

**AMENDED AND RESTATED BYLAWS**

**OF**

**LOHMAN'S AMHURST HOMEOWNERS**  
**ASSOCIATION, INC.**

**COMMON INTEREST COMMUNITY NO. 1172  
Planned Community**

**AMENDED AND RESTATED BYLAWS**

**OF**

**LOHMAN'S AMHURST HOMEOWNERS ASSOCIATION, INC.**

These Amended and Restated Bylaws (the "Bylaws") were approved by the Board of Directors and the members of Lohman's Amhurst Homeowners Association, Inc., a Minnesota nonprofit corporation (the "Association"), in accordance with the requirements of the Original Bylaws (defined below) and Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act").

**WHEREAS**, the Association is an owners association which is contemplated by Section 515B.3-101 of the Act and which governs an existing planned community located in St. Louis Park, Minnesota, known as Lohman's Amhurst, and

**WHEREAS**, the original Declaration of Covenants, Conditions and Restrictions of Lohman's Amhurst, as amended and/or supplemented, has been restated and superseded by that certain Amended and Restated Declaration of Lohman's Amhurst (the "Declaration"), and

**WHEREAS**, the original Bylaws of the Association were adopted by the Association on November 5, 1980 (the "Original Bylaws"), and

**WHEREAS**, the Association and the Owners constituting the members thereof desire to amend and restate the Original Bylaws as set forth herein, with the intent that these Bylaws shall supersede the Original Bylaws, and any amendments thereto, in their entirety.

**THEREFORE**, the Original Bylaws, as amended, are hereby amended and restated in their entirety as follows:

**SECTION I**

**GENERAL**

The Association is organized pursuant to the Act to act as the owners association governing Lohman's Amhurst, Common Interest Community No. 1172, Hennepin County, Minnesota, which is a planned community subject to the Act. The terms used in these Bylaws shall have the same meaning as they have in the Declaration or the Act, as applicable.

**SECTION II**

**MEMBERSHIP**

2.1 Owners Defined. All Persons described as Owners in Section 4 of the Declaration shall be members of the Association. No Person shall be a member solely by virtue of holding a security interest in a Residential Unit or Garage Unit. A Person shall cease to be a member at such time as that Person is no longer an Owner.

2.2 Registration of Owners and Occupants. Upon request of the Association, an Owner shall register with the Secretary of the Association, in writing, (i) the name and address of the Owners and any Occupants of the Residential Unit and Garage Unit, (ii) the nature of such Owner's interest or estate in each Residential Unit and Garage Unit owned; (iii) the address at which the Owner desires to receive notice of any meeting of the Owners, if other than the address of the Residential Unit and Garage Unit; and (iv) the name and address of the secured party holding the first mortgage on the Residential Unit and Garage Unit, if any. Each Owner shall have a continuing obligation to advise the Association in writing of any changes in the foregoing information.

2.3 Transfers. The interests, rights and obligations of an Owner in the Association may be assigned, pledged, encumbered or transferred, but only along with and as a part of the title to the Owner's Residential Unit and Garage Unit or as otherwise specifically authorized by the Governing Documents or by law.

### SECTION III

#### VOTING

3.1 Entitlement. Votes shall be allocated to each Residential Unit as provided in the Declaration. No votes are allocated to Garage Units. However, no vote shall be exercised as to a Residential Unit while the Residential Unit is owned by the Association.

3.2 Authority to Cast Vote. At any meeting of the Owners, an Owner included on the voting register presented by the Secretary in accordance with Section 4.6, or the holder of such Owner's proxy, shall be entitled to cast the vote which is allocated to the Residential Unit owned by the Owner. If there is more than one Owner of a Residential Unit, only one of the Owners may cast the vote. If the Owners of a Residential Unit fail to agree as to who shall cast the vote, or fail to register pursuant to Section 2.2, the vote shall not be cast.

3.3 Voting by Proxy. An Owner may cast the vote which is allocated to the Owner's Residential Unit and be counted as present at any meeting of the Owners by executing a written proxy naming another Person entitled to act on that Owner's behalf, and delivering the same to the Secretary before the commencement of any such meeting. All proxies granted by an Owner shall be effective until the earliest of the following events: (i) revocation by the granting Owner by written notice or by personally attending and voting at the meeting for which the proxy is effective, (ii) the date specified in the proxy, if any, or (iii) the time at which the granting Owner is no longer an Owner.

3.4 Voting by Written Ballot. The entire vote on any issue, except the election or removal of directors, may be determined by written ballots, subject to the following requirements.

- a. The notice of the vote shall: (i) clearly state the proposed action, (ii) indicate the number of responses needed to meet the quorum requirements, (iii) state the percentage of approvals necessary to approve each matter other than election of directors and (iv) specify the time by which a ballot must be received by the Association in order to be counted.
- b. The ballot shall: (i) set forth each proposed action and (ii) provide an opportunity to vote for or against each proposed action.

- c. The Board shall set the time for the return of ballots, which shall not be less than fifteen nor more than thirty days after the date of delivery of the ballots to the Owners. The Board shall provide notice of the results of the vote to the Owners within ten days after the expiration of the voting period.
- d. Approval by written ballot under this Section is valid only if (i) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and (ii) the number of approval votes equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

3.5 Vote Required. A majority of the votes cast at any properly constituted meeting of the Owners, or cast by ballot in accordance with Section 3.4, shall decide all matters properly brought before the Owners, except where a different vote or voting procedure is required by the Governing Documents or the Act. The term "majority" as used herein shall mean in excess of fifty percent of the votes cast at a meeting, in person or by proxy, or voting by mail, in accordance with the allocation of voting power set forth in the Declaration. Cumulative voting shall not be permitted.

## SECTION IV

### MEETINGS OF OWNERS

4.1 Place. All meetings of the Owners shall be held at the office of the Association or at such other place in the state of Minnesota reasonably accessible to the Owners as may be designated by the Board in any notice of a meeting of the Owners.

4.2 Annual Meetings. An annual meeting of the Owners shall be held in each fiscal year on a date, and at a reasonable time and place, designated by the Board. At each annual meeting of the Owners, (i) the Persons who are to constitute the Board shall be elected pursuant to Section 6, (ii) a report shall be made to the Owners on the activities and financial condition of the Association, and (iii) any other matter which is included in the notice of the annual meeting, and is a proper subject for discussion or decision by the Owners, shall be considered and acted upon at the meeting.

4.3 Special Meetings. Special meetings of the Owners may be called by the President as a matter of discretion. Special meetings of the Owners shall be called by the President or Secretary within thirty days following receipt of the written request of a majority of the members of the Board or of Owners entitled to cast at least twenty-five percent of all the votes in the Association. The meeting shall be held within sixty days following receipt of the request. The request shall state the purpose of the meeting, and the business transacted at the special meeting shall be confined to the purposes stated in the notice. The purpose for which the meeting is requested and held must be lawful and consistent with the Association's purposes and authority under the Governing Documents.

4.4 Notice of Meetings. Not less than twenty-one nor more than thirty days in advance of any annual meeting of the Owners, and not less than seven nor more than thirty days in advance of any special meeting of the Owners, the Secretary shall send notice of the time, place and agenda of the meeting to all persons who are Owners as of the date of sending the notice. The notice shall be sent by United States mail, or by hand delivery, at the Owner's Residential Unit address or to such other address as the Owner may have designated in writing to the Secretary. The notice shall also

be sent to the Eligible Mortgagee, upon request, at the address provided by the Eligible Mortgagee. Any Eligible Mortgagee shall, with respect to the Residential Unit, upon request, be entitled to designate a representative to be present at any meeting. Notice of meetings to vote upon amendments to the Association's Articles of Incorporation shall also be given separately to each officer and director of the Association.

4.5 Quorum/Adjournment. The presence of Owners in person or by proxy, who have the authority to cast twenty-five percent of all the votes in the Association shall constitute a quorum at all meetings of the Owners for the transaction of any business, except that of adjourning the meeting to reconvene at a subsequent time. The Association may not be counted in determining a quorum as to any Residential Unit owned by the Association. Any meeting may be adjourned from time to time, but until no longer than fifteen days later, without notice other than announcement at the meeting as initially called. If a quorum is present at the reconvened meeting, any business may be transacted which might have been transacted at the meeting as initially called had a quorum then been present. If a quorum has been established at a meeting or a reconvened meeting, the quorum shall continue to exist for the meeting in question notwithstanding the departure of any Owner originally in attendance in person or by proxy.

4.6 Voting Register. The Secretary shall have available at the meeting a list of the Residential Unit numbers, the names of the Owners, the vote attributable to each Residential Unit and the name of the Person (in the case of multiple Owners) authorized to cast the vote.

4.7 Agenda. The agenda for meetings of the Owners shall be established by the Board, consistent with the Governing Documents, and shall be sent to all Owners along with the notice of the meeting.

## SECTION V

### ANNUAL REPORT

The Board shall prepare an annual report, a copy of which shall be provided to each Owner at or prior to the annual meeting. The report shall contain, at a minimum:

- a. Capital Expenditures. A statement of any capital expenditures in excess of two percent of the Association's current budget or five thousand dollars, whichever is greater, approved by the Association for the current year or succeeding two fiscal years.
- b. Reserve Funds. A statement of the balance in any reserve or replacement fund.
- c. Financial Statements. A copy of the statement of revenues and expenses for the Association's last fiscal year, and a balance sheet as of the end of said fiscal year.
- d. Litigation and Judgments. A statement of the status of any pending litigation or judgments to which the Association is a party.

- e. Insurance. A detailed description of the insurance coverage provided by the Association, including a statement as to which, if any, of the items referred to in Section 515B.3-113(b) of the Act are covered.
- f. Status of Assessments. A statement of the total past due assessments on all Residential Units and Garage Units, current as of not more than sixty days prior to the date of the meeting.

## SECTION VI

### BOARD OF DIRECTORS

6.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of five directors, all of whom shall be Owners, or a duly authorized representative of the Owner if the Owner is an entity which has the capacity to hold title to real estate.

6.2 Term of Office. The terms of office of the members of the Board shall be three years, staggered such that the terms of at least one, but not more than two, directors expire in each year. The term of a director shall expire upon the election of a successor director at the appropriate annual meeting of the Owners; provided, that a director shall continue in office until a successor is elected. A number of nominees equal to the number of vacancies, and receiving the greatest numbers of votes, shall be elected, notwithstanding that one or more of them does not receive a majority of the votes cast. A director appointed or elected to fill an uncompleted term shall serve until the natural termination of that term, unless removed in accordance with these Bylaws. There is no cumulative voting for directors.

6.3 Nominations. Nominations for election to the Board at each annual meeting of the Owners shall be made by a nominating committee appointed by the Board; provided, that Owners may also make nominations at any time at or before the annual meeting. The nominating committee shall consist of Owners who are representative of the general membership of the Association, and shall establish fair and reasonable procedures for the submission of nominations. All nominations shall be made only with the consent of the nominee.

6.4 Powers. The Board shall have all powers necessary for the administration of the affairs of the Association, and may exercise for the Association all powers and authority vested in or delegated to the Association (and not expressly prohibited or reserved to the Owners) by law or by the Governing Documents. The powers of the Board shall include, without limitation, the power to:

- a. adopt, amend and revoke Rules and Regulations not inconsistent with the Governing Documents, as follows: (i) regulating the use of the Common Elements; (ii) regulating the use of the Residential Units and Garage Units, and the conduct of Owners and Occupants, which may jeopardize the health, safety, or welfare of other Owners and Occupants, which involves noise or other disturbing activity, or which may damage the Common Elements or other Residential Units and Garage Units; (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the Common Elements and conduct which may damage the Property, (v) regulating the exterior appearance of the Property, including, for example, decks, patios, and signs and other displays, regardless of whether inside a Residential Unit or Garage

- Unit; (vi) implementing the Governing Documents, and exercising the powers granted by this Section; and (vii) otherwise facilitating the operation of the Property;
- b. adopt and amend budgets for revenues, expenditures and reserves, levy and collect assessments for Common Expenses (subject to Section 6 of the Declaration), and foreclose assessment liens incidental to its collection efforts;
  - c. hire and discharge managing agents and other employees, agents, and independent contractors;
  - d. institute, defend, or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two or more Owners on matters affecting the Common Elements or other matters affecting the Property or the Association, or, (ii) with the consent of the Owners of the affected Residential Units or Garage Units, on matters affecting only those Residential Units or Garage Units;
  - e. make contracts and incur liabilities;
  - f. regulate the use, maintenance, repair, replacement and modification of the Common Elements and the Residential Units and Garage Units;
  - g. cause improvements to be made as a part of the Common Elements;
  - h. acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, subject to the requirements of the Act for the conveyance or encumbrance of the Common Elements;
  - i. grant easements as follows: (i) public utility and cable communications easements through, over or under the Common Elements may be granted by the Board, and (ii) other public or private easements, leases and licenses through, over or under the Common Elements may be granted only by approval of the Board, and by the Owners voting at an Association meeting, unless the Board is expressly authorized to grant the easement by the Governing Documents or by law;
  - j. impose and receive any payments, fees, or charges for services provided to Owners;
  - k. impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Governing Documents and the Rules and Regulations;
  - l. borrow money, and encumber or pledge the assets of the Association as security therefor; provided, that any borrowings in any twelve month period which exceed, in aggregate, ten percent of the Association's current annual budget, shall require approval by the Owners voting at an Association meeting;
  - m. impose reasonable charges for the review, preparation and recording of amendments to the Declaration or Bylaws, resale disclosure certificates required by

Section 515B.4-107 of the Act, statements of unpaid assessments, or furnishing copies of Association records;

- n. provide for the indemnification of its officers, directors and committee members, and maintain directors' and officers' liability insurance;
- o. provide for reasonable procedures governing the conduct of meetings and the election of directors;
- p. appoint, regulate and dissolve committees; and
- q. exercise any other powers conferred by law or the Governing Documents, or which are necessary and proper for the governance of the Association.

