

# EVERGREEN ESTATES SERVICE ASSOCIATION, INC.

## DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION is made by Adamar Development, LLC, hereinafter called Developer

### RECITALS

- A. Developer is the owner of the real property described in Schedule "A" of this Declaration and located in the City of West Fargo, ND.
- B. Developer desires to create thereon the community known as Evergreen Estates of Charleswood.
- C. Developer desires to provide for the preservation and enhancement of the property values, amenities and opportunities in said community contributing to the personal and general health, safety and welfare of residents and for the maintenance of the land and improvements thereon, and to this end subjects the real property described in Schedule "A", to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof.
- D. To provide means for meeting the purposes and intents herein set forth, the Developer has incorporated under the laws of the State of North Dakota, a nonprofit corporation to be known as Evergreen Estates Service Association, Inc.

Accordingly, Developer hereby:

- 1) declares that the real property described in Schedule "A" is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, agreements, charges and liens hereinafter set forth;
- 2) Developer hereby delegates and assigns to Evergreen Estates Service Associations, Inc. the powers of maintaining and administering the Common Areas and private driveways, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the residents, subject to the rights of the Developer as hereafter reserved, and
- 3) hereby states and affirms that this Declaration is being executed by the Developer as owner of the real property affected by said Declaration.

## **ARTICLE I**

### ***COVENANTS COMMITTEE***

#### **Section 1.**

##### **A. Composition**

A Covenants Committee shall be established by the Board and consist of not less than three Members of the Association. The Covenants Committee may consist of members of the Board or general members of the Corporation. The President of the Board shall elect a Committee Chairperson to organize meetings, take minutes, and lead discussion of issues at hand.

##### **B. Powers and Duties**

The Covenants Committee shall function in two broad areas: (1) to regulate the external design, appearance, and location of The Properties and improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the Common Areas, and (2) to monitor and, subject to appeal to the Board, enforce compliance with the provisions of the Governing Documents. In furtherance thereof, the Covenants Committee shall:

- 1) Review and approve, modify or disapprove written applications of Owners, excluding the initial construction of a Unit by the Developer with the exception of fences, decks, etc. and the Corporation, for exterior alterations or additions to the Units or Common Areas.
- 2) In accordance with the BYLAWS and Declaration, monitor the Units for compliance with design standards and approved plans for alteration.
- 3) Propose design standards for adoption by the Board.
- 4) Decide cases of alleged infraction of the Governing Documents.
- 5) Propose procedures for the exercise of its duties for adoption by the Board.

##### **C. Failure to Act**

In the event the Covenants Committee fails to approve, modify, or disapprove in writing a correctly filed application within forty-five (45) days, approval will be deemed granted, except that where an application is for a change clearly prohibited by the Governing Documents. A failure to act shall not constitute a waiver of the restriction or an approval.

D. Appeal

An applicant may appeal an adverse Covenants Committee decision to the Board of Directors, which may uphold, reverse or modify such decision by a two-thirds (2/3) vote of the Directors.

E. Funds

The Board of Directors shall annually budget a reasonable fund for the operations of the Covenants Committee, supported by the General Assessment. The Covenants Committee shall be responsible to the Board for the expenditure and management of this fund. The Committee must have written approval of the Board before any suit against a Member is initiated.

F. Election

The Board of Directors shall elect Members of the Committee from time to time to carry out duties of the Covenants Committee.

G. Dismissal

The Board of Directors may remove Members of the Covenants Committee, at any time, by a two-third (2/3) vote of the Directors.

H. Resignation

Members of the Covenants Committee may relinquish membership to the Covenants Committee by giving forty-five days' notice to the President of the Directors.

## **ARTICLE II**

### ***COMMON AREAS***

#### **Section 1. Obligations of the Corporation**

The Corporation, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Members, of the Common Areas conveyed to it, and all improvements thereon. The Corporation shall keep, or cause to be kept, the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

#### **Section 2. Easement of Enjoyment**

A. Common Areas

Subject to the provisions herein, every Owner shall have a right and easement of enjoyment in and to the Common Areas that shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment to the Common Areas.

### **Section 3. Extent of Members' Easements**

The Members' easement of enjoyment created hereby shall be subject to the following:

- A. The right of the Corporation to mortgage any or all of the Common Area's facilities with the assent of two-thirds (2/3) vote of the Members. In the event of a default upon any mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge reasonable admission and other fees as a condition to a continued enjoyment by the Members and, if necessary, to open the enjoyment of such property to a wider public until the mortgage debt is satisfied, whereupon the possession of such properties shall returned to the Corporation and all rights on the Members hereunder shall be fully restored.
- B. The right of the Corporation to convey, dedicate or transfer all or any part of the Common Areas, with the assent of two-thirds (2/3) vote of the Members.
- C. The right of the Corporation to regulate the use of portions of the Common Areas for the benefit of the Members.
- D. The right of the Corporation to grant easements for use of the Common Areas subject to the assent of two-thirds (2/3) vote of the Members.

