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(Above Space Reserved for Recording Data)

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS  
AND EASEMENTS**

**THE HARBOR AT EAST GULL**

This Declaration of Covenants, Conditions, Restrictions and Easements (the “Declaration”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Harstad Hills, Inc., a Minnesota corporation (the “Developer”), for the purpose of establishing The Harbor at East Gull, as a single-family residential housing community.

**WHEREAS**, Developer, as the owner or with consent of the owner(s) attached hereto, desires to submit certain real property located in Cass County, Minnesota, legally described in Exhibit A attached hereto and all improvements thereon (collectively the “Property”) to this Declaration; and

**WHEREAS**, Developer desires to establish on the Property, and any additional property added thereto, a plan for a permanent, single-family residential community to be owned, occupied and operated for the use, health, safety and welfare of its resident Owners and Occupants (as defined below), and for the purpose of preserving the quality and character of the Property; and

**WHEREAS**, the Property is not subject to the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B (“MCIOA”) by reason of the exemption contained in Section 515B.1-102(e)(2) of MCIOA, and is not subject to a master association as defined in MCIOA.

**THEREFORE**, Developer makes this Declaration and submits the Property to this Declaration as a residential community under the name “The Harbor at East Gull” 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, and any additional property added thereto, shall be owned, used, occupied and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens set forth herein, all of which shall run with the land and 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” means the Minnesota Nonprofit Corporation Act, Minnesota Statutes Chapter 317A, as amended.
- 1.2 “Assessments” means all assessments levied by the Association pursuant to Section 6, including annual Assessments, special Assessments and limited Assessments.
- 1.3 “Association” means The Harbor at East Gull Association, a Minnesota nonprofit corporation created pursuant to the Act, whose members consist of all Owners.
- 1.4 “Board” means the Board of Directors of the Association as provided for in the Bylaws.
- 1.5 “Builder” means a Person who acquires a Unit from the Developer or another Person for the construction and sale of a Dwelling located or to be located thereon.
- 1.6 “Bylaws” means the Bylaws governing the operation of the Association, as amended from time to time.
- 1.7 “City” means the City of East Gull Lake, Minnesota.
- 1.8 “Common Elements” means any parts of the Property, including all Improvements thereon, except the Units. The Common Elements, as of the date of this Declaration, are legally described in Exhibit B attached hereto.
- 1.9 “Common Expenses” means all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, and items otherwise identified as Common Expenses in the Declaration or Bylaws.
- 1.10 “Developer Control Period” means the time period during which Developer has the exclusive right to control the operations of the Association and to appoint the members of the Board, as provided in Section 15.6.
- 1.11 “Developer Rights” means those exclusive rights reserved to Developer, its successors and assigns, as described in Section 15.
- 1.12 “Dwelling” means a building consisting of one (1) or more floors, designed and intended for occupancy as a detached, single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or

otherwise located within the boundaries of the Unit upon which the Dwelling is located.

- 1.13 “Governing Documents” means this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.14 “Improvement” means any physical improvement of any kind to any part of the Property, temporary or permanent, structural, aesthetic or otherwise including, but not limited to, any Dwelling, structure, enclosure, building, addition, retaining wall or other wall, fence, sign, enclosure, deck, patio, screening, sport court, basketball hoop, fire pit, exterior lighting, gazebo, utilities system, antenna or other type of sending or receiving apparatus or communications system, irrigation or drainage system, pond, roadway, trail, planting, landscaping, or any other type of structure or physical improvement or any alteration, modification or change involving any such physical improvement.
- 1.15 “MCIOA” means the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B, as amended.
- 1.16 “Member” means all Persons who are members of the Association by reason of being Owners as defined in this Declaration. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.
- 1.17 “Mortgagee” means any Person owning a mortgage on a Unit, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit.
- 1.18 “Occupant” means any person or persons, other than an Owner, in possession of or residing in a Dwelling on a Unit.
- 1.19 “Owner” means a Person who owns a Unit, but excluding contract for deed vendors, Mortgagees and other Persons holding a security interest in a Unit, and Persons holding a reversionary or remainder interest in a Unit. The term “Owner” includes, without limitation, contract for deed vendees and holders of life estates.
- 1.20 “Person” means a natural individual, corporation, limited liability company, partnership, limited liability partnership, trust, or other legal entity capable of holding title to real property.
- 1.21 “Plat” means the recorded plat or part thereof depicting the Property pursuant to the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended Plat or replat recorded from time to time.
- 1.22 “Property” means all of the real property now or hereafter subjected to this Declaration, including the Units, Dwellings and all other structures and Improvements located thereon now or in the future. The Property, as of the date of this Declaration, is legally described in Exhibit A attached hereto.

- 1.23 “Rules” means the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6, if any.
- 1.24 “Slip” means one of the Common Element dock slips that shall be licensed to the Owners of the Units and/or the Association pursuant to Section 3.2.
- 1.25 “Storage Areas” means one of the Common Element storage areas that shall be licensed to the Owners of the Units and/or the Association pursuant to Section 3.3.
- 1.26 “Unit” means any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as described in Section 2.1 and shown on the Plat, including all Improvements thereon, but excluding any Common Elements.

References to section numbers shall refer to sections of this Declaration, unless otherwise indicated. References to the singular may refer to the plural, and conversely, depending on context.

## SECTION 2

### DESCRIPTION OF UNITS AND RELATED EASEMENTS

2.1 Units. There are twenty-seven (27) Units, subject to the right of the Developer to add additional property thereto as described in Section 3.4 or to deannex portions of the Property as described in Section 3.5. All Units are restricted to single-family residential use. The Units are identified by lot and block numbers and subdivision name, as shown on the Plat, which is incorporated herein by reference. Each Unit constitutes a separate parcel of real estate. The Units are legally described in Exhibit A attached hereto.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit are the boundary lines of the platted lot upon which the Dwelling is located or intended to be located. The Units have no upper or lower boundaries. All Improvements within the boundaries of a Unit are a part of the Unit.

2.3 Appurtenant Easements. The Units shall be subject to and benefited by the easements described in Section 12.

## SECTION 3

### COMMON ELEMENTS AND OTHER PROPERTY

3.1 Common Elements. The Common Elements and their characteristics shall be as follows:

3.1.1 All parts of the Property, including all Improvements thereon, except the Units, owned by the Association for the common benefit of the Owners and Occupants constitute Common Elements. The Common Elements are legally described in Exhibit B.