6.5 Meetings and Notices. An annual meeting of the Board shall be held promptly following each annual meeting of the Owners. At each annual meeting of the Board, the officers of the Association shall be elected.

- a. Regular meetings of the Board shall be held at least on a quarterly basis, at such times as may be fixed from time to time by a majority of the voting directors. A schedule, or any amended schedule, of the regular meetings shall be provided to the directors, and posted or published for the information of Owners, as provided in Section 6.5.e.
- b. Special meetings of the Board shall be held when called (i) by the President of the Association, or (ii) by the Secretary within ten days following the written request of a majority of the voting directors. Notice of any special meeting shall be given to each director not less than three days in advance thereof, subject to Section 6.5.c. Notice to a director shall be deemed to be given when deposited in the United States mail postage prepaid to the Residential Unit address of such director, or when personally delivered, orally or in writing, by a representative of the Board.
- c. Any director may at any time waive notice of any meeting of the Board orally, in writing, or by attendance at the meeting. If all the directors are present at a meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.
- d. A conference among directors by a means of communication through which all directors may simultaneously hear each other during the conference is a Board meeting, if (i) the same notice is given of the conference as would be required for a meeting, and (ii) the number of directors participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting.
- e. Except as otherwise provided in this Section, meetings of the Board must be open to the Owners. To the extent practicable, the Board shall give reasonable notice to the Owners of the date, time, and place of a Board meeting. If the date, time and place of meetings are provided for in the Declaration, the Association's Articles of Incorporation, the Bylaws, announced at a previous meeting of the Board, distributed to Members in writing, posted in a location accessible to the Owners and designated

by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required. "Notice" has the meaning given in Section 11.1. Notwithstanding the foregoing, meetings may be closed at the discretion of the Board to discuss the following:

- (1) personnel matters;
- (2) pending or potential litigation, arbitration or other potentially adversarial proceedings between Owners, between the Board or Association and Owners, or other matters in which any Owner may have an adversarial interest, if the Board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the Board or Association or the privacy of an Owner or Occupant of a Residential Unit or Garage Unit; or
- (3) criminal activity arising within the common interest community if the Board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize investigation of the activity.

The minutes of, and the documentation discussed or submitted at, such closed meeting shall not be made available for review or copying pursuant to Section 8.5. Nothing in this Section imposes a duty on the Board to provide special facilities for meetings. The failure to give notice as required by this Section shall not invalidate the Board meeting or any action taken at the meeting, but shall not impair Owners' rights to exercise other remedies against the Directors.

6.6 Quorum and Voting. A majority of the directors constitutes a quorum for the transaction of business at any meeting thereof. A quorum, once established, continues to exist, regardless of the subsequent departure of any directors. Each director has one vote. The vote of a majority of the directors present at any meeting at which a quorum is present is sufficient to adopt any action. Proxies shall not be permitted.

6.7 Action Taken Without a Meeting. The Board shall have the right to take any action in the absence of a meeting which it could take at a meeting when authorized in a writing signed by all the directors; provided, that a copy of the proposed written action is given to all directors for review prior to its signing.

6.8 Vacancies. A vacancy in the directors, other than those under Sections 6.2 and 6.9, shall be filled by a person elected within thirty days following the occurrence of the vacancy by a majority vote of the remaining directors, regardless of their number. Each person so elected shall serve out the term vacated.

6.9 Removal. A director may be removed from the Board, with or without cause, by a majority vote at any annual or special meeting of the Owners; provided, (i) that the notice of the meeting at which removal is to be considered states such purpose, (ii) that the director to be removed has a right to be heard at the meeting and (iii) that a new director is elected at the meeting by the owners to fill the vacant position caused by the removal. A director may also be removed by the Board if such director (i) has more than two unexcused absences from Board meetings and/or Owners meetings during any twelve month period or (ii) is more than sixty days past due with

respect to the payment of assessments or installments thereof assessed against the director's Residential Unit or Garage Unit. Such vacancies shall be filled by the vote of the Owners as previously provided in this Section.

6.10 Compensation. Directors shall not receive compensation for their services as directors. Directors may be reimbursed for out-of-pocket expenses incurred in the performance of their duties. A director or an entity in which the director has an interest may, upon approval by the Board, be reasonably compensated under a contract for goods and services furnished to the Association in a capacity other than as a director; provided (i) that the contract is approved by a majority vote of the Board, excluding the interested director, and (ii) that the director's interest is disclosed to the Board prior to approval.

6.11 Fidelity Bond. Fidelity bonds or insurance coverage for unlawful taking of Association funds shall be obtained and maintained as provided in the Declaration on all voting directors and officers authorized to handle the Association's funds and other monetary assets.

6.12 Standard of Responsibility. A director shall discharge his or her duties in good faith, in a manner the director reasonably believes to be in the best interest of the Association, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

## SECTION VII

### OFFICERS

7.1 Principal Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the directors. The Board may from time to time elect such other officers and designate their duties as in the Board's judgment may be necessary to manage the affairs of the Association. A person may hold more than one office simultaneously, except those of President and Vice President. Only the President and Vice President must be members of the Board.

7.2 Election. The officers of the Association shall be elected annually by the Board at its annual meeting and shall hold office at the pleasure of the Board.

7.3 Removal. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, with or without cause, and a successor elected, at any regular meeting of the Board, or at any special meeting of the Board called for that purpose.

7.4 President. The President shall be the chief executive officer of the Association, and shall preside at all meetings of the Board and the Association. The President shall have all of the powers and duties which are customarily vested in the office of president of a corporation, including without limitation the duty to supervise all other officers and to execute all contracts and similar obligations on behalf of the Association. The President shall have such other duties as may from time to time be prescribed by the Board.

7.5 Vice President. The Vice President shall take the place of the President and perform the duties of the office of the President whenever the President shall be absent or unable to act. The Vice President shall also perform such other duties as shall from time to time be prescribed by the Board.

7.6 Secretary. The Secretary is responsible for recording the minutes of all meetings of the Board and the Association. The Secretary shall be responsible for keeping the books and records of the Association, and shall give all notices required by the Governing Documents or the Act unless directed otherwise by the Board. The Board may delegate the Secretary's administrative functions to a managing agent; provided, that such delegation shall not relieve the Secretary of the ultimate responsibility for the Secretary's duties.

7.7 Treasurer. The Treasurer is responsible for all financial assets of the Association, and shall be covered by a bond or insurance in such sum and with such companies as the Board may require. The Treasurer shall (i) be responsible for keeping the Association's financial books, assessment rolls and accounts; (ii) cause an annual financial report to be prepared, subject to review by the Association's accountants; (iii) cause the books of the Association to be kept in accordance with generally accepted accounting practices and shall submit them to the Board for its examination upon request; (iv) cause all moneys and other monetary assets of the Association to be deposited in the name of or to the credit of the Association in depositories designated by the Board; (v) cause the proper obligations of the Association to be paid when due; and (vi) perform all other duties incident to the office of Treasurer. The Board may delegate the Treasurer's administrative functions to a managing agent; provided, that such delegation shall not relieve the Treasurer of the ultimate responsibility for the Treasurer's duties.

7.8 Compensation. Officers of the Association shall not receive compensation for their services as officers in such capacity. Officers may be reimbursed for out-of-pocket expenses incurred in the performance of their duties. An officer or an entity in which the officer has an interest may be reasonably compensated under a contract for goods and services furnished to the Association in a capacity other than as an officer; provided, (i) that the contract is approved by a majority vote of the Board, excluding the interested party, and (ii) that the officer's interest is disclosed to the Board prior to approval.

7.9 Standard of Responsibility. A officer shall discharge his or her duties in good faith, in a manner the officer reasonably believes to be in the best interest of the Association, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

## **SECTION VIII**

### **OPERATION OF THE PROPERTY**

8.1 Assessment Procedures. The Board shall annually prepare a budget of Common Expenses for the Association and assess such Common Expenses against the Residential Units and Garage Units according to their respective Common Expense obligations as set forth in the Declaration.

- a. Subject to Section 6 of the Declaration, the Board shall fix the amount of the annual Assessment against each Residential Unit and Garage Unit, levy the Assessment and advise the Owners in writing of the Assessment at least thirty days prior to the beginning of the Association's fiscal year when the first Assessment installment shall be due. The failure of the Board to timely levy an annual Assessment shall not relieve the Owners of their obligation to continue paying Assessment installments in the amount currently levied, as well as any increases subsequently levied.

- b. Subject to Section 6 of the Declaration, the Board may amend the budget and Assessments, or levy a special Assessment, at any time. The levy shall be deemed to occur upon the date specified in the resolution which fixes the Assessment.
- c. The Board may levy limited Assessments against only certain Residential Units and/or Garage Units under Section 6.4 of the Declaration. Such Assessments may be included in the annual Assessments levied against the affected Residential Units and Garage Units or may be levied separately during the year. Such Assessments are not annual or special Assessments within the meaning of the Declaration or of these Bylaws, and are not subject to any limitation contained in Section 6 of the Declaration.
- d. The annual budget shall include an adequate reserve fund for maintenance, repair and replacement of the Common Elements and any parts of the Residential Units and Garage Units that must be maintained, repaired or replaced by the Association on a periodic basis.
- e. The Association shall furnish copies of each budget on which the assessment is based to an Owner or to any Eligible Mortgagee, upon request of such persons.

8.2 Payment of Assessments. Annual Assessments shall be due and payable in monthly installments in advance on the first day of each month. Special Assessments and limited Assessments shall be due when designated by the Board. All Owners shall be absolutely and unconditionally obligated to pay the Assessments. No Owner or Occupant shall have any right of withholding, offset or deduction against the Association with respect to any Assessments, or late charges or costs of collection, regardless of any claims alleged against the Association or its officers or directors. Any rights or claims alleged by an Owner may be pursued only by separate action.

8.3 Default in Payment of Assessments. If any Owner does not make payment on or before the date when any Assessment or installment thereof is due, subject to such grace periods as may be established, the Board may assess, and such Owner shall be obligated to pay, a late charge as provided in the Declaration for each such unpaid Assessment or installment thereof, together with all expenses, including reasonable attorneys' fees, incurred by the Board in collecting any such unpaid Assessment.

- a. If there is a default of more than thirty days in payment of any Assessment, the Board may accelerate any remaining installments of the Assessment upon prior written notice thereof to the Owner, as provided in the Declaration, and the entire unpaid balance of the assessment and late charges shall become due and payable upon the date stated in the notice unless all past due amounts, including late charges, costs of collection and fines, are paid prior to said date.
- b. The Board shall have the right and duty to attempt to recover all Assessments for Common Expenses, together with any charges, attorneys' fees or expenses relating to the collection thereof. In addition, the Board shall have the right and duty to attempt to recover any and all 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.

- c. Upon written request of an Owner or an Eligible Mortgagee of such Residential Unit or Garage Unit, notice of a default of more than thirty days in payment of any Assessment or installment of an Assessment for Common Expenses or any other default in the performance of obligations by the Owner shall be given in writing to such Owner or Eligible Mortgagee.
- d. The rights and remedies referred to in this Section shall not limit the remedies available to the Association under the Declaration or by law.

8.4 Foreclosure of Liens for Unpaid Assessments. The Association has the right to foreclose a lien against a Residential Unit and Garage Unit for Assessments imposed by the Association, as more fully described in the Declaration and the Act.

