

CROW WING COUNTY
MINNESOTA

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GARY GRIFFIN
County Recorder
Deputy:

Draft

(Above Space Reserved for Recording Data)

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

Eagle View Storage Association

This Declaration is made in the County of Crow Wing, State of Minnesota, on this _____, 2026 by Whitebirch, Inc., (collectively, the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act, hereinafter referred to as the "Act", for the purposes of creating "Eagle View Storage" a planned condominium community.

WHEREAS, Declarant is the Owner of certain real property located in Crow Wing County, Minnesota, legally described in Exhibit A-I attached hereto, and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act and;

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

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

THEREFORE, Declarant makes the Declaration and submits the Property to the Act as a planned community under the name "Eagle View Storage", consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied, and conveyed subject to the covenants, restrictions, easements, charges, and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest herein, and their heirs, personal representatives, successors and assigns.

SECTION 1 **DEFINITIONS**

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

1.2 "**Association**" shall mean Eagle View Storage Association, a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, whose members consist of all Owners as defined herein.

1.3 "**Architectural Review Committee**" or "**ARC**" shall mean and refer to that permanent committee of the Association, created for the purpose of establishing and enforcing criteria for the construction of improvements within the Property.

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

1.5 "**Building**" shall mean a part of a building consisting of one or more floors, designed and intended for occupancy by an individual owner or owners, and located within the boundaries of a Unit.

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

1.7 "**Unit**" shall mean any platted lot subject to this Declaration upon which a Building is located or intended to be located, as shown on the Plat including all improvements thereon, but excluding the Common Elements.

1.8 "**Common Elements**" shall mean all parts of the Property except the Units, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The Common Elements are legally described in Exhibit B attached hereto.

1.9 "**Common Expenses**" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without

limitation allocation to reserve those items specifically identified as Common Expenses in the Declaration or By-Laws.

1.10 "**Declarant**" shall mean and refer to Whitebirch, Inc., successors and assigns, as well as to any person, who, under the terms of this Declaration or by law, succeeds to any Special Declarant Rights. "Declarant" shall also mean and include an "Affiliate of a Declarant" as the term is used in the Act.

1.11 "**Development**" shall mean and refer to the Property and all improvements located or constructed thereon.

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

1.13 "**Governing Documents**" shall mean this Declaration, and the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.14 "**Improvements**" shall mean and refer to all structures of any kind, including but not limited to any building, wall, fence, sign, paving, grading, screen enclosure or screening of any type, sewer, drain, driveway, sidewalk, decorative building, planting, landscaping, landscaping device or object or any or all types of structures or improvements, whether or not the purpose thereof is purely decorative or otherwise, and any and all additions, alterations, modifications, or changes thereto or thereof.

1.15 "**Limited Common Elements**" shall mean all parts of the Common Elements that are reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated from the Property except the Units.

1.16 "**Lot**" shall mean and refer to any tract of land located within the Property which is intended for use as, or used as, a site for a Building.

1.17 "**Management Agent**" shall mean the person, persons, or service company, if any, hired or appointed by the Association to manage the Property from time to time.

1.18 "**Member**" shall mean all persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.

1.19 "**Occupant**" shall mean any person or persons, including, without limitation, any owner, or any guest, invitee or tenant occupying or otherwise using a Unit within the Development.

1.20 "**Owner**" shall mean a person who owns a Unit, but excluding contract for deed vendors, mortgagees and other secured parties within the meaning of Section 515B.

1103(29) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of life estates.

1.21 "**Party Wall**" shall mean the shared wall between two Buildings.

1.22 "**Person**" shall mean a natural individual, corporation, Limited Liability Company, partnership, trustee, or other legal entity capable of holding title to real property or having legal identity before a Minnesota Court of Law.

1.23 "**Plat**" shall mean the recorded plan depicting the Property pursuant to the requirements of Section 515B.2-1 IO(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapter 505, including any amended Plat recorded from time to time in accordance with the Act.

1.24 "**Property**" shall mean all of the real property submitted to this Declaration, including the buildings 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.

