



814793

\$65.00

RECORDER'S OFFICE, GRAND FORKS COUNTY, ND 5/26/2021 at 8:28

I certify that this instrument was filed for record this date.

GARLYNN HELMOSKI, County Recorder

BY Susi Walker

(reserved for recording data)

**SOUTHFIELD PLACE TWIN HOMES DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, LIENS AND CHARGES**

THIS DECLARATION, made 5/23, 2021 by Thomsen Homes, LLC, a Minnesota limited liability company, hereinafter together referred to as "Developer", who desires to provide for the preservation of the values and amenities of the property described in Article II of this Declaration, hereinafter called the "Property". To this end the Property is subject to the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Declaration, each and all of which is and are for the benefit of the Property and each Owner. These covenants, conditions, restrictions, reservations, easements, liens and charges shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the properties herein described or any part thereof, and shall inure to the benefit of each Owner thereof.

NOW, THEREFORE, Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, liens and charges (sometimes referred to as "covenants and restrictions") set forth in this Declaration.



**AUDITOR'S OFFICE**

COUNTY OF GRAND FORKS, NORTH DAKOTA

May 26, 2021

TRANSFER ENTERED

Debbie Nelson Auditor

Ursula Nelson Deputy

ARTICLE I.

DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

1. "Building Plot" shall mean and consist of one or more Lots or one Lot and a portion or portions of adjacent Lots which have the same Owner.

2. "Declaration" shall mean the covenants, conditions, restrictions, reservations, easements, liens and charges set forth in this Agreement, as may from time to time be amended.

3. "Developer" shall collectively mean and refer to Thomsen Homes, LLC, a Minnesota limited liability company, its successors and assigns, if any successors or assigns shall acquire a majority of the undeveloped Lots for the purpose of development.

4. "Family" shall mean one or more persons living in a residential building as a single housekeeping unit and shall exclude a group or groups of persons where three (3) or more persons thereof are not related by blood, adoption, or marriage.

5. "Lot" shall mean and refer to any plot of land shown upon any recorded Plat of the Property. If a Lot as shown on the Plat or a portion thereof, is added to an adjacent Lot, then the same shall be considered as one Lot for purposes of this Declaration.

6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

7. "Property" shall mean that real property described more specifically in Article II of this Declaration.

8. "Review Committee" shall mean the Southfield Place Architectural Review Committee established pursuant to Article III.

ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is described as follows:

**Lots 36-108, in Block 1, of Edgewood Village Second Resubdivision  
to the City of Grand Forks, Grand Forks County, North Dakota.**

all of which real property shall hereinafter be called the "Property".

ARTICLE III.

ARCHITECTURAL CONTROL

1. Southfield Place Architectural Review Committee. There is hereby established The Southfield Place Architectural Review Committee ("Review Committee") for the Property which shall be comprised of the Developer's designated agent, Thomsen Homes, LLC, 3280 Veterans Blvd South, Suite 120, Fargo, ND, 58104, until the time that residences have been constructed and completed on all properties, or until the time that the Developer decides to divest itself of responsibility for architectural control. When such control is relinquished, the responsibility shall be vested in a committee comprised of three Owners, who shall be elected by all Lot Owners in the subdivision. The elected committee shall, at that time, adopt a meeting schedule and rules of operation. It shall be conclusively presumed that there has been no complete construction upon all properties or that the Developer has not divested itself of responsibility for Architectural Control unless there is a sworn affidavit of record stating that one or the other of said factual circumstances exists.

2. Procedure for Submission of Plans and Specifications. Plans (for which receipt must be acknowledged in writing) will be submitted to the Review Committee at Niels@thomsenhomesllc.com. Approval or disapproval of those plans will be made in writing within ten (10) days after the receipt of those plans. In the event the Review Committee fails to approve or disapprove of the plans and related documents within this ten (10) day period, approval will not be required and the related covenants shall be deemed to have been fully met. Approval shall not be arbitrarily withheld or delayed, it being the intention of the Review Committee to grant or withhold approval for the purpose of establishing a quality, restricted residential district, free from objectionable or value-destroying features and in conformity with the governing zoning codes, building codes and other applicable regulations then in force.

3. Architectural Control. No building, wall, landscaping feature, pool, driveway, sidewalk or any other structure shall be commenced, erected or maintained on the Lots, nor shall any exterior addition to or change or alteration thereto be made to any buildings on the Lots until the plans and specification for same have been submitted to and approved in writing by the Review Committee or its appointed architect from time to time.

