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Burleigh County

**SECOND AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR COTTONWOOD COTTAGE TOWNHOMES**

This Second Amendment relates to the Declaration of Covenants, Conditions and Restrictions for Cottonwood Cottage Townhomes (herein the "Declaration"), dated July 22, 2009, and recorded as Document No. 712245 on July 23, 2009, and applicable to certain property, in the State of North Dakota, County of Burleigh, described as follows:

Santa Fe Addition to the City of Bismarck, Burleigh County, North Dakota

[Being a replat of the South 347.00 feet of Lot 23, Block 3,
Cottonwood Lake Fifth Addition to the City of Bismarck,
and the adjoining Santa Fe Avenue and South Twelfth
Street right-of-way, Burleigh County, North Dakota.]

As more fully set forth in the Declaration, the Declaration is and/or shall be applicable to the following phases of development, with parenthetical reference being made to property addresses on Santa Fe Avenue, Bismarck, North Dakota:

Phase I- Lot 1 (1110), Lot 2 (1112), Lot 3 (1114), Lot 4 (1116), Lot 5 (1117), Lot 6 (1115), Lot 7 (1113), Lot 8 (1111), Lot 9 (1120), Lot 10 (1122), Lot 11 (1124), Lot 12 (1125), Lot 13 (1123), Lot 14 (1121)

Phase II- Lot 15 (1130), Lot 16 (1132), Lot 17 (1134), Lot 18 (1136), Lot 19 (1138), Lot 20 (1139), Lot 21 (1137), Lot 22 (1135), Lot 23 (1133), Lot 24 (1131), Lot 25 (1140), Lot 26 (1142), Lot 27 (1144), Lot 28 (1146), Lot 29 (1148), Lot 30 (1149), Lot 31 (1147), Lot 32 (1145), Lot 33 (1143), Lot 34 (1141)

Phase III- Lot 35 (1160), Lot 36 (1162), Lot 37 (1164), Lot 38 (1166), Lot 39 (1167), Lot 40 (1165), Lot 41 (1163), Lot 42 (1161), Lot 43 (1150), Lot 44 (1152), Lot 45 (1154), Lot 46 (1155), Lot 47 (1153), Lot 48 (1151)

The undersigned do hereby declare that ARTICLE VI, INSURANCE, shall be amended so that, after amendment, said article shall read, as follows:

**ARTICLE VI
INSURANCE**

Section 1. Insurance to be Maintained by the Association.

(a) The Association shall maintain, to the extent reasonably available:

- 1) Fire and casualty insurance for the residential structures and other fixtures situated on the residential lots, including but not limited to party walls, interior and

exterior fixtures, and all other permanent improvement typically covered by property insurance, along with fire and casualty insurance coverage for the Common Elements, and shall arrange for the replacement thereof in the event of damage or destruction from any casualty against which such insurance applies. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. It is declared that the value of the Common Elements, and the values of the residential structures owned by the Association members, are dependent on the assurance that damages to residential structures and other fixtures will be appropriately repaired, and therefore it is declared that the Association, on behalf of itself and its members, has an insurable interest in the residential structures and permanently attached fixtures. Such insurance shall include fire and extended coverage, including coverage for such other risks and hazards against which the Association shall deem appropriate. Said insurance coverage shall be "blanket coverage" for residential structures and permanently attached fixtures (excluding, by way of example only, appliances and floor coverings), and the Association may elect such "deductible" provision as, in the Association's opinion, are consistent with good business practices. Such fire and casualty insurance shall name the Association as the insured, as trustee for the respective Lot Owners, and shall provide a standard loss-payable clause providing for payment of insurance proceeds to the Association as trustee for said owners, and their respective mortgagees and deed of trust beneficiaries. Any such insurance proceeds obtained by the Association shall be used exclusively in accordance with this declaration. The Association shall furnish, upon request of an owner, a true copy of all casualty insurance procured hereunder, and a certificate of insurance identifying the insured interest of the owner. All policies of fire and casualty insurance shall provide for a waiver of subrogation by the insurer as to claims against the Association, the Board of Directors, Association's employees or agents, and against each owner and each owner's employees, agents and guests, and shall provide that any "no other insurance" clause in the policies do not limit or preclude any other policies of fire or casualty insurance owned and maintained by a Lot Owner, and that such Association policies shall not be brought into contribution with any such insurance obtained and owned by a Lot Owner, and

- 2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements, and the residential lots.

(b) If the insurance described in subsection (a) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Lot Owners.

(c) Insurance policies carried pursuant to subsection (a) of this section shall provide that:

- 1) Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest,
- 2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;
- 3) No act or omission by any Lot Owner, unless acting within the scope of the owner's authority on behalf of the Association, will preclude recovery under the policy; and
- 4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(d) Any loss covered by the property policy under subdivision (a)(1) of this section shall be adjusted with the Association, but the insurance proceeds for that loss are payable to the Association, and not to any mortgagee. The Association shall hold any insurance proceeds for the benefit of Lot Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the project is terminated.

(e) Lot Owners shall be solely responsible to pay the deductible amount on any damage to that Lot Owner's Living Unit and/or Lot. An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for the Lot Owner's own benefit.

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Lot Owner or mortgagee. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Lot Owner, and each mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(g) Any portion of the Property for which insurance is required under subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Association is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) by an eighty percent (80%) vote, the Lot Owners decide not to rebuild, including one hundred percent (100%) approval both of Lot Owners who suffered the direct physical loss and of Lot Owners assigned to any Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Property is not repaired or

replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project, (ii) the insurance proceeds attributable to Limited Common Elements which are not rebuilt shall be distributed to the Owners of the Lots to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed and/or credited to all the Lot Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the Lots.

Section 2. Insurance to be maintained by the Lot Owner. It shall be, and hereby is, the responsibility of each Lot Owner to procure and obtain the following types of insurance coverage:

- 1) Because the Association is not required by this Declaration to provide any insurance covering personal property of any type belonging to the Lot Owners or any other person or entity which may be located on the Common Elements or a Lot, or within any Unit, any such insurance coverage shall be the sole responsibility of each Lot Owner, at its sole cost and expense. Further, nothing herein contained shall preclude any Lot Owner from obtaining any other or further insurance coverage, including fire, casualty and liability insurance, covering the owner, the owner's lot, and/or the Living Unit, and
- 2) Liability insurance in reasonable amounts, as determined from time to time by the Board, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Lot and Living Unit.