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

1.26 "**Unit**" shall mean any Unit

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

SECTION 2 **DESCRIPTION OF UNITS AND APPURTENANCES**

2.1 **Units**. This Common Interest Community consists of 6 Units. The Unit identifiers and locations of the Units are as shown on the Eagle View Storage Plat, incorporated herein by reference, and a schedule of Units is set forth on Exhibit A-I. The Unit identifier for a Unit shall be its lot and block numbers and the subdivision name.

2.2 **Unit Boundaries**. The unit boundaries shall be lot lines of each platted Lot.

2.3 **Access Easements**. Each Unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across the Common Elements as shown on the Plat, subject to any restriction set forth in the Declaration.

2.4 **Use and Environmental Easements**. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements, and for use and enjoyment of any Limited Common elements allocated to the Unit, subject to any restrictions authorized by the Declarant.

2.5 **Utility and Maintenance Easements.** Each Unit shall be subject to and shall be the beneficiary of appurtenant easements for all services and utilities servicing the Units and the Common Elements, and for maintenance, repair and replacement as described in Section 13.

2.6 **Encroachment Easements.** Each Unit shall be subject to and shall be the beneficiary of the appurtenant easements for encroachments as described in Section 13.

2.7 **Declarant's Easements.** Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 15.5.

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

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

2.10 **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 impose reasonable Rules and Regulations governing the use of the Property.

2.11 **Parking.** The Association shall maintain, upon the common Elements, vehicle parking spaces conveniently located for the use of the Owners, the Owners' customers, invitees, and guests. Any vehicle, snowmobile, watercraft or trailer not in regular use or inoperable shall not be kept on the Property. The Association may from time to time establish additional rules and regulations concerning the use of these parking spaces and may cause to be towed, from the Common Elements, improperly parked vehicles or personal property, at the owner's expense.

2.12 **Personal Property for Common Use.** The Association may acquire and hold for the use of all the Members tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in such property shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Member may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Members. The Association shall have the authority to impose reasonable rules, regulations and charges upon the use of such property.

2.13 **Water.** The Association shall provide a common well which shall be a Common Element. All costs and liabilities of any well shall be paid solely by the Association.

2.14 **Sewer.** The Association shall provide a private sewer line and service connection to the municipal sewer system operated by the City of Breezy Point. Said private sewer line and connection shall be a Common Element. All costs and liabilities of any sewer line shall be paid solely by the Association.

SECTION 3

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

3.1 **Common Elements.** The Common Elements and their characteristics are as follows:

3.1.1 All of the property not included within the Units constitutes Common Elements. The Common Elements include those parts of the Property described in Exhibit B; designated as Common Elements on the Plat or in the Act. The Common Elements are owned by the Association for the benefit of the Owners and Occupants.

More specifically, the Association shall maintain the drives, lawn, sewer line and well system which shall all be Common Elements.

3.1.2 The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, use and enjoyment in favor of each Unit and its Owners and Occupants, and their guests; subject to (I) the rights of Owners and Occupants in Limited Common Elements appurtenant to their Units and (ii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.

3.1.3 Subject to Sections 5, 6, and 9, 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 6.

3.2 **Limited Common Elements.** The Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated, and the rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Units.

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 virtue of his or her ownership of a Unit, and the membership shall be transferred with the conveyance of the Owner's interest in the Unit. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be members of the Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Unit nor authorize the division of the voting rights.

4.2 **Voting and Common Expenses.** Voting rights and Common Expense obligations are allocated equally among the Units; except that special allocations of Common Expenses shall be permitted as provided in Section 6.1. Each Unit is allocated one (1) vote in the Association.

4.3 **Appurtenant Rights and Obligations.** The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interest, and the title to the Units, shall not be separated or conveyed separately. The allocation of the rights, obligations and interests described in this section may not be changed, except in accordance with the Governing Documents and the Act.

4.4 **Authority to Vote.** The Owner, or some other 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; provided, that 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 By-Laws.