3.1.2 The Common Elements are subject to (i) easements as described in this Declaration and the Governing Documents, reflected on the Plat or in other instruments

recorded against the Common Elements, and (ii) the right of the Association to establish reasonable Rules governing the use thereof.

3.1.3 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.

3.1.4 Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 4.2 and Section 6.

3.2 Dock Slips. There shall be twenty-seven (27) Slips located on the Common Element boat docks. No additional Slips shall be installed or otherwise allowed. The Slips shall be licensed to the Owners, subject to the terms and conditions set forth in this Section 3.2, and following the initial licensing of each Slip by the Developer, the operation and transfer of the Slips shall be administered by the Association in accordance with this Section 3.2. The following conditions and restrictions shall govern the licensing, use and transfer of the Slips.

3.2.1 The initial grant of Slip licenses shall be made in accordance with this Section 3.2.1. Developer shall have the authority to include the grant of an exclusive license to use one (1) previously unlicensed Slips to each Owner apart from or in connection with the sale or other conveyance of a Unit to such Owner. Developer shall, at the time the license is granted, file with the Association a Slip license certificate executed by Developer. The Slip license certificate shall, at a minimum, identify the licensed Slip, the unit identifier of the Unit to which the Slip license is appurtenant, and a reference to this Section 3.2. Developer may require the onetime payment by an Owner to Developer of a consideration for the grant of the Slip license to such Owner. The rights of Developer under this Section 3.2.1 shall terminate upon the conveyance of all Units to Persons other than a Developer.

3.2.2 Upon and following the grant of a Slip license to an Owner, the Slip license shall be deemed appurtenant to such Owner's Unit and no interest in the Slip license may be held or transferred separate from such Unit, except as provided in Section 3.2.3. Neither Developer nor the Association shall have the right or authority to unilaterally transfer any Slip license assigned to an Owner and all Slip license transfers shall be made only in accordance with Section 3.2.3.

3.2.3 A Slip license shall remain with the Unit to which it is appurtenant until the license is transferred in accordance with this Section 3.2.3. Except as otherwise provided herein, a Slip license may be transferred to another Owner, but only by first delivering to the Association (i) a written transfer certificate, in form approved by the Association, signed by the transferor and transferee, and (ii) all prior Slip license certificates, and copies thereof, issued with respect to the Slip in the possession of the transferor. The Association shall review the proposed transfer certificate for compliance with this Section 3.2.3, and if the transfer complies, the Association shall transfer the license on its records to the transferee Owner and the license shall thereafter be deemed appurtenant to such Owner's Unit. In the absence of a properly executed transfer certificate to the contrary, a license appurtenant to a Unit at the time of such Unit's conveyance shall be automatically transferred to the new Owner with the conveyance of

title to such Unit. Notwithstanding the foregoing, one (1) Slip shall remain licensed to each Unit at all times.

3.2.4 The Slip license certificates and transfer certificates shall not be recorded. The Association shall maintain records including the originals or copies of the Slip license certificates and any transfer certificates made in accordance with the terms of Section 3.2.3, the Units to which the Slip licenses are appurtenant, and the names of the Owners of such Units. A copy of the Slip license certificate shall be delivered by the Association to the Owner of the applicable Unit upon the Owner's request.

3.2.5 Owners may permit guest use of their licensed Slip and may rent or allow the use of their licensed Slip to or by other Owners and Occupants. The lease or other use right shall be in written form, and shall terminate when the lessor, lessee or other user is no longer an Owner or Occupant, regardless of the terms of any agreement to the contrary. The Owner shall give the Association advance written notice of any lease or use agreement with respect to such Owner's Slip, and shall provide a copy of the lease or use agreement to the Association upon its request.

3.2.6 The interest of a secured party holding a lien on a Unit includes the license to any Slip appurtenant to such Unit at the time of foreclosure of the secured party's lien; provided that, unless the secured party has given written notice to the Association of a contrary agreement with the Owner of the Unit, the secured party's consent to the transfer of a Slip license prior to the commencement of a foreclosure action shall not be required if at least one Slip license remains appurtenant to the Unit.

3.2.7 The use of the Slips and the docks, and the size and types of boats and other watercraft which may be kept in the Slips, are subject to the restrictions set forth in this Declaration and the Rules approved from time to time by the Board. The Association shall apply for and maintain any permits required for the docks.

3.2.8 Any license, lease, rental, use, assignment, transfer or purported transfer of any interest in a Slip or a Slip license in violation of this Section 3.2 shall be void.

3.3 Storage Areas. There shall be twenty-seven (27) Storage Areas located in the Common Element storage buildings. The Storage Areas shall be licensed to the, subject to the terms and conditions set forth in this Section 3.3, and following the initial licensing of each Storage Area by the Developer, the operation and transfer of the Storage Areas shall be administered by the Association in accordance with this Section 3.3. The following conditions and restrictions shall govern the licensing, use and transfer of the Storage Areas.

3.3.1 The initial grant of Storage Area licenses shall be made in accordance with this Section 3.3.1. Developer shall have the authority to include the grant of an exclusive license to use one (1) previously unlicensed Storage Areas to an Owner apart from or in connection with the sale or other conveyance of a Unit to such Owner. Developer shall, at the time the license is granted, file with the Association a Storage Area license certificate executed by Developer. The Storage Area license certificate shall, at a minimum, identify the licensed Storage Area, the unit identifier of the Unit to which the Storage Area license is appurtenant, and a reference to this Section 3.3. Developer may require the onetime payment by an Owner to Developer of a consideration for the grant

of the Storage Area license to such Owner. The rights of Developer under this Section 3.3.1 shall terminate upon the conveyance of all Units to Persons other than a Developer.

3.3.2 Upon and following the grant of a Storage Area license to an Owner, the Storage Area license shall be deemed appurtenant to such Owner's Unit and no interest in the Storage Area license may be held or transferred separate from such Unit, except as provided in Section 3.3.3. Neither Developer nor the Association shall have the right or authority to unilaterally transfer any Storage Area license assigned to an Owner and all Storage Area license transfers shall be made only in accordance with Section 3.3.3.