A. Plans submitted for approval shall include the following:

i. One complete set of house plans and one site plan.

- ii. The house plan should indicate construction materials and specifications, roofing material, exterior finishes and colors.
- iii. The site plan should indicate the basement outline with projections shown as a dotted line. The garage "footprint" and exterior steps or decks should be indicated. The main floor proposed grade, and the basement floor grade should be clearly shown. The site plan should clearly indicate the finished landscape grade at each corner of the building as well as those adjacent to any unusual indentations within an elevation. The site plan should indicate sidewalk, walkway, and driveway locations and sizes.

B. No Accessory Structures shall be permitted.

C. Any and all solar heating devices or satellite, TV and radio antennae must be approved by the Review Committee or its architect. (Does not apply to Dish Network, DirecTV, or similar satellite dishes.)

D. Each Lot will be restricted to construction of one single family attached residence ("Unit") with a two car attached garage.

E. The following exterior minimum square footage requirements apply. Square foot calculations will not include basements, open porches and decks or garages.

- i. 1100 square feet for a standard one story (rambler or ranch)
- ii. 1400 square feet for a standard two story (includes both upper and main floors).
- iii. 1600 square feet for a standard bi-level (includes all levels)
- iv. 1600 square feet for a standard multi-level (includes all levels).

F. A reduction of the square footage with respect to any of the Lots may be granted by the Review Committee. Any reduction shall be evidenced by a written certificate of variance issued by the Review Committee.

G. No residence shall exceed two and a half stories in height when viewed from the street.

H. All residences are required to have at least ten (10%) percent hard surface coverage on the front of the structure which would include brick, stone, dryvit or similar type materials.

ARTICLE IV.

RESTRICTIONS

The Property shall be subject to the following restrictions:

1. Land Use and Building Type. All Lots zoned residential shall be used for single family purposes only. No improvements or structures whatsoever, other than a private dwelling house, Review Committee approved fences (subject to limitations hereinafter set forth) may be erected, placed or maintained on any Lot on the Property.

2. Building Location. No building shall be erected on any Lot unless side Lot clearances and front line set backs are in compliance with the City of Grand Forks, however, in no event shall any building or structure be erected within 25 feet of the front Lot line. Eaves and steps shall also be constructed in such a way so as to comply with such zoning ordinances and restrictions, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

3. Lot Drainage Control. All Lots shall be graded to the finished design grades as approved by the Architectural Review Committee and the City of Grand Forks.

4. Fencing. All fencing must be made of white maintenance-free material. No chain link or wood fencing will be permitted. No fence shall be constructed beyond the front of the primary structure facing the front of the lot (that side of the lot facing a street) except on corner lots as approved by the Developer. No such fence shall exceed six feet in height.

5. Decks. No deck platform shall exceed the dimensions of 11 feet in width and 6 feet in depth excluding stairs. Each deck shall be permitted a single straight staircase. A privacy panel not exceeding 6 feet in width and 8 feet in height is permitted between decks of adjoining units.

6. Landscaping. The front and sides of each Lot shall be sodded or seeded and landscaped prior to the end of the first summer construction season that the home is completed and occupied. If a property is completed in the winter, it shall be sodded or seeded and landscaped prior to the end of the following summer. If a property is completed in the same year, the rear Lot shall be seeded or sodded and landscaped within one year of occupancy of the completed residence.

7. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.

8. Antennas. No antenna, satellite or microwave dish or other device for transmission or reception of television or radio signals shall be constructed, installed, erected, used or maintained on any Lot without the prior written approval of the Review Committee unless applicable law prohibits the Review Committee from requiring such

approval. Any such antennas must be installed in accordance with the guidelines set forth by the Review Committee. (Does not apply to Dish Network, DirecTV, or similar satellite dishes.)

9. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers. In no event shall such containers be visible from neighboring property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be maintained on any Lot.

10. Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any residence, garage, or other building so as to be visible from neighboring property.

11. Basketball Goals and Backboards. No basketball goal or backboard shall be attached to a residence or other building. Basketball goals and backboards attached to a freestanding pole may be installed on a Lot provided the location, design and appearance of the basketball goal and backboard is approved in writing by the Review Committee.

12. Animals. Other than household pets kept for non-commercial uses, no animals, livestock, poultry or insects of any kind shall be raised, bred or maintained on any of the Lots. Pets will be restricted to owners Lot, must not be a nuisance and will not be allowed to stray to adjacent property.