### **Section 4. Delegation of Use**

Any Member may delegate his right of enjoyment to the Common Area to the members of his family and to his guests, subject to such general regulations as may be established from time to time by the Board of Directors and included within the Declaration.

### **Section 5. Title to Common Areas**

The Developer hereby covenants that it will convey such Common Areas, as same are disclosed on the plat of Charleswood Twenty First Addition to the City of West Fargo, Cass County, North Dakota, or portions thereof to the Corporation, free and clear of liens and financial encumbrances. Assessments may not be used to defray operation and maintenance costs of designated Common Areas owned by the Developer that have not been conveyed to the Corporation.

## **ARTICLE III**

### ***COVENANT FOR ASSESSMENTS***

#### **Section 1. Creation of the Lien and Obligation for Assessments**

The Corporation hereby covenants for each Unit within The Properties and each Owner of any Unit by acceptance of a deed thereof or contract for deed pertaining thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation such Annual

and special Assessments as are established herein, pursuant to the percentages set forth in Schedule B and paid in the manner hereinafter provided.

The Annual and Special Assessments, together with such late fees as may be levied, interest, cost of collection (including court costs and attorney fees) as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with late fees, interest and costs of collection, shall also be the personal obligation of the Owner of such property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Unit. The personal obligation for payment of assessments shall not pass to the successor in title unless expressly assumed by them.

## **Section 2. Subordination of the Lien to Mortgages**

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to the mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve the Owner of such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

## **Section 3. Units General Taxes and City of West Fargo Special Assessments Not Included in Assessments**

Subject to the provisions of Article III, Section 5 (a) 1 hereof, general assessments and special assessments payable to the Cass County Treasurer on each Unit do not form part of the General Assessments and are the responsibility of each individual Unit Owner.

## **Section 4. Perfection of the Lien for Assessments**

The Corporation, in order to perfect the lien for assessments, shall record a claim of lien with the County Recorder of Cass County, North Dakota. The claim of lien must be recorder according to the following requirements:

- A. The claim of lien must be recorded not less than thirty (30) and not more than one hundred eighty (180) days from the time such assessment or installment thereof became due and payable.
- B. The claim of lien must be signed and verified by the oath of the president or treasurer of the Corporation.
- C. The claim of lien must contain the following information:
  - 1) The legal description of the property, including the Unit member, the property address, the name of the Corporation, the city or county wherein the Corporation is located and the deed book and page number where the first page of the Declaration is recorded.

- 2) The name of the Owner of the Unit.
- 3) The amount of unpaid assessments currently due, including accelerated installments as provided in Section 7 of this Article, or past due, together with the date when each fell due.
- 4) The amount of all late charges, interest and costs of collection being claimed.
- 5) The date of issuance of the memorandum.
- 6) A statement to the effect that:

The Claim of lien is made by the Corporation pursuant to the terms of this Declaration, and

- 1) Due demand has been made upon the defaulting or the delinquent Owner pursuant to this Declaration and that said amount was not paid within thirty (30) days after such demand.
- 2) The cost of recording and releasing such claim of lien shall be deemed a cost of collection.

## **Section 5. Annual Assessments shall consist of General Assessments**

### **A. General Assessments**

#### **1) Purpose**

The General Assessment shall be used exclusively:

- a) to provide for snow removal for the Common Areas, inclusive of The Private Drives, as well as the driveways and landscaping and lawn maintenance of the Common Areas, where required, respectively, as an obligation of the Corporation,
- b) to improve, maintain and operate the Common Areas and improvements, inclusive of The Private Drives, Easement and Common Area Landscaping and to include funding of appropriate reserves for future repair and replacement,
- c) payment of any remuneration pursuant to any management contract, which may be entered into between the Corporation and a manager,
- d) reasonable fees and disbursements of the accountant of the Corporation, if any,
- e) water supply to the Common Area, if any,
- f) the payment of consolidated taxes and special assessments, if any, in respect of the Common Area, payable to the Cass County Treasurer,
- g) insurance premiums for The Private Drives and Common Area(s) solely.

#### **2) Basis for Assessment**

For General Assessment purposes, each Unit Owner shall be assessed according to the percentages allocated to each Unit in Schedule "B" attached hereto.