3.3.3 A Storage Area license shall remain with the Unit to which it is appurtenant until the license is transferred in accordance with this Section 3.3.3. Except as otherwise provided herein, a Storage Area license may be transferred to another Owner, but only by first delivering to the Association (i) a written transfer certificate, in form approved by the Association, signed by the transferor and transferee, and (ii) all prior Storage Area license certificates, and copies thereof, issued with respect to the Storage Area in the possession of the transferor. The Association shall review the proposed transfer certificate for compliance with this Section 3.3.3, and if the transfer complies, the Association shall transfer the license on its records to the transferee Owner and the license shall thereafter be deemed appurtenant to such Owner's Unit. In the absence of a properly executed transfer certificate to the contrary, a license appurtenant to a Unit at the time of such Unit's conveyance shall be automatically transferred to the new Owner with the conveyance of title to such Unit. Notwithstanding the foregoing, one (1) Storage Area shall remain licensed to each Unit at all times.

3.3.4 The Storage Area license certificates and transfer certificates shall not be recorded. The Association shall maintain records including the originals or copies of the Storage Area license certificates and any transfer certificates made in accordance with the terms of Section 3.3.3, the Units to which the Storage Area licenses are appurtenant, and the names of the Owners of such Units. A copy of the Storage Area license certificate shall be delivered by the Association to the Owner of the applicable Unit upon the Owner's request.

3.3.5 Owners shall permit guest use of their licensed Storage Area and may rent or allow the use of their licensed Storage Area only to or by other Owners and Occupants. The lease or other use right shall be in written form, and shall terminate when the lessor, lessee or other user is no longer an Owner or Occupant, regardless of the terms of any agreement to the contrary. The Owner shall give the Association advance written notice of any lease or use agreement with respect to such Owner's Storage Area, and shall provide a copy of the lease or use agreement to the Association upon its request.

3.3.6 The interest of a secured party holding a lien on a Unit includes the license to any Storage Area appurtenant to such Unit at the time of foreclosure of the secured party's lien; provided that, unless the secured party has given written notice to the Association of a contrary agreement with the Owner of the Unit, the secured party's consent to the transfer of a Storage Area license prior to the commencement of a foreclosure action shall not be required if at least one Storage Area license remains appurtenant to the Unit.

3.3.7 The use of the Storage Areas and the size and types of boats and other watercraft and personal property which may be kept in the Storage Areas, are subject to the restrictions set forth in this Declaration and the Rules approved from time to time by the Board.

3.3.8 Any license, lease, rental, use, assignment, transfer or purported transfer of any interest in a Storage Area or a Storage Area license in violation of this Section 3.3 shall be void.

3.4 Annexation of Other Property. Other real property may be annexed to the Property and subjected to this Declaration subject to the following requirements: (i) the parcel shall be owned by the Developer; (ii) the annexation shall be approved by the Board; and (iii) an amendment to this Declaration describing the annexation and the parcel being annexed, subjecting said parcel to this Declaration, and reallocating Common Expense obligations, voting rights and memberships, shall be executed by the Developer, consented to by any mortgagee of the annexed parcel, and recorded. Any property so annexed may be designated as Common Elements or Units.

3.5 Dedication and Deannexation of Property. Portions of the Property may be deannexed and withdrawn from this Declaration subject to the following requirements: (i) the Property shall be owned by the Developer; (ii) the deannexation shall be approved by the Board; and (iii) an amendment to this Declaration describing the deannexation and the parcel being deannexed shall be executed by the Developer, consented to by any mortgagee of the deannexed parcel, and recorded. The Association shall also have the power to deannex and dedicate or convey reasonable portions of the Property owned by it to any governmental or private Person for private or public purposes, subject to the written consent of the Developer so long as the Developer owns an unsold Unit for sale. The portion of the Property which is deannexed shall be automatically released from and no longer subject to this Declaration, and any rights or obligations accruing thereto shall terminate, effective upon the recording of such instrument; provided that such instrument shall reference this Declaration and the authority contained in this Section.

3.6 Interest Subject to Plan of Development. Every Owner and any secured party or other Person holding or acquiring an interest in a Unit, shall take title or hold such interest subject to the Developer's rights pursuant to this Declaration. Notwithstanding anything to the contrary in this Declaration, the Developer's rights or obligations under the Governing Documents may not be changed in whole or in part without the prior written consent of the Developer, which consent may be granted or denied in the Developer's sole and absolute discretion.

## SECTION 4

### ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

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

4.1 Membership. Each Owner shall be a Member of the Association by reason of Unit ownership, and the membership is automatically transferred with the conveyance of the Owner's title to the Unit. An Owner's membership terminates when the Owner's Unit ownership terminates. When more than one (1) Person is an Owner of a Unit, all such Persons are Members of the Association, but multiple ownership of a Unit does not increase the voting rights allocated to the Unit nor authorize the division of the voting rights.

4.2 Voting and Common Expenses. Each Unit is allocated one (1) vote in the affairs of the Association. Subject to the qualifications set forth in Section 6.4 and Section 6.5, Common Expense obligations, annual Assessments and special Assessments shall be allocated equally among the Units. Said rights and obligations are reallocated on the same basis as and if additional Units are added to the Property.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit includes the voting rights and Common Expense obligations described in Section 4.2. Said rights and obligations, and the title to the Units, cannot 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 and obligations described in this Section may not be changed, except in accordance with the Governing Documents.

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association. However, if there are multiple Owners of a Unit, only the Owner or other person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the Bylaws.

## SECTION 5

### ADMINISTRATION

The administration and operation of the Association and of 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 are governed by the Governing Documents and the Rules. The Association is responsible for the operation, management and control of the Property in accordance with the Governing Documents. The Association has all powers described in the Governing Documents and the Act. All power and authority of the Association shall be vested in the Board, unless action or approval by the Owners is specifically required by the Governing Documents or the Act. All references to the Association means the Association acting through the Board unless specifically stated to the contrary.

5.2 Operational Purposes. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the Governing Documents; (ii) enforcing the Rules, (iii) maintaining, repairing and replacing those portions of the Property and other Improvements (if any) for which the Association is responsible pursuant to Section 9; and (iv) preserving the architectural and environmental character of the Property.

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with 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.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws govern the operation and administration of the Association and are binding upon all Owners, Occupants and other Persons owning or acquiring any interest in the Property.