SECTION 5 ADMINISTRATION

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

5.1 **General.** The operation and administration of the Association and the Property shall be governed by the Governing Documents and the Act. The Association shall, subject to the rights of the Owners set forth in the Governing Documents and the Act, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, the Act and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the

Governing Documents or the Act. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

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

5.3 **Binding Effect of Actions.** All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents or the Act shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal, representatives, successors and assigns, and all secured parties as defined in the Act.

5.4 **By-Laws.** The Association shall have By-Laws. The By-Laws and any amendments thereto shall govern the operation and administration of the Association.

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

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

5.7 **Association Assets & Surplus Funds.** All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

SECTION 6 **ASSESSMENTS FOR COMMON EXPENSES**

6.1 **General.** Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in Sections 6.2 and 6.3, and the requirements of the By-Laws. Assessments for Common

Expenses shall include annual assessments and may include Special Assessments. Assessments shall be allocated among the Units according to the Common Expense allocations set forth in Section 4.2, subject to the following qualifications:

6.1.1 Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element undertaken by the Association may be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.

6.1.2 Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit, as appropriate.

6.1.3 The Costs of insurance may be assessed in proportion to value, risk or coverage.

6.1.4 The costs of utilities may be assessed in proportion to usage.

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

6.1.6 Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of the Act.

6.1.7 Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.

6.1.8 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.

6.1.9 If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.

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

6.1.11 Assessments under Subsections 6.1.1-10 shall not be considered special assessments as described in Section 6.3.

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

6.2.1 Until a Common Expense assessment is levied, Declarant shall pay all accrued expenses of the common interest community.

6.2.2 After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board, subject to Section 6.2.3.

6.2.3 Until the termination of the period of Declarant Control described in Section 15.7, the increase in the annual assessment for any year shall not exceed the greater of 5% of the total annual assessment for the Association's previous fiscal year, unless such increase is approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

6.2.4 Units shall not be assessed until transferred from Developer.

6.3 **Special Assessment.** In addition to annual assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or non-budgeted Common Expense; (ii) general or specific reserves for maintenance, repair or replacement; and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting.

6.4 **Capital Improvement Fund.** The Association shall establish a capital improvement fund to meet expenditures for improvements to the Common Elements as approved by the Association. The funds shall be deposited into the Association's account, and Declarant may not use the

funds to defray any of its expenses, reserve contributions, or to make up any budget deficit while Declarant is in control of the Association.

6.5 **Liability of Owners for Assessment.** The obligations of an Owner to pay assessments shall commence at the later of (i) the recording of the Declaration or amendment thereto which creates the Owner's Unit, or (ii) the time at which the Owner acquires title to the Unit, subject to the alternative assessment program described in Section 6.6. The Owner at the time an assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. The liability is absolute and unconditional. No Owner is exempt from liability for payment of his or her share of Common Expenses 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 rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 14, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

6.6 **Assessment Lien.** The Association has a lien on a Unit for any assessment levied against that Unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association pursuant to Sections 515B3-102(a)(10), (11) and (12) of the Act are liens, and are enforceable as assessments, under this section. Recording of the Declaration constitutes record notice and perfection of any lien under this section, and no further recordation of any notice of or claim for the lien is required.

6.7 **Foreclosure of Lien & Remedies.** A Lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other Person claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, 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

6.8 **Lien Priority & Foreclosure.** A lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the Unit, and (iii) liens for real estate taxes and their governmental assessments or charges against the Unit. Notwithstanding the foregoing, if a first mortgage on a Unit is foreclosed and no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes, Chapters 580 581, or 582, then the holder of the Sheriff's Certificate of Sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-115(a), (h)(1) to (3), (I), and (1) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's Period of Redemption.

SECTION 7 **RESTRICTIONS ON USE OF PROPERTY**

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Unit, covenant and agree that, in addition to any other restrictions which may be imposed by the Act or the Governing Documents and the Act, 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, as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

7.2 **Subdivision Prohibited.** Except as permitted by the Act, no Unit nor any part of the Common Elements may be subdivided or partitioned without the prior written approval of all secured parties holding first mortgages on the Units, and in compliance with the City of Breezy Point's Ordinances.