In accord with Article XI, Section 3, of the Declaration of Covenants, Conditions and Restrictions for Cottonwood Cottage Townhomes, dated July 22, 2009, and recorded as Document No. 712245 on July 23, 2009, the Board of Directors of Cottonwood Cottage Townhome Owners Association, Inc., acting pursuant to the provisions of Article VI, Section 9, of the ByLaws, and also pursuant to Article XI, Section 3, of the Declaration of Covenants, Conditions and Restrictions for Cottonwood Cottage Townhomes, do hereby authorize, and join with, the Declarant in making this amendment, for the benefit of the project, it being agreed that a correction is required to the above-referenced provisions for insurance and that all owners in the project will benefit from the correction of the above-referenced provisions relating to insurance. Except as amended herein, the original Declaration of Covenants, Conditions and Restrictions for Cottonwood Cottage Townhomes, dated July 22, 2009, as previously amended, shall otherwise remain in full force and effect.

Dated this 16th day of August, 2012.

Cottonwood Cottage, LLP, a North Dakota limited liability partnership

By: Matthew J. Geiger Managing Partner
Matthew J. Geiger, Managing Partner

By: Thomas L. Kunz Managing Partner
Thomas L. Kunz, Managing Partner

The undersigned, being the members of the Board of Directors of Cottonwood Cottage Townhome Owners Association, Inc., do hereby authorize the Declarant's actions herein, and join with the Declarant in making this amendment.

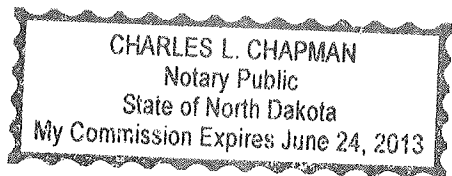
Matthew J. Geiger
Matthew J. Geiger

Thomas L. Kunz
Thomas L. Kunz

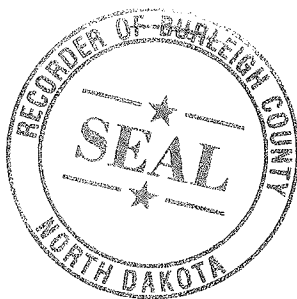
STATE OF NORTH DAKOTA)
)ss
COUNTY OF BURLEIGH)

The undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Matthew J. Geiger and Thomas L. Kunz, being Managing Partners of Cottonwood Cottage, LLP, a North Dakota Limited Liability Partnership, and also being the members of the Board of Directors of Cottonwood Cottage Townhome Owners Association, Inc., personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership and on behalf of the Board of Directors.

Witness my hand and official stamp, this 16th day of August, 2012.



Charles L. Chapman
Charles L. Chapman
Notary Public
Burleigh County, North Dakota



CHAPMAN & CHAPMAN LAW

Debbie Krohn

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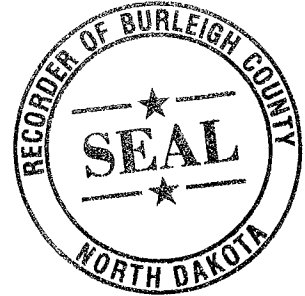
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Burleigh County

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**FIRST AMENDMENT TO DECLARATION
 OF COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR COTTONWOOD COTTAGE TOWNHOMES**

This First Amendment relates to the Declaration of Covenants, Conditions and Restrictions for Cottonwood Cottage Townhomes (herein the "Declaration"), dated July 22, 2009, and recorded as Document No. 712245 on July 23, 2009, and applicable to certain property, in the State of North Dakota, County of Burleigh, described as follows:

Santa Fe Addition to the City of Bismarck, Burleigh County, North Dakota

[Being a replat of the South 347.00 feet of Lot 23, Block 3,
 Cottonwood Lake Fifth Addition to the City of Bismarck,
 and the adjoining Santa Fe Avenue and South Twelfth
 Street right-of-way, Burleigh County, North Dakota.]

As more fully set forth in the Declaration, the Declaration is and/or shall be applicable to the following phases of development, with parenthetical reference being made to property addresses on Santa Fe Avenue, Bismarck, North Dakota:

Phase I- Lot 1 (1110), Lot 2 (1112), Lot 3 (1114), Lot 4 (1116), Lot 5 (1117), Lot 6 (1115), Lot 7 (1113), Lot 8 (1111), Lot 9 (1120), Lot 10 (1122), Lot 11 (1124), Lot 12 (1125), Lot 13 (1123), Lot 14 (1121)

Phase II- Lot 15 (1130), Lot 16 (1132), Lot 17 (1134), Lot 18 (1136), Lot 19 (1138), Lot 20 (1139), Lot 21 (1137), Lot 22 (1135), Lot 23 (1133), Lot 24 (1131), Lot 25 (1140), Lot 26 (1142), Lot 27 (1144), Lot 28 (1146), Lot 29 (1148), Lot 30 (1149), Lot 31 (1147), Lot 32 (1145), Lot 33 (1143), Lot 34 (1141)

Phase III- Lot 35 (1160), Lot 36 (1162), Lot 37 (1164), Lot 38 (1166), Lot 39 (1167), Lot 40 (1165), Lot 41 (1163), Lot 42 (1161), Lot 43 (1150), Lot 44 (1152), Lot 45 (1154), Lot 46 (1155), Lot 47 (1153), Lot 48 (1151)

The Declarant does hereby declare the following amendments:

The Declarant adds Section 15 to Article IX, USE RESTRICTIONS, of the Declaration of Covenants, Conditions and Restrictions so that, after amendment, Section 15 will read, as follows:

15. Window Coverings. The Board of Directors shall have control over all window coverings, which are visible from the exterior of a Living Unit, and shall have the authority to prevent the placement of, and to require the removal of, any window covering which, in the judgment of the Board of Directors, is inconsistent with, or fails to promote the harmony of, the Project. For purposes of this paragraph, the Board of Directors, by way of example and not of limitation, shall have authority over color, patterns, and style of window coverings.

With the amendments set forth above, the Declarant does hereby re-declare and affirm the Declaration of Covenants, Conditions and Restrictions for Cottonwood Cottage Townhomes, dated July 22, 2009, and recorded as Document No. 712245 on July 23, 2009.

Dated this 26 day of July, 2010.

Cottonwood Cottage, LLP, a North Dakota limited liability partnership

By: Matthew J. Geiger
Matthew J. Geiger, Managing Partner

By: Thomas L. Kunz
Thomas L. Kunz, Managing Partner



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Burleigh County

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I, Tonia Fitterer, a Notary Public of the County and State aforesaid, do hereby certify that Matthew J. Geiger and Thomas L. Kunz, Managing Partners of Cottonwood Cottage, LLP, a North Dakota Limited Liability Partnership, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership.

Witness my hand and official stamp, this 26th day of July, 2010.

Tonia Fitterer

Notary Public
Burleigh County, North Dakota
My Commission Expires:



**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR COTTONWOOD COTTAGE TOWNHOMES**

THIS DECLARATION, made on the date hereinafter set forth by Cottonwood Cottage, LLP, a North Dakota Limited Liability Partnership, with its principal office located at 408 East Main, Bismarck, North Dakota (hereinafter referred to as "Declarant.")

