal Insurance. Each Owner shall obtain insurance covering the Unit Owner's Unit area and all improvements thereon for the full replacement value thereof and may obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or liability. All insurance policies maintained by Owners shall provide that they are, without contribution as against the insurance purchased by the Association. Owners are required to carry Unit insurance to include \$1,000,000 liability coverage with a loss payable clause to the Association.

SECTION 11

Reconstruction, Condemnation and Eminent Domain

11.1 Reconstruction. The obligations 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 substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved. Notice of substantial damage or destruction shall be given as provided in Section 15.10.

11.2 Condemnation and Eminent Domain. In the event of taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern, provided (i) that notice shall be given as provided in Section 15.10, (ii) that the Association shall be the attorney-in-fact to represent the Owners in any related proceedings, negotiations, settlements or agreements and (iii) that any awards or proceeds shall be payable to the Association for the benefit of the Owners and the mortgagees of their Units. 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.

11.3 Termination and Liquidation. The termination of the common interest community, and the distribution of any proceeds therefrom, shall be governed by the Act. Any distribution of funds shall be based upon the value of the Units as determined by their relative value for property insurance purposes and shall be made to Owners and their mortgage holders, as their interests may appear, as provided in the Act.

11.4 Notice. The Association shall give written notice of any condemnation proceedings or substantial destruction of the Property to the Eligible Mortgagees entitled to notice under section 15.10.

11.5 Association's Authority. In all cases involving reconstruction, condemnation, eminent domain, termination, or liquidation of the common interest community, the Association shall have authority to act on behalf of the Owners in all proceedings, negotiations, and settlement of claims. All proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and their mortgage holders, as their interests may appear, in accordance with the Act.

SECTION 12

Easements

12.1 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, balconies, porches, patios, utility installations and other appurtenances (i) which are part of the original construction of the Cabin or to the Unit or the Property or (ii) which are added in compliance with Section 8. If there is an encroachment by a Cabin or other improvements located in a Unit within the Common Area 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 Cabin, building or improvement, and for the maintenance thereof, shall exist, provided, that with respect to improvements or alterations added pursuant to Section 8, no easement shall exist unless the same have been approved, and the proposed improvements constructed, as required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

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

12.3 Utility Easements. The Property shall be subject to non-exclusive, appurtenant easements in favor of all public utility companies and other utility providers for the installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable TV and other

electronic communications, water service, septic systems, wells, and similar services, and metering and control devices, which exist or are constructed as part of the development of the Property, or which are referred to in the Plat or otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall also be subject to a non-exclusive, appurtenant easement in favor of the other Units for all such utilities and services, provided, that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Units by the Owners and Occupants, nor affect the structural or architectural integrity of the Units or Cabins.

12.4 Emergency Access to Units. In case of emergency, all Units and Limited Common Elements are subject to an easement for access, without notice and at any time, by an officer or member of the Board, by the Association's management agents or by any public safety personnel. The Board may require that an Owner or Occupant leave keys to the Cabin upon the Unit with another Owner of his or her choice and to advise the manager or Board of the locations of the keys, so as to allow access for emergencies when the Owner or Occupant is absent for extended periods.

12.5 Project Sign Easements. Declarant shall have the right to erect and maintain monument signs identifying the common interest community and related decorative improvements on the Common Elements. Those parts of the Property on which monument signs or related decorative improvements are located shall be subject to appurtenant, exclusive easements in favor of the Association for the continuing use, maintenance, repair, and replacement of said signs and improvements. In exercising its rights under the said easements, the Association shall take reasonable care to avoid damaging the improvements to the Property.

12.6 Roadway Access Easements. The Common Elements shall be subject to an appurtenant easement for roadway access in favor of the Owners and Occupants over those parts of the Common Elements which are dedicated to use as connection streets.

12.7 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Unit or the right to utility services thereof. The easements set forth in this Section 12 shall supplement and not limit any easements described elsewhere in this Declaration or recorded and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of maintenance, repair, replacement, and reconstruction. All easement rights shall include a right of reasonable access to maintain, repair, and replace the utility lines and related equipment.

SECTION 13

Compliance and Remedies

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Governing Documents, the Rules and Regulations, and such amendments thereto as may be made from time to time, and the decisions of the Association. 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.