7.3 **Use.** The Units shall be used by Owners, Occupants, and their guests exclusively based on the City's Commercial zoning district for purposes of storage or business use. No fences or kennels shall be allowed. Each Owner shall ensure that its tenants and guests park in the designated Owner's Unit on the Common Element. No inoperable vehicles may be parked on a Lot or the Common Elements. No discharging of firearms is allowed on a Lot or the Common Elements.

7.4 **Rental.** No Unit may be rented in increments shorter than one whole month. A Unit may only be rented by one party at a time; a rental period may not be split between parties. No 'vacation' rental or subletting is allowed.

7.5 **Storage.** Outside storage of any items, including, but without limitation, sporting equipment, toys, yard and garden tools and equipment and trash and garbage containers, shall not be allowed, except for the outdoor storage of outdoor furniture and outdoor cooking equipment which is allowed. No watercraft, inoperable automobiles, snowmobiles, fish houses, trailers, camping vehicles, recreational vehicles, tractor/trailers, buses, or trucks over a one-ton capacity, shall at any time be stored outside any Unit.

7.6 **Trash and Refuse** The cost to maintain and provide trash and refuse pick-up from individual Unit shall be the responsibility of the Unit Owner or Occupant.

7.7 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Units except an Owner may have household pets but no outside kennels or storing of animals shall be allowed. All pets must be for their personal use and not for commercial purposes. All household pets shall be under control by their owner, shall be supervised and not left unattended, and shall be on a leash when outside the confines of a dwelling at all times. The Board of Directors may amend the rules and restrictions relating to pets if it deems necessary at a future time.

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

More specifically, the type of outside lighting of any Unit shall be downlighting and installed in a way that no light pollution affects the enjoyment of the adjacent Units. All outdoor light fixtures must be black in color, and lightbulbs shall have a maximum brightness of 3000-3500 lumens. All lightbulbs shall be LED.

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

7.10 **Alterations.** Except for those made by Declarant in consideration of its initial sale of a Unit, no alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "alterations") shall be made, or caused or allowed to be made, by any Owner, Occupant, or their guests, in any part of the Common or Limited Elements, or in any part of the Unit which affects the Common or Limited Elements or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8. The Board, or the appointed committee, if so authorized by the Board, shall have authority to establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied.

7.11 **Access to Units.** An easement is hereby reserved across all of the drives within the plat to provide access to any Unit or to the Common Areas for emergency vehicles.

SECTION 8
ARCHITECTURAL CONTROL

8.1 Architectural Control Committee.

8.1.1 There is hereby created the Summerset Park Architectural Control Committee ("Committee") which shall initially be composed of the following:

The Declarant.

In addition to said initial members, the Declarant shall have the right to appoint additional members of the Committee; provided, however, that the total number of members of the Committee shall not exceed five (including the Chairman). Declarant shall also have sole discretion to allocate differing degrees of voting power upon matters decided by the Committee to any members designated by Declarant.

8.1.2 The Committee shall appoint one member of the Committee to be its Chairman. The Chairman shall call meetings of the Committee, from time to time at said Chairman's discretion. During periods in which the Committee consists of only one individual, all acts of the Committee shall be determined, and memorialized, by that individual. During periods in which the Committee consists of two or more individuals, a quorum of the Committee shall consist of and the Committee may act upon the vote or written consent of any two of its members that, collectively, can exercise a majority of the voting power of all the members. The chairman of the Committee is authorized to execute certificates of approval, notices of disapproval, and similar instruments effectuating or memorializing decisions of the Committee.

8.1.3 In the event of death or resignation of any member of the Committee, the remaining member or members shall have full authority to designate a successor or successors, except that the Declarant shall have the sole right to designate a successor or successors to any member that had been designated by Declarant. Neither the members of the Committee nor any of its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration. Notwithstanding the foregoing, at any time after, and subject to the condition that, all of the Units affected by this Declaration have been sold by the Declarant or its successors and assigns, to Unit Owners, and at such time as Declarant no longer owns or holds any right, title, lien or interest, whether legal or equitable, in any Unit, then the Association shall have the power to change the membership of the Committee and the allocation of voting power among and between such members or modify its powers and duties. Such action shall be effective only when evidenced by an instrument which has been executed by Unit Owners of a majority of the Units (with one vote for each Unit), and recorded in the office of the County Recorder, Cass County, Minnesota.