B. Method of Assessment for General Assessment.

All Annual General Assessments levied by the Corporation against Assessable Units shall be collected and disbursed by the Corporation. The Board of Directors shall fix the amount of the Assessments in accordance with the percentages allocated to each Unit and set the date or dates such Assessments shall become due. By a vote of two-thirds (2/3) of the Directors, the Board shall fix the Annual General Assessments at an amount not in excess of the current maximum for such assessment, provided however, that the Annual Assessments shall be sufficient to meet the obligations imposed by the Declaration and supplementary Declarations, if any. In the event the Board fails to fix an assessment for any fiscal year, the each assessment established or the prior year shall automatically be continued until such time as the Board acts.

C. Date of Commencement of Annual General assessments.

The first Annual Assessments provided herein shall commence, as to each individual Assessable Unit, on the first day of the month following the conveyance of such individual Assessable Unit to an Owner other than the Developer. Until such time as there is a conveyance of such individual assessable Unit to an Owner, the Developer will pay quarterly, an amount equal to the costs of the Association's actual operating expenses allocable to the developer-owned lots for the quarter, plus 10% (a "Developer Assessment"). The Developer Assessment will not include a charge for lawn maintenance or snow removal on a giver Lot until such serviced are actually being provided to such Lot.

## **Section 6. Special Assessments**

A. Capital Improvement and Reserve Fund Assessment

The Corporation shall levy an initial Capital Improvement Assessment in the sum of \$350.00 against each Lot, which levy shall be paid by the Buyer, or with the consent of the Developer, may be deferred until such time as the construction of a house on the Lot is completed and conveyed to a buyer of such house and Lot. The Corporation may thereafter levy in any assessment a Special Assessment against Assessable Units, applicable to that year and payable over not more than the next three (3) succeeding years, for the purpose of defraying in whole or in part, the cost of any necessary reconstruction, repair or replacement of a capital improvement or major landscaping effort, as well as off-setting deficiencies in unforeseen common expenditures, finance costs of the foregoing upon the Common Areas, including fixtures and personal property related thereto, ('Capital Improvement and Reserve Fund Assessment') provided that any such assessment shall have the assent of the Developer, if any, and of two-thirds (2/3) vote of the Members at a special meeting called for such purposes. The quorum required for such a meeting is sixty percent (60%) of the Members, represented in person or by proxy.

B. Restoration Assessment

The Corporation may levy a Restoration Assessment upon any Unit whose Owner fails to maintain such Unit, as provided in Article IV, Section 2. Restoration Assessments shall be limited to the amount to meet the cost of restoration and the cost of collection thereof.

C. Unit Accounts for Capital Improvement and Restoration Fund

The Corporation shall establish and maintain records which indicate separately for and with respect to each Unit, from time to time portion of the monies standing to the credit of the Capital Improvement and Restoration Fund applicable to a Unit ("Unit Account" and collectively the "Unit Accounts"), each Unit Account to indicate interest from time to time thereto, additions from time to time made thereto and reductions or deductions made thereto or therefrom. Contributions or payments made to the Capital Improvement and Restoration Fund for or applicable to a Unit shall be credited to that Unit's Unit Account, as shall interest paid for late payment of any such contributor payment.

D. Payments from Capital Improvement and Restoration Fund

Where payments are made out of the Capital improvements and Restoration Fund, each unit's unit Account shall be reduced pro rata to the extent of the amount standing to the credit of the Unit's unit Account immediately prior to the payment out as compared to the aggregate of the amounts standing to the credit of all Units' Unit Accounts at that time.

**Section 7. Effect of Nonpayment of Assessments: Remedies of the Corporation**

Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Corporation shall provide Notice of such delinquency and may (i) declare the entire balance of such Annual or Special Assessment due and payable in full; (ii) charge interest from the date due at the rate of ten percent (10%) per annum; (iii) give Certified Notice to the Owner that in the event payment with accrued charges is not paid within thirty (30) days from the date of such notice, then the lien provided for herein shall be perfected; (iv) upon Certified Notice to the Owner, suspend the right of such Owner to vote or to use the recreational facilities until the assessment and accrued charges are paid in full; (v) employ other remedies available at law or equity.

**ARTICLE IV**  
***USE OF PROPERTY***

**Section 1. Protective Covenants**

A. Nuisances

No nuisance shall be permitted to exist or operate upon any property, including the driveway of any Unit, so as to jeopardize property values of The Properties or be detrimental to the well-being of Members. No lot shall be used in whole or in part for storage of rubbish or debris of any kind whatsoever nor for the storage of any property or things that will cause such lot to appear untidy, unclean or obnoxious to the human eye; or shall any substance, thing or material be kept on any lot that will emit foul or obnoxious odors, or that will cause any noise



that will or might disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property.