13. Clotheslines. Clotheslines will be permitted as long as placement and design are approved by the Review Committee.

14. Vehicle Parking Storage. No commercial vehicles, motor homes, travel trailers, or construction equipment shall be permitted on any Lot. Motor homes, travel trailers and like vehicles shall be temporarily permitted on the Lots for the purpose of loading and unloading such vehicles or for temporary visits by visitors to the Lots for a period not to exceed 72 hours. Motor homes, travel trailers and like vehicles may be stored on the Lots only if they are stored behind the front house line and are adequately screened from public view as determined by the Review Committee. All motor vehicles kept on or about a property shall be currently licensed and shall be maintained in an operable condition at all times, temporary mechanical difficulties and breakdowns excepted.

15. Signs. No billboards or advertising signs of any kind or character shall be erected, placed, permitted or maintained on any Lot except as herein expressly permitted. A name and address sign used solely for the purpose of identification of the dwelling house occupants may be placed on the property by its occupants provided the sign is no more than two feet square maximum and the design of the sign is approved by the Review Committee prior to installation. The provisions of the paragraph may be

waived by the Review Committee only when in its discretion the same is necessary to promote the sale of the property in the area of promotion of the premises. The Review Committee may erect, place and maintain such sign structure or structures as it deems necessary for the operation or identification of the subdivision.

16. Nuisance. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Such restrictions shall include, but not be limited to using the Lot as a dumping ground for rubbish, garbage, trash, or other waste materials, the placing thereon of unsightly piles of dirt, lumber or other material except during construction, and then only during the course of construction. Such restrictions shall also prevent noxious weeds to grow on the Lot either during or after the period of construction of the home.

17. Dirt Removal. No topsoil or excavation material may be removed from the development without the permission of the Developer. When there occurs an excess of soil or excavation material as a result of basement excavation or Lot grading, permission to remove that material must be obtained from the Developer, or its engineer. The Developer will identify a location for the stock piling of excess soil or clay fill.

18. Appearance During Construction. All Lots are to be kept clean during construction. All garbage is to be stored out of sight. No garbage/trash burning will be permitted. All Lots shall comply with the storm water management practices in use in the City of Grand Forks during the time of construction.

19. Propane Tanks. No combustible liquid or gas tanks, exposed to view from the public street, shall be allowed on the Lots.

20. Temporary Residence. No trailer, basement, tent shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence, nor shall any residence of a temporary character be permitted.

21. Easements. The easements for the installation and maintenance of utility and drainage facilities are shown on the plat of the development. Within the area of the easements no structures, plantings, fencing or other materials shall be placed, erected, or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change or alter the direction of flow of drainage channels or swales in the easements or which obstruct or retard the flow of water through drainage channels or swales in the easements. The easement areas of each Lot and all improvements on it shall be maintained continuously by the Owner except for the improvements for which the public authority or utility company is responsible. All claims for damages, if any, arising out of the construction, maintenance and repair of the utility or drainage facility or on account of temporary or other inconvenience caused thereby against the Developer, the utility or the public authority or any of its agents or servants are waived by the Owners.

22. Power and Telephone Lines. Overhead telecommunication and electrical delivery lines are prohibited.

23. Mining. No derrick or other structure designed for use in exploring for oil or natural gas shall be erected, placed, or permitted upon any part of the Lots nor shall any oil, natural gas, petroleum, asphalt, or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the Lots. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted on any Lot or any part of the properties nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on part of the Lots.

24. Basements. No basement shall be constructed for temporary residential purposes and no basement structure shall be used for residential purposes unless and until the entire primary structure has been erected and it complies with the building code of the City of Grand Forks.

25. Structural Changes. No house or structure shall be moved onto any of the Lots, unless it is a new structure built to meet all of the current codes and specifically approved in writing by the Review Committee, and no structure once erected shall at any time be altered or changed so as to permit its use to be in violation of this Declaration.

26. Mortgages. The breach of any of the foregoing covenants, conditions, reservations or restrictions shall not defeat or render invalid any lien, mortgage or deed of trust made in good faith for value as to any Lot or Lots or portion of Lots in the Development; but this Declaration shall be binding upon, and effective against any mortgagee, trustee or owner, whose title or whose grantor's title is or was acquired by foreclosure, trustee sale or otherwise.