8.1.4 No building, fence, wall, antenna, exterior material or other improvement shall be erected, placed or altered on any Unit until the plans and specifications, including exterior materials and exterior colors, and a plan showing the proposed construction, along with the name of the builder or contractor who will actually perform the work, have been

approved as provided in subparagraph (8.1.6). The following is a non-exclusive list of items that may be considered by the Committee in reviewing all such plans, specifications and documentation:

8.1.4.1 Reputation and experience of builder or contractor;

8.1.4.2 Quality and type of workmanship and materials.

8.1.4.3 Nature of external design and colors and harmony with any existing structures; and

8.1.4.4 Location with respect to topography and finish-grade elevation.

8.1.5 Plans, specifications, and all documentation shall be mailed to:

The Declarant

and shall be deemed to have been received by the Committee upon personal delivery or three (3) days after the same is deposited in United States mail with postage paid, properly addressed to the Committee. All exterior elevations, materials and colors, including the manufacturer, type and color of all shingles, shall be specified in such plans, specifications, and documentation and the name and address of the party to whom approval or disapproval is to be mailed shall also be included. Approval or disapproval will be effective on the date of postmark when mailed by first class, mail, postage prepaid and addressed to the named party.

8.1.6 The Committee's determinations concerning such plans, specifications and documentation shall be conclusive and shall be reached in the Committee's sole discretion. If the Committee disapproves of the builder or contractor, the plans and specifications or any other aspect of the documentation submitted to it, it shall state in writing the reason for such disapproval and, in the case of the plans and specifications, the deficiencies which must be cured to obtain approval. In the event the Committee fails to approve the plans and specifications and site plans or does not specify in writing the deficiency of said plans and specifications, within thirty (30) days after the entirety of same have been submitted to it, the plans and specifications shall be deemed to have been approved.

8.2 **Remedies for Violations**. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Unit Owner causing or permitting the violation all attorney's fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Unit Owner's Unit and a personal obligation of the Unit Owner.

SECTION 9

MAINTENANCE

9.1 **Maintenance by Association.** The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall (i) provide for lawn maintenance for all Units as determined by the Association, and (ii) provide for snow removal, not provided by the City, on all driving and parking surfaces., The Association shall have easements as described in Section 13 to perform its obligations under this Section 9.

9.2 **Maintenance by Owner.** All maintenance of the Buildings and Units shall be the sole responsibility and expense of the Owners thereof.

SECTION 10 **PARTY WALLS**

There are no Party Walls.

SECTION 11 **INSURANCE AND CONDEMNATION**

11.1 **Insurance.**

11.1.1 The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Elements against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

11.1.2 The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Elements and all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverage as is determined to be necessary by the Board of Directors, and with policy limits no less than \$2,000,000 per occurrence; \$4,000,000 aggregate.

11.1.3 The Board or its duly authorized agents shall have the authority to and may obtain: (i) worker's compensation insurance to the extent necessary to comply with any applicable laws; and (ii) such other types and amounts of insurance as may be

determined by the Board to be necessary or desirable, including, without limitation, directors' and officers' errors and omissions insurance or fidelity bonds.

11.1.4 All such insurance coverage obtained by the Board of Directors shall be written-in the name of the Association as trustee for each of the owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the Common Elements having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

11.1.4.1 All policies shall be written with a company licensed to do business in the State of Minnesota and holding a rating of A-XI or better in such financial categories as established by Best's Insurance Reports, if such a company is available or if not available, its equivalent rating or the best rating possible.

11.1.4.2 All property insurance policies shall be for the benefit of the owners and their Mortgagees as their interests may appear.

11.1.4.3 All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days, prior written notice of such cancellation to the Association and to any mortgagee to which a mortgagee endorsement has been issued.