**B. Conditions for Design Review**

No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work that in any way alters the exterior of any Unit or Common Area or the improvements located thereon from its natural or improved state existing on the date such property was first made or done without the prior written approval of the Developer. Once Developer has conveyed not less than 90% of its membership interest to homeowners, such approval shall be required by the Covenants Committee. No building, fence, wall, residence or other structure shall be commenced, erected, improved, altered, made or done on such property without the prior written approval of the Developer. Once Developer has conveyed not less than 90% of its membership interests to homeowners, such approval shall be required by the Covenants Committee. In no event shall any approvals be granted that may be in contravention to any general development provisions in place and effect by Charleswood, Inc.

**C. Leasing**

No Unit shall be rented for transient or hotel purposes or, in any event, for an initial period of less than six months. No portion less than all of any Unit shall be leased for any period. No Owner shall lease a Unit other than on a written form of lease requiring the lessee to comply with the Governing Documents, and providing that failure to comply constitutes default under the lease. The Board of Directors may provide a suggested standard lease form for use by Owners. Each Owner of a Unit shall, promptly following the execution of any lease of a Unit, forward a confirmed copy thereof to the Board of Directors. The foregoing provisions of this subparagraph, except the restriction against use for hotel or transient purposes, shall not apply to the Developer, or to a Mortgagee in possession of a Unit as a result of foreclosure or other judicial sale or as a result of any proceeding in lieu of foreclosure.

**D. Basketball Backboard and Hoops**

No basketball backboards or hoops shall be attached to any Unit.

**E. No Oversized Vehicles**

Parking of vehicles shall be limited to the Unit garage and driveway, and on such side of The Private Drive(s) as may be designated for parking and only during such time period as may be designated from time to time. Parking in the Unit's driveway shall be used only for parking by vehicles no larger than full-sized passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles, including, inter alia, semi cabs and trailer, are herein referred to as "Oversized Vehicles" and are expressly prohibited.

F. Landscaping/Gardens

Notwithstanding the landscaping performed by the Developer, which may exceed the requirements of this section, no alterations or changes shall be made that would result in a minimum of five percent (5%) of the front yard of the Unit being maintained for the planting of trees, shrubs and flowerbeds. There shall be at least one tree, with a future growth of not less than six feet in height included in the foregoing. Choice of trees and shrubs shall be subject to the approval of the Covenants Committee. No vegetable garden may be planted in the front yard of the Unit without the prior written approval of the Covenants Committee.

G. Rules

From time to time the Board of Directors shall adopt and promulgate general rules, including but not limited to, rules to regulate potential problems relating to the use of property and the well-being of Members, such as keeping of animals, including their size and breed, storage and use of all vehicles, storage and use of machinery, use of outdoor drying lines, antennas, signs, trash and trash containers, maintenance and removal of vegetation on The Properties. All such general rules and any subsequent amendments thereto shall be placed in the Governing Documents and shall be binding on all Members, except where expressly provided otherwise in such rules.

H. Exceptions

The Board of Directors may issue temporary permits to waive any prohibitions expressed or implied by this section, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures. So long as the Developer is engaged in developing or improving any portion of The Properties, it shall be exempted from (b) above and rules affecting movement, disposition and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities, including maintenance of model Units. Such exemption shall be subject to such rules as may be established by the Corporation to maintain reasonable standards of safety, cleanliness and general appearance of The Properties.

I. Fencing

All fencing except that provided the Developer shall require the approval of the Covenants Committee prior to installation. No fencing shall be permitted to extend beyond the front of the primary structure facing the front of the lot. No chain link, cedar or other material fencing will be permitted. PVC fencing, consistent in design and material to those used within the original construction of the development shall be permitted. No fence shall exceed six (6) feet in height. Privacy fencing between the homes may be placed on the lot line dividing the two homes, not exceeding 10 feet in length away from the house and six (6) feet in height above the ground.

J. Animals

Other than household pets kept for non-commercial uses, no animals, livestock, poultry or insects of any kind shall be raised, bred or maintained on any of the lots.

K. Garbage and Refuse

No garbage, garbage cans, ashes, refuse, or trash receptacles shall be allowed on a lot exposed to view (except as required by the City of Fargo to facilitate garbage pickup) and no outside incinerator shall be permitted. Garbage, garbage cans, ashes, refuse, and trash receptacles shall only be placed on a lot in a convenient place to facilitate pickup on the day of pickup only. No burning or rubbish outside of a residence shall be permitted.

L. Propane Tanks

No combustible liquid or gas tanks, exposed to view, shall be allowed on the lots.