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Burleigh, State of North Dakota, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Property"); and,

WHEREAS, Declarant desires to develop a townhome development in accordance with the Declaration of Covenants, Conditions and Restrictions hereinafter set forth, and

WHEREAS, Declarant reserves the right to develop the property in phases and, at Declarant's option, to suspend or terminate one or more of the phases of development, and to remove part of the Property from the development project, and

NOW, THEREFORE, Declarant hereby declares:

(a) That all of the Property, which is actually developed as a part of this project, and which is thusly developed and conveyed by the Declarant, shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, title or interest in the described Property or any part thereof, and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. The Property shall be developed in Phases, as further set forth herein, and the Lots within such Phases are identified, as follows (paranetical reference is made to property addresses on Santa Fe Avenue, Bismarck, North Dakota):

Phase I- Lot 1 (1110), Lot 2 (1112), Lot 3 (1114), Lot 4 (1116), Lot 5 (1117), Lot 6 (1115), Lot 7 (1113), Lot 8 (1111), Lot 9 (1120), Lot 10 (1122), Lot 11 (1124), Lot 12 (1125), Lot 13 (1123), Lot 14 (1121)

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(b) That, the Declarant hereby declares Phase I to be subject to this Declaration, effective upon the filing of this Declaration with the Burleigh County Recorder, and further declares that, prior to the sale of the first Lot in Phase I, Declarant shall convey the following real property, less those parcels platted as Lots, to the Association as Phase I of the project:

The west 194.00 feet of Santa Fe Addition to the City of Bismarck,
Burleigh County, North Dakota

(c) That, unless the Declarant withdraws all, or some of, the remaining portions of the Property from the project, as such right is reserved to the Declarant under Article II, Section 4, the Declarant shall thereafter convey additional Phases of the Property, less those parcels platted as Lots, to the Association, when, and if, additional Phases of the project are developed and, upon such subsequent conveyances by Declarant to the Association, the real property so conveyed in the applicable Phase, along with the Lots in that Phase, shall automatically become subject to this Declaration, upon the filing of the Declarant's deed of conveyance with the Burleigh County Recorder.

ARTICLE I DEFINITIONS

Section 1. "Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation of Cottonwood Cottage Townhome Owners Association, Inc., the original of which has been, or will be, filed in the office of the North Dakota Secretary of State, and any and all subsequent amendments thereto.

Section 2. "Association" shall mean and refer to the Cottonwood Cottage Townhome Owners Association, Inc., a North Dakota non-profit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to a structure containing Living Units, constructed or erected on the Property.

Section 5. "Bylaws" shall mean the Bylaws of Cottonwood Cottage Townhome Owners Association, Inc., which shall be recorded following the recordation of this Declaration in the office of the Burleigh County Recorder, along with any and all subsequent amendments thereto.

Section 6. "Common Elements" or "Common Areas" are used interchangeably and shall mean any real estate, easement, or other real property interest, which is owned, held, or leased by the Association, solely or in conjunction with others.

Section 7. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses for maintenance of the Townhomes as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair or replacement of the Common Elements and Limited Common Elements;
- (d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase, or as the Association may deem appropriate to purchase;
- (f) Ad valorem taxes and public assessments charges lawfully levied against Common Elements and Limited Common Elements;
- (g) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property and serve both the Property and lands adjacent thereto;
- (h) All expenses agreed by the members to be Common Expenses of the Association; and
- (i) All charges for utilities used in connection with the maintenance of the Common Elements and Limited Common Elements.

Section 7. "Declarant" shall mean and refer to Cottonwood Cottage, LLP, its successors and assigns to whom the rights of the Declarant hereunder are expressly transferred, in whole or in part.

Section 8. "Limited Common Elements" shall mean those portions of the Common Elements, which serve only a single Lot or fewer than all the Lots, and which may include, but specifically are not limited to, driveways, walkways, parking areas or areas serving only specified

Lots, and such other similar areas as may be designated by a plat map of the Property. Unless otherwise specified, the use of the term "Common Elements" also includes the "Limited Common Elements."

Section 9. "Living Unit" shall mean and refer to a townhome dwelling unit constructed on any Lot, where such dwelling unit has been fully constructed and made ready for occupancy as a residence, including, without limitation, completion of the final floor covering, interior paint and wallpaper and all appliances, and for which a Certificate of Occupancy has been issued.

Section 10. "Lot" shall mean and refer to any plot of land shown upon the Plat of the Property designated for separate ownership and for construction of a Living Unit.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 12. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of title to any Lot which is a part of the Property, including the Declarant so long as any Lot as hereinafter defined is owned by the Declarant, and including contract sellers, but excluding those contract sellers having such interest merely as the security for the performance of an obligation.

Section 13. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 14. "Phase" shall mean and refer to the incremental phases of construction, which will be used by Declarant to develop this project, and such incremental phases are designated individually as Phase I, Phase II, and Phase III, as more specifically set forth in Paragraph (a) on pages 1 and 2 of this Declaration, and on the Plat (Exhibit B), as the same may be amended from time to time, as provided within this Declaration.

Section 15. "Plat" shall mean that certain Plat of the Property, attached as Exhibit B, as the same may be amended from time to time, as provided within this Declaration.

Section 16. "Property" shall mean and refer to that certain real property hereinbefore described in Exhibit "A," and such additions thereto as may be hereafter brought within the jurisdiction of the Association, but excluding any real property later removed from the jurisdiction of the Association in the event that the Declarant withdraws one or more Phases from the project, as such removal rights are reserved to the Declarant under Article II, Section 4.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, on and over the driveways, walkways and parking areas of the Common Elements, all of which rights shall be appurtenant to and shall pass with the title to every Lot, in accordance with the purpose for which it is intended and without violating the lawful rights of the other Owners, subject to the following provisions:

a) The right of the Association to suspend the voting rights and the right of use of the recreational or other Common Element facilities (except rights of access to Lots), by an Owner for any period during which any assessment against such Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

b) The right of the Association to dedicate, sell, lease or transfer all or any part of the Common Element, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless voted upon and approved by eighty percent (80%) of each class of members in the Association on a written instrument. On such instrument, the Secretary of the Association shall certify that eighty percent (80%) of each class of members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes as specified herein may be made by the Association without the consent of the Members;

c) The right of the Association to regulate the use of parking spaces, including but not limited to the right to assign specific parking spaces for the use of specific Lots;

d) The right of the Association, in accordance with this Declaration and its Articles of Incorporation and Bylaws, to borrow money, using the Common Elements as security for such debt, for the purpose of improving the Common Element and facilities;

e) The right of the Association to limit the number of guests of Members;

f) The right of the Association, in accordance with this Declaration and its Articles of Incorporation or Bylaws, to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements, and to create Limited Common Elements; and

g) The right of the Declarant to provide, declare, dedicate, and convey, in common interest between the Association and any other person (including but not limited to the Declarant), the common ownership of portions of the Common Elements and/or the joint use of

easement rights upon the Common Elements, including but not limited to walkways and roadways, at any time during the development of the project, or in the event of withdrawal by Declarant of one or more Phases from the project. In such instances, the Declarant, at its option, and in its discretion, shall provide terms and conditions for the maintenance and repair of such commonly owned/enjoyed portions and rights.