8.5 Records. The Board shall cause to be kept at the registered office of the Association, and at such other place as the Board may determine, records of the actions of the Board, minutes of the meetings of the Board, minutes of the meetings of the Owners, names of the Owners and Eligible Mortgagees, and detailed and accurate records of the receipts and expenditures of the Association. With the exception of records that may be privileged or confidential information, all Association records, including receipts and expenditures and any vouchers authorizing payments, shall be available for examination by Owners and Eligible Mortgagees for a proper purpose, upon reasonable notice and during normal business hours. Separate accounts shall be maintained for each Residential Unit and Garage Unit setting forth the amount of the Assessments against the Residential Unit and Garage Unit, the date when due, the amount paid thereon and the balance remaining unpaid.

8.6 Financial Review. The Board shall cause the financial records of the Association to be "reviewed" by an independent certified public accountant on an annual basis, pursuant to the requirements of Section 515B.3-121 of the Act. This requirement may be waived, on an annual basis, by the vote of Owners holding at least thirty percent of the total votes in the Association. The waiver must be approved prior to sixty days after the end of the Association's fiscal year or such longer period authorized by the Act. The Board may require the review or an audit notwithstanding a waiver vote by the Owners.

8.7 Enforcement of Obligations. All Owners and Occupants and their guests are obligated and bound to observe the provisions of the Governing Documents, the Rules and Regulations and the Act. The Association may impose any or all of the charges, sanctions and remedies authorized by the Governing Documents, the Rules and Regulations or by law to enforce and implement its rights and to otherwise enable it to manage and operate the Association.

## **SECTION IX**

### **AMENDMENTS**

These Bylaws may be amended, and the amendment shall be effective, upon the satisfaction of the following conditions:

9.1 Approval. The amendment must be approved by Owners who have authority to cast in excess of fifty percent of the total votes in the Association, in writing or at a duly held meeting of the Owners; subject to any approval rights of Eligible Mortgagees as provided in the Declaration; and

9.2 Notice. A copy of the proposed amendment and, if a meeting is to be held, notice of such meeting, shall be mailed by U.S. mail, or hand delivered, to all Owners authorized to cast votes; and

9.3 Effective Date; Recording. The amendment shall be effective on the date of approval by the required vote of the Owners (and of Eligible Mortgagees, if required) and need not be recorded.

## SECTION X

### INDEMNIFICATION

The Association shall, to the extent the alleged liability is not covered by insurance, indemnify every individual acting in any official capacity on behalf of the Association, pursuant to the provisions of Minnesota Statutes Section 317A.521.

## SECTION XI

### MISCELLANEOUS

11.1 Notices. Unless specifically provided otherwise in the Act, the Declaration or these Bylaws, all notices required to be given by or to the Association, the Board, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or upon mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2.2 shall be effective upon receipt by the Association.

11.2 Severability. The invalidity or unenforceability of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

11.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way limit or proscribe the scope of these Bylaws or the intent of any provision hereof.

11.4 Conflicts in Documents. In the event of any conflict among the provisions of the Act, the Declaration, these Bylaws or the Rules and Regulations, the Act shall control unless it permits the documents to control. As among the Declaration, these Bylaws and Rules and Regulations, the Declaration shall control, and as between these Bylaws and the Rules and Regulations, these Bylaws shall control.

11.5 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

11.6 No Corporate Seal. The Association shall have no corporate seal.

11.7 Fiscal Year. The fiscal year of the Association shall be as determined by the Board.

The undersigned, the Secretary of Lohman's Amhurst Homeowners Association, Inc., hereby executes these Bylaws, and certifies that they were adopted by the Board and by the vote of the Owners required by the Original Bylaws.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary  
Lohman's Amhurst Homeowners Association, Inc.

**AMENDED AND RESTATED  
DECLARATION**

**LOHMAN'S AMHURST**

**COMMON INTEREST COMMUNITY NO. 1172**

**LOHMAN'S AMHURST**

**AMENDED AND RESTATED DECLARATION**

**TABLE OF CONTENTS**

SECTION 1  
DEFINITIONS ..... 2

SECTION 2  
DESCRIPTION OF UNITS AND APPURTENANCES ..... 4

2.1 Units ..... 4

2.2 Unit Boundaries ..... 5

2.3 Access Easements ..... 5

2.4 Use and Enjoyment of Easements ..... 5

2.5 Utility and Maintenance Easements ..... 5

2.6 Encroachment Easements ..... 5

2.7 Structural Support Easements ..... 5

2.8 Recorded Easements ..... 6

2.9 Easements are Appurtenant ..... 6

2.10 Impairment Prohibited ..... 6

2.11 Benefit of Easements ..... 6

SECTION 3  
COMMON ELEMENTS, LIMITED COMMON ELEMENTS  
AND ADDITIONAL PROPERTY ..... 6

3.1 Common Elements ..... 6

3.2 Limited Common Elements ..... 7

3.3 Annexation of Additional Property ..... 7

SECTION 4  
ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS ..... 8

4.1 Membership ..... 8

4.2 Voting and Common Expenses ..... 8

4.3 Appurtenant Rights and Obligations ..... 8

4.4 Authority to Vote ..... 8

SECTION 5  
ADMINISTRATION ..... 9

5.1 General ..... 9

5.2 Operational Purposes ..... 9

5.3 Binding Effect of Actions ..... 9

5.4 Bylaws ..... 9

5.5 Management ..... 9

5.6	<u>Rules and Regulations</u>	9
5.7	<u>Association Assets; Surplus Funds</u>	10
5.8	<u>Resale Disclosure Certificates</u>	10
SECTION 6		
	ASSESSMENTS	10
6.1	<u>General</u>	10
6.2	<u>Annual Assessments</u>	10
6.3	<u>Special Assessments</u>	11
6.4	<u>Limited Assessments</u>	11
6.5	<u>Liability of Owners for Assessments</u>	12
6.6	<u>Assessment Lien</u>	12
6.7	<u>Foreclosure of Lien; Remedies</u>	12
6.8	<u>Lien Priority; Foreclosure</u>	13
6.9	<u>Voluntary Conveyances; Statement of Assessments</u>	13
6.10	<u>Governmental Assessments</u>	13
SECTION 7		
	RESTRICTIONS ON USE OF PROPERTY	13
7.1	<u>General</u>	14
7.2	<u>Subdivision Prohibited</u>	14
7.3	<u>Residential Use and Occupancy</u>	14
7.4	<u>Business Use Restricted</u>	14
7.5	<u>Leasing</u>	14
7.6	<u>Delegation of Use</u>	15
7.7	<u>Parking</u>	15
7.8	<u>Animals</u>	15
7.9	<u>Signs and Personal Property</u>	16
7.10	<u>Quiet Enjoyment; Interference Prohibited</u>	16
7.11	<u>Conformance with Law</u>	16
7.12	<u>Alterations</u>	16
7.13	<u>Time Shares Prohibited</u>	17
7.14	<u>Access to Units</u>	17
SECTION 8		
	ARCHITECTURAL STANDARDS	17
8.1	<u>Restrictions on Alterations</u>	17
8.2	<u>Review Procedures</u>	18
8.3	<u>Remedies for Violations</u>	19
8.4	<u>Hold Harmless</u>	19
8.5	<u>Exemptions</u>	19
SECTION 9		
	MAINTENANCE	20
9.1	<u>Maintenance by Association</u>	20
9.2	<u>Optional Maintenance by Association</u>	21
9.3	<u>Maintenance by Owner</u>	21

9.4	<u>Damage Caused by Owner</u> .....	22
9.5	<u>Easements for Maintenance</u> .....	22
9.6	<u>Maintenance of Ponding Areas</u> .....	22
SECTION 10		
	PARTY WALLS .....	23
10.1	<u>General Rules of Law to Apply</u> .....	23
10.2	<u>Repair and Maintenance</u> .....	23
10.3	<u>Destruction by Fire or Other Casualty</u> .....	23
10.4	<u>Weatherproofing</u> .....	23
10.5	<u>Right to Contribution Runs With Land</u> .....	24
10.6	<u>Disputes</u> .....	24
SECTION 11		
	INSURANCE .....	24
11.1	<u>Required Coverage</u> .....	24
11.2	<u>Premiums; Improvements; Deductibles</u> .....	25
11.3	<u>Loss Payee; Insurance Trustee</u> .....	25
11.4	<u>Required Policy Provisions</u> .....	26
11.5	<u>Cancellation; Notice of Loss</u> .....	26
11.6	<u>Restoration in Lieu of Cash Settlement</u> .....	26
11.7	<u>No Contributions</u> .....	26
11.8	<u>Owner's Personal Insurance</u> .....	26
SECTION 12		
	RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN .....	27
12.1	<u>Reconstruction</u> .....	27
12.2	<u>Condemnation and Eminent Domain</u> .....	27
12.3	<u>Termination and Liquidation</u> .....	27
12.4	<u>Notice</u> .....	27
12.5	<u>Association's Authority</u> .....	27
SECTION 13		
	EASEMENTS .....	27
SECTION 14		
	COMPLIANCE AND REMEDIES .....	29
SECTION 15		
	AMENDMENTS .....	32
SECTION 16		
	RIGHTS OF ELIGIBLE MORTGAGEES .....	32
16.1	<u>Consent to Certain Amendments</u> .....	32
16.2	<u>Consent to Certain Actions</u> .....	33
16.3	<u>Consent to Subdivision</u> .....	33
16.4	<u>No Right of First Refusal</u> .....	33

16.5	<u>Priority of Lien</u> .....	33
16.6	<u>Priority of Taxes and Other Charges</u> .....	33
16.7	<u>Priority for Condemnation Awards</u> .....	33
16.8	<u>Requirements for Management Agreements</u> .....	34
16.9	<u>Access to Books and Records/Audit</u> .....	34
16.10	<u>Notice Requirements</u> .....	34

SECTION 17

	PROVISIONS BENEFITTING KNOLLWOOD AND OAK RIDGE TRAILS .....	34
17.1	<u>Setbacks and Buffer Fence</u> .....	34
17.2	<u>Maximum Number of Residential Units</u> .....	35
17.3	<u>Elevation of Dwellings</u> .....	35
17.4	<u>Amendment and Enforceability of Section 17.</u> .....	36
17.5	<u>Maintenance of Emergency Barrier</u> .....	36
17.6	<u>Clean-up of Litter</u> .....	36
17.7	<u>Access onto Edgemoor Drive</u> .....	37

SECTION 18

	MISCELLANEOUS .....	37
--	---------------------	----

---

(Above Space Reserved for Recording Data)

**COMMON INTEREST COMMUNITY NO. 1172  
Planned Community**

**LOHMAN'S AMHURST**

**AMENDED AND RESTATED DECLARATION**

This Amended and Restated Declaration (the "Declaration") of Lohman's Amhurst is made, effective on the date of recording hereof, by the Lohman's Amhurst Homeowners Association, Inc., a Minnesota nonprofit corporation (the "Association"), with the approval of the required number of Owners (defined herein) of the lots (defined herein as Units). This Declaration is made for the purpose of subjecting the Property (defined herein) to Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), as a planned community.

**WITNESSETH:**

**WHEREAS**, there is recorded in the office of the Registrar of Titles in and for Hennepin County, Minnesota that certain Declaration of Covenants, Conditions and Restrictions for Lohman's Amhurst as Document No. 1404255, as amended and/or supplemented by Document Nos. 1407880, 1417872, 1475878, 1532759, 1564751, 1579817, 1599643, 1609439, 1619083, 1636870 and 1636871 (collectively the "Existing Declaration"), and

**WHEREAS**, the Existing Declaration established a plan for the use, operation, maintenance and preservation of the real estate described in Exhibit A attached hereto (the "Property"), and

**WHEREAS**, the Association and the Owners desire to provide for the preservation of the residential character, value, architectural style and architectural uniformity of the Property, and for the maintenance of open spaces and other common facilities, and

**WHEREAS**, the Association and the Owners desire to amend and restate the Existing Declaration in accordance herewith, and to subject the Property to the Act, and to the covenants, restrictions, easements, charges and liens set forth herein, pursuant to the requirements and procedures prescribed by Section 515B.1-102(d) of the Act, and

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

**NOW THEREFORE**, the Association, with the written approval of at least seventy-five percent of the Owners (at one vote per lot), hereby declares that (i) this Declaration shall constitute covenants to run with the Property, and that the Property and all real estate that may be annexed thereto shall be subject to the Act as a planned community, and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein and their heirs, personal representatives, successors and assigns, and (ii) the Existing Declaration shall be revoked and superseded in its entirety by this Declaration upon its recording.

## 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 Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act.

1.2 "**Association**" means the Lohman's Amhurst Homeowners Association, Inc., a nonprofit corporation created under Minnesota Statutes Chapter 317A, whose members consist of all Owners as defined herein.

1.3 "**Assessments**" means all assessments levied by the Association pursuant to Section 6 of this Declaration, including, without limitation, annual Assessments, special Assessments and limited Assessments.