13.1 Entitlement to Relief. The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or equity. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner to enforce compliance with the Governing Documents, the Rules and Regulations or the decisions of the

Association. However, no Owner may withhold any Assessments payable to the Association or take or omit other action in violation of the Governing Documents, the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

13.2 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, the 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 greater of TWENTY DOLLARS (\$20.00), of FIFTEEN PERCENT (15%) of the amount past due, for each past due Assessment or installment thereof, and impose interest at the highest rate permitted by law accruing beginning on the first day of the month after the Assessment or installment was due.
- c. In the event of default of more than THIRTY (30) days in the payment of any Assessment or installment thereof, all remaining installments of Assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent Assessments or installments thereof, together with all attorneys' fees, costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Not less than TEN (10) days 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 to vote when the Assessments due with respect to the Owner's Unit are past due, and suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities, provided that the suspension of use rights shall not apply to Limited Common Elements, 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 Owners and 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 damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
- g. Enter any Unit or Limited Common Element in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Cabin 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 which is causing the violating, provided that any improvements which are a part of a Cabin may be altered or demolished only pursuant to a court order or with the agreement of the Owner.

h. Foreclose any lien under the provisions of the Governing Documents or under law, in the manner provided by the Act.

13.3 Rights to Hearing. Before the imposition of any of the remedies authorized by Section 13.2 d, e, f, g, or h, the Board shall, upon written request of the offender, grant the offender an opportunity for 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 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 offender fails to timely request a hearing or to appear at the hearing, then the right to a hearing shall be deemed 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.

13.4 Lien for Charges, Penalties, Etc. Any Assessments, charges, fines, expenses, 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 makes a written decision at or 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 Association's right to pursue any others.

13.5 Costs of Proceedings and Attorneys Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the Unit owned by the violator with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorney's fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association. Such expenses shall also include any collection or contingency fees or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Occupant. The assessment shall be the personal obligation of the Owner of the Unit and shall be a lien against such Owner's Unit.

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

13.7 Enforcement by Owners. The provision 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 14

Amendments

14.1 Approval Requirements. Except for amendments by Declarant pursuant to Section

16, this Declaration may be amended only by the approval of:

- a. Owners of Units to which are allocated at least SIXTY-SEVEN PERCENT (67%) of the total votes in the Association.
- b. The percentage of Eligible Mortgagees (based upon one vote per Unit financed) required by Section 15 as to certain amendments referenced in said Section.
- c. Declarant as to certain amendments as provided in Section 16.
- d. The Otter Tail County Land and Resource Office and the Otter Tail County Board of Commissioners.

14.2 Procedures. Approval of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees or Declarant if required shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

SECTION 15

Rights of Eligible Mortgagees

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

15.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least FIFTY-ONE PERCENT (51%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon ONE (1) vote per Unit financed) shall be required for any amendment to the Governing Documents which causes any change in provisions including the following: (i) voting rights; (ii) increases in Assessments over TWENTY-FIVE PERCENT (25%) Assessment liens, or priority of Assessment liens; (iii) reductions in reserved for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use; (vi) redefinition of any Unit boundaries; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (ix) hazard or fidelity insurance requirements; (x) imposition or restrictions on the leasing of Units; (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association (if the project involves fifty (50) or more Units) to establish self-management when professional management is in effect as required previously by the Governing Documents or an Eligible Mortgagee; (xiii) restoration or repair of the Property (after a hazard damage Or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the common interest community after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

15.2 Consent to Certain Actions. The written consent to Eligible Mortgagees representing at least SIXTY-SEVEN PERCENT (67%) of the Units that are subject to first mortgages

held by Eligible Mortgagees (based upon ONE (1) vote per Unit financed) shall be required to (i) abandon or terminate the common interest community; (ii) change the allocations of voting rights, Common Expense obligations or interests in the Common Elements; (iii) partition or subdivide a Unit except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Common Elements; or (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

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

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

15.5 Priority of Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid Assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgage holder or purchaser, (i) except as provided in Section 6.10 and the Act and (ii) except that any unreimbursed Assessments or charges may be reallocated among all Units in accordance with their interests in the Common Elements.

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

15.7 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 to or a taking of the Unit and/or the Common Elements. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

15.8 Requirements for Management Agreements. The term of any agreement for professional management of the Property may not exceed TWO (2) years.

15.9 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, including those which are audited, shall be available within ONE HUNDRED TWENTY (120) days of the end of the Association's fiscal year. If the common interest community consists of fewer than FIFTY (50) Units, FNMA, or any institutional guarantor or insurer of a mortgage loan against a Unit, may require that, at its own expense, an audit of the Association's financial statements be made for the preceding year, in which case the Association shall cooperate in having an audit made and a copy given to the requesting party. If the common interest community consists of FIFTY (50) or more Units, the Association shall provide the requested audit at its expense.