Section 2. Delegation of Use. Any owner may temporarily delegate, in accordance with the Bylaws, his right of enjoyment to the Common Element to the members of his immediate family, his tenants, or contract purchasers who reside on the Property.

Section 3. Title to the Common Elements. The Declarant hereby covenants for itself, its successors, and assigns, that it will convey fee simple title to the Common Elements applicable to Phase I to the Association, prior to the conveyance of the first Lot, free and clear of all encumbrances and liens, except encumbrances of record, but subject to the right of the Declarant and the Association to declare future easements under Article VIII, and further subject to the right of Declarant to provide, declare, dedicate, and convey common ownership and joint use of interests in the Common Elements under Article II, Section 1(g). Thereafter, if and when additional Phases are developed, the Declarant will likewise convey the Common Elements applicable to that additional Phase. Until any portion of the Property is actually conveyed to the Association, neither the Association, any Member, nor any Lot Owner shall have any rights, vested or otherwise, in the Property, except that the Declarant covenants that, upon the commencement of the development of a particular Phase, the Declarant will complete that particular Phase and will convey the Common Elements applicable to that particular Phase.

Section 4. Reservation of Development Rights to Declarant. The Declarant reserves the right to develop this project in Phases, at such times, and in such manner, as determined appropriate by the Declarant. By way of example and not by way of limitation, if the Declarant, after the completion of Phase I, decides, for any reason, to decline the development of the additional Phases, the Declarant hereby reserves that right, which can be exercised in the discretion of the Declarant, and which right may be exercised by a written declaration of that decision, signed and recorded by Declarant. In such instance, those portions of the Property, which are not included within an already developed Phase, shall be withdrawn from this project by the Declarant, without the necessity of the consent of the Association, the Members, the Owners, or any Mortgage Holders, and, in such instances, the Declarant shall thereafter have the full and unlimited right and option to convey, develop, or otherwise deal with the property, so withdrawn from the project, in the total discretion of Declarant, without regard to the provisions of this Declaration. The three anticipated Phases of development are set forth on Exhibit B; however, the Declarant further reserves the right to amend or alter the Phases, and/or the extent and nature of such Phases, by the recording of an amended Plat.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all the Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B member shall be the Declarant. The Class B Member shall be entitled to four (4) votes for each Lot in which the Class B Member has an ownership interest; provided, the Class B membership shall cease and be converted to Class A membership on the happening of the following events whichever shall first occur:

- a) Ninety percent (90%) of the 48 Lots that have been proposed for development and which will be platted are deeded from Declarant to Lot Owners other than Declarant; or
- b) On December 31, 2014.

After termination of the Class B membership, if the Declarant still owns Lots, said Declarant shall for all purposes be deemed a Lot Owner and shall be entitled to the same rights and privileges of Class A Members.

Section 3. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, which shall be payable by the Owner either monthly, quarterly, or annually at the election of the

Association, (2) special assessments for purposes set forth in Article IV, Section 5, including but not limited to extraordinary maintenance and capital improvements, and (3) special assessments for purchase and reconstruction of townhomes. The annual and special assessments together with interest and costs and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of each person who was an Owner of such Lot at the time when the assessment became due. The personal obligation for the delinquent assessments shall not pass to a Lot Owner's successors in title unless expressly assumed by them; however, the lien for such delinquent assessments shall remain as a charge against the Lot.

Notwithstanding any provision herein to the contrary, the assessment for each Lot which does not have a Living Unit thereon shall be twenty-five percent of the assessment of a Living Unit.

The Association shall also have the authority, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof, by way of a properly filed lien, to the Association arising from breach by such owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money, or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns to pay each assessment levied by the Association on his Lot by the due date as established by the Board, and further covenants that if said assessment shall be in default and become a lien upon said Owner's Lot as provided herein then such lien shall continue to be enforceable, both against the Owner and against the Owner's successors in title to the Lot, until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property, and in particular, but not limited to, for the acquisition, improvement and maintenance of the Property, services, equipment, and facilities, for the exterior maintenance of the Buildings and for the use and enjoyment of the Common Elements, including, but not limited to, the cost of repairs, replacements and additions; the cost of labor, equipment, materials, management and supervision; the payment of taxes and public assessments assessed against the Common Elements; the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board; the employment of counsel, accountants and other professionals for the Association when necessary; and such other needs as may arise.

Section 3. Reserve/Replacement Fund. Out of the annual assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and any Limited Common Elements which the Association may be obligated to maintain.

Section 4. Amount of Annual Assessment.

- a) Initial Maximum Assessment. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, other than the Declarant, the maximum annual assessment shall not exceed One Thousand Five Hundred Dollars (\$1,500.00) per Lot. The Declarant shall pay no assessment for Lots developed and owned by it.
- b) Increase by Association. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment effective for any year may be increased by the Board of Directors, without a vote of the membership, by a percentage which may not exceed (10%) over the annual assessment for the prior year.
- c) Increase by Members. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of at least two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for such purpose.
- d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors may consider all current costs and expenses of the Association, any accrued debts, reserves for future needs, and any other issues relevant to the purpose of the assessments (as outlined in Article IV, Section 2).

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, one or more special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Element, any extraordinary maintenance, any exterior maintenance, including fixtures and personal property, on any property for which the Association is responsible, and any other extraordinary expenses, as determined by the Association, provided that any such special assessment shall be approved by the affirmative vote of at least two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4(c) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4(c) and 5 shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject

to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, and such quorum requirement shall continue to decrease at each subsequent meeting until a quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Except as otherwise set forth herein, both annual and special assessments must be fixed at a uniform rate for all Lots, with the exception of assessments levied on Limited Common Elements that only benefit certain Lots, and assessments may be collected on a monthly basis, quarterly basis, or annual basis, but in no event shall assessments be collected less frequently than annually, as determined by the Board of Directors of the Association; provided, however, that the Declarant shall pay no assessment, either general or special, for Lots developed and/or owned by it. Further, if any common expense is caused by the negligence or misconduct (i) of any Lot Owner, (ii) of a Lot Owner's family, guests, agents, or contractors, or (iii) of any other occupant of a Lot, the Association, by action of the Board, may assess that expense exclusively against the applicable Lot.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided herein shall commence as to all Lots in a particular Phase on the first day of the month following the conveyance of the Common Elements pertaining to that Phase to the Association. The first annual assessment shall be prorated according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the annual assessment period. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within ten (10) days after the due date shall be delinquent, in default and shall bear interest at the highest rate then permitted by North Dakota Law. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorney's fees, and/or proceed with any other permissible legal remedy then available to the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of such Owner's Lot.

Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when a Notice of Lien is filed of record. The Notice of Lien shall state the description of the Lot encumbered thereby, the name of the record owner at the time the lien is filed, the name and address of the Association, a reasonable identification of the delinquent assessment(s), and the amount due; a Notice of Lien may be filed for multiple

delinquent assessments, both general and special. The Association may foreclose the claim in any manner allowed by North Dakota law.

The Notice of Lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such Notice of Lien may include assessments which are due and payable when the Notice of Lien is recorded, fees, charges, late charges, fines, interest, costs, attorney's fees, advances to pay taxes and/or prior encumbrances and interest thereon. Such Notice of Lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such Notice of Lien, the same shall be satisfied of record.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the lien of the assessments. However, the sale or transfer of any Lot pursuant to such mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not extinguish the personal obligation of the Owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due.

Section 11. Foreclosure of Liens for Unpaid Common Expenses. In an action brought by the Board of Directors to foreclose a lien on a Lot, the Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, if so interested, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage convey or otherwise deal with the same, subject, however to applicable restrictions of record. A suit to recover a money judgment for unpaid Common Expenses may be maintainable without foreclosing or waiving the lien securing the same.

ARTICLE V ARCHITECTURAL CONTROL

No site preparation or initial construction, erection or installation of any improvements including, but not limited to, building, fences, signage, walls, screens, plantings or other structure shall be commenced, erected or maintained upon the Property, including but not limited to the painting, siding, shingling, or other altering of a Building (which actions are within the rights of the Association under Section 1, Article VIII) nor shall any exterior addition to or change or alteration thereto be made by any Lot Owner (provided, this restriction shall not apply to the Declarant, so long as Declarant is Class B Member), until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted in writing to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the reasonable discretion of the Board of Directors of the Association, or by the reasonable discretion of an architectural committee

composed of three (3) or more persons, which may be appointed by the Board, in the Board's discretion. In the event said Board, or its architectural committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing. In reviewing such plans and specifications, neither the Board, nor the architectural control committee, shall be required to approve any plans or specifications; instead, it is understood that the Board, and the architectural control committee, have the discretion to determine whether the plans and specifications are consistent with all aspects of the project, including but not limited to appearance, design, quality, harmony with existing structures, and other criteria which is felt to be important to the overall character of the project and the value of the townhomes. It is further provided that, until the Declarant ceases to be a Class B Member, all plans and specifications must also have the written approval of the Declarant.

The Association shall have the right, at its election, but shall not be required, to enter upon any of the Property during site preparation or construction, erection or installation of improvements on any Lot to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workman-like manner, utilizing approved methods and good quality materials; provided, that the Association shall have no such right(s) as to any improvements undertaken by the Declarant, or the Declarant's agents or contractors.

ARTICLE VI INSURANCE

Section 1. Insurance to be Maintained by the Association.

(a) Commencing not later than the time of the first conveyance of a Lot to a person other than a Declarant, the Association shall maintain, to the extent reasonably available:

- 1) Property insurance on the Common Elements and the exterior surfaces of the Lots and Buildings, to the extent that those exterior surfaces are the Association's obligation to maintain and repair, insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies, and
- 2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

(b) If the insurance described in subsection (a) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Lot Owners.

(c) Insurance policies carried pursuant to subsection (a) of this section shall provide that:

- 1) Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest,
- 2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;
- 3) No act or omission by any Lot Owner, unless acting within the scope of the owner's authority on behalf of the Association, will preclude recovery under the policy; and
- 4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(d) Any loss covered by the property policy under subdivision (a)(1) of this section shall be adjusted with the Association, but the insurance proceeds for that loss are payable to the Association, and not to any mortgagee. The Association shall hold any insurance proceeds for the benefit of Lot Owners and lienholders as their interests may appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the project is terminated.

(e) An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for the Lot Owner's own benefit.

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Lot Owner or mortgagee. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Lot Owner, and each mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(g) Any portion of the Property for which insurance is required under subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced promptly by the Association

unless (i) the Association is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) by an eighty percent (80%) vote, the Lot Owners decide not to rebuild, including one hundred percent (100%) approval both of Lot Owners who suffered the direct physical loss and of Lot Owners assigned to any Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Property is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project, (ii) the insurance proceeds attributable to Limited Common Elements which are not rebuilt shall be distributed to the Owners of the Lots to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed and/or credited to all the Lot Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the Lots.

Section 2. Insurance to be maintained by the Lot Owner. The Association shall not provide nor purchase insurance for the repair or replacement of any Building, except as set forth in Section 1. It shall be, and hereby is, the responsibility of each Lot Owner to procure and obtain the following types of insurance coverage:

- 1) Property insurance on the Lot Owner's individual Lot, excluding insurance coverage which is the obligation of the Association, insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies, and
- 2) Liability insurance in reasonable amounts, as determined from time to time by the Board, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Lot.

ARTICLE VII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall, which is built as a part of the original construction of the townhomes upon the Property and which is intended to be placed on the dividing line between Lots, and all reconstruction or extensions of such walls, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below ground construction and/or liability for property damaged due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair or Maintenance. The cost of reasonable repair and maintenance of a party wall shall be equally shared by the Owners who make use of the party wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if other Owners also make use of the party wall, they shall contribute equally to the cost of restoration thereof, subject, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

Section 4. Reserved Rights of Association. Although the primary responsibility for repair and maintenance of all party walls lies with the adjoining Owners, it is declared that, if the Association determines that repair or maintenance to a party wall is necessary, and if the Association further determines that, for any reason, the applicable Lot Owners are failing to perform the necessary work, the Association may enter upon the Lots, and the Living Units, may perform the necessary repair or maintenance, and, in such event, shall institute a special assessment, equally, against the Owners of the applicable Lots. The Association shall have an easement of ingress and egress, upon and over the applicable Lots and Living Units, in order to perform this function. Nothing herein shall be deemed to shift the primary responsibility of repair and maintenance of any party wall to the Association.

Section 5. Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

Section 6. Certification by Adjoining Lot Owner that No Contribution is Due. If any Owner desires to sell that Owner's Lot, such Owner may, in order to assure a prospective purchaser that no adjoining Owner has right of contribution as provided in this Article, request of the adjoining Owner a certificate that no contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request without charge; provided, however, that where the adjoining Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 7. Arbitration. In the event of any dispute among Owners and/or the Association arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled at binding arbitration as follows: each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by majority of all the arbitrators. Each Owner, by accepting title to a Lot, agrees to the provisions of this Section.