1.4 "**Board**" means the Board of Directors of the Association as provided for in the Bylaws.

1.5 **"Bylaws"** means the Amended and Restated Bylaws governing the operation of the Association, as amended from time to time.

1.6 **"Common Elements"** means all parts of the Property except the Residential Units and Garage Units, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The Common Elements owned by the Association as of the date of this Declaration are legally described in Exhibit C attached hereto.

1.7 **"Common Expenses"** means expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including Assessments and items specifically otherwise identified as Common Expenses in the Declaration or Bylaws.

1.8 **"Dwelling"** means a building, or a part of a building if there is more than one Dwelling per building, occupying one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Residential Unit. A Dwelling includes, without limitation, any garage attached thereto or otherwise included within the boundaries of the Residential Unit within which the Dwelling is located.

1.9 **"Eligible Mortgagee"** means any Person owning a mortgage on any Unit, (i) which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit, and (ii) which mortgage holder has requested the Association, in writing, to notify the mortgage holder about any proposed action which requires approval by a specified percentage of Eligible Mortgagees.

1.10 **"Garage Building"** means a building designed and intended for parking of vehicles, and located within the boundaries of a Garage Unit.

1.11 **"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.

1.12 **"Limited Common Elements"** means a portion of the Common Elements allocated by the Declaration or by operation of Section 515B.2-102(d) or (f) of the Act for the exclusive use of one or more than one Residential Unit or Garage Unit, but fewer than all of the Residential Units and Garage Units.

1.13 **"Member"** means a Person who is a member of the Association by reason of being an Owner as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.

1.14 **"Occupant"** means any person or persons, other than an Owner, in possession of a Residential Unit or a Garage Unit or residing in a Residential Unit.

1.15 **"Owner"** means a Person who owns a Residential Unit and/or a Garage Unit, but excluding contract for deed vendors, mortgagees, and other secured parties within the meaning of

Section 515B.1-103(30) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.

1.16 "**Party Wall**" means the shared interior wall between two Dwellings or Garage Buildings.

1.17 "**Person**" means a natural individual, corporation, limited liability company, partnership, limited liability partnership, trustee, other or legal entity capable of holding title to real property.

1.18 "**Plat**" means one or more than one plat depicting all or a portion of the Property pursuant to the requirements of the Act, including any amended or supplemental Plat or replat recorded from time to time in accordance with the Act. The recorded plat(s) for the Property existing as of the date of this Declaration, as amended, shall constitute the Plat(s).

1.19 "**Property**" means collectively all of the real property submitted to this Declaration, including the Dwellings and Garage Buildings and all other 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.

1.20 "**Rules and Regulations**" means the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.

1.21 "**Unit**" means a part of the Property, designated as follows:

1.21.1 "**Residential Unit**" means any platted lot upon which a Dwelling is located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements. A schedule of the Residential Units is set forth on Exhibit B.

1.21.2 "**Garage Unit**" means any platted lot upon which a Garage Building is located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements. A schedule of the Residential Units is set forth on Exhibit B.

Residential Units and Garage Units may be referred to herein collectively as "Units." The term "Units," as used in this Declaration means (i) multiple "Residential Units," (ii) multiple "Garage Unit," or (iii) Residential Units and Garage Units together.

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

## SECTION 2

### DESCRIPTION OF UNITS AND APPURTENANCES

2.1 Units. There are two hundred seventy-six Residential Units and two hundred seventy-seven Garage Units. Residential Units are restricted to residential use. Garage Units are

restricted to the parking of Owners' and Occupants' motor vehicles, bicycles, and related storage as authorized by the Board, all of which uses are considered to be incidental residential uses. The Owner of a Residential Unit must at all times own a Garage Unit, and one Garage Unit must be conveyed with each Residential Unit. Each Residential Unit and each Garage Unit constitutes a separate parcel of real estate. No additional Residential Units or Garage Units may be created by the subdivision or conversion of Residential Units or Garage Units pursuant to Section 515B.2-112 of the Act; however, Residential Units or Garage Units may be altered or combined as provided in the Act. The Unit identifiers and locations of the Residential Unit and each Garage Unit are as shown on the Plat, which is incorporated herein by reference, and a schedule of the Residential Units and Garage Units is set forth on Exhibit B. The Unit identifier for a Residential Unit and Garage Unit shall be its lot and block numbers and the subdivision name.

2.2 Unit Boundaries. The front, rear and side boundaries of each Residential Unit and Garage Unit shall be the boundary lines of the platted lot upon which the Dwelling or Garage Building is located or intended to be located, as shown on the Plat. The Residential Units and Garage Units shall have no upper or lower boundaries. Subject to this Section 2 and Section 3.2., all spaces, structures, and other improvements within the boundaries of a Residential Unit and a Garage Unit are a part of the Residential Unit and Garage Unit, respectively.

2.3 Access Easements. Each Residential Unit and Garage Unit is the beneficiary of an easement for access to a public street or highway on or across the Common Elements, subject to any restrictions set forth in the Declaration.

2.4 Use and Enjoyment of Easements. Each Residential Unit and Garage Unit is the beneficiary of easements for non-exclusive use and enjoyment on and across the Common Elements. A Residential Unit is subject to an exclusive use and enjoyment of any deck, patio or porch allocated to the Residential Unit as a Limited Common Element, subject to any restrictions set forth in the Declaration.

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

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

2.7 Structural Support Easements. Each Residential Unit and Garage Unit shall be subject to and the beneficiary of an easement for structural support in all walls, columns, joists, girders and other structural components located in another Residential Unit or Garage Unit in a Dwelling or Garage Building and contributing to the support of the Dwelling or Garage Building.

2.8 Recorded Easements. The Property is 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 benefitting a Residential Unit or Garage Unit or any other part of the Property run with the land, and shall be permanent, subject only to termination in accordance with the Act or the terms of the easement. Any recorded easement benefitting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by the Declaration.

2.10 Impairment Prohibited. No person shall materially restrict or impair any easement benefitting or burdening the Property, or any equipment or improvements relating to the easement, subject to the Declaration and the right of the Association to impose reasonable Rules and Regulations governing the use of the Property.

2.11 Benefit of Easements. Subject to Section 7.6, all easements benefitting a Residential Unit or Garage Unit shall benefit the Owners and Occupants of the Residential Unit or Garage Unit, and their families and guests. However, an Owner who has delegated the exclusive right to occupy the Residential Unit or Garage Unit to an Occupant or Occupants, whether by a lease or otherwise, does not have the use of, and other easement rights in, the Property during such delegated occupancy, except (i) as a guest of an Owner or Occupant, (ii) to maintain the Residential Unit or Garage Unit, or (iii) in connection with the inspection or recovery of possession of the Residential Unit or Garage Unit from the Occupant pursuant to a lease or the law.

### SECTION 3

#### **COMMON ELEMENTS, LIMITED COMMON ELEMENTS AND ADDITIONAL PROPERTY**

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

3.1.1 All of the Property not included within the Residential Units and Garage Units constitutes Common Elements. The Common Elements include, but are not limited to, (i) those parts of the Property described in Exhibit C, (ii) all pipes, conduit, ducts, wires, load bearing walls and other components within a Residential Unit or a Garage Unit which serve other Residential Units, Garage Units, or the Common Elements, and (iii) all areas and items listed in this Section 3 or designated as Common Elements on the Plat or by the Act. The Common Elements are owned by the Association for the benefit of the Owners and Occupants.

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 Residential Unit and Garage Unit and its Owners and Occupants; subject to (i) the specific rights of Owners and Occupants in easements for decks and patios designed to serve exclusively their Residential Units and in Limited Common Elements appurtenant to their Residential Units and Garage

Units and (ii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.

3.1.3 Except as provided to the contrary in this Declaration, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.

3.1.4 Except as provided to the contrary in this Declaration, 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 Residential Units and Garage Units to which they are allocated. The rights to the use and enjoyment of the Limited Common Elements are automatically conveyed with the conveyance of such Residential Units and Garage Units. The Limited Common Elements are described and allocated to the Residential Units and Garage Units as follows:

3.2.1 Those items or areas designed as Limited Common Elements by the Act are allocated as indicated therein.

3.2.2 Chutes, flues, ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components or fixtures lying partially within and partially outside the boundaries of a Residential Unit or Garage Unit, and serving only that Residential Unit or Garage Unit, are allocated to the Residential Unit or Garage Unit they serve. Any portion of such installations serving or affecting the function of more than one Residential Unit or Garage Unit or any portion of the Common Elements is a part of the Common Elements, but is not a Limited Common Element.

3.2.3 Improvements such as decks, balconies, porches, patios, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors and windows, and air conditioning equipment constructed as part of the original construction to serve a single Residential Unit or Garage Unit, and replacements and modifications thereof authorized pursuant to Section 8, if located outside the boundaries of the Residential Unit or Garage Unit, are Limited Common Elements allocated exclusively to that Residential Unit or Garage Unit.

3.2.4 Heating, ventilating or air conditioning equipment serving only a certain Residential Unit or Garage Unit, or a group of Residential Units or Garage Units, and located wholly or partially outside boundaries of such Residential Unit(s) or Garage Unit(s), are Limited Common Elements allocated to such Residential Unit(s) or Garage Unit(s) served by such equipment.

3.3 Annexation of Additional Property. Other real property may be annexed to the Property, and subjected to this Declaration as additional Residential Units, Garage Units, Common

Elements, Limited Common Elements, or any combination thereof, by the vote of Owners of Residential Units to which are allocated at least sixty-seven percent of the votes in the Association. Upon such approval, the Association shall be authorized to execute an amendment to the Declaration and Plat, if required, and all other documents necessary to complete the annexation of the other real property to the Property, on behalf of all Owners, secured parties and any other Persons holding an interest in the Property, and to take all other actions necessary to complete such annexation. If additional Residential Units or Garage Units are added, the voting rights and common expense obligations shall be reallocated among all Residential Units and Garage Units in accordance with the formula set forth in Section 4.2.

## **SECTION 4**

### **ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS**

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

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

4.2 Voting and Common Expenses. Voting rights are allocated equally among the Residential Units; no voting rights are allocated to Garage Units. Common Expense obligations are allocated equally among the Residential Units and Garage Units, except that other allocations of Assessments shall be permitted as provided in Sections 6.3 and 6.4.

4.3 Appurtenant Rights and Obligations. The ownership of a Residential Unit and a Garage Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights and obligations, and the title to such Units, shall not be separated nor conveyed separately. Any conveyance, encumbrance, judicial sale or other transfer of any interest in a Residential Unit or Garage Unit separate from the title to the Residential Unit or Garage Unit, shall be void. The allocation of the rights and obligations described in this Section 4 may not be changed, except in accordance with the Governing Documents and the Act.

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who needs not be an Owner, may cast the vote allocated to such Owner's Residential Unit at meetings of the Association; provided, that if there are multiple Owners of a Residential 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 the Property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

5.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents and the Act. The Association shall, subject to the rights of the Owners set forth in the Governing Documents and the Act, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, the Act and the statute under which the Association is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual 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 the Rules and Regulations, (ii) improving, 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 Bylaws. The Association shall have Bylaws. The Bylaws, and any amendments thereto, govern the operation and administration of the Association, shall be binding on all Owners and Occupants, and need not be recorded.

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 Association and regulating the use of the Property;

provided, that the Rules and Regulations must be reasonable, lawful and consistent with the governing documents and the Act. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

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.

5.8 Resale Disclosure Certificates. Pursuant to Section 515B.4-107 of the Act, in the event of a resale of a Residential Unit and a Garage Unit by a Owner, that Owner shall furnish to the purchaser a resale disclosure certificate containing the information required by Section 515B.4-107(b) of the Act. Pursuant to Section 515B.4-107(d) of the Act, the Association, within ten days after a request by an Owner or the Owner's authorized representative, shall furnish the resale disclosure certificate. The Association may charge a reasonable fee for furnishing the resale disclosure certificate and any documents related thereto.

## SECTION 6

### ASSESSMENTS

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

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared by all Residential Units and Garage Units in accordance with the allocation formula set forth in Section 4.2. Annual Assessments shall be payable in equal monthly installments. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of the Common Elements and those parts of the Residential Units and Garage Units for which the Association is responsible to maintain, repair or replace. Except for the variations authorized by Section 6.4, and except for premiums on insurance carried by the Association, the increase in the annual Assessment for any fiscal year shall not exceed ten percent of the previous year's annual Assessment unless the increase is approved by the vote of at least sixty-seven percent of those Owners voting, in person or by proxy,

at a meeting called for that purpose, or voting by written ballot. Notice of the meeting or ballot voting shall be sent to all Owners not less than twenty-one days nor more than thirty days in advance of the meeting or date for the return of the written ballot, as applicable.