11.1.4.4 In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual owners or their mortgagees.

11.1.4.5 All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Association's manager.

11.1.4.6 All policies shall contain a provision that no policy may be canceled, invalidated, or suspended on account of the conduct of one or more of the individual owners, or their respective families, servants, agents, employees, tenants, guests, and invitees, or on account of the acts of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to

cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

11.1.4.7 All liability insurance shall contain cross-liability endorsements to cover liability of the Association to an individual owner and shall also name the Declarant as an additional insured, for so long as Declarant owns any Lot in the Property.

11.1.5 It shall be the individual responsibility of each Owner at his own expense to provide public liability, property damage, title, and other insurance with respect to his own Lot and Building. The Board of Directors shall require all Owners to carry public liability and property damage insurance with respect to their respective Lots and Buildings and to furnish copies or certificates thereof to the Association.

To be clear if a Unit is one Building with only one Unit and Owner, the entire building would be a Unit (no Common Elements) and thus the entire Unit including exterior would be insured by the owner not the association.

11.2 Damage or Destruction to Common Elements. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Elements covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section I 1, means repairing or restoring the damaged property to substantially the same condition in which it existed prior-to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Elements, Declarant, during the period of Declarant control of the Association pursuant to Section 15.6 herein, together with at least seventy-five percent (75%) of the total vote of the Members of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such special assessment shall be levied against the Owners equally in the same manner as General Assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or

reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Elements damaged or destroyed by fire or other casualty shall be cleared and the Common Elements left in a clean, orderly, safe, and sightly condition.

11.3 Damage or Destruction to Units or Buildings. In the event of damage or destruction by fire or other casualty to any Lots or Buildings, and in the further event that the Owner of such Lot or Building responsible for the repair and replacement of such Lot or Building, as the case may be, elects not to repair or rebuild the damaged or destroyed Lot or Building, such Owner making such elections shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot or Building in an orderly, safe, and sightly condition. Should such owner elect to repair or rebuild such Lot or Building, or other improvements, such Owner shall repair or rebuild such Lot, Building, or other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

11.4 Condemnation of Common Elements. Whenever all or any part of the Common Elements of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement of at least seventy-five percent (75%) of the total vote of the Members of the Association, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

11.4. I If the taking or sale in lieu thereof involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, during any period of Declarant control of the Association pursuant to Section 15.6 herein, together with at least seventy-five percent (75%) of the total Members of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining land included in the Common Elements which is available therefore, in accordance with the plans approved by the Board of Directors, the A.R.C., and by Declarant, for so long as Declarant has not turned over control of the Association pursuant to Section 15.6 herein. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as general assessments are levied, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

11.4.2 If the taking or sale in lieu thereof does not involve any improvements to the Common Elements, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds shall be retained by and for the benefit of the Association.

11.4.3 If the taking or sale in lieu thereof includes all or any part of a Lot or Building and also includes any part of the Common Elements, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners of any Lot or Building taken for their interest in such Lot or Building; provided, however, such apportionment may instead be resolved by the agreement by and among: (i) the Board of Directors; (ii) the Owners of all Lots or Buildings, wholly or partially taken or sold, together with the mortgagees for each such Lot or Building; and (iii) Declarant, if such taking occurs during any period of Declarant control of the Association pursuant to Section 15.6 hereof.

SECTION 12 **RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN**

12.1 **Reconstruction.** The obligations and procedures for the repair, reconstruction or disposition of the Property following damage to or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved upon. Notice of substantial damage or destruction shall be given pursuant to Section 18.9.

12.2 **Condemnation and Eminent Domain.** In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act govern; provided that the notice shall be given pursuant to Section 18.9 Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and the Governing Documents, as their interests may appear.

12.3 **Notice.** All Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property and the Association shall give written notice thereof to an Eligible Mortgagee pursuant to Section 18.9.

SECTION 13 **EASEMENTS**

13.1 **Easement for Encroachments.** Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for walls, roof overhangs, installations and other appurtenances added pursuant to Section 8. If there is an encroachment by a Building, or other building or improvement located in a Unit, upon another Unit or

Building as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of any encroaching Building, building or improvement, and for the maintenance thereof, shall exist; provided that with respect to improvements of alterations added pursuant to Section 8 no easement shall exist unless the same have been approved and 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.

