

**CORRECTIVE  
FOURTH AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS CORRECTIVE FOURTH AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (“Corrective Declaration”) is made effective as of May 9, 2019 by Amesbury West Homes Association, a Minnesota nonprofit corporation (the “Association”).

WITNESSETH:

WHEREAS, this Corrective Declaration pertains to the properties comprising Amesbury West, a planned community in the City of Shorewood, County of Hennepin, State of Minnesota, which properties are legally described on the attached Exhibit A (collectively, the “Properties”);

WHEREAS, on or about May 9, 2019, the Association, for the benefit of the Properties and pursuant to the affirmative vote of not less than seventy-five percent (75%) of the Owners of Lots within the Amesbury West Development, as those terms are defined below, approved for execution and filing that certain Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions of Amesbury West Homes Association dated May 9, 2019, as subsequently filed in the Office of the Hennepin County Registrar of Titles on May 14, 2019 as Document No. T05612420 (the “Fourth Amended Declaration”);

WHEREAS, the Association has subsequently discovered certain formatting and technical errors within the Fourth Amended Declaration that the Association now desires to correct in the manner provided for correction of technical errors set forth in Article XIII of the Fourth Amended Declaration (which procedures are also fully incorporated into this Corrective Declaration as Article XIV, below);

NOW THEREFORE, having obtained consent from at least fifty percent (50% - 16 votes) of the Owners of Lots within the Amesbury West Development, the Association hereby causes this Corrective Declaration to correct technical errors within, and thereby fully amend, restate, and replace the Fourth Amended Declaration in its entirety, and in so doing to likewise amend, restate and replace that certain Declaration of Covenants, Conditions and Restrictions executed by McNulty Construction Company November 16, 1981, filed November 18, 1981 as Document No. 1448226 in the Office of the Registrar of Titles, Hennepin County, Minnesota, as amended by that certain Amended Declaration of Covenants, Conditions and Restrictions of Amesbury West Homes Association dated April 26, 1983, filed on May 20, 1983 as Document No. 1514678 with the Office of the Registrar of Titles, Hennepin County, Minnesota, as further amended by the First Amendment to Amended Declaration of Covenants, Conditions and Restrictions of Amesbury West Homes Association dated April 1, 2007, filed July 5, 2007 as Document No. 4403066 in the Office of the Registrar of Titles, Hennepin County, Minnesota, as further amended by the Fourth Amended Declaration (collectively, the "Initial Declaration");

AND NOW THEREFORE, it is hereby declared that the Properties, being all the Lots and Common Areas within the Amesbury West Development, shall be held, sold and conveyed subject to and pursuant to the terms of this Declaration, as that term is defined below, the foregoing Recitals which shall be fully incorporated herein, and the easements, restrictions, covenants, and conditions set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having any right, title or interest in or to the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**  
**DEFINITIONS**

Section 1. Terms. The following words, when used in this Corrective Declaration, have the following meaning, unless the context prohibits:

a. "Amesbury West Development" shall mean and refer to all existing individual parcels or units comprising the Properties.

b. "Association" shall mean and refer to Amesbury West Homes Association, a Minnesota non-profit corporation, its successors and assigns.

c. "Board" shall mean and refer to the Board of Directors of the Association.

d. "Common Areas" shall mean and refer to those Properties legally described upon Exhibit B attached hereto and made a part hereof, which are owned by the Association and declared to be for the common use and enjoyment of the Owners.

e. "Declaration" shall mean and refer to this Corrective Declaration.

f. "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designated and intended for use and occupancy as a residence by a single family.

g. "Lot" shall mean and refer to any plot of land or individual property shown upon any recorded subdivision map of the Properties except Common Areas.

h. "Member" shall mean and refer to Owners who are members of the Association in accordance with Article II, Section 1, hereof.

i. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, contract purchasers and life tenants thereof.

j. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may be brought within the jurisdiction of the Association from time to time.

k. "Type A Lot" shall mean and refer to any Lot twenty-eight (28) feet in width.

l. "Type C Lot" shall mean and refer to any Lot fifty-six feet in width.