M. Occupancy

No private dwelling or town home erected upon any lot shall be occupied in any manner while neither in the course of construction nor at any time prior to full completion. nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans and all covenants, conditions, reservations and restrictions herein set forth. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home, recreational vehicle or thither temporary structure shall be placed or erected upon any lot unless approved by the Developer.

N. Commercial Vehicles

No commercial vehicles, construction equipment, mobile homes or travel trailer of any kind shall be permitted on any lot unless first approved by the Covenants Committee and kept in a garage completely enclosed. Under no circumstances shall any such vehicle be on the street for more than forty-eight (48) consecutive hours. The use of all vehicles, including but not limited to trailers, **buses**, campers, recreational vehicles, boats, motorcycles, motor scooters, wagons, sleighs and snowmobiles, may be subject to parking regulations, or other restrictions regulating the same.

O. Utility Lines and Television Antennae

All electrical service and telephone lines shall be placed underground and not outside electrical lines shall be placed overhead. There shall be no satellite dishes, except an 18-inch compact model located with the Covenants Committee approval. No clotheslines or other exterior clothes drying apparatus shall be permitted except as approved in writing by the Covenants Committee.

P. No Hazardous Activities

No activities shall be conducted on the premises and no improvements constructed on the premises that are or might be unsafe or hazardous to any person or property. Without limiting

the generality of the foregoing, no firearms shall be discharged upon the premises; and no open fires shall be lighted or permitted on the premises except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well designed exterior fireplace.

## **Section 2. Maintenance of Property**

### **A. Owner Obligation**

To the extent that exterior maintenance by the Corporation is not provided for in this Declaration, each Owner shall keep all Units owned by him. and all improvements therein or thereon, in good order and repair and free of debris including, but not limited to the pruning and cutting of all trees and shrubbery and the painting (or other external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. Owners are required to insure the proper placement and maintenance of sump pump drain lines, where applicable, to insure adequate drainage, and to insure that such placement of lines or hoses do not create a visual or physical impediment to the development or neighboring homes.

### **B. Failure to Maintain**

In the event an Owner of any Lot in The Properties fails to maintain the premises and the improvements situated thereon as provided herein, the Corporation, after Notice to the Owner and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All cost related to such correction, repair or restoration shall become a Special Restoration Assessment upon such Lot and as such shall be regarded as any other assessment with respect to lien rights of the Corporation and remedies provided for non-payment.

### **C. Corporation Obligation**

The Corporation shall on its own as well as the Owners' behalf contract with a reputable grounds maintenance company to provide lawn maintenance, inclusive of the Common Areas, during the period from spring through late fall (being generally mid-April through late October). In addition thereto, the Corporation shall, on its own as well as the Owners' behalf contract with a reputable grounds maintenance company to provide snow removal from all The Private Drive into The Properties, or such greater or lesser areas as the Corporation may from time to time, acting reasonably determine to be prudent. The Corporation shall be responsible to ensure all landscaping is maintained and nurtured.

## **Section 3. Resale of Lots**

### **A. Reference to Declaration**

The deed or instrument transferring title to any Lot shall contain a provision incorporating by reference the covenants and restrictions set forth in this Declaration.

**B. Notification**

The Contract Seller of a Lot or Unit shall, not less than fifteen (15) working days prior to the contract date of the disposed item, notify the Board of Directors as to his intent to sell the Lot or Unit so that an estoppel certificate may be prepared.

**C. Estoppel Certificate**

Within ten (10) working days of the receipt of such notification, the Board of Directors shall prepare an estoppel certificate, which shall be signed by an authorized officer of the Board, that shall set forth any assessments and charges due upon such Lot at time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the Lot as of the date of preparation of such certificate. This certificate shall be delivered to the place designated by Seller. The Board of Directors shall be entitled to levy such reasonable fee as it may fix from time to time for the preparation of an estoppel certificate.

**D. The Lots shall be held, sold and conveyed subject to the covenants, conditions and restrictions all of which are for the purpose of enhancing and protecting the attractiveness and desirability of the real property. These covenants, conditions and restrictions shall run with the land.**

## **ARTICLE V**

### **EASEMENTS**

#### **Section 1. Utility Easements**

There is hereby created an easement upon, across, over, through and under The Properties for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to, water, sewers, gas, telephones, electricity, television or communications lines and systems. The virtue of this easement shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on said property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of units provided that such company restores disturbed areas to the condition in which they were found. The Corporation is authorized to execute any further evidence on the easement as is reasonably required by any entity providing such services.

Notwithstanding anything to the contrary contained in this paragraph: (i) no sewers, electrical lines, water lines or other utility service lines or facilities for such utilities may be installed or relocated on said premises except as approved by the Developer, or by the Corporation, and (2) it shall not be construed to apply to the relocation, installation, or removal of utility lines within a Unit that serve only that Unit. This easement shall in no way affect any other recorded easement on said premises.