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 Residential Units and Garage Units equally. Among other things, special Assessments shall be used for the purpose of defraying in whole or in part (i) the cost of any unforeseen and unbudgeted 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, or voting by mail.

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

6.4.1 The costs of property insurance under Section 11.1.1 shall be assessed equally, and the costs of common utilities may be assessed equally among all Residential Units and Garage Units or groups of Residential Units and Garage Units, or in proportion to usage.

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

6.4.3 Late charges, fines and interest may be assessed as provided in Section 14.

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

6.4.5 If any damage to the Common Elements or another Residential Unit or Garage 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, or any increase in insurance rates directly attributable to the act or omission, exclusively against the Residential Unit and/or Garage Unit owned by that Owner to the extent that the damage is not covered by insurance.

6.4.6 If any Assessment or installment of an Assessment assessed against a Residential Unit or Garage Unit becomes more than thirty days past due, then the

Association may, upon at least ten days' written notice to the Owner, declare the entire amount of the Assessment immediately due and payable in full.

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

Assessments levied under Sections 6.4.1 through 6.4.5 may, at the Board's discretion, be assessed as a part of, or in addition to, the other Assessments levied under Section 6.

6.5 Liability of Owners for Assessments. The obligation of an Owner to pay Assessments with respect to the Owner's Residential Unit and Garage Unit shall commence at the time that the owner takes title to the Residential Unit and Garage Unit. The Owner at the time an Assessment is payable with respect to the relevant Residential Unit and Garage Unit is personally liable for the share of the Common Expenses assessed against such Residential Unit and Garage Unit. Personal liability for Assessments shall be prorated where different owners own a Residential Unit or Garage Unit during the same year. Where there are multiple Owners of a Residential Unit or Garage Unit, the liability of each Owner of that Residential Unit or Garage Unit is joint and several. The liability is absolute and unconditional. No Owner is exempt from liability for payment of Assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Residential Unit or Garage Unit, by the waiver of any other rights, by reason of any claim against the Association or its officers, directors or agents, or by reason of the Association's failure to fulfill any duties under the Governing Documents or the Act.

6.6 Assessment Lien. The Association has a lien on a Residential Unit and a Garage Unit for any Assessment levied against that Residential Unit and Garage 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 as authorized by Section 515B.3-102(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 Assessments may be foreclosed against a Residential Unit and a Garage Unit under the laws of the state of Minnesota (i) by action, or (ii) by advertisement. The Association shall have a power of sale to foreclose the lien in a like manner as a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Residential Unit or Garage Unit so acquired. The Owner and any other Person claiming an interest in the Residential Unit or Garage Unit, by the acceptance or assertion of any interest in the Residential Unit or Garage Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition to its foreclosure 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 Residential Unit or Garage Unit.

6.8 Lien Priority; Foreclosure. A lien for Assessments is prior to all other liens and encumbrances on a Residential Unit or Garage Unit except (i) liens and encumbrances recorded before the recording of the Declaration, (ii) any first mortgage on the Residential Unit or Garage Unit, and (iii) liens for real estate taxes and other governmental Assessments or charges against the Residential Unit or Garage Unit. Notwithstanding the foregoing, if a first mortgage on a Residential Unit or Garage Unit is foreclosed, the first mortgage was recorded on or after the date of recording of the Declaration, 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 Residential Unit or Garage Unit subject to the Association's lien against the Residential Unit or Garage Unit for unpaid Assessments levied pursuant to Sections 515B.3-115(a), (e)(1) to (3), (f), and (i) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

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

6.10 Governmental Assessments. If a governmental assessment or other charge is levied against any Residential Units, Garage Units or the Common Elements for improvements to roadways, utilities or other infrastructure improvements serving the Property, the Association shall have authority, but shall not be obligated, to allocate and levy such assessments or charges equally against all Residential Unit and Garage Units, notwithstanding the fact that the levy made by the municipality or other governmental authority affects only certain of the Residential Units and Garage Units or the Common Elements.

## **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 Residential Unit or Garage Unit, covenant and agree that, in addition to any other restrictions which may be imposed by the Act or the Governing Documents, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

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

7.2 Subdivision Prohibited. Except as permitted by the Act, no part of the Common Elements may be subdivided or partitioned without the prior unanimous written approval of the Owners and secured parties holding first mortgages on the Residential Units and Garage Units.

7.3 Residential Use and Occupancy. Residential Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential Dwellings, and not for transient, hotel, commercial, business nor other non-residential purposes. Occupancy of the Residential Units shall be limited to a maximum of two persons in a one bedroom Residential Unit, four persons in a two bedroom Residential Unit and six persons in a three bedroom Residential Unit, subject to any differing requirements imposed by any governmental authority having jurisdiction over the Property.

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

7.4.1 An Owner or Occupant residing in a Residential Unit may keep and maintain his or her business or professional records in such Residential Unit and handle matters relating to such business by telecommunications or correspondence therefrom; provided, that such uses (i) are incidental to the residential use, (ii) do not involve physical alteration of the Residential Unit, (iii) are permitted by and comply with all governmental laws, ordinances and regulations, (iv) do not involve any observable business activity such as signs, advertising displays, regular deliveries, or frequent visitation to or use of the Residential Unit, by customers, employees or vendors, and (v) do not involve disturbing noise, air pollution, safety hazards or increased insurance risk.

7.4.2 The Association may maintain offices on the Property for management and related purposes.

7.5 Leasing. Leasing of Residential Units and Garage Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) a Garage Unit may be leased only with the lease of the Residential Unit owned by the Owner of the Garage Unit, (ii) no Residential Unit or Garage Unit shall be leased for transient or hotel purposes, (iii) except for a first mortgagee holding title to a Residential Unit or Garage Unit following foreclosure or deed in lieu of foreclosure, no Residential Unit or Garage Unit may be leased for a term of less than six months unless approved in advance by the Board, (iv) no Residential Unit or Garage Unit may be subleased, (v) a Residential Unit or Garage Unit must be leased in its entirety (not by room), (vi) all

leases shall be in writing, and (vii) all leases shall provide that they are subject to the Governing Documents, the Rules and Regulations and the Act, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Any lease of a Residential Unit or Garage Unit (except for occupancy by guests with the consent of the Owner) for a period of less than thirty days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for hotel or transient purposes. The Association shall be entitled to a copy of the lease promptly upon receipt. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the leasing of Residential Units and Garage Units.

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

7.7 Parking. Garage Units and other parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. Garages, whether in a Garage Unit or Residential Unit, shall not be converted to other uses or used for storage or other purposes which would prevent the parking of at least one automobile or a similar vehicle in each garage. Subject to the provisions of this Section 7.7, the use of garages, whether in a Garage Unit or Residential Unit, and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation (i) the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property and (ii) the time period that vehicles may be parked in other outside parking areas.

7.8 Animals. The Board shall have the exclusive authority to regulate, by Rules and Regulations, the keeping of animals on the Property; provided, that the Board may only permit, and shall not prohibit, dogs, cats, small birds, small fish, and other animals generally recognized as common domestic house pets (collectively referred to as "pets"). The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans. The following conditions shall apply to all pets allowed by the Board to be kept on the Property:

7.8.1 Rules and Regulations may be adopted by the Association to regulate pets on the Property including, but not limited to, the type and number of pets allowed to be kept in a Residential Unit.

7.8.2 Pets shall be kept solely as common domestic house pets and/or as statutorily authorized "service animals" used by handicapped persons, and not for any other purpose. No animal of any kind shall be raised or bred, or kept for business or commercial purposes by any Person upon any part of the Property.

7.8.3 Pets shall not be allowed to make an unreasonable amount of noise, nor to become a nuisance or a threat to the safety of Owners, Occupants and their guests.

7.8.4 Pets shall be housed only within the Dwellings. No structure, fence or enclosure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Property, except as approved pursuant to Section 8.

7.8.5 Pets shall be under control at all times when outside the Residential Unit.

7.8.6 The Board shall have authority to determine in its sole and absolute discretion whether a particular pet shall be permanently removed from the Property based upon the pet's behavior or the failure of the pet's owner to comply with this Section 7, applicable governmental restrictions, laws or ordinances, or any additional restrictions approved by the Board; provided, that such removal shall be subject to Section 14.3.

7.8.7 An Owner shall be liable to the Association for the cost of repair of any damage to the Property, or the expenses associated with any personal injury, caused by animals kept within that Owner's Residential Unit.

7.8.8 Any fine, or costs for repair or injury, imposed upon an Owner for a failure to comply with any pet restrictions shall be an Assessment against the Owner's Residential Unit and/or Garage Unit.

7.9 Signs and Personal Property. The erection, keeping or use of signs and personal property on the exterior of a Dwelling, or other parts of a Residential Unit or Garage Unit visible from the exterior, shall be subject to review and regulation as provided in Section 8.

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

7.11 Conformance 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 or Occupant.

7.12 Alterations. Alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, decorative or otherwise (collectively referred to as "alterations") shall not be made, nor caused or allowed to be made, by any Owner or Occupant, or their guests, in any part of the Common Elements, or in any part of a Residential Unit or Garage Unit which affects the Common Elements or another Residential Unit or Garage Unit, or which is visible from the

exterior of the Residential Unit or Garage 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.

7.13 Time Shares Prohibited. The time share form of ownership, or any comparable form of lease, occupancy rights or ownership which has the effect of dividing the ownership or occupancy of a Residential Unit or Garage Unit into separate time or use periods, is prohibited.

7.14 Access to Units. In case of emergency, the exterior portions of the Residential Units and Garage Units and Limited Common Elements are subject to entry, without notice and at any time, by an officer or member of the Board of the Association, by the Association's management agents or by any public safety personnel. Such entry is also authorized for maintenance purposes under the conditions prescribed in Section 9 and for enforcement purposes under Section 16.

## SECTION 8

### ARCHITECTURAL STANDARDS

8.1 Restrictions on Alterations. One of the purposes of this Declaration is to ensure that those parts of the Residential Units and Garage Units which are visible from the exterior be kept architecturally attractive and uniform in appearance. Therefore, except as set forth in Section 8.5, the following restrictions and requirements shall apply to alterations on the Property:

8.1.1 Except as expressly provided in this Section 8, no modifications, improvements, repairs or replacements of any type, whether temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "alterations"), including, but not limited to, any structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, antenna or other type of sending or receiving apparatus, sign, flag, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other improvements to or alternations of any Residential Unit or Garage Unit which (i) affects the Common Elements, or other Limited Common Elements, or another Residential Unit or Garage Unit, or (ii) which is visible from the exterior of the Residential Unit or Garage Unit, shall be, or caused or allowed to be, commenced, erected or maintained in any part of the Common Elements or in any Residential Unit or Garage Unit unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board or a committee appointed by it.

8.1.2 The Board may appoint, supervise and disestablish an architectural 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 committee where appropriate. The architectural committee shall be subject to the supervision of the Board.

8.1.3 The Board shall establish the criteria for approval of alterations, which shall include and require, at a minimum:

- 8.1.3.1 substantial uniformity of color, location, type and design in relation to existing Residential Units and Garage Units,
- 8.1.3.2 comparable or better quality of materials as used in existing improvements on the Property,
- 8.1.3.3 ease of maintenance and repair,
- 8.1.3.4 adequate protection of the Property, the Association, Owners, and Occupants from liability and liens arising out of the proposed alterations,
- 8.1.3.5 substantial preservation of other Owners' sight lines, if material, and
- 8.1.3.6 compliance with governmental laws, codes and regulations.

8.1.4 The Board, or the appointed architectural committee if so authorized by the Board, shall be the sole judge of whether such criteria are satisfied. The purpose of the criteria established by the Board shall be (i) to preserve the architectural style and uniformity, the quality and value of the Property, and (ii) to protect the Association and the Owners from undue liability arising out of the alterations or any construction activity in connection therewith.

8.1.5 Alterations may be made in compliance with Section 515B.2-113 of the Act, and relocation of the boundaries of the Residential Units and Garage Units may be made in compliance with Section 515B.2-114 of the Act.

8.1.6 Approval of alterations which encroach upon another Residential Unit or Garage Unit or the Common Elements shall create an appurtenant easement for such encroachment in favor of the Residential Unit or Garage Unit with respect to which the alterations are approved, notwithstanding any contrary requirement in the Governing Documents or the Act. A file of the resolutions approving all alterations shall be maintained permanently as a part of the Association's records.

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

8.2.1 Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board, shall be submitted to the Board at

least sixty days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.

8.2.2 The Board shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within sixty days after receipt of said plans and specifications and all other information requested by the Board, then approval shall be deemed to be granted; provided, that the alterations are done in accordance with the plans, specifications and related information 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 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, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Residential Unit and Garage Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Residential Unit and Garage Unit and to restore any part of the Residential Unit and Garage Unit to its prior condition if any alterations were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Residential Unit and Garage Unit.