15.10 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 timely written notice of:

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

SECTION 16 *Special Declarant Rights*

Declarant hereby reserves exclusive and unconditional authority to exercise the following special declarant rights within the meaning of *Section 515B.1-1 03(32) of the Act* for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

16.1 Continued Operation of Resort. To continue the operation of the resort on the Property for so long as an existing Unit remains unsold.

16.2 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 within any Units owned or leased by Declarant from time to time, located anywhere on the Property.

16.3 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.

16.4 Construction: Declarant's Easement: The Declarant reserves the right to form or to have performed on Declarant's behalf repairs and construction work in Units, and in Common and Limited Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed by the Declarant or by a designee of the Declarant without the consent or approval of the Board. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. The easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State, riparian owners, or upland owners to fulfill the plan of development. The rights reserved by this Section shall also accrue to Unit Owners and their contractors.

16.5 Control of Association. The Declarant shall control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board pursuant to *Section 515B.3-103 of the Act*, until the earliest of: (i) voluntary surrender of control by Declarant, (ii) an Association meeting which shall be held within SIXTY (60) days after conveyance to Owners other than a Declarant of SEVENTY-FIVE PERCENT (75%) of the total number of Units authorized to be included in the Property or (iii) the date FIVE (5) years following the date of the first conveyance of a Unit to an Owner other than a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall

have the right to nominate and elect not less than THIRTY-THREE AND ONE-THIRD PERCENT (33 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.

16.6 Consent to Certain Amendments. Until such time as Declarant no longer owns any Unit for initial sale, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects Declarant's rights under the Governing Documents or the Act.

16.7 Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following: as long as the Declarant (a) is obligated under any warranty or obligation, (b) owns any Unit; or (c) owns any Security Interest in any Units; or (d) TEN (10) years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

16.8 Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminishes any Special Declarant Right without the prior written consent of the Declarant.

16.9 Declarant reserves the right to continue to operate the unsold Units as a resort and rate and lease Unit for that purpose.

SECTION 17

Environmental Control Committee

17.1 Organization. An Environmental Control Committee is hereby created.

- a. The Declarant shall serve as the Environmental Control Committee during the period of Declarant Control.
- b. The Board of Directors of the Association shall serve as the Environmental Control Committee following the period of Declarant Control.
- c. Any time after the period of Declarant Control, the Board of Directors of the Association may create a separate Environmental Control Committee in lieu of the Board itself serving as the Committee. In such an event, the Board shall retain the power to appoint and remove members of the Committee at any time and shall have the right to establish Rules to govern the conduct and administration of the Committee. The Board further reserves the right to disband the Committee at any time, in which event the Board shall resume the duties of the Environmental Control Committee.

17.2 Committee Duties. It shall be the duty of the Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to this Declaration and to adopt Committee rules, and to perform such other duties from time to time delegated to it by these Covenants and Restrictions and by the Association.

17.3 Committees: Meetings: Action: Compensation: Expenses: The Committee shall meet from time to time as necessary to perform its duties. The vote or written consent of a majority of members

shall constitute an act by the Committee. The Committee shall keep and maintain a record of all action taken by it at such meetings or otherwise. Unless and until authorized by the Board, the members of the Committee shall not receive any compensation from the Association, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Committee function.

17.4 Committee Rules. The Board of Directors of the Association shall by majority vote have the exclusive power to adopt, amend and repeal, rules and regulations, to be known as "Environmental Control Committee Rules," which interpret or implement the provisions of this Declaration insofar as they relate to matters within the jurisdiction of the Committee. A copy of the Rules, as they may from time to time be amended, shall be maintained with the records of the Association and shall be available for inspection by any Owner.

17.5 Non-Waiver. The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Committee under these Covenants and Restrictions, shall be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification, or matter.

17.6 Variances. The Committee shall have the power to allow reasonable variances to the Rules and the provisions of this Declaration in order to overcome practical difficulties and prevent unnecessary hardship, provided the following conditions are met:

- (1) An Association hearing on the application for such variance is held by the Committee after giving TEN (10) days prior written notice to owners of Units in the Community.
- (2) The Committee finds that the variance will not be materially detrimental to other Units or Common Areas in the Community.