## **Section 2. Developer's Easement to Correct Drainage**

For a period of two (2) years from the date of conveyance of each Lot, the Developer reserves an easement and right on, over, and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standard of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil or take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition, as near as practicable. The Developer shall give timely notice of intent to take such action to all affected Owners, unless in the opinion of the Developer and emergency exists that precludes notice.

## **Section 3. Construction Easement and Rights**

Notwithstanding any provision of this Declaration or of any supplementary Declaration, so long as the Developer is engaged in developing or improving any portion of The Properties, such persons shall have an easement of ingress, egress and use over any lands not conveyed to an Owner for occupancy to an Owner for occupancy for (i) movement and storage of building materials and equipment. (ii) erection and maintenance of directional and promotional signs, and (iii) conduct of sales activities, including maintenance of model Units. Such easement shall be subject to such rules as may be established by the Corporation to maintain reasonable standards of safety, cleanliness and general appearance of The Properties.

## **Section 4. Easement to Inspect and Correct Violations**

There is hereby created an easement in favor of the Corporation for ingress and egress on any Lot during reasonable hours (i) to inspect such property for alleged violations of the Governing Documents following receipt of a complaint, or compliance with standards following receipt of a complaint or approved plans for alterations and improvement, provided the Owner of such Lot is given written Notice of the purpose and time of inspection at least three (3) days in advance thereof and (ii) performing such correction of violations or such maintenance as is required by the Declaration on such Lots.

## **Section 5. Easement for Governmental Personnel**

A right of entry on any Lot or Common Area is hereby granted to law enforcement officers, fire and rescue and local animal control personnel as needed to carry out their duties, including enforcement of cleared emergency vehicle access zones.

## **Section 6. Easement for Snow Removal/Storage**

There is hereby created an easement upon, across and over the 15 foot utility easement at the front of each Lot in The Property, as provided for in the plat of Charleswood Twenty First Addition, for the placement, location and storage of snow, ice and slush which may be removed, taken from or extracted from The Private Drive(s) in The Properties.

## **Section 7. Easement for Access**

There is hereby created in favor of the lawful invitees, guests or contractors of either an Owner(s) or the Corporation, an easement for the express purpose of providing a right of entry upon, across, over, through The Private Drives, denoted as Evergreen Way and Cypress Way upon the plat of Charleswood Twenty First Addition to the City of West Fargo, for the express purpose of obtaining access to a Lot or performing a lawful contract.

## **ARTICLE VI**

### ***PARTY WALL AGREEMENTS FOR TWIN HOMES AND 4-PLEX UNITS***

#### **Section 1. Party Wall between Twin Homes and 4-Plex Units**

The Properties consist of eighteen (18) Twin Home Units and seven (7) 4-Plex Units, each which Unit(s) have situated between each of them a common or party wall supported by common or the same footings, foundation and other supports and common sanitary sewer connections. The Twin Homes and 4-Plex Units that are to be constructed upon the adjoining lots, as set forth in Schedule "A" (hereinafter referred to as "Adjoining Lots").

#### **Section 2. Units Affected**

The covenants in this Article shall run with and bind the land contained herein and in particular those specific Units as set forth in Schedule "A".

#### **Section 3. Common Wall Deemed Not to Be An Encroachment**

The walls to be constructed on the boundary between the pair of Twin Home Units or the four 4-Plex Units, set forth in Schedule "A" and forming a part of each of each of said pair of Twin Home Units, or each set of the 4-Plex Units are hereby declared to be a party or common wall for the use, benefit and enjoyment of the parties hereto, their respective heirs, executors, administrators, successors, assigns or successors in title, and no part thereof, to be constructed, shall be deemed to be an encroachment on either of the Units situated in The Properties.

#### **Section 4. Damage or Destruction to Common Wall**

In the event of damage or destruction of the party wall or any portion thereof, in respect of any pair or set of Units set forth in Schedule "A", from any cause other than the negligence of one of the Owners of the Unit affected, then the Owners of each of such affected Units shall at their joint and several equal expense repair or rebuild the said wall, and each of the parties shall have the full use of the wall so repaired or rebuilt. If either Owner's negligence shall cause damage or destruction of the said wall, such negligent Owner shall bear the entire cost of the repair or reconstruction. If the Owner of either of the affected Unit shall neglect or refuse to pay his or her share or all of such costs in the case of negligence, the Corporation may have the wall repaired or restored and same all be deemed to be a Corporation Assessment and if after expiration of fifteen (15) days from receipt

of a written request for payment of such Assessment, the Corporation shall be entitled to the remedies as set out in Article III, Section 7 hereof.