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

8.5 Exemptions. The requirements set forth in this Section 8 (except Section 8.4) shall not apply to the following: the following antennas may be installed on a Residential Unit, Garage Unit or Limited Common Element, as permitted by applicable federal law: (i) one antenna one meter or less in diameter for the purpose of receiving direct broadcast/satellite service or video programming services, or (ii) any antenna for receiving television broadcast signals. However, the Board or an architectural committee appointed by it may require that the antenna be installed so as to minimize its visibility from the exterior and otherwise camouflage its appearance, unless such requirements would (i) unreasonably delay installation, (ii) unreasonably increase the cost of installation, maintenance or use of the antenna, or (iii) preclude reception of an acceptable quality signal. Such installation shall be subject to all governmental laws, codes and ordinances, including any limit on the height of television broadcast antennas. The Board shall have authority to impose further, reasonable requirements consistent with law. The Owner or Occupant of the Residential

Unit or Garage Unit shall perform and pay for the installation, maintenance and repair of the installation.

## SECTION 9

### MAINTENANCE

9.1 Maintenance by Association. The Association shall, at its expense, maintain, repair and replace (collectively referred to as “maintain” or “maintenance”) the Common Elements and all improvements thereon. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards of appearance for the Property, the Association shall maintain the exteriors of the Dwellings and Garage Buildings and of the exteriors of the Residential Units and Garage Units in accordance with this Section 9, and, subject to the last paragraph of this Section 9.1, shall pay the cost thereof from the Association's Common Expense funds unless indicated to the contrary, as follows:

9.1.1 Maintenance of siding, soffits, fascia, trim, masonry, brick, chimney caps, railings, house numbers, bath, cooking and combustion air vents. Such maintenance shall include caulking, tuckpointing, and related maintenance, as applicable.

9.1.2 Maintenance of roofs and roof decking (exclusive of structural supports), including, without limitation, shingles, vents, flashings, gutters, downspouts, and rain diverters; remove snow and ice dams from roofs but only if the Association determines that ice dams are causing leaks into the interior of the Dwellings or Garage Buildings covered by those roofs.

9.1.3 Maintenance of window frames, doors, door sidelights, door frames, and patio doors and patio door frames.

9.1.4 Maintenance of driveways, sidewalks, front entry steps, retaining walls, exterior privacy fences between Residential Units and Garage Units, and walking paths; snow removal on parking areas, sidewalks, and front entry steps (but not on patios or in courtyard areas); and lawn mowing.

9.1.5 Maintenance of irrigation systems not installed by past or present Owners.

9.1.6 Clean, paint and caulk those portions of the exteriors of the Dwellings, Garage Buildings, Residential Units and Garage Units as determined by the Association.

9.1.7 Maintenance of garage door panels (excluding hardware) and related trim.

9.1.8 Maintenance of all wiring, valves, disconnects and related devices that serve more than one Unit, whether or not underground.

9.1.9 Maintenance of all utilities, wiring, valves, disconnects and related devices that serve a Residential Unit or Garage Unit and that are located within the Residential Unit or Garage Unit but outside of the Dwelling or Garage Building, whether or not underground. The cost of such maintenance shall be assessed against the Residential Unit or Garage Unit upon which the maintenance is performed, and charged to the Owner of that Residential Unit or Garage Unit, pursuant to Section 6.4.

9.1.10 Unless authorized under Sections 9.1 or 9.2, the Association's maintenance obligations shall exclude Dwelling and Garage Building walls, floors, ceilings and all other structural elements of Dwellings and Garage Buildings; patios; decks (including, but not limited to, railings, supports, joists, posts and footings); insulation; foundations and foundation walls (except exterior surface); garage floors; garage door hardware, openers and weatherstripping; windows and other glass (including all seals in windows); window screens; patio door screens; storm windows; storm doors; skylights and their seals; skylight frames; laundry and dryer vents; flues; flue or chimney cleaning; mechanical, electrical, plumbing and sewer systems; irrigation systems within Residential Units or Garage Units installed by Owners; air conditioners and pads/support bases; sump pumps and related discharge systems; light fixtures; light bulb replacement; faucets; and any other items not specifically required to be maintained by the Association under Section 9.1 or Section 9.2.

The Association shall have easements as described in Section 13 to perform its obligations under this Section 9.1. The Association may, by Rules and Regulations, further define its obligations within the categories of maintenance obligations set forth in this Section 9.1 or added pursuant to Section 9.2. All maintenance performed by the Association under this Section 9 shall be funded by annual Assessments, unless otherwise provided in Section 9.1. Notwithstanding anything to the contrary in this Section 9, the Association reserves the right to levy and allocate the cost of any maintenance performed under this Section 9 to one or more than one Residential Unit or Garage Unit, pursuant to Section 6.4.

9.2 Optional Maintenance by Association. In addition to the maintenance described in Section 9.1, the Association may, with the approval of a majority of the total votes of the Association cast in person or by proxy at a meeting called for such purposes, or by written ballot, provide additional exterior maintenance to the Residential Unit, Garage Units, Dwellings or Garage Buildings. Upon such approval, no amendment to the Declaration shall be necessary to establish the Association's additional maintenance responsibilities.

9.3 Maintenance by Owner. Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.2, all maintenance of the Residential Units and Garage Units shall be the sole obligation and expense of the Owners thereof. Owners and Occupants shall keep and maintain their Residential Units and Garage Units and related Limited Common Elements in good, clean and sanitary condition, and in compliance with all applicable government requirements, and the Rules and Regulations. The Association may require that any exterior maintenance of the Residential Units and Garage Units to be performed by the Owner be accomplished pursuant to specific criteria established by the Association. The Association may also

undertake any exterior maintenance of the Residential Unit or Garage Unit which the responsible Owner fails to or improperly performs and assess the Residential Unit and Garage Unit, and charge the Owner, for the cost thereof. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Residential Unit or Garage Unit. Owners and Occupants shall promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain.

9.4 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Declaration, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, or by a condition in a Residential Unit or Garage Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Residential Unit or Garage Unit to do so). The cost of the repair or correction may be assessed against the Residential Unit or Garage Unit of the Owner responsible for the damage, and shall be a personal obligation of the Owner and a lien against that Owner's Residential Unit or Garage Unit. Notwithstanding the foregoing, in the case of Party Walls, the Owners of the affected Dwellings or Garage Buildings shall be liable as provided in Section 10.

9.5 Easements for Maintenance. Each Residential Unit and Garage Unit and the Common Elements and Limited Common Elements are subject to appurtenant easements in favor of the Association for maintenance and reconstruction of those portions of the Property for which the Association has responsibility. Each Owner shall afford to the Association, and its management agents and employees, access at reasonable times and upon reasonable notice, to and through the Residential Unit or Garage Unit and its Limited Common Elements for maintenance; provided, that access may be had without notice and at any time in case of emergency.

9.6 Maintenance of Ponding Areas. Maintenance of certain ponding areas on the Property and related improvements shall be governed by the following procedures:

9.6.1 The Association shall maintain (i) all ponding areas upon the Property not installed by an Owner or Occupant, (ii) the equalizer pipe between the ponds near the middle of the Property and at the north end of the Property, and (iii) the discharge pipe extending from the city of Hopkins, Minnesota ("Hopkins") at Bridle Lane located in city of St. Louis Park, Minnesota ("St. Louis Park"), and as shown upon the final development plans for Lohman's Amhurst on file with Hopkins and St. Louis Park. In the event the Association fails to perform its obligations under this Section 9.6, St. Louis Park may, after ten days written notice to the president or secretary of the Association, perform such work (directly or with contract personnel) and the Association shall reimburse St. Louis Park or its designee for the cost thereof promptly upon demand by St. Louis Park. The costs, at the option of St. Louis Park, may be assessed pro rata against all Residential Units.

9.6.2 The rights of St. Louis Park and Hopkins to maintain said ponding areas and obtain payment from the Association or to assess such costs against the Residential Units,

as set forth in Section 9.6.1, cannot be rescinded, cancelled nor amended notwithstanding Section 15 of this Declaration.

9.6.3 The Association and all Owners hereby waive any and all procedural and substantial objections to assessments by St. Louis Park or Hopkins under Section 9.6.1, including any claim that such assessments exceed the benefit of the services provided by St. Louis Park or Hopkins.

9.6.4 At the option of St. Louis Park or Hopkins, the cost to maintain such ponding areas shall be considered an obligation of the Association and/or a personal obligation of each Owner, which obligation St. Louis Park and Hopkins may enforce as provided by law.

## SECTION 10

### PARTY WALLS

10.1 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

10.2 Repair and Maintenance. The Owners of the Residential Units and Garage Units which share the Party Wall shall be responsible for the maintenance repair and replacement of the Party Wall in equal proportions; provided, (i) that any maintenance, repair or replacement necessary due to the acts or omissions of a certain Owner or Occupant sharing such Party Wall shall be paid for by such Owner, and (ii) that the Association may, at its discretion, contract for and supervise the repair of damage caused by an Owner or Occupant and assess the Owners for their respective shares of the cost to the extent not covered by insurance. Such cost shall be a personal obligation of the affected Owner(s) and a lien against the Owners' Residential Unit(s) and Garage Unit(s).

10.3 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has use of the Party Wall may, with the consent of the Association, restore it, and the other Owner shall promptly reimburse the Owner who restored the Party Wall for his or her share of the cost of restoration thereof. However, the cost of restoration resulting from destruction or other casualty resulting from the acts or omissions of certain Owners shall be the financial responsibility of such Owners, and the Association may assess the responsible Owners for their share of the costs, without prejudice to the right of an Owner to recover a larger contribution from the other Owner. Insurance claims shall be made promptly following any casualty.

10.4 Weatherproofing. Notwithstanding any other provision of this Section, any Owner who, by his or her negligent or willful act, causes or allows a Party Wall to be exposed to the elements, shall bear the whole cost of the repairs necessary for protection against such elements.

10.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Unit and shall pass to such Owner's assigns and successors in title.

10.6 Disputes. Unless otherwise agreed in writing by the Owners sharing a Party Wall, if a dispute arises concerning the Party Wall, and is not resolved within thirty days after the event causing the dispute, then the dispute shall promptly be submitted to mediation before a qualified intermediary selected by the Association. If no mediated settlement is reached within ninety days after selection of the mediator, the dispute shall be submitted to binding arbitration under the rules of the American Arbitration Association upon written demand by the Association or any Owner whose Dwelling shares the Party Wall. The decision of the arbitrator or arbitrators shall be final and conclusive of the dispute. The arbitrator(s) and mediator's fees shall be shared equally by the parties, but each party shall pay its own attorneys' fees or other costs to present its case.

## SECTION 11

### INSURANCE

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

11.1.1 Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent of the insurable "replacement cost" of the Property, exclusive of: (i) deductibles; (ii) land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery); and (iii) if authorized by the Board, any or all of the items referred to in Section 515B.3-113(b)(i) through (vii) of the Act. The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverages and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA") or the Secretary of Veterans Affairs ("VA"), if required by one of such agencies as a precondition to their purchase, financing, insuring or guarantee of a mortgage on a Residential Unit or Garage Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, or insurer, guarantor, or servicer of a mortgage, obligating the Association to keep certain specified coverages or endorsements in effect.

11.1.2 Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of One Million Dollars per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and

use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include additional endorsements, coverages and limits necessary to comply with the regulations of the FNMA, the FHA or VA, if required by one of such agencies as a precondition to the purchase, financing, insuring or guarantee of a mortgage on a Residential Unit or Garage Unit.

11.1.3 Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or persons responsible for handling funds belonging to or administered by the Association, if deemed to be advisable by the Board or required by the regulations of any financing-related institution as a precondition to the purchase, insuring, guarantee, or financing of a mortgage on a Residential Unit or Garage Unit. The fidelity bond or insurance shall name the Association as the named insured, and shall comply with the regulations of the FNMA, the FHA or VA, if required by one of such agencies as a precondition to the purchase, financing, insuring, or guarantee of a mortgage on a Residential Unit or Garage Unit. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.

11.1.4 Workers' Compensation insurance as applicable and required by law.

11.1.5 Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.

11.1.6 Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

11.2 Premiums; Improvements; Deductibles. Except as provided in Section 6.4, all insurance premiums shall be assessed and paid as part of an annual Assessment. If improvements and betterments to the Residential Units or Garage Units are covered, any increased cost may be assessed against the Residential Units and Garage Units affected. The Association may, in the case of a claim for damage to one or more than one Residential Unit or Garage Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Residential Units and/or Garage Units affected in any reasonable manner, or (iii) require the Owners of the Residential Units and/or Garage Units affected to pay the deductible amount directly. The Association's decision as to who shall be charged with paying the deductible amount may, but need not, be based on fault.