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

5.6 Rules. The Board has exclusive authority to approve and implement such reasonable Rules 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 in accordance with the Governing Documents. The Rules shall be consistent with the Governing Documents and any ordinances, governmental laws, codes, ordinances or regulations of any governmental entity having jurisdiction over the Property. The inclusion in other parts of the Governing Documents of authority to approve Rules is in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules are effective only after reasonable notice thereof has been given to the Owners.

5.7 Association Assets. 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. A budget shall be established and Assessments shall be determined and levied against the Units 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 Assessments under Section 6.4. Annual and special Assessments shall be allocated among the Units in accordance with the allocation formula set forth in Section 4.2; provided, that the Board may allocate a reduced share of an annual or special Assessment against those Units which are unimproved or unoccupied to reflect reduced services received from the Association. Limited Assessments under Section 6.4 are allocated to Units as set forth in that Section.

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board, subject to the limitations set forth hereafter. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association, which are to be shared by all Units in accordance with the allocation formula set forth in Section 4.2. Annual Assessments shall be payable in equal monthly, quarterly or annual installments, as directed by the Board.

6.3 Special Assessments. In addition to annual Assessments, and subject to the limitations set forth hereafter, the Board may levy in any Assessment year a special Assessment against all Units in accordance with the allocation formula set forth in Section 4.2, and for the purposes described in this Declaration. Among other things, 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 Assessments. In addition to annual Assessments and special Assessments, the Board may, at its discretion, or shall, as indicated below, levy and allocate limited Assessments among only certain Units in accordance with the following requirements and procedures:

6.4.1 Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Unit or Units benefited.

6.4.2 The costs of insurance shall be assessed equally or by actual cost per Unit, and the costs of utilities may be assessed equally, in proportion to usage or such other reasonable allocation as may be approved by the Board. Fees for the use of common amenities (if any) may be assessed equally or in proportion to use.

6.4.3 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 and the Rules, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.

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

6.4.5 Assessments levied to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to those Units' Common Expense liabilities.

6.4.6 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.

6.4.7 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.

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

Assessments levied under Sections 6.4.1 through 6.4.4 may, at the Board's discretion, be assessed as a part of, or in addition to, other Assessments levied under this Section 6.

6.5 Liability of Owners for Assessments/Developer Exemption. Subject to Section 6.5.3, the obligation of an Owner to pay Assessments is as follows:

6.5.1 The Owner at the time an Assessment is payable with respect to that Owner's Unit is personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit.

6.5.2 The Owner's liability is absolute and unconditional, unless otherwise modified by law or this Declaration. Except as provided in Section 6.5.3, 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 Developer, the Association or their respective officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act.

6.5.3 The Developer, and any Unit owned by Developer, are exempt from Assessments and Assessment liens until a certificate of occupancy (or similar approval) has been issued by the City with respect to a Dwelling located in such Unit. Builders approved by the Developer may have a similar exemption from liability for Assessments and Assessment liens if granted in writing by the Developer.

6.6 Assessment Lien. Subject to Section 6.5, 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 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.

6.7 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 substantially the same manner as a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid 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 by advertisement. 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.

6.8 Lien Priority; Foreclosure. A lien under this Section 6 is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before 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. A Mortgagee that acquires title to the Unit by foreclosure or a deed in lieu of foreclosure shall take title to the Unit free and clear of all Assessment liens encumbering the Unit and Assessments payable in the period prior to the

acquisition of title to the Unit by the mortgage holder. At such time as the Mortgagee takes title to the Unit, it shall be obligated to pay Assessments levied against the Unit and payable during the period when it holds title to the Unit.

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

6.10 Real Estate Taxes and Assessments. Real estate taxes, governmental special assessments, and other charges and fees which may be levied against the Common Elements by governmental authorities, shall be allocated equally among and levied against the Units, and shall be a lien against each Unit in the same manner as a lien for real estate taxes and special assessments levied against the Unit alone.

## **SECTION 7 RESTRICTIONS ON USE OF PROPERTY**

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

7.1 General. The Property shall be owned, conveyed, encumbered, leased, used and occupied subject to the Governing Documents and the Rules, all as amended from time to time. All covenants, restrictions, obligations, conditions and easements 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 otherwise provided herein, no Unit nor any part of the Common Elements may be subdivided or partitioned without the prior approval by a vote of the Owners, any governmental authorities having jurisdiction over the Property, and any Mortgagees of the affected Units. The dedication or de-annexation of a portion of the Property pursuant to Section 3 shall not be deemed a subdivision or partition.

7.3 Residential Use. Except as provided in Section 7.4, the Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential Units. 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.

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

7.4.1 An Owner or Occupant residing in a Dwelling may maintain an office or home occupation in such Owner or Occupant's Dwelling; provided, that such use (i) is incidental to the residential use; (ii) does not involve physical alteration of the Dwelling visible from the exterior; (iii) is permitted by and in compliance with applicable governmental laws, ordinances and regulations; (iv) does not involve unusual numbers of deliveries, or unusual levels of pedestrian or vehicular traffic to and from the Unit; and (v) does not involve activity which disturbs the quiet enjoyment of the Property by other Owners or Occupants.

7.4.2 The Association may maintain offices and other facilities on the Property, including the Common Elements, for management, operations and related purposes.

7.4.3 Developer, or a Builder authorized by the Developer, may maintain offices, sales facilities, model homes and other related facilities on the Property, including the Common Elements, in connection with the exercise of their rights under the Governing Documents.

7.5 Leasing. Leasing of Units and Dwellings is allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no Unit or Dwelling shall be leased for transient or hotel purposes; (ii) that no Unit or Dwelling may be subleased; (iii) that a Dwelling must be leased in its entirety, not by room or other part, unless the Dwelling is simultaneously occupied by the Owner; (iv) that all leases shall be in writing; (v) that all leases shall provide that they are subject to the Governing Documents and Rules and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease; and (vi) the lease is permitted by and in compliance with all governmental laws, ordinances and regulations. The Association may impose such reasonable Rules as may be necessary to implement non-discriminatory procedures for the leasing of Dwellings.