### **Section 5. Footings, Foundations and Support**

In the event that any of the footings, foundations and other supports, supporting the common wall constructed on the boundary between the Lots of each of the Units is hereby declared to be party footings, foundations and supports between each of the said Units for the use, benefit and enjoyment of the Owners of each of said Units, their respect heirs, executors, administrators, successors and assigns and no part thereof presently existing shall be deemed to be an encroachment on either of said Adjoining Lots.

### **Section 6. Repairs or Rebuilding of Footings**

In the event that it should become necessary to repair or rebuild the said footings, foundations and supports or any portion thereof, in respect of any of the said Units, from any cause other than negligence of either of the Owner of the Adjoining Lots, then each of the Owners shall at their joint and equal expense repair or rebuild the said footing, foundations and other supports, and each of the Owners of the Adjoining Lots shall have the right to full use of the said footings, foundation and other supports so repaired or rebuilt.

If either of the Owner of any Adjoining Lot shall neglect or refuse to pay his or her share or all of such costs in the case of negligence on his or her part, the other Owner of the Adjoining Lot shall be entitled to **contribution** and payment from the defaulting Owner for the defaulting Owner's share of the repair and restoration costs. The aforesaid footings, foundations and other supports, and in such manner as it may conform with the then currently accepted construction and engineering practices in such regard.

### **Section 7. Destruction of Unit**

In the event that any of the Units situated on any of Adjoining Lots, be partially, totally or completely destroyed by any cause whatsoever, then the Owner of said Unit upon which the destroyed Unit was situated for any reason whatsoever do anything which will or will be likely to adversely affect or be in any way detrimental to the support and use of the water connection to the surviving Unit. The Owner of the surviving Unit is entitled to by virtue of this Declaration for the party wall and the party footings, foundations and other supports.

## **ARTICLE VII**

### ***ARCHITECTURAL CONTROLS***

### **Section 1. Use of Lots**

All Lots zoned SR-2 as presently defined in the zoning ordinances of the City of West Fargo, North Dakota shall be used for Single Family residential purposes only. No building or structure intended for or adopted to business purposes and no apartment house, double house, lodging house,



rooming house, hospital, sanitarium or professional office, or other multiple family dwellings shall be erected, placed, permitted or maintained on any such Lot or on any part of such Lot. No improvement or structure whatsoever other than a first class private dwelling house, patio walls and customary outbuildings, garages, car ports and fences subject to limitations herein set forth may be erected, placed or maintained on any such Lot in The Properties.

## **Section 2. Quality**

- A. No building shall be erected on any Lot unless the design, location, materials and workmanship are at harmony with existing structures and locations in the residential portions of the premises and such building must conform to these restrictive covenants.
- B. No structure shall be erected, altered, placed or permitted on any building lot other than one detached single family dwelling with front yard and side yard set backs in compliance with the SR-2 zoning ordinances of the City of West Fargo as existing on the date thereof.

## **Section 3. Size of Units**

- A. Any dwelling structure on any lots as noted on the attached Schedule "A" (excluding porches, decks, and garages) shall have a main floor structural area of not less than 1,400 square feet for 4-plex units, and not less than 1,800 square feet for twin home units. All units shall have attached garages capable of storing a minimum of two (2) conventional automobiles.
- B. Areas shall be calculated at main floor level only.
- C. Garages, porches and decks shall be excluded from floor area calculations referred to in Section 3 (a) herein.
- D. Temporary Residences. No trail, mobile home, motor home, tent, shack, garage, barn, basement house or other building shall be used as a residence either temporarily or permanently nor shall any residence of a temporary character be permitted.
- E. Basement. No basement shall be constructed for temporary residential purposes.

## **Section 4. Grading**

All grading operations shall be designed to drain all surface water in conformity with the grading plan either to the real lot line or the street within the lot boundaries. All grading, either as part of the original construction or as part of community maintenance shall be done in conformity with the master plans for grading that make up the design drawing for this project.

## **Section 5. Setbacks**

Minimum side yard shall be set as part of the master planned development within the boundaries as determined by the City of West Fargo. Maximum side yards shall be determined in the same manner. Front setbacks shall be determined in this same manner.

## **Section 6. Exteriors**

No changes to the original designs as improved and completed by the Developer are permitted until such time as the Developer has conveyed not less than 90% of its ownership interest to homeowners. Notwithstanding the foregoing, no such changes to any facet of the exterior design, colors, or materials shall be permitted without the express approval of not less than 75% of all owners once the Developer has conveyed not less than 90% of its ownership interest to homeowners.