11.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, including Eligible Mortgagees, which suffer loss. The Association, or any insurance trustee selected

by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association.

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

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

11.4.2 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.

11.4.3 The coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner or Eligible Mortgagee, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

11.4.4 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.

11.5 Cancellation; Notice of Loss. Property insurance and comprehensive liability insurance policies maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least thirty days prior written notice to the Association and to all secured parties holding first mortgages on Residential Units and Garage Units.

11.6 Restoration in Lieu of Cash Settlement. Property insurance policies 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.

11.7 No Contributions. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners or their Eligible Mortgagees.

11.8 Owner's Personal Insurance. Each Owner shall obtain additional personal insurance coverage (commonly known as "gap coverage" or an "HO6" policy) at his or her own expense covering fire and other casualty to the interior of the Owner's Residential Unit and Garage Unit, personal property and the Owner's personal liability. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the

Association, except as to deductible amounts or other items not covered under the Association's policies.

## 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 or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved. Notice of substantial damage or destruction shall be given as provided in Section 16.10.

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 shall govern; provided, (i) that notice shall be given as provided in Section 16.10, (ii) that the Association shall be the attorney-in-fact to represent the Owners in any related proceedings, negotiations, settlements or agreements and (iii) that any awards or proceeds shall be payable to the Association for the benefit of the Owners and the mortgagees of their Residential Units and Garage Units. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and the Governing Documents, as their interests may appear.

12.3 Termination and Liquidation. The termination of Lohman's Amhurst, and the distribution of any proceeds therefrom, shall be governed by the Act. Any distribution of funds shall be based upon the value of the Residential Units and Garage Units as determined by their relative value for property insurance purposes, and shall be made to Owners and their mortgage holders, as their interests may appear, as provided in the Act.

12.4 Notice. The Association shall give written notice of any condemnation proceedings or substantial destruction of the Property to the Eligible Mortgagees entitled to notice under Section 16.10.

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

## SECTION 13

### EASEMENTS

13.1 Easement for Encroachments. Each Residential Unit and Garage 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 Residential Units and Garage Units

for fireplaces, walls, roof overhangs, air conditioning systems, decks, balconies, porches, patios, utility installations and other appurtenances (i) which are part of the original construction of the adjoining Residential Unit, Garage Unit or the Property or (ii) which are added in compliance with Section 8. If there is an encroachment by a Residential Unit or Garage Unit upon another Residential Unit or Garage Unit 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 Residential Unit or Garage Unit, and for the maintenance thereof, shall exist; provided, that with respect to improvements or alterations added pursuant to Section 8, no easement shall exist unless the same has 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.

13.2 Easements for Maintenance, Repair, Replacement and Reconstruction. Each Residential Unit and Garage 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 Residential Units and Garage Units for the purposes of maintenance, repair, replacement and reconstruction of the Residential Units and Garage Units and other improvements located within the Residential Units and Garage Units, and utilities serving the Residential Units and Garage 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 in favor of all public utility companies and other utility providers for the installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable TV and other electronic communications, water, sewer, wells, and similar services, and metering and control devices, which exist or are constructed as part of the development of the Property, or which are referred to in the Plat or otherwise described in this Declaration or other recorded instruments. Each Residential Unit and Garage 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 Residential Units and Garage Units for all such utilities and services. Utilities and related services or systems shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Residential Units and Garage Units by the Owners and Occupants, nor affect the structural or architectural integrity of each Residential Unit and Garage Unit.

13.4 Emergency Access to Units. In case of emergency, all Residential Units, all Garage Units, and the Limited Common Elements are subject to an easement in favor of the Association for access, without notice and at any time, by an officer or member of the Board, by the Association's management agents, or by any public safety personnel for the purpose of addressing the emergency. Such easement shall specifically include, but not be limited to, the right of access to a Residential Unit or a Garage Unit in which a building water shut-off is located. The Board may require that an Owner or Occupant leave keys to the Dwelling and Garage Building with another Owner of his or her choice and to advise the manager or Board of the location(s) of the keys, so as to allow access for emergencies when the Owner or Occupant is absent for extended periods.

13.5 Project Sign Easements. The Common Elements shall be subject to appurtenant, exclusive easements in favor of the Association for the continuing use, maintenance, repair and replacement of all monument signs identifying Lohman's Amhurst and related decorative improvements on the Common Elements.

13.6 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, no Owner or Occupant shall be denied reasonable access to his or her Residential Unit and Garage Unit or the right to utility services thereto. The easements set forth in this Section 13 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 Residential Units and Garage Units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction. All easement rights shall include a right of reasonable access to maintain, repair and replace the utility lines and related equipment.

## SECTION 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, and such amendments thereto as may be made from time to time, and the decisions of the Association. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized in 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, the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

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

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 the greater of (i) twenty-five dollars or (ii) fifteen percent of each late payment of an Assessment or installment thereof, plus interest at up to the highest rate allowed by law, accruing from the first day of the month following the month for which the Assessment installment was due.

14.2.3 In the event any Assessment or installment thereof is more than thirty days past due, all remaining installments of Assessments assessed against the Residential Unit and Garage 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. Ten days advance written 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 Rules and Regulations.

14.2.5 If allowed by the Act, suspend the rights of any Owner to vote if the Assessments with respect to the Owner's Residential Unit or Garage Unit are more than thirty days past due, and suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities, provided, that this suspension of use shall not apply to Limited Common Elements or deck, balcony, porch or patio easements appurtenant to the Residential Unit or Garage Unit, and those portions of the Common Elements providing utilities service and access to the Residential Unit or Garage 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 days thereafter in the case of suspension of use rights, 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 Residential Units and Garage Units.

14.2.7 Enter any Residential Unit or Garage Unit or Limited Common Element in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Dwelling or Garage Building or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Residential Unit or Garage Unit or Limited Common Elements which is causing the violation; provided, that any improvements which are a part of a Residential Unit or Garage 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 any manner authorized by the Act.

14.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 7.8.6, 14.2.4, 14.2.5, 14.2.6 or 14.2.7, the Board shall, upon written request of the offender, grant to the offender a hearing as contemplated by the Act. The hearing may be held before the Board or a committee of three or more disinterested Owners appointed by the Board. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten days within which to request a hearing. The hearing shall be scheduled by the Board/committee and held within thirty days of receipt of the hearing request by the Board/committee, and with at least ten days prior written notice to the offender. If the offending Owner fails to request, or to appear at, the hearing, then the right to a hearing shall be waived and the Board/committee may take such action as it deems appropriate. Hearings shall be conducted in a fair and equitable manner. The decision of the Board/committee and the rules for the conduct of hearings established by the Board, shall be final and binding on all parties. The Board's/committee'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. Any fines to be imposed by the Association may, at the Board's discretion, be retroactive to the date of the violation or offense.

14.4 Lien for Charges, Penalties, Etc. Any Assessments, charges, fines, penalties or interest imposed under this Section shall be a lien against the Residential Unit and Garage 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/committee 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 Association's right to pursue any other remedy.

14.5 Costs for Proceedings and Attorneys' Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Residential Unit and Garage 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 Residential Unit and Garage Unit.

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 Residential Unit or

Garage 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 Residential Unit and Garage Unit.

14.7 Enforcement by Owners. The provisions of this Section shall not limit nor 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**

### **AMENDMENTS**

This Declaration may be amended by the consent of (i) Owners of Residential Units to which are allocated at least seventy-five percent of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 16 as to matters prescribed by Section 16, and (iii) the occupants of the lots platted in Hennepin County, Minnesota, as Oak Ridge Trails and Knollwood required by Section 17.4 as to matters prescribed by Section 17. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary or the President of the Association as to the outcome of the vote, or as to the execution of any agreements or consents, shall be adequate evidence thereof for all purposes, including, without limitation, the recording of the amendment.

## **SECTION 16**

### **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:

16.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least fifty-one percent of the Residential Units and Garage 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, Assessment liens, or priority of Assessment liens; (iii) reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in, or rights to use, the Common Elements or Limited Common Elements; (vi) redefinition of any Residential Unit or Garage Unit boundaries; (vii) convertibility of Residential Units and Garage 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 Residential Units and Garage Units; (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Residential Unit or Garage Unit; (xii) a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or a

Eligible Mortgagee; (xiii) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the common interest community after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit Eligible Mortgagees, insurers or guarantors.

16.2 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent of the Residential Units and of the Garage 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 Lohman's Amhurst; (ii) change the allocations of voting rights, Common Expense obligations or interest in the Common Elements; (iii) partition or subdivide a Residential Unit or Garage Unit except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Common Elements; or (v) use hazard insurance proceeds for purposes other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

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

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

16.5 Priority of Lien. Any holder of a first mortgage on a Residential Unit or Garage Unit, or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Residential Unit or Garage Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Residential Unit or Garage Unit free of any claims for unpaid Assessments or any other charges or liens imposed against the Residential Unit or Garage Unit by the Association which have accrued against such Residential Unit or Garage Unit prior to the acquisition of possession of the Residential Unit or Garage Unit by said first mortgage holder or purchaser; (i) except as provided in Section 6.8 and the Act and (ii) except that any unpaid Assessments or charges may be reallocated among all Residential Units and Garage Units in accordance with their interests in the Common Elements.

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

16.7 Priority for Condemnation Awards. No provision of the Governing Documents shall give an Owner, or any other Person, priority over any rights of the Eligible Mortgagee of the Residential Unit or Garage 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 Residential Unit or Garage 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.

16.8 Requirements for Management Agreements. The term of any agreement for professional management of the Property may not exceed two years. Any such agreement must provide at a minimum for termination without penalty or termination fee by either party, (i) with cause upon thirty days' prior written notice, and (ii) without cause upon ninety days or less prior written notice.

16.9 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive, upon 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 eighty days of the end of the Association's fiscal year. Any institutional guarantor or insurer of a mortgage loan against a Residential Unit or Garage Unit, may require that an audit of the Association's financial statements be made for the preceding year, in which case the Association shall cooperate in having an audit made and a copy given to the requesting party; provided, that the cost for the requested audit shall be paid by the requestor.

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

16.10.1 a condemnation loss or any casualty loss which affects a material portion of the Property or the Residential Unit or Garage Unit securing the mortgage;

16.10.2 a sixty day default on any provision of this Declaration, the Bylaws, or the Association's Articles of Incorporation, as amended and/or supplemented;

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

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

## **SECTION 17**

### **PROVISIONS BENEFITTING KNOLLWOOD AND OAK RIDGE TRAILS**

In the event of any conflict between the provisions of this Section 17 and the other provisions of this Declaration, the provisions of this Section 17 shall control.

17.1 Setbacks and Buffer Fence. A minimum sixty-five foot setback from the western edge of the Property to the Dwellings located on the Residential Units legally described as: Lots 149 thru

152, both inclusive, and Lots 189 thru 194, both inclusive, all in Block 1, Lohman's Amhurst, Hennepin County, Minnesota, and the portion of the Property west of Independence Avenue and two hundred fifty feet South of the southerly border of that portion of the Property legally described as: Lot 201, Block 1, Lohman's Amhurst, Hennepin County, Minnesota, shall be established. Said setback shall be measured to the foundation line of said Dwellings. In addition, a buffer fence and berm are constructed on the western part of the Property distant forty to forty-five feet east of the western edge of the Property and in the area of the large existing vegetation at that point. The original developer of Lohman's Amhurst, Cheyenne Land Company, a partnership (the "Developer"), shall determine the exact redesign of this area subject to approval as constructed. Occupants to the west of the Property living within the areas platted in Hennepin County, Minnesota, as Oak Ridge Trails and Knollwood shall have thirty days after the filing of the Existing Declaration to voice objections to the berm and fence as constructed and thirty days after issuance of the initial certificate of occupancy by St. Louis Park, during which they may raise any objection as to the setback of said Dwellings. After said thirty day periods, approval of the berm, fence and buildings as constructed will be deemed to have been given. Said thirty-day period shall commence to run three days after the mailing of notice of the filing of the Existing Declaration or the issuance of the certificate of occupancy, by certified mail, upon:

John H. Herman  
Suite 930  
Ten South Fifth Street  
Minneapolis, Minnesota 55401

17.2 Maximum Number of Residential Units. The maximum number of Residential Units within the Property shall be two hundred seventy-six and there shall be no more than one Dwelling on each Residential Unit.