7.6 Parking/Vehicles/Personal Property. The outside storage or parking of buses, trucks (other than pick-ups, SUVs and similar small trucks used for the Owner's or Occupant's personal vehicle), trailers, unlicensed automobiles, aircraft, tractors, motorcycles, snowmobiles, motorhomes, all-terrain vehicles, or watercraft is prohibited, except for temporary parking as authorized by the Association. Garages shall not be used for storage or other purposes so that they become unavailable for parking vehicles and keeping incidental personal property. No Person shall perform maintenance, repair or restoration work on any vehicle on the Property except for their own vehicles, and then only (i) within the Owner's garage, or (ii) for emergency repairs. Notwithstanding anything to the contrary in this Section, commercial vehicles shall not be parked or stored on the Property, except within a garage or on a temporary basis in connection with construction work on a Unit or deliveries.

7.7 Traffic Regulations. All vehicular traffic on the Property is subject to federal, state and local laws and regulations. All vehicles operated on the Property shall be operated in a careful, prudent, and safe manner; and with due consideration for the rights of all Owners and Occupants.

7.8 Animals. In addition to all federal, state and local laws, ordinances and regulations, the Board shall have the authority to regulate by Rules, the keeping of animals on the Property, but those animals which are permitted shall be limited to common domestic house pets such as dogs, cats, fish, birds and the like. However, no animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. The word “animal” shall be interpreted in its broadest sense and shall include all living creatures except humans. Notwithstanding the foregoing, no Rule may prohibit the keeping of a qualified service dog or similar animal by a person who is disabled within the meaning of the Fair Housing Amendments Act of 1988 or comparable state law.

7.9 Signs. In addition to all federal, state and local laws, ordinances and regulations, no sign or comparable device of any kind shall be placed, erected or maintained on the Property except (i) one (1) sign per Unit of a size and style approved by the Association, advertising the Unit for sale or rent; (ii) signs placed by the Developer to advertise the Property, Units or Dwellings or for other business or construction related purposes during the construction, development or sales period; (iii) the permanent entrance signs and monuments erected by the Developer to identify the Property; and (iv) other signs that are expressly authorized by and in compliance with all governmental laws, ordinances and regulations.

7.10 Common Amenities. The use of the Slips, docks, Storage Areas, storage sheds, pool, pool house, common park areas, trails, tot lot, and related Improvements shall be subject to the right of the Association to establish reasonable Rules governing the use thereof and to any restrictions authorized by the Governing Documents.

7.11 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests 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, or interfere with the use and quiet enjoyment of the Property by other Owners and Occupants and their invitees.

7.12 Compliance with Law. The Property shall be used in compliance with municipal codes or ordinances, and state and federal laws. No Person shall 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.

7.13 Improvements. Except for those made by Developer or authorized Builders in connection with the sale of a Unit or construction of the first Dwelling thereon, no Improvement may be made, or caused or allowed to be made, in any part of the Common Elements, or in any part of a Unit which is visible from outside existing structures except in accordance with Section 8.

7.14 Time Shares Prohibited. The time share form of ownership, or any comparable form of lease, occupancy rights, ownership, or right-to-use plans, which has the effect of dividing the ownership or occupancy of a Unit into separate time periods, is prohibited.

7.15 Access to Units. In case of emergency, the yard areas of all Units are subject to entry, without notice and at any time, by an officer or member of the Board, by the management agent of the Association, or by any public safety personnel. Reasonable access is also authorized

for maintenance purposes under Sections 9 and 12 and for enforcement purposes under Section 13.

## SECTION 8

### ARCHITECTURAL STANDARDS

8.1 Restrictions on Improvements. One of the purposes of this Declaration is to ensure that the exterior portions of the Dwellings and the Units are kept and maintained in an architecturally attractive condition, consistent with the overall architectural character of the Property. Therefore, except as set forth in Section 8.6, the following restrictions and requirements shall apply to Improvements to the Property:

8.1.1 Except as expressly provided in Section 8.6, no Improvements to a Unit, or any design or color change, or other alteration, modification or Improvement of any Dwelling or any other part of a Unit which is visible from the exterior of the Dwelling, shall be commenced, erected or maintained, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the Improvement shall have been approved in writing by the Board or a committee appointed by it. Notwithstanding the foregoing, Developer's written consent shall also be required for Improvements for so long as Developer owns a Unit for sale.

8.1.2 The Board may appoint, supervise and disestablish an architectural review committee, and specifically delegate to it part or all of the functions which the Board exercises under this Section 8, in which case the references to the Board shall refer to the architectural review committee where appropriate. The architectural review committee shall be subject to the supervision of the Board.

8.1.3 The Board shall use criteria for approval of Improvements, which shall include and require, at a minimum: (i) compatibility of color, location, type and design in relation to existing Dwellings and topography, (ii) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed Improvements, and (iii) compliance with governmental laws, codes and regulations. The Board, in its sole discretion, may impose Rules or guidelines establishing standards for design, appearance, construction, or development which are greater or more stringent than standards prescribed by the Governing Documents, or by building, zoning, or other governmental laws, codes, or regulations; provided that such standards shall be consistent with the architectural character and use of the Property as planned and developed by the Developer. The Board shall be the sole judge of whether such criteria are satisfied and its determination shall be binding upon the Owners, Occupants and any other Person holding or acquiring an interest in the Unit.

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

8.2.1 Detailed plans, specifications and related information regarding any proposed Improvement, in form and content acceptable to the Board, shall be submitted to the Board and to Developer (if applicable) at least thirty (30) days prior to the

projected commencement of construction. No Improvement shall be commenced prior to approval.

8.2.2 The Board and Developer (if applicable) shall give the Owner written notice of approval or disapproval. The Board shall have the right and authority to approve, conditionally approve or deny requests for Improvement in its sole absolute discretion. If the Board and Developer (if applicable) fail to approve or disapprove within thirty (30) days after receipt of said plans and specifications and all other information requested by the Board and Developer (if applicable), then approval shall be deemed to be granted; provided, that the Improvement is done in accordance with the plans, specifications and related information which were submitted.

8.2.3 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, equitable or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner causing or permitting the violation all attorneys' fees and costs of enforcement incurred by the Association, regardless of the type of action taken or whether or not an action is taken. 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 upon the Owner's Unit and to restore any part of the Dwelling or Unit to its prior condition if any Improvements were made in violation of this Section, and the cost of such restoration shall be a lien against the Owner's Unit and a personal obligation of the Owner.