ARTICLE VIII EXTERIOR MAINTENANCE

Section 1. Maintenance of Lots and Buildings. In addition to maintenance upon the Common Elements, the Association shall provide exterior repair, maintenance, and replacement, as determined reasonable and prudent by the Association, upon each Lot and Building, including but not limited to the following items: paint; siding material; roof covering; gutters and downspouts; exterior Building surfaces (except for exterior window and door repair and replacement); grass, trees, shrubs, and other vegetation; walkways; landscaping; those certain fences installed by Declarant or the Association; and other exterior improvements made by the Declarant or the Association, but specifically excluding any repair, maintenance, or replacement on the Heating, Ventilation, and/or Cooling systems ("HVAC"), regardless of where such HVAC equipment is located on the Property (It shall be the sole and exclusive responsibility of each Lot Owner to maintain, repair, and replace the HVAC system that services the Lot Owner's Lot). Exterior repair, maintenance, and repair by the Association shall not include glass surfaces, fences placed by an Owner, areas fenced for patio purposes, awnings, or other exterior appurtenances added by an Owner, with the necessary approval under Article V of this Declaration; if any Owner installs any improvement which limits access to a portion of that Owner's Lot, such installation shall relieve the Association from its responsibility, but not from its right, to repair, maintain, and replace that portion of that Lot. No repair, maintenance, or replacement by a Lot Owner or such Owner's agents, nor the construction of a fence on the Lot by a Lot Owner, shall reduce the assessment payable by a Lot Owner to the Association. If, in the opinion of the Association, any Lot Owner fails to maintain such Owner's Lot in a neat and orderly manner, or to adequately and timely address issues of repair, maintenance, or replacement of those items which are the responsibility of the Owner, the Association may undertake any required repair, maintenance, or replacement, and add the cost thereof to the assessment against such Owner and such Owner's Lot. The Owner shall not plant any trees, shrubs, or other vegetation, except with prior written approval under Article V of this Declaration.

- (a) The Association's obligation to perform exterior repair, maintenance, and replacement shall only extend to visible exterior surfaces, and not to the underlying structure. The Lot Owner(s) shall remain responsible for all structural and non-exterior non-structural repair, maintenance, and replacement on the Lots, the Buildings, and the Living Units.
- (b) In fulfilling its obligation of exterior repair, maintenance, and replacement, the Association shall, if reasonably practical, strive for uniformity of the appearance of the project. However, absolute uniformity in appearance shall not be required, and the Association may make repairs, maintenance, and replacement in a manner which does not maintain uniformity, if, in the judgment of the Board, such actions are reasonable, due to issues of cost, product availability, or other concerns. By way of example, and not be way of limitation, if a fence is damaged, and if the Board determines that it is impossible or impractical to replace the fence with

fencing which is identical to other fencing on the Property, the Board may replace the fencing with a reasonably comparable product.

Section 2. In the event that the need for exterior maintenance, repair or replacement on a Lot or Building is caused through the willful or negligent act or omission of the Owner, or the Owner's family, guests, invitees, tenants, agents or contractors, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Lot is subject.

Section 3. The Association is hereby granted an easement right of access to enter upon any Lot, Building, or Living Unit for the performance of maintenance, repairs or replacement.

Section 4. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, an easement for the right to unobstructed access over, upon, and within each Lot at all reasonable times for inspection purposes.

ARTICLE IX USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of all yard space of each Lot and the Common Elements. Such rules and regulations may provide for the imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants or conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property (except for temporary offices of the Declarant and/or any model used by the Declarant) shall be used except for single family residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance on the Property.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any Living Unit except that dogs, cats or other traditional household pets may be kept and maintained; provided, such dogs, cats, or other traditional household pets are not kept or maintained for commercial purposes; further provided, no more than two (2) traditional household pets may be kept in, upon, or about a single Living Unit; further provided, the combined total weight of such two (2) household pets shall not, in any event, exceed eighty (80) pounds [e.g., an owner cannot have two 45-pound dogs]. Any Owner, who allows a pet outside the Living Unit, must keep the pet on a leash and must keep the pet under control; upon a

vote of the Board of Directors of the Association, any pet, which exhibits aggressive or dangerous actions towards humans and/or other animals, or which barks or otherwise generates noise in a way that creates unreasonable disturbance to other owners, shall be ordered to be removed, either temporarily or permanently, from the project. It shall be the affirmative obligation of every pet owner to control such owner's pet and to promptly and properly dispose of any fecal waste left by such owner's pet within the Project. Any damage done to the Property by the household pet of a Lot Owner, or of any person present on the Property with the consent, express or implied, of the Lot Owner, to landscaping, lawn, vegetation, or improvements, shall be the responsibility of the Lot Owner.

Section 5. Subdividing Prohibited. Absent an approved amendment to this Declaration, no Lot shall be resubdivided in such a manner that will result in there being more than the number of Lots shown on the applicable recorded plat.

Section 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shed, shack, garage, barn, or other outbuilding, shall be placed or used on any Lot at any time; provided, the Association may, at its option, place a storage structure on the Common Elements.

Section 7. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will unreasonably increase the rate of insurance, for the Property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in such Owner's townhome or on the Common Elements which will result in the cancellation of insurance on any portion of the Property or the contents thereof, or which will be in violation of any law, ordinance or regulation. No waste shall be committed on any portion of the Common Elements. Any increase in insurance premium attributed to a Lot Owner shall be charged to that Lot Owner, although this provision does not limit the right of the Association to address violations of this section.

Section 8. Offensive Behavior. No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with. In addition, the Association, in implementing rules and regulations, shall have the authority to set hours for "quiet time."

Section 9. Parking. No boats, trailers, campers, motor homes, commercial trucks or tractors shall be parked on the Property by any person, including without limitation a Lot Owner, such Owner's family members, tenants or contract purchasers, except as may be permitted by the rules and regulations adopted by the Association.

Section 10. Signs. No Owner shall display, or allow to be displayed, to public view any sign, placard, poster, billboard or identifying name or number upon any Building, or any

portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, an Owner of any Lot, or their respective agents, may place "For Sale" or "For Rent" signs on a Lot then being offered for sale or rent. This section notwithstanding, the Declarant may maintain a sales office and may erect such signs as the Declarant deems appropriate as aids to development and marketing, provided that such signs do not violate any applicable law.

Section 11. Alterations. No person shall undertake, cause or allow any alteration of structures in or upon any portion of the Common Elements except at the directions of, or with the express written consent of, the Association.

Section 12. Common Elements Use. The Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 13. Satellite Dishes or Antennas. No television reception antennas or satellite dishes shall be placed on a Building, or on any Lot.