17.3 Elevation of Dwellings. There shall be no more than fourteen Dwellings in that portion of the Property legally described as: Lots 149 thru 152, both inclusive, and Lots 189 thru 194, both inclusive, Block 1, Lohman's Amhurst, Hennepin County, Minnesota, and in that portion of the Property west of Independence Avenue and two hundred fifty feet South of the southerly border of that portion of the Property legally described as: Lot 201, Block 1, Lohman's Amhurst, Hennepin County, Minnesota. Ten Dwellings shall be constructed on that portion of the Property legally described as: Lots 149 thru 152, both inclusive, and Lots 189 thru 194, both inclusive, all in Block 1, Lohman's Amhurst, Hennepin County, Minnesota, and four Dwellings shall be constructed on that portion of the Property west of Independence Avenue and two hundred fifty feet south of the southerly border of that portion of the Property legally described as: Lot 201, Block 1, Lohman's Amhurst, Hennepin County, Minnesota. The exteriors of said Dwellings shall consist of brick and cedar. Occupants to the West of the Property living within the areas platted in Hennepin County, Minnesota, as Oak Ridge Trails and Knollwood shall have thirty days after issuance of a certificate of occupancy by St. Louis Park, during which they may raise any objection to said construction. After said thirty day period, approval of the Dwellings as constructed will be deemed to have been given. Said thirty day period shall commence to run three days after the mailing of notice of the issuance of the certificate of occupancy, by certified mail upon:

John H. Herman  
Suite 930  
Ten South Fifth Street  
Minneapolis, Minnesota 55401

Said Dwellings shall be one-story Dwellings only.

17.4 Amendment and Enforceability of Section 17. Any other provisions to the contrary in this Declaration, the provisions in this Section 17 may be amended by the procedures set forth in Section 15 and by two-thirds of the occupants of lots platted in Hennepin County, Minnesota, as Oak Ridge Trails and Knollwood. In addition, it is understood that any occupant of said areas platted as Oak Ridge Trails and Knollwood may request enforcement of Sections 17.1, 17.2, 17.3, 17.5, 17.6, and 17.7 as set forth in those Sections. Notwithstanding the expiration of the thirty-day periods specified in Sections 17.1, 17.2, and 17.3 regarding initial construction, any subsequent construction shall be subject to the requirements of those Sections.

17.5 Maintenance of Emergency Barrier. The Association shall be obligated to maintain, repair and replace as often as may become necessary the locked emergency access gate constructed on the emergency access road (the location of which is describe on Exhibit D attached hereto and made a part hereof) and to snow plow as necessary the emergency access road. In the event the Association fails to perform its obligations under this Section, St. Louis Park may, after ten days written notice to the President or Secretary of the Association, perform such work and the Association shall reimburse St. Louis Park for the cost thereof promptly upon demand. Such cost, at the option of St. Louis Park may be assessed prorata, against all Residential Units. The Developer, the Association, and all Owners hereby waive any and all procedural and substantive objections to assessments by St. Louis Park including any claim that the assessments exceed the benefit. At the option of St. Louis Park the costs to maintain the emergency access gate and road shall be considered an obligation of the Association and/or a personal obligation of each Owner pro rata, enforceable in any way available to St. Louis Park under the law for such an obligation.

17.6 Clean-up of Litter Two clean-ups of litter and other non-natural material of the area west of the fence and berm referred to in Section 17.1 shall be done each year, once immediately after the last snow melt in the spring and once between September 1<sup>st</sup> and September 30<sup>th</sup> in the late fall. In addition, said fence and berm shall be kept in good repair and condition, including painting when needed. Any lease or land conveyance by Developer of the Property shall contain a condition requiring adherence to the terms of this Section by the lessee or buyer and all homeowner associations established by the Developer or the lessee or buyer of the Property, their heirs, successors and assigns. St. Louis Park may, at its option, perform such clean-up and maintenance and the costs shall be considered an obligation of the Association and/or a personal obligation of each Owner pro rata, enforceable in any way available to St. Louis Park under the laws for such an obligation. The Developer, the Association, and all Owners hereby waive any and all procedural and substantive objections to assessments of such costs by St. Louis Park including any claim that the assessments exceed the benefit.

17.7 Access onto Edgemoor Drive. In no event will any emergency access, construction area or permanent access for motor vehicles be requested or provided from the western border of the Property onto Edgemoor Drive or into the city of Minnetonka, Minnesota, provided that an emergency exit is authorized onto Highway 7. In the event the authority for the emergency exit onto Highway 7 is revoked, only emergency exit onto Edgemoor Drive shall be allowed and such exit shall be located on the portion of Edgemoor Drive bounded on both sides by Hopkins. Such emergency exits shall be sealed at all times by a locked gate not less than four feet in height.

## SECTION 18

### MISCELLANEOUS

18.1 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.

18.2 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.

18.3 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 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 Bylaws shall be effective upon receipt by the Association.

18.4 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the Bylaws and any Rules or Regulations, the Act shall control unless it permits the documents to control. As among the Declaration, the Bylaws and any Rules and Regulations, the Declaration shall control, and as between the Bylaws and any Rules and Regulations, the Bylaws shall control.

18.5 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 and the Act.

**IN WITNESS WHEREOF**, the Association, and at least seventy-five percent of the Owners (at one vote per lot), have approved this Declaration, all in accordance with the requirements of the Existing Declaration and the Act.

**LOHMAN'S AMHURST HOMEOWNERS  
ASSOCIATION, INC.**

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

Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, the \_\_\_\_\_ President of Lohman's Amhurst Homeowners Association, Inc., a Minnesota nonprofit corporation, on behalf of the corporation.

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

THIS INSTRUMENT WAS DRAFTED BY:  
Fredrick R. Krietzman, Esq.  
FELHABER, LARSON, FENLON & VOGT, P.A.  
Attorneys at Law  
225 South Sixth Street, Suite 4200  
Minneapolis, Minnesota 55402  
(612) 373-8418

**AFFIDAVIT OF SECRETARY**

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

The undersigned, Secretary of the Lohman’s Amhurst Homeowners Association, Inc., a Minnesota nonprofit corporation, being first duly sworn on oath, hereby swears and certifies that, pursuant to the applicable provisions of the Existing Declaration, the Amended and Restated Declaration of Lohman’s Amhurst (the “Declaration”) has been duly approved by a vote of the Board, and in writing by at least seventy-five percent of the Owners, in compliance with the requirements of the Existing Declaration and the Act. The terms used in this Affidavit shall have the same meaning attached to them in the Declaration.

\_\_\_\_\_  
Secretary

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, the Secretary of the Lohman’s Amhurst Homeowners Association, Inc., a Minnesota nonprofit corporation, on behalf of said corporation.

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

THIS INSTRUMENT WAS DRAFTED BY:  
Fredrick R. Krietzman, Esq.  
FELHABER, LARSON, FENLON & VOGT, P.A.  
Attorneys at Law  
225 South Sixth Street, Suite 4200  
Minneapolis, Minnesota 55402  
(612) 373-8418

**COMMON INTEREST COMMUNITY NO. 1172**

**LOHMAN'S AMHURST**

**EXHIBIT A TO AMENDED AND RESTATED DECLARATION**

**DESCRIPTION OF PROPERTY**

**The legal description of the Property is as follows:**

Lots 1 through 201, inclusive, Block 1, Lohman's Amhurst; Lot 1, Block 2, Lohman's Amhurst; Lots 1 through 125, inclusive, Block 1, Lohman's Amhurst 2<sup>nd</sup> Addition; Lots 1 through 33, Block 2, Lohman's Amhurst 2<sup>nd</sup> Addition; Lots 1 through 133, inclusive, Block 1, Lohman's Amhurst 3<sup>rd</sup> Addition; and Lots 1 through 65, inclusive, Block 2, Lohman's Amhurst 3<sup>rd</sup> Addition; all in Hennepin County, Minnesota.

**COMMON INTEREST COMMUNITY NO. 1172**

**LOHMAN'S AMHURST**

**EXHIBIT B TO AMENDED AND RESTATED DECLARATION**

**SCHEDULE OF RESIDENTIAL UNITS AND GARAGE UNITS**

The Residential Units consist of the following platted lots:

Lots 1 through 8, inclusive, 17 through 24, inclusive, 33 through 40, inclusive, 49 through 56, inclusive, 65 through 72, inclusive, 81 through 90 inclusive, 100 through 107, inclusive, 117 through 124, inclusive, 133 through 140, inclusive, 149 through 152, inclusive, 157 through 164, inclusive, 173 through 180, inclusive, and 189 through 194, inclusive, Block 1, Lohman's Amhurst; Lots 1 through 6, inclusive, 13 through 18, inclusive, 28 through 41, inclusive, 65 through 76, inclusive, 77 through 84, inclusive, 93 through 102, inclusive, and 113 through 118, inclusive, Block 1, Lohman's Amhurst 2<sup>nd</sup> Addition; Lots 1 through 8, inclusive, and Lots 17 through 24, inclusive, Block 2, Lohman's Amhurst 2<sup>nd</sup> Addition; Lots 1 through 8, inclusive, 17 through 24, inclusive, 33 through 40, inclusive, 49 through 56, inclusive, 65 through 74, inclusive, 85 through 92, inclusive, 101 through 108, inclusive, and 117 through 124, inclusive, Block 1, Lohman's Amhurst 3<sup>rd</sup> Addition; and Lots 1 through 6, inclusive, 13 through 20, inclusive, 29 through 38, inclusive, and 49 through 56, inclusive, Block 2, Lohman's Amhurst 3<sup>rd</sup> Addition; all in Hennepin County, Minnesota.

The Garage Units consist of the following platted lots:

Lots 9 through 16, inclusive, 25 through 32, inclusive, 41 through 48, inclusive, 57 through 64, inclusive, 73 through 80, inclusive, 91 through 99, inclusive, 108 through 116, inclusive, 125 through 132, inclusive, 141 through 148, inclusive, 153 through 156, inclusive, 165 through 172, inclusive, 181 through 188, inclusive, and 195 through 200, inclusive, Block 1, Lohman's Amhurst; Lots 7 through 12, inclusive, 19 through 27, inclusive, 42 through 52, inclusive, 53 through 64, inclusive, 85 through 92, inclusive, 103 through 112, inclusive, and 119 through 124, inclusive, Block 1, Lohman's Amhurst 2<sup>nd</sup> Addition; Lots 9 through 16, inclusive, and 25 through 32, inclusive, Block 2, Lohman's Amhurst 2<sup>nd</sup> Addition; Lots 9 through 16, inclusive, 25 through 32, inclusive, 41 through 48, inclusive, 57 through 64, inclusive, 75 through 84, inclusive, 93 through 100, inclusive, 109 through 116, inclusive, and 125 through 132, inclusive, Block 1, Lohman's Amhurst 3<sup>rd</sup> Addition; and Lots 7 through 12, inclusive, 21 through 28, inclusive, 39 through 48, inclusive, and 57 through 64, inclusive, Block 2, Lohman's Amhurst 3<sup>rd</sup> Addition; all in Hennepin County, Minnesota.

**COMMON INTEREST COMMUNITY NO. 1172**

**LOHMAN'S AMHURST**

**EXHIBIT C TO AMENDED AND RESTATED DECLARATION**

**DESCRIPTION OF COMMON ELEMENTS**

Lot 201, Block 1, Lohman's Amhurst, except that part of said Lot 201 lying between the southeasterly extension of the northeasterly and southwesterly lines of Lot 80, Block 1, Lohman's Amhurst, and northerly of a line 5.00 feet southeasterly of and parallel with the southeasterly line of said Lot 80; Lot 1, Block 2, Lohman's Amhurst; the northwesterly 5.00 feet of Lot 80, Block 1, Lohman's Amhurst; Lot 125, Block 1, Lohman's Amhurst 2<sup>nd</sup> Addition; Lot 33, Block 2, Lohman's Amhurst 2<sup>nd</sup> Addition; Lot 133, Block 1, Lohman's Amhurst 3<sup>rd</sup> Addition; and Lot 65, Block 2, Lohman's Amhurst 3<sup>rd</sup> Addition; all in Hennepin County, Minnesota.

**COMMON INTEREST COMMUNITY NO. 1172**

**LOHMAN'S AMHURST**

**EXHIBIT D TO AMENDED AND RESTATED DECLARATION**

**LOCATION OF EMERGENCY ACCESS ROAD**

That part of Tract A, Registered Land Survey No. 885, lying 12 feet either side of a line described as follows:

Commencing at the Northwest corner of Section 19, Township 117, Range 21; thence on an assumed bearing of North 88 degrees 40 minutes East along the North line of said Section 19 a distance of 219.92 feet to the point of beginning of said centerline; thence South 1 degree East 111.44 feet; thence southwesterly 101.11 feet along a tangential curve, concave to the northwest, having a radius of 74.73 feet and a central angle of 77 degrees 31 minutes 10 seconds; thence South 76 degrees 31 minutes 10 seconds East, tangent to last described curve, 86.74 feet; the southwesterly and southerly 60.09 feet along a tangential curve concave to the southeast having a radius of 38.26 feet and a central angle of 90 degrees; thence South 13 degrees 28 minutes 50 seconds East, tangent to last described curve, 35.00 feet and said centerline there terminating.