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

13.3 **Utility Easements.** The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each Unit and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Units for all such services, including, without limitation, any water lines servicing other Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utility companies providing service to the Units for the installation and maintenance of utility metering devices.

13.4 **Continuation and Scope of Easements.** Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or an Occupant 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 recorded and shall include reasonable access to the easement areas through the Unit and the Common Elements for purposes of maintenance, repair, replacement and reconstruction.

SECTION 14 **COMPLIANCE AND REMEDIES**

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Governing Documents, the Rules and Regulations, the decisions of the Association, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this section, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

14.1 **Entitlement to Relief.** The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any

combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, the Act or the decisions of the Association. However, no Owner may withhold any assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents, or the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

14.2 Sanctions and Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and Occupants, and/or their guests, who violate the provisions of the Governing Documents, or the Rules and Regulations or the Act.

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

14.2.2 Impose late charges of up to 15% of each late payment of an assessment or installment thereof.

14.2.3 In the event of default of more than 30 days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance notice of the effective date of the acceleration shall be given to the defaulting Owner.

14.2.4 Impose reasonable fines, penalties or charges for each violation of the Act, the Governing Documents or the Rule and Regulations of the Association.

14.2.5 Suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities; provided, that this limitation shall not apply to Limited Common Elements or deck, balcony or patio easements, appurtenant to the Unit, and those portions of the common Elements providing utility services and access to the Unity. 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 30 days thereafter, for each violation.

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

14.2.7 Enter any Unit or Limited Common Element in which, or as to which, a violation or breach of the Governing Documents exists which materially affects,

or is likely to materially affect in the near future, the health or safety of the other Owners of Occupants, or their guests, or the safety or soundness of any Building or other part of the Property or the property of the Owners, Occupants and or their guests, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit or Limited Common Elements which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner.

14.2.8 Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale as allowed by law.

14.3 **Rights to Hearing.** In the case of imposition of any of the remedies authorized by Section 14.2.4, .5 or .6, the Board shall, upon written request of the Offender, grant to the offender a fair and equitable hearing as contemplated by the Act. The Offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty days of receipt of the hearing request by the Board, and with at least 10 days prior written notice to the offender. If the offending Owner fails to appear at the hearing then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten days following the hearing, if not delivered to the offender at the hearing.

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

14.5 **Costs of Proceeding and Attorney's Fees.** With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorney's fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

14.6 **Liability for Owners' and Occupants' Acts.** An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants, or guests in the Owner's Unit, to

the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and or increase in insurance rates, resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

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

SECTION 15 **SPECIAL DECLARANT RIGHTS**

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

15.1 **Complete Improvements.** To complete all the Units and other improvements indicated on the Plat, or otherwise included in Declarant's development plans or allowed by the Declaration, and to make alterations in the Property to accommodate its sales facilities.

15.2 **Sales Facilities.** To construct, operate and maintain a sales office, management office, model Units and other development, sales and rental facilities within the Property and any Units owned by Declarant from time to time, located anywhere on the property.

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

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

15.5 **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, Declarant hereby reserves exclusive and unconditional authority to exercise the following special Declarant rights within the meaning of Section 515B.1-103(31) of the Act for as long as it owns a Unit, or for such shorter period as may be specifically indicated until the earliest of: (i) voluntary surrender of control by Declarant, (ii) an Association

meeting which shall be held within 60 days after conveyance to Owners other than a Declarant of 75% of the total number of Units authorized to be included in the Property or (iii) the date five (5) years following the date of the first conveyance of a Unit to an Owner other than a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall have the right to nominate and elect not less than 33-1/3% of the directors at a meeting of the Owners which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Property.