Section 14. Sexual Offenders. No person, who is then listed on the North Dakota Sex Offender Website, maintained by the North Dakota Attorney General, or on a substantially similar government-maintained listing of sexual offenders, may reside within the project, as an owner, tenant, guest, or in any other capacity. Any owner, who offers that owner's unit for sale or lease, shall, prior to entering into a purchase agreement or lease agreement, as applicable, notify potential buyers or potential tenants about this restriction. If an owner or renter is first listed as a sexual offender after purchase or commencement of rental, the owner or renter shall be allowed to remain living within the project for no more than 60 days after written notice from the Association of the restrictions of this paragraph.

ARTICLE X EASEMENTS

Section 1. Utility Easements. Declarant hereby declares, dedicates, and conveys, for itself, and its successors and assigns, including but not limited to the Association and all Lot Owners, upon, under, and within, all of the Property, including Lots, Buildings, Living Units, and Common Elements, easements (including all rights for placement, inspection, maintenance, repair, and replacement thereof, and further including the right of access for all purposes associated therewith) for utilities, whether public, common, or associated with one or more Living Units, including but not limited to water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable lines, electronic data lines, and other utilities. By way of example, and not by way of limitation, the utilities for middle Lots, applicable to a Building, will probably be placed upon and under the end Lots, applicable to a Building; therefore, repairs and maintenance of utilities, for those middle Lots, may cause disruption of the

end Lots. These easements apply both to utilities which are placed, prior to completion of a Phase, and also to utilities which are determined reasonably necessary by the Declarant, or by the Association, after completion of a Phase, where either the Declarant or the Association, acting through the Board of Directors, and without the necessity of consent by the Members, determines that such further easements are appropriate for the convenient use and enjoyment of the Property.

Section 2. Additional Easements. Declarant hereby declares, dedicates, and conveys, for itself, and its successors and assigns, including but not limited to the Association and all Lot Owners (but only as applicable to a particular Lot), upon, under, and within, all of the Property, including Lots, Buildings, Living Units, and Common Elements, easements (including all rights for placement, inspection, maintenance, repair, and replacement thereof, and further including the right of access for all purposes associated therewith) for all purposes, which are determined by the Board of Directors to be appropriate for the convenient use and enjoyment of the Property, said purposes including but not being limited to driveways, walkways, parking areas, and other such conveniences. These easements apply both to such conveniences which are placed, prior to completion of a Phase, and also to such conveniences which are determined reasonably necessary by the Declarant, or by the Association, after completion of a Phase, where either the Declarant or the Association, acting through the Board of Directors, and without the necessity of consent by the Members, determines that such further easements are appropriate for the convenient use and enjoyment of the Property.

Section 3. The easements for said utilities and/or conveniences, as provided in Sections 1 and 2 above, shall be placed in such locations as will minimize damage to improvements in the Lots, Buildings, Living Units, and Common Elements, and as will minimize interference with the full use thereof, but said easements shall be placed in such locations as will allow the Association and the Lot Owners to fully benefit from such utilities and/or conveniences. The Association shall restore any portion of the Property, which is disturbed by the utilization of easements rights, to a condition which substantially approximates the Property's condition prior to utilization of easement rights.

Section 4. The utilization of existing easements, and the placement of utilities and/or conveniences in new locations, shall be under the exclusive jurisdiction of the Declarant until all Phases are completed and then shall be under the exclusive jurisdiction of the Board of Directors. All decisions of the Declarant and/or the Board of Directors, regarding all aspects of the easements and/or placement of utilities and conveniences, shall be left to the discretion of such decision-maker and shall be final and conclusive. Any costs associated with such utilization or placement, or any costs associated with restoration of a Lot, Building, Living Unit, or Common Element, shall be a common expense, to be assessed against all Lots, provided, the decision-maker (whether the Declarant or the Board of Directors) may determine that certain requests for utilities and/or conveniences, made by one or more Lot Owners, are not reasonably necessary for the general good of the project and, in such case, may condition approval of such utilities and/or conveniences upon the agreement, on terms determined appropriate by the decision-maker, of the

applicable Lot Owners to pay for expenses associated therewith or to make other accommodations.

Section 5. Adjoining Lots. Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of buildings, or any other cause, which is unrelated to the conduct of an Owner. There is further declared and granted a valid easement for the maintenance and repair of said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor on an Owner or Owners if said encroachment occurred due to the misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that encroachments over adjoining Lots, created during repair or reconstruction, shall be permitted and that valid easements for the maintenance and repair of said encroachments are declared and granted so long as said encroachments shall exist.

Section 6. Unintentional Encroachment. In the event that any Building on a Lot shall encroach upon any Common Elements or upon any other Lot for any reason not caused by the purposeful act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance and maintenance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuation and maintenance of such encroachment of the Common Elements onto any such Lot for so long as such encroachment shall exist.

Section 7. Priority of Easements. Each of the easements herein above referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, the Association, and the Common Elements, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 8. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building, or as a result of any repair, construction, reconstruction, or alteration, there is hereby created a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of such Lot to an Owner for the purpose of correcting any problems that may arise regarding grading or drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 9. Emergencies. Every Lot, Building, and Living Unit shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which any Building or portion of the Common Elements.

Section 10. Common Water and Sewer Systems. Each Building, which contains Living Units, will have a common water and sewer system. Therefore, while the Owners may be billed separately for those services, a delinquency by an Owner in the payment of a water bill could, if unremedied, result in termination of the water supply to the entire Building; the Association, in such event, is authorized to arrange for payment of the applicable delinquency and to take all measures, determined to be appropriate by the Board, to remedy a threatened termination of the water supply and to assess all applicable expenses to the delinquent Owner, whether by special assessment or by other means, without prejudice to pursuit of multiple collection remedies. The emergency water shut-off will be located in one of the Living Units, and the Association is granted an easement of access to the emergency water shut-off, even in the absence of prior notice; the Association shall be entitled to demand and receive a means of access, including but not limited to an access key, to the applicable Living Unit, and the expense of obtaining such access shall be considered a Common Expense.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time these declarations shall be automatically extended for successive terms of ten (10) years, unless all Owners, and each person who holds a first mortgage on a Lot, consents in writing to termination of the Declaration, at least ninety (90) days prior to the end of the initial, or any renewal, term. This Declaration may be amended by an instrument signed by Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and by each person who holds a first mortgage on a Lot; provided that (1) prior to the sale of the first Lot, this Declaration may be amended by the Declarant without the requirement of additional consent from any person; and (2) the Board may amend this Declaration without the consent of the Members to correct any obvious error or inconsistency in drafting, typing or reproduction, to allow for the annexation of additional property, to allow the addition of further special Declarant

rights which will benefit the Project, or for other reasons listed in Section 4 below. All amendments shall specify the provisions herein under which it is amended and shall certify the compliance with the amendment provision herein. No amendment shall be effective until recorded in the Office of the Recorder for Burleigh County, North Dakota.