8.4 Owner Responsibility/Indemnity. The Owner who causes an Improvement to be made, regardless of whether the Improvement is approved by the Board, shall be responsible for the construction work and any claims, damages, losses or liabilities arising out of the Improvement. The Owner shall hold harmless, indemnify and defend the Association and the Developer, and their officers, directors and committee members, 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 Improvement which violates any governmental laws, codes, ordinances or regulations; (ii) the adequacy of the specifications or standards for construction of the Improvement; and (iii) the construction of the Improvement.

8.5 Additional Restrictions. The Board may adopt reasonable Rules further restricting Improvements or other material alterations to the Units or Dwellings.

8.6 Exemptions. The requirements set forth in this Section 8 (except Section 8.4) shall not apply to the following:

8.6.1 Original construction of the Dwellings and other Improvements approved or undertaken by the Developer or by Builders authorized by Developer, or approved by the City, in connection with the sale of the Units and the Improvement thereof.

8.6.2 The installation of certain satellite dishes and antennas, which shall be governed by federal law and rules consistent therewith.

8.6.3 Other Improvements expressly permitted by federal, state or local law.

## **SECTION 9 MAINTENANCE**

9.1 Maintenance by Association. The Association shall not, and has no obligation to, maintain any portion of the Dwellings. The maintenance obligations of the Association are as follows:

9.1.1 The Association shall maintain, repair and replace the Common Elements, including without limitation, the boat docks, storage sheds, pool house, common wells, swimming pool, tot lot, common landscaping, any monuments, and related Improvements located thereon, and any irrigation systems and related components serving the Common Elements.

9.1.2 The Association shall provide for routine lawn maintenance of the yard areas of the Units, including trees, shrubs and similar plantings, for the watering of lawns, and for snow removal on the driveways and walkways.

9.1.3 The Association shall perform any maintenance obligation it may have under any agreement, now or hereafter entered into, with the City.

9.1.4 The Association may, at the discretion of the Board, provide for (a) removal of trash and recyclables from the Units; and/or (b) the maintenance, repair and/or replacement of other Improvements within the yard areas of the Units, but in no case shall the Association maintain the exterior or interior of any Dwelling or other structure on a Unit.

9.2 Maintenance by Owner. The maintenance obligations of the Owners are as follows:

9.2.1 Subject to Section 9.1, all maintenance of the Dwellings, Units and all Improvements located within the Units shall be the sole obligation and expense of the Owners thereof. Exterior maintenance for which the Owners are obligated must be performed in accordance with any standards established by the Association.

9.2.2 All drainage easement areas within a Unit as shown on the recorded Plat for the Property or as described in other recorded instruments shall be maintained by the Owner or Occupant of the Unit in a condition that will continuously permit the free flow of water over the drainage easement without change of direction or impediment.

9.2.3 Notwithstanding anything to the contrary in the Governing Documents, the expense of any maintenance, repair or reconstruction of the Property or other areas maintained by the Association necessitated by the acts or omissions of an Owner or Occupant shall be paid by the responsible Owner.

## **SECTION 10 INSURANCE**

10.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth

herein, issued by a reputable insurance company or companies authorized to do business in the state of Minnesota, as follows:

10.1.1 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 insurable Improvements to the Common Elements, less deductibles, exclusive of land and other items normally excluded from coverage. The policy or policies shall also cover personal property owned by the Association.

10.1.2 Commercial general liability insurance covering the use, operation and maintenance of the Common Elements, and the use, operation and maintenance of other lands or Improvements which the Association is obligated to maintain against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in type, location and use to the Property. The policy shall have minimum limits of One Million Dollars (\$1,000,000.00) per occurrence. The policy shall, if reasonably available, 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.

10.1.3 Insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or other persons responsible for handling funds belonging to or administered by the Association, if deemed to be advisable by the Board or required as a precondition to the purchase, insuring or financing of a mortgage on a Unit. The insurance shall name the Association as insureds, as their interests may appear.

10.1.4 Workers’ compensation insurance as required by law.

10.1.5 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 annual Assessments, and allocated among the Units as determined by the Board consistent with the Governing Documents. The Association may, in the case of a claim for damage or personal injury with respect to Improvements (if any) which the Association maintains (i) pay the deductible amount as a Common Expense; (ii) assess the deductible amount against the Units affected in any reasonable manner; or (iii) require the Owners of the Units affected to pay the deductible amount directly.

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 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. Subject to Section 11.1.4, the Association, or any insurance trustee selected by it, shall use the proceeds from property insurance on a damaged Improvement solely to repair and reconstruct the damaged Improvement, and not for any other purpose.

10.4 Required Policy Provisions. All policies of property insurance carried by the Association shall, if such provisions are reasonably available, provide that:

10.4.1 Each Owner and Mortgagee is an insured Person under the policy with respect to liability arising out of the Owner's interest or membership in the Association.

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

10.4.3 No act or omission by any Owner or Mortgagee of a Unit, 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.

10.4.4 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 canceled or substantially modified, for any reason, without at least thirty (30) days' prior written notice to the Association, and all of the insureds.

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 Owner's Personal Insurance. It is the obligation of each Owner to obtain personal insurance coverage at his or her own expense covering fire and other casualty to the Owner's Dwelling and other insurable Improvements located within the Owner's Unit, and public liability insurance covering the Owner's Unit. All insurance policies maintained by Owners shall, if possible, provide that they are without contribution as against any insurance purchased by the Association, except as to deductibles under Section 10.2.

10.8 Notice to Developer. The Association shall give Developer at least thirty (30) days prior written notice of any change in the Association's insurance policies until Developer no longer owns any Unit for initial sale.

## **SECTION 11 RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN**

11.1 Reconstruction. In the event of a casualty on or to any portion of the Property, the obligations and procedures for the repair, reconstruction or disposition of the damaged Improvements shall be governed by the following provisions:

11.1.1 All repair and reconstruction of the damaged Improvements shall be commenced promptly following the casualty and shall be carried through diligently to conclusion. The Association shall be responsible for the repair and reconstruction of Common Elements Improvements (if any) and the Owners shall be responsible for the repair and reconstruction of Improvements to their respective Units.

11.1.2 All repair and reconstruction shall be approved pursuant to Section 8. The repair and reconstruction shall be in accordance with the requirements of all applicable zoning, subdivision, building, and other governmental regulations.

11.1.3 Notice of substantial damage or destruction to any portion of the Property shall be promptly given to the Association by the Owner of the damaged Improvements.