## ARTICLE V.

### SOUTHFIELD PLACE TWIN HOME HOMEOWNERS ASSOCIATION

1. Membership in Association. Upon the completion of all residences in the Property, or in the sole discretion of Developer, governing control of these covenants and restrictions shall be transferred to the Board of the Association. Every Owner of any Lot which is subject by covenants of record to assessment by the Association shall be a mandatory member of the Association. There shall be one vote per Lot. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. All members of the Association shall be governed and controlled by the Articles of Incorporation and by the Bylaws thereof.

2. Creation of a Lien and Personal Obligation and Assessments. The Developer hereby covenants, and each Owner of any Lot by acceptance of a deed thereof, whether or not so expressed in such deed, is deemed to covenant and agree to pay the Association annual general assessments or charges, and special assessments for



capital improvements. All assessments shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment shall also be the personal obligation of the Owner of such property at the time when the assessment fell due.

3. Method of Assessment. By vote of a majority of the members, the Association shall fix their annual assessment upon the basis provided herein, provided, however, that the annual assessment shall be sufficient to meet the obligations imposed by this Declaration. The Association shall set the date(s) such assessments shall become due. The Association may provide for collection of assessments annually or in monthly, quarterly, or semi-annual installments, provided, however, that upon default of the payment of any one or more installments, the entire balance of said assessment may be accelerated, at the option of the Association, to be declared due and payable in full.

4. General Assessment. The general assessment levied by the Association shall be used exclusively to promote the improvement, maintenance and operation of the roads, signage, mailboxes, common areas, parks, perimeter landscape and entrance to Southfield Place. Each Lot, whether improved or unimproved, shall be assessed at a uniform rate with the assessment commencing at, and in an amount to be determined by the Members of the Association at the initial meeting of the Members of the Association.

5. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable for that year and for not more than the next four succeeding years for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements located within the development including the roads, underground utilities, paving of roads, common areas, parks, entrance and the landscaped area or area of the entrance, street lighting, banners, or other decorations to enhance the aesthetic value of the subdivision, sidewalks, or any other improvement, including fixtures and personal property related thereto, providing that any such assessment shall have the ascent of a two-thirds (2/3) majority of the owners who are voting in person or by proxy at a special meeting duly called for that purpose. So long as the Developer owns any Lot any special assessment must be approved in writing by the Developer. Any special assessment shall be levied in equal amount for each Lot.

6. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

7. Enforcement of Lien:

A. All delinquent assessments, together with interest thereon (at an interest rate equal to that rate charged by Grand Forks County for delinquent taxes), and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

B. If the Association elects to claim a lien for non-payment of assessments, it shall at any time within thirty (30) days after the occurrence of default make a demand for payment to the defaulting owner. Said demand shall state the date and amount of delinquency. If such delinquency is not paid within ten (10) days after delivery of such notice, the Association may elect to file a claim of lien against the Lot of such delinquent owner. Such claim of lien shall state:

- i. The name of the delinquent owner.
- ii. The legal description of the Lot against which the claim of lien is made.
- iii. The amount claimed to be due and owing.
- iv. That the claim of lien is made by the Association pursuant to the terms of this Declaration.
- v. That the lien claimed against the Lot is in an amount equal to the amount of the stated delinquency.
- vi. Due demand has been made upon the defaulting or the delinquent owner pursuant to this Declaration and that said amount was not paid within the ten (10) days after such demand.

Upon recordation of a duly executed and acknowledged original of such claim of lien by the Recorder of Grand Forks County, the lien claimed therein shall immediately attach to the real property and become effective subject to the limitations hereinafter set forth. Each default shall constitute a separate basis for a claim of lien or a lien but a number of defaults may be included within a single claim of lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of real estate mortgages pursuant to the statutes of the State of North Dakota.

The lien of the assessments provided for above shall be subordinate to the lien of any first mortgage, first purchase money security deed, or security deed representing a first lien on said property and including the improvement note and mortgage at Bank Forward. Sale or transfer of any Lot pursuant to foreclosure shall extinguish the lien of

such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall release such Lots from liability for any assessments thereafter becoming due or form the lien thereof.

C. In addition to lien rights, the Developer or Association, as the case may be, shall have the authority to levy fines upon any homeowner who remains in default of these covenants after written notice of default. The amount of such fines shall be adjusted on a periodic basis by the Developer or Association, but the minimum amount per violation shall be set at \$50.00. Any fine not paid shall be a charge on the land and a continuing lien on the Lot, together with attorney's fees and the cost of recording the lien.