## **Section 7. Letter and Delivery Boxes**

The Developer shall determine the location, color, size, design, lettering and all other particulars of all mail boxes and standards and brackets and name signs for such boxes. Failure of the Developer to make aforesaid determination shall not constitute a waiver of the right of the Developer to make such determination with respect to any lot in the future; including the revision of mail delivery boxes not previously approved by the Developer. No delivery boxes other than boxes for the U.S. mail and The Forum newspaper shall be permitted on any lot or abutting such lot.

## **Section 8. Garages and Outbuildings**

No garage or outbuilding shall be used for any purpose except in connection with the residence constructed on the lot. All dwellings shall have garages as defined in Section 3 (a). The design and location of all out buildings for storage and otherwise requires approval by the Covenants Committee.

## **Section 9. Construction Time Requirements**

Construction of all primary structures shall be substantially completed within eight (8) months after issuance of any building permit for the structure. Landscaping shall be completed as soon as weather permits following substantial completion of the primary structure. Until the landscaping is completed, the owner of the lot shall maintain the property in a condition free of noxious weeds and if the owner fails to do so, the Covenants Committee may maintain the property and the cost of such work shall be paid by the owner. No outside storage of building materials shall be permitted on any lot after the eight (8) month construction period.

# **ARTICLE VII**

## ***GERNERAL PROVISIONS***

## **Section 1. Duration**

The covenants and restrictions of this Declaration shall run and bind the land for a term of ten (10) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless at the expiration of any such period the

covenants and restriction are expressly terminated by an instrument signed by Owners of not less than seventy-five percent (75%) of the Units.

## **Section 2. Amendment**

Any amendment shall be authorized by a document signed by Owners of not less than seventy-five percent (75%) of the Units and evidence of the approvals required herein. An amendment must be recorded in order to become effective.

## **Section 3. Enforcement**

The Corporation, any Owner, Occupant or First Mortgagee, as their interest may appear, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, condition, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenants or restrictions herein contained shall in no event deemed a waiver of the right to do so thereafter.

## **Section 4. Certain Rights of the Developer**

For such time as the Developer, herein defined as the Developer AND Builder being Adamar Development, LLC d/b/a Heritage Homes, being one and the same, shall own Lots, its rights and interests shall not be prejudiced by any of the following actions, unless it shall, in writing, join in such actions:

- A. Discriminate or tend to discriminate against its rights as an Owner
- B. Change DEFINITIONS of the BYLAWS unless approved by the Developer
- C. Alter the rights of the Developer under Article V of the BYLAWS as regards annexation of additional properties
- D. Alter the character and rights of membership or the rights of the Developer, as set forth in Article Vi of the BYLAWS. Such character or rights may be changed with written approval of the Developer
- E. Alter previously recorded or written agreements with public or quasi-public agencies as regards easements and rights of way
- F. Deny the right to convey Common Areas to the Corporation so long as Common Areas contiguous to the property subjected to the Declaration lie within the land area represented in the Development Plan
- G. Alter the basis for assessments
- H. Alter the provisions of the protective covenants as set forth in Article IV
- I. Alter the Developer's rights, without written approval, as they appear under this Article

## **Section 5. Limitations**

As long as the Developer has an interest in developing The Properties as defined in the BYLAWS, the Corporation may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intents of the Development Plan. Nothing in this Section shall be construed to limit the rights of the Members to act a individuals or in affiliation with other members or groups.

## **Section 6. Severability**

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

## **Section 7. Conflict**

In the event of conflict among the Governing Documents, this Declaration shall control, then the Articles of Incorporation of the Corporation, then the BYLAWS, except that in all cases where the Governing Documents may be found to be in conflict with statute, the statute shall control.

## **Section 8. Interpretation**

Unless the context otherwise requires the use herein, the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation". The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions thereof.

IN WITNESS WHEREOF, the Adamar Development, LLC, a limited liability company under the laws of North Dakota, has caused these presence to be duly executed by its officer, this 29<sup>th</sup> day of November 2004.

Adamar Development LLC

By \_\_\_\_\_  
Daryl L. Braham

Its Chief Operating Officer

STATE OF NORTH DAKOTA  
COUNTY OF CASS

On this 29<sup>th</sup> day of November 2004, before me, a notary public in and for said county and state, personally appeared Daryl L. Braham, known to me to be the Chief Operating Officer, of Adamar Development, LLC, the Declarant herein, and that executed the foregoing instrument, and acknowledged to me that he executed the foregoing instrument on behalf of Adamar Development, LLC.

By \_\_\_\_\_  
Michelle L. Froeber, Notary Public  
Cass County, North Dakota  
My commission expires: Feb. 20, 2008