11.1.4 Notwithstanding the foregoing, repair and reconstruction of a Dwelling need not be undertaken if the Association, the Owner and the Owner's Mortgagee agree in writing that the damaged Improvements need not be repaired and reconstructed. If such an agreement is made, the ruins and debris of any damaged Improvements shall promptly be cleared away and the Property shall be left in an orderly, safe and sightly condition.

11.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Common Elements by condemnation or eminent domain, 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 Mortgagees, as their interests may appear. With respect to the taking of all or part of a Unit, the Owner of the Unit shall negotiate and settle all claims, subject to the rights of any Mortgagee of the Unit.

## **SECTION 12 EASEMENTS**

Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to or beneficiary of (i) the appurtenant easements and rights granted and reserved in this Section 12; and (ii) other appurtenant easements and rights of record as referenced herein.

12.1 Drainage. The Common Elements and the yard areas of the Units shall be subject to nonexclusive easements for storm water drainage over those parts of the Property which are designed, improved or graded for such purposes.

12.2 Access. Each Unit is the beneficiary of a non-exclusive easement for access to a public street or highway on or across any portions of the Common Elements designed and intended for use as streets or trails, or otherwise designated for such uses by the Association, subject to any restrictions imposed pursuant to the Governing Documents.

12.3 Use and Enjoyment. Each Unit is the beneficiary of a nonexclusive easement for use and enjoyment on and across the Common Elements, subject to any restrictions authorized or imposed pursuant to the Governing Documents.

12.4 Encroachments. If there is a minor encroachment by a Dwelling, or other Improvement onto another Unit or the Common Elements 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 the encroaching Dwelling or other Improvement, and for the maintenance thereof, shall exist; provided, that with respect to Improvements 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.

12.5 Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, are subject to the rights of the Association to a non-exclusive, appurtenant easement on and over the yard areas of Units for the purposes of access to and maintenance, repair, replacement and reconstruction of utilities and other common Improvements serving more than one Unit, to the extent necessary to fulfill the Association's obligations.

12.6 Utilities. The Property is subject to non-exclusive, appurtenant easements in favor of all public utility companies, other utility providers and the Association for the installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable TV, telephone, data and other electronic communications, water, sewer, irrigation, 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, this Declaration or otherwise described in 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 reasonable use and quiet enjoyment of the Units by the Owners and Occupants, nor affect the structural or architectural integrity of the Units or Dwellings.

12.7 Developer Rights. Developer shall have and be the beneficiary of exclusive easements for the exercise of its Developer Rights.

12.8 Association Access. There is a non-exclusive easement in favor of the Association, including without limitation any management agent or service vendor retained by the Association, for access on and across the Common Elements and the yard areas of Units, for the purpose of performing the Association's obligations under the Governing Documents. Except in the event of emergencies, this easement shall be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant directly affected.

12.9 Emergency Access to Units. In case of emergency, the yard areas of all Units are subject to an easement for access, without notice and at any time, by officers or members of the Board, by the Association's management agents, or by any public safety personnel.

12.10 Project Signs. Developer shall have the right to erect and maintain monument signs and related Improvements identifying the community on the Common Elements or on Units subject to sign easements. Those parts of the Property on which monument signs or related decorative Improvements are located are subject to appurtenant, exclusive easements in

favor of the Association for the continuing use, maintenance, repair and replacement of said signs and related Improvements. Any Person exercising the rights granted under said easements shall take reasonable care to avoid damaging the Improvements to the Property and shall repair any damage caused by it.

12.11 Other Easements. The Property is subject to such other easements as may be recorded against it or otherwise shown on the Plat.

12.12 Continuation, Scope and Conflict of Easements. Notwithstanding anything in this Declaration to the contrary, no Owner or Occupant shall be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this Section shall supplement and not limit any easements described elsewhere in this Declaration, or otherwise recorded, and shall include reasonable access to the easement areas through the yard areas of Units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction.

12.13 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 law 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.

12.14 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 governing the use of the Property.

12.15 Benefit of Easements. All easements benefitting a Unit shall benefit the Owners and Occupants of the Unit, and their families and guests. However, an Owner who has 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 easements 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 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, and the Rules, and such amendments thereto as may be made from time to time, and the decisions of the Association with respect to matters over which each has authority.

13.1 Entitlement to Relief. 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, the Act or the decisions of the Association. However, no Owner may withhold any Assessments payable to the Association, nor take or omit other action in violation of the Governing Documents, the Rules, 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 or the Rules:

13.2.1 Commence legal action for damages or equitable relief in any court of competent jurisdiction.

13.2.2 Impose late charges of up to the greater of \$100, or 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 first month after the Assessment or installment was due.

13.2.3 In the event of default of more than thirty (30) days in the payment of any Assessment or installment thereof, all remaining installments of Assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent Assessments 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.

13.2.4 Impose reasonable fines, penalties or charges for each violation of the Governing Documents or the Rules.

13.2.5 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 Elements amenities; provided, that the suspension of use rights shall not apply to 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.

13.2.6 Restore any portions of the Common Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.

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

13.3 Rights to Hearing. Before the imposition of any of the remedies authorized by Sections 13.2.4 or 13.2.5, the Board shall, upon written request of the offender, grant to the offender an opportunity for a fair and equitable hearing. The Association shall give to the offender written notice of the nature of the violation and the right to a hearing, and the offender shall be given at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least ten (10) days' prior written notice to the offender. If the 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 Proceeding and Attorneys' Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Governing Documents or the Rules, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association. 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. Such collection or contingency fees or costs shall be the personal obligation of such Owner 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 any part 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 provisions of this Section shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents, the Rules or the Act as provided therein.

13.8 Pre-Litigation Requirement. Any litigation, administrative proceeding or other legal action instituted or intervened in by or in the name of the Association, exclusive of (i) any action to collect Assessments or foreclose Assessment liens, or (ii) to enforce the Governing Documents or the Rules, is subject to prior approval by the Owners of Units to which are allocated in excess of fifty percent (50%) of the total votes in the Association.