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

SECTION 16 - INTENTIONALLY OMITTED

SECTION 17 AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least seventy-five percent (67%) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 18 as to matters prescribed by said Section and (iii) the consent of Declarant to certain amendments as provided in Section 15.7. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consent of Eligible Mortgagees and the Declarant shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. The Amendment shall be effective when recorded. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

SECTION 18 RIGHTS OF ELIGIBLE MORTGAGEES

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

18.1 **Consent to Certain Amendments.** The written consent of Eligible Mortgagees representing at least fifty-one percent (51 %) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessments, assessments liens, or priority of assessment liens; (iii) reserves for maintenance, repair and replacement of Common Elements; (iv)

responsibility for maintenance and repairs; (v) relocation of interests in the Common Elements or Limited Common Elements, or right to their use; (vi) redefinition of any Unit boundaries; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the property; (ix) insurance or fidelity bonds; (x) leasing of Units; (xi) imposition of any restriction on an Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association to establish self-management when professional management is in effect; (xiii) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the condominium after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

18.2 **Consent to Certain Actions.** The written consent of Eligible mortgagees representing at least seventy-five percent (75%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required to (i) abandon or terminate the condominium; (ii) change the allocations of voting rights, Common Expense obligations or interest in the Common Elements; (iii) partition or subdivide a Unit except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Common Elements; or (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

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

18.4 **Priority of Lien.** Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgage holder or purchaser; (i) except as provided in Section 6 and (ii) except that any un-reimbursed assessments or charges may be reallocated among all Units in accordance with their interests in the Common Elements.

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

18.6 **Priority for Condemnation Awards.** No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and / or the Common Elements. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

18.7 **Management Agent.** The Property may be managed by a Management Agent in accordance with a management agreement reasonably acceptable to the Association.

18.8 **Access to Books and Records & Audits.** Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, including those which are audited, shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. If a request is made by any institutional guarantor or insurer of a mortgage loan against a Unit, for an audit of the Association's financial statements for the preceding year, the Association shall cause an audit to be made and deliver a copy to the requesting party.

18.9 **Notice Requirements.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a mortgage on a Unit, and the Unit number or address, the holder, insurer or guarantor shall be entitled to timely written notice of:

18.9.1 A condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;

18.9.2 A 60 day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;

18.9.3 A lapse, cancellation or material modification of any insurance policy maintained by the Association; and

18.9.4 A proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

SECTION 19 **MISCELLANEOUS**

19.1 **Severability.** If any term, covenant, or provision of this instrument or any exhibit attached hereto is held to be invalid or unenforceable for any reason whatsoever, such determination shall not be deemed to alter, affect or impair in any manner whatsoever any other portion of this instrument or exhibits.

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

19.3 **Tender of Claims.** In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to the Act, the Association shall promptly tender the defense of the action to its insurance carrier,

and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

19.4 **Notices.** Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board of Directors, the Association officers or the Owner or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2.2 of the By-Laws shall be effective upon receipt by the Association.

19.5 **Conflicts Among Documents.** In the event of any conflict among the provisions of the Act, the Declaration, the By-Laws or any Rules or Regulations approved by the Association, the Act shall control. As among the Declarations, By-Laws and Rules and Regulations, the Declaration shall control, and as between the By-Laws and Rules and Regulations, the By-Laws shall control.

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

David Spizzo, President, Whitebirch, Inc

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by David Spizzo, President, of Whitebirch, Inc., a Minnesota corporation, on behalf of the corporation.

(Notary Signature) Notary Public, _____ County, Minnesota

(Notary Printed Name) My Commission expires _____

This Document Was Drafted By:

Whitebirch, Inc.

9252 Breezy Point Drive

Breezy Point, Minnesota 56472

**COMMON INTEREST COMMUNITY NO.
A PLANNED COMMUNITY
"EAGLE VIEW STORAGE"**

EXHIBIT A-I TO DECLARATION

Legal description of property to be subjected to Declaration:

Lots 1 through 7, Block 1, Eagle View Storage

**COMMON INTEREST COMMUNITY NO.
A PLANNED COMMUNITY
"EAGLE VIEW STORAGE"**

**EXHIBIT "B"
TO DECLARATION**

Legal description of Common Elements:

Lot 7, Block 1, Eagle View Storage