Section 4. Other Amendment of Declaration Without Approval of Owners. The Declarant, so long as it shall retain a majority of the votes in the Association, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Dakota, regarding purchase or sale of such Lots and improvements or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standard, aesthetics and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitations, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation of the Federal National Mortgage Association or the City of Bismarek or the County of Burleigh, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. No amendment shall be effective until recorded in the Office of the Recorder for Burleigh County, North Dakota.

Section 5. Amendment to Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Association, and thereafter the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax exempt status. Such amendment shall be effective when recorded in the Office of the Recorder for Burleigh County, North Dakota.

Section 6. Management and Contract Rights of Association. Declarant may enter into a contract with any person for the purposes of providing any elements of the operation, care, supervision, maintenance and management of the Property. However, no such contract shall later be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of management by Declarant to the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be signed in its name, effective as of the 22nd of July, 2009.

Cottonwood Cottage, LLP, a North Dakota limited liability partnership

By: Matthew J. Geiger
Matthew J. Geiger, Managing Partner

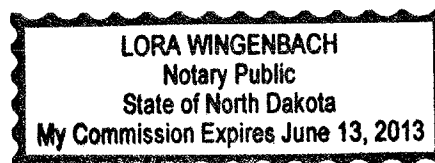
By: Thomas L. Kunz
Thomas L. Kunz, Managing Partner

[illegible]

I, Lora Wingenbach, a Notary Public of the County and State aforesaid, do hereby certify that Matthew J. Geiger and Thomas L. Kunz, Managing Partners of Cottonwood Cottage, LLP, a North Dakota Limited Liability Partnership, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership.

Witness my hand and official stamp, this 22nd day of July, 2009.

Jora Wingenbach
Notary Public
Burleigh County, North Dakota
My Commission Expires: 6/13/13





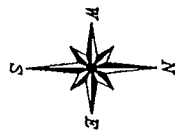
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Burleigh County

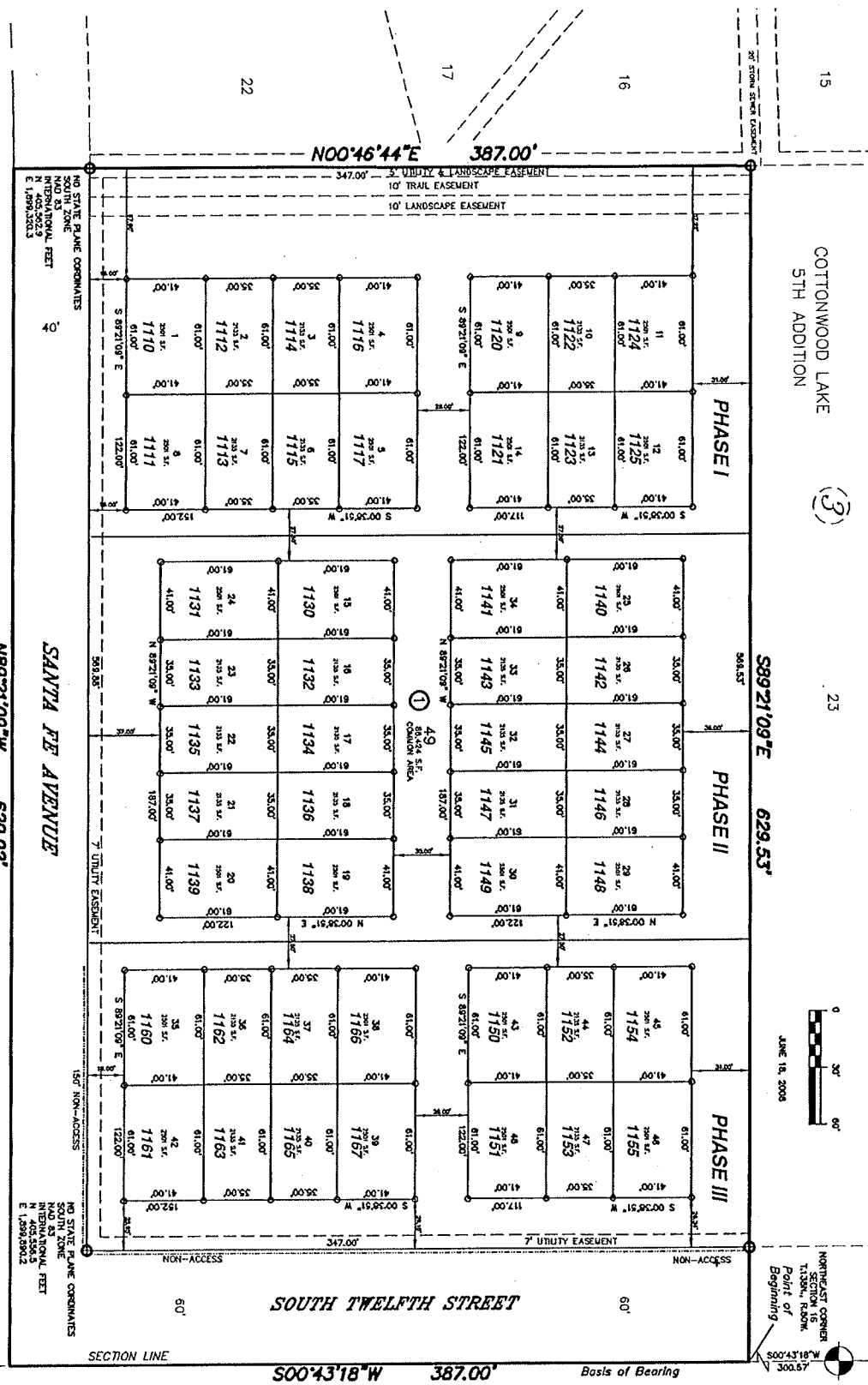
EXHIBIT A

Santa Fe Addition to the City of Bismarck, Burleigh County, North Dakota

[Being a replat of the South 347.00 feet of Lot 23, Block 3,
Cottonwood Lake Fifth Addition to the City of Bismarck,
and the adjoining Santa Fe Avenue and South Twelfth
Street right-of-way, Burleigh County, North Dakota.]



SANTA FE ADDITION
BEING A REPLAT OF THE SOUTH 347.00 FEET OF LOT 23 BLOCK 3 COTTONWOOD LAKE FIFTH ADDITION
AND THE ADJOINING SANTA FE AVENUE AND SOUTH TWELFTH STREET RIGHT-OF-WAY
NORTHEAST 1/4, SECTION 16, T. 138 N., R. 80 W.
BISMARCK, NORTH DAKOTA





CHAPMAN & CHAPMAN LAW

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Burleigh County

Debbie Krohn