## **SECTION 14 AMENDMENTS**

14.1 Approval Requirements. Except for amendments by Developer authorized by this Declaration, this Declaration may be amended only with the approval of:

14.1.1 Owners who have the authority to cast in excess of fifty percent (50%) of the total votes in the Association; and

14.1.2 Developer as to certain amendments as provided in Section 15.

14.2 Procedures. Approval of the Owners shall be obtained in accordance with the procedures set forth in the Bylaws. Other required approvals shall be in writing. Any amendment shall be subject to any greater requirements imposed by this Declaration. The amendment shall be effective when recorded in the office of the appropriate recording office in the county in which the Property is located. An affidavit by the President or 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 DEVELOPER RIGHTS**

Developer hereby reserves the exclusive authority to exercise the following rights for as long as it owns a Unit or for any shorter period indicated:

15.1 Complete Improvements. To complete the Dwellings and other Improvements included in Developer's development plans or allowed by this Declaration, and to make Improvements in the Units and Common Elements, to accommodate the exercise of any Developer Rights.

15.2 Relocate Boundaries and Alter Units. To relocate boundaries between Units and to otherwise alter Units owned by it, to the extent permitted by the City.

15.3 Sales Facilities. To construct, operate and maintain a sales office, management office, model Dwellings, and other development, sales and rental facilities within the Common Elements, and within any Units owned or leased by Developer or authorized Builders from time to time, located anywhere on the Property.

15.4 Signs. To erect and maintain signs and other sales displays offering the Units for sale or lease and for other business and construction related purposes, in or on any Unit owned by Developer or authorized Builders and on the Common Elements.

15.5 Easements. To have and use easements, for itself, its employees, contractors, Builders, representatives, agents and prospective purchasers through and over the Common Elements and the yard areas of the Units for the purpose of exercising its rights under this Section.

15.6 Control of Association. To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board, until the earliest of: (i) voluntary surrender of control by the Developer, or (ii) the date when Developer no longer owns a Unit for sale.

15.7 Consent to Certain Amendments. To approve or withhold approval of any amendment to the Governing Documents or Rules which affect Developer's rights or the rights of authorized Builders under the Governing Documents.

15.8 Transfer of Developer Rights. To transfer some or all of the Developer Rights, temporarily or permanently, by a separate instrument signed by the Developer and the transferee, and recorded against the portions of the Property owned by the Developer or the transferee and affected by the transfer, subject to the following qualifications.

15.9.1 Upon transfer of any of the Developer Rights, the liability of the Developer shall be as follows: (i) the Developer shall be liable for any obligation or liability arising out of its acts or omissions occurring before the transfer; (ii) the Developer shall be liable for any obligation or liability relating to any Developer Rights retained by the Developer; and (iii) the Developer shall not be liable for any act or omission arising from the exercise of Developer Rights by the transferee of the Developer Rights.

15.9.2 Any transferee of the Developer Rights shall be entitled to exercise such Developer Rights from and after the date of recording of the instrument transferring the rights. The transferee shall thereafter be subject to all of the obligations with respect to the rights transferred; except (i) misrepresentations of the Developer; (ii) warranty obligations of the Developer; (iii) breach of fiduciary obligations by the Developer or by any officers or members of the Board appointed by the Developer; (iv) any liability or obligation imposed on the Developer as a result of the Developer's acts or omissions after the transfer; and (v) any liability arising out of any Developer Rights retained by the Developer.

## **SECTION 16 MISCELLANEOUS**

16.1 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.

16.2 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 statutes amending or replacing the Act, and the comparable sections thereof.

16.3 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 Owners or Occupants shall be (i) in writing and shall be effective upon hand

delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail, or (ii) by electronic communication and shall be effective when sent, as and if authorized by the Bylaws and the Act; except that registrations pursuant to Section 2.2 of the Bylaws shall be effective upon receipt by the Association.

16.4 Conflicts Among Documents. In the event of any conflict among the provisions this Declaration, the Bylaws or the Rules, this Declaration shall control. As between the Bylaws and the Rules, the Bylaws shall control.

16.5 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.

16.6 Agreement with the City. The Developer and/or Association may enter into certain agreements with the City with respect to the Property. Notwithstanding anything to the contrary herein, the Association and Developer shall perform all of their respective obligations under any agreement either or both may have (at any time) entered into with the City, and to the extent there are any inconsistencies between any such agreement with the City and this Declaration, such agreement with the City shall control. The Developer's and/or the Association's obligations under agreements with the City may include obligations that involve Common Expenses.

[Signature page follows]

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

HARSTAD HILLS, INC.,  
a Minnesota corporation

By: \_\_\_\_\_  
Martin Harstad  
Its: President

**STATE OF MINNESOTA )**  
**) ss.**  
**COUNTY OF HENNEPIN )**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Martin Harstad, the President of Harstad Hills, Inc., a Minnesota corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
Felhaber Larson (MSR)  
220 South Sixth Street, Suite 2200  
Minneapolis, Minnesota 55402  
(612) 373-8409

**THE HARBOR AT EAST GULL**  
**EXHIBIT A TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS**

**DESCRIPTION OF PROPERTY**

Lots 1 through 24, Block 1; and Lots 1 through 5, Block 2; The Harbor at East Gull, according to the recorded plat thereof, Cass County, Minnesota.

**THE HARBOR AT EAST GULL**  
**EXHIBIT B TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS**

**DESCRIPTION OF COMMON ELEMENTS**

Lot 14, Block 1; and Lot 5, Block 2; The Harbor at East Gull, according to the recorded plat thereof, Cass County, Minnesota.

**THE HARBOR AT EAST GULL**

**CONSENT AND JOINDER BY MORTGAGEE**

The undersigned (the "Mortgagee") is a mortgagee of portions of real property described in the Declaration of Covenants, Conditions, Restrictions and Easements of The Harbor at East Gull (the "Declaration") attached hereto. Mortgagee hereby consents to and joins in this Declaration; provided, that by consenting to and joining in this Declaration, (i) the Mortgagee does not in any manner constitute itself or obligate itself as a Developer as defined in the Declaration, (ii) such consent and joinder does not modify or amend the terms and conditions of the Mortgage and related loan documents, and (iii) the Mortgage shall remain as a lien on the property described therein, prior to any Assessment liens or other liens imposed under the Declaration, if any, until released or satisfied.

**IN WITNESS WHEREOF**, the Mortgagee has caused this Consent and Joinder to be executed on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**STATE OF MINNESOTA )**  
**) ss.**  
**COUNTY OF \_\_\_\_\_ )**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Felhaber Larson (MSR)  
220 South Sixth Street, Suite 2200  
Minneapolis, Minnesota 55402  
(612) 373-8409