17.7 Estoppel Certificate. Within THIRTY (30) days after written demand therefore is delivered to the Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Association, the Committee shall record an estoppel certificate executed by any two of its members, certifying with respect to any Unit of said Owner, that as of the date thereof either (a) all improvements and other work made or done upon or within said Unit of Planned Community by the Owner, or otherwise, comply with the Covenants and Restrictions, or b) such improvements and/or work do not so comply, in which event the certificate shall also (1) identify the non-complying improvements and/or work, and (2) set forth the cause or causes for such non-compliance. Any purchaser from the Owner or encumbrances shall be entitled to rely on said certificate with respect to the matter therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and any purchaser, or encumbrances.

17.8 Liability. Neither the Committee, nor any member thereof; shall be liable to the Association, or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, whether or not defective, b) the construction or performance of any work, whether or no pursuant to approved plans, drawings and specifications, (c) the development or manner of any property within the Development, or the execution and filing of an estoppel certificate, whether or not the facts therein are correct; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

SECTION 18

Notice and Hearing

18.1 Right to Notice and Comment. Before the Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice" and at any other time the Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Unit Owner in writing, delivering personally or by mail to all Unit Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five days before the proposed action is to be taken. It shall invite comments to the Board orally or in writing before the scheduled time of the meeting. The right of Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

18.2 Right to Notice and Hearing. Whenever the Documents require that an action be taken after Notice and Hearing," the following procedure shall be observed: the party proposing to take the action (e.g., the Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

18.3 Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Board from a decision of persons other than the Board by filing a written notice of appeal with the Board within TEN (10) days after being notified of the decision. The Board shall conduct a hearing within 30 days, giving the same notice and observing the same procedures as were required for the original meeting. Any person having a right to Notice and Hearing shall have the right to appeal to each of the owners of the Association from a decision of the Board by filing a written notice of appeal, with the president or secretary of the Association. In such event, the president or secretary of the Association shall call a special meeting of the members of the Association, who shall consist of the Unit Owners, and shall have a right to be heard by the entire Association, and a majority vote of the Association shall constitute the decision of the Association.

SECTION 19

Open Meetings

19.1 Access. All meetings of the Board at which action is to be taken by vote will be open to the Unit Owners, except as hereafter provided.

19.2 Notice. Notice of every such meeting will be given not less than TWENTY-FOUR (24) hours prior to the time set for such meeting, by posting such notice in a conspicuous location in the Common Interest Community, except that such notice will not be required if an emergency requires that the meeting be held without delay.

19.3 Executive Sessions. Meetings of the Board may be held in executive session, without giving notice and without the requirement that they be open to Unit Owners, in either of the following situations only:

(a) If no action is taken at the executive session requiring the affirmative vote of Directors; or

(b) If the action taken at the executive session involves personal, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual Unit Owners, matters which are to remain confidential by request of the affected parties and agreement of the Board or actions taken by unanimous consent of the Board.

SECTION 20 *Miscellaneous*

20.1 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 Declaration or exhibits attached hereto.

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

20.3 Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to 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.

20.4 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board, the Association officers or the Owner's 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.

20.5 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the By-Laws or any Rules or Regulations approved by the Association, the Act shall control unless it permits the documents to control. As among the Declaration, By-Laws and Rules and Regulations, the Declaration shall control, and as between the By-Laws and the Rules and Regulations, the By-laws shall control.

20.6 Duration of Covenants. The covenants, conditions, restrictions, easements, liens, and charges contained in this Declaration shall be perpetual, subject only to termination as provided in this Declaration and the Act.

[SIGNATURE PAGE TO FOLLOW]

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

DECLARANT

SUNSET DEVELOPMENT, LLC

Date: 9/17/23

Scott E Olson
SCOTT E. OLSON, *President, Chief Manager*

Date: 9/14/23

Cathy L Olson
CATHY L. OLSON, *Secretary, Treasurer*

STATE OF MINNESOTA)
) SS
COUNTY OF OTTER TAIL)

The foregoing instrument was acknowledged before me **THIS 14 DAY OF JULY 2023**, by **SCOTT E. OLSON**, as *President*, and **CATHY L. OLSON**, as *Secretary*, of **SUNSET DEVELOPMENT, LLC**, a Minnesota Limited Liability Company, *Grantor*.

K. T. Jensen
NOTARY PUBLIC



THIS INSTRUMENT WAS DRAFTED BY:

Paul S. Jensen #337420

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