## ARTICLE VI.

### MAINTENANCE

1. Areas of Association Responsibility. The Association, or its duly delegated representative, shall be responsible for the management and maintenance of the signage, mail boxes, parks, perimeter landscape, Tobi Lané, all underground utilities and entrance to Southfield Place, and all improvements located thereon, except for any part thereof which any governmental entity is maintaining or is obligated to maintain (together the "Common Areas"). With regard to water, the Association will be responsible for the repair and maintenance of the domestic water system from the main to the curb stop for each Lot. With regard to sanity sewer, the Association shall be responsible for the wye connection at main; and Lot Owner shall be responsible for the line from the residence to the wye connection. The Board shall be the sole judge as to the appropriate maintenance of all Common Areas. No Owner, resident or other person shall construct or install any improvements on the Common Areas or alter, modify or remove any Improvements situated on the Common Areas without the approval of the Board. No Owner, resident or other person shall obstruct or interfere with the Association in performance of the Association's management or maintenance of the Common Areas, and the improvements located thereon.

2. Lots. Each Owner of a Lot shall be responsible for the maintenance of his Lot, and all buildings, residential units, landscaping or other improvements situated thereon. All buildings, residential units, landscaping and other improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines, trees and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be visible from neighboring property or streets. All Lots upon which no residential units, buildings or other structures, landscaping or improvements have been constructed or installed shall be maintained in a weed free and attractive manner.

3. Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance of the Common Areas is caused through the willful or negligent act of any Owner, his family, tenants, guests, or invitees, the cost of such maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

4. Improper Maintenance and Use of Lots. In the event any portion of any Lot is maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the development which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under the Association documents, the Association may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Association may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Association shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

## ARTICLE VII.

### EASEMENTS

1. Easement to Inspect and Correct Violations. There is hereby created an easement in favor of the Association for ingress and egress on any Unit during reasonable hours:

- A. To inspect such property for alleged violations of this Declaration and any governing documents of the Development following receipt of a complaint, or compliance with standards following receipt of a complaint, or approved plans for alterations and improvements, provided the Owner of such Unit is given written notice of the purpose and time of inspection at least three (3) days in advance; and,
- B. Performing such correction of violations or such maintenance as is required by the Declaration on such Units.

2. Easement for Governmental Personnel. A right of entry on any Unit or common area is hereby granted to law enforcement officers, fire and rescue, public works and water meter personnel, and local animal control personnel as needed to carry out their duties, including curb stop access and enforcement of cleared emergency vehicle access zones.

3. Easement for Snow Removal/Storage. There is hereby created an easement upon, across, and over the approach at the front of each Unit in the Development for the

placement, location, and storage of snow, ice, and slush which may be removed, taken from or extracted from the private roads in the Development.

4. Easement for Access. There is an Ingress/Egress Easement as shown on the plat created in favor of the lawful invitees, guests, or contractors of either an Owner(s) or the Association, an easement for the express purpose of providing a right of entry upon, across, over and through the Common Areas within the Development for the express purpose of obtaining access to a Unit, or performing a lawful contract.

No fence, shrubs, or other barrier that prevents or obstructs the passage of pedestrian or vehicular travel shall be constructed across the easement. However, this provision shall not prohibit the installation of convenience facilities that do not impair the use of the easement (such as mailboxes, public telephones, benches, trash deposit enclosures, curbing, or forms of landscaping) and forms of traffic controls to the extent an owner of a parcel wishes to place or construct those improvements.

## ARTICLE VIII.

### PARTY WALL AGREEMENTS

1. Party Wall. The Project consists of approximately Thirty-six (36) twin home Units. Between the Units there are common or party walls supported by common or the same footings, foundation, and other supports and common sanitary sewer connections. Each garage has two party or common walls.

2. Units Affected. The covenants in this Article shall run with and bind the land contained herein.

3. Common Wall Deemed Not an Encroachment. The walls to be constructed on the boundary between the twin-home Units, and forming a part of each twin-home Unit, are hereby declared to be party or common walls for the use, benefit, and enjoyment of the parties, their respective heirs, executors, administrators, successors, and assigns, and no part thereof is to be construed or deemed to be an encroachment on either of the Units situated in the Project.

4. Damage or Destruction to Common Walls. In the event of damage or destruction of a party wall or any portion thereof, from any cause other than the negligence on one of the Owners of the affected Unit, then the Owners of each of the affected Units shall at their joint and several equal expense repair or rebuild the damaged or destroyed wall, and each of the parties shall have the full use of the wall so repaired or rebuilt. If either Owner's negligence shall cause damage or destruction of the common wall, such negligent Owner shall bear the entire cost of the repair or reconstruction. If the Owner of either of the affected Unit shall neglect or refuse to pay his or her share or all of such costs in the case of negligence, the Association may have the wall repaired or restored and the same shall be deemed to be an assessment against the Unit(s) and Owner(s) who refused to pay his or her share. If, after expiration

of fifteen (15) days from receipt of a written request for payment of such assessment, the Association shall be entitled to the remedies set forth herein.

5. Footings, Foundations, and Support. No part of any of the footings, foundation, and other supports, supporting the common wall constructed on the boundary between the Units is hereby declared to be party footings, foundations, and supports, shall be deemed an encroachment on any Unit or adjacent or adjoining property.

6. Repairs or Rebuilding of Footings. In the event that it should be necessary to repair or rebuild the footings, foundations, and supports, or any portion thereof, from any cause other than the negligence of either of the Owners of adjoining or adjacent Units or property, then each of the Owners shall, at their joint and equal expense, repair or rebuild the footings, foundations, and supports, and each Owner shall have the right to full use of the footings, foundations, and other supports so repaired or rebuilt.

7. Weatherproofing. Notwithstanding any other provision of this Declaration, an Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

8. Exterior Maintenance. In order to maintain the aesthetic character and the value of the Units, the exterior walls and roofs of each Unit shall be maintained in a like color and material. In the event of dispute between the Owners of the respective Units, maintenance questions shall be submitted for arbitration as provided in this Declaration. Each Owner agrees to periodically paint, decorate and maintain the exterior of his Unit including lawn and landscaping so as to not detract from the value of the adjacent tract.

9. Easement for Repair and Reconstruction. If it becomes necessary to repair or reconstruct the partywall, the Owner of each Unit grants unto the other Owner, as his agent, an easement to come on to the grantor Owner's property at reasonable times and upon reasonable notice to effect the repair or replacement.

10. Default by a Unit Owner. If any of the Owners of shall neglect or refuse to pay his or her share or all of such costs in the case of negligence, the other Owner shall be entitled to contribution and payment from the defaulting Owner for the defaulting Owner's share of the repair and reconstruction costs. The footings, foundations, and supports, when being rebuilt or restored shall be rebuilt or repaired where they are now situated, and shall be of like quality and done in a workmanlike manner consistent with the present footings, foundations, and other supports, and in such a manner as it may conform with the then-current accepted construction and engineering practices,

11. Destruction of a Unit. In the event that any of the Units situated on any adjoining lands are partially or totally destroyed by any cause whatsoever, then the Owner of said Unit will not do anything which will or will be likely to adversely affect or be detrimental in any way to the support and use of the water connection to the

surviving Unit. The Owner of the surviving Unit is entitled to the party wall, footings, foundations and other supports for the surviving Unit.

## ARTICLE IX.

### GENERAL PROVISIONS

1. Enforcement. If any party shall violate or attempt to violate any of the covenants or restrictions contained in this Declaration, it shall be lawful for the Developer to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either prevent him or them from so doing or to recover damages for such violation. At such time as the Developer has divested itself of responsibility for architectural control, any Owner may prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either prevent him or them from so doing or to recover damages for such violation.

2. Right to Enforce. Failure to enforce this Declaration or any of its terms should not be deemed a waiver of the right to do so thereafter, nor shall it be construed as an act of acquiescence or approval on the part of the Developer or the Owners.

3. Duration. This Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, devisees, successors and assigns for a term of ten (10) years from the date this Declaration is recorded. After which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of a majority of the Lots has been recorded, agreeing to modify said covenants and restrictions in whole or in part. This Declaration may be vacated, in part, or its entirety, by the Developer at any time during which the Developer is responsible for architectural control, but in no event more than seven (7) years from the date of this Declaration.

4. Severability. The invalidity or unenforceability of any particular provision of this Declaration shall not affect its other provisions. This Declaration shall be construed in all respects as if such invalid or unenforceable provision was omitted.

5. Amendments. This Declaration may be amended by the Developer until the earlier of: (i) Developer divests itself of the responsibility for architectural control; or (ii) five (5) years from the date of this Declaration. It shall be conclusively presumed that the Developer has not divested itself of responsibility for architectural control unless Developer has placed of record a sworn affidavit to this effect. After that time, this Declaration may be amended by an instrument signed by the owners of not less than seventy-five (75%) percent of the Lots. Any instrument amending, modifying or canceling this Declaration must be properly filed and recorded before it shall be effective.