Whenever any two adjoining Type A lots are conveyed to an Owner and used for the construction of one Living Unit similar in design to that typically for the construction of one Living Unit similar in design to that typically constructed on a Type C Lot, the two Type A Lots shall be treated for all purposes as one Type C Lot.

**ARTICLE II**  
**MEMBERSHIP AND VOTING RIGHTS**  
**IN THE ASSOCIATION**

Section 1. Membership. Every person or entity who is an Owner as defined in Article I, Section 1 shall be a member of the Association, provided no Owner shall have more than one membership interest for each Lot owned by such Owner. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is part of the Association. Being an "Owner" of such Lot shall be the sole qualification for membership.

Section 2. Voting Rights. The Amesbury West Homes Association shall have one class of voting membership, referred to as Class A.

Class A Members shall be all those Owners as defined in Section 1. Class A Members shall be entitled to one vote for each Lot in which they hold an interest required for membership by Section 1. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among themselves, determine. The vote for a Lot may be apportioned where there is more than one Owner of a Lot, but in no event shall more than one vote be cast with respect to any Lot.

Section 3. Management. Among other rights and obligations appropriate to the Association and which will be set forth in the Articles, Bylaws and Minutes of Association

Meetings, the Association shall have the right to appoint a managing agent to operate the Association and to effectuate and enforce the provisions of this Declaration and of any Articles, Bylaws, Rules and Regulations and Minutes of Meetings to the extent of the authority granted therein. Such managing agent may be paid reasonable fees and costs for such services which fees and costs will be added to and become a part of the assessments to which each Lot is subject under Article V hereof.

**ARTICLE III**  
**PROPERTY RIGHTS IN COMMON AREA**

Section 1. Member's Easements. Subject to the provisions of Section 3, every Member shall have the following non-exclusive appurtenant easements:

- a. Ingress and egress over the Common Area;
- b. Utility, water, and sewer easements;
- c. Parking privileges, subject to and as further defined in Article IV hereof;
- d. Right of overhang and encroachment of improvements on a lot which are not inconsistent with the use of the Common Area by other Members;
- e. Party wall easement, subject to Article VI hereof; and
- f. Right and easement of enjoyment.

Section 2. Title to Common Area. The Association shall have marketable title to the Common Area and any additions to said Common Area.

Section 3. Extent of Members' Easements. The rights and easements created hereby and the title of the Association to the Common Area shall be together with and subject to the following:

- a. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, in aid thereof, to mortgage said Area; and

b. The right of the Association to take such actions as are reasonably necessary to protect the Common Area from foreclosure; and

c. The Association shall have the right, as provided in its Articles and/or Bylaws, to (i) suspend the voting rights of any Member as well as the right to use the recreational facilities for any period during which any assessment remains unpaid said rights for up to sixty (60) days and, (ii) to impose a fine not to exceed One Hundred and 00/100 Dollars (\$100.00), charged on a cumulative basis for each infraction of its published Rules and Regulations, plus the cost of cleaning or repairing any damage related to such infraction. Each day during which such infraction exists shall be deemed a separate and distinct infraction; provided, however, that nothing contained in this paragraph 3c shall be deemed to deny an Owner access to and from such Owner's Lot or Living Unit. For example, assuming a Member has not paid an assessment properly levied in the amount of \$1,000.00 payable on March 1<sup>st</sup> of the first year, but the amount is paid on March 5<sup>th</sup> of the same year, the penalty fee shall be calculates as follows:

1 <sup>st</sup> day late:	\$100.00
2 <sup>nd</sup> day late:	\$200.00
3 <sup>rd</sup> day late:	\$300.00
4 <sup>th</sup> day late:	\$400.00
Total:	\$1,000.00

d. The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area; and

e. The right of the Owner of each Lot to an exclusive easement in the Common Area to areas occupied by fireplaces, roof overhangs, air-conditioning compressors, flower boxes, decks, balconies, bay windows and other appurtenances which are part of the original construction of any Living Unit or which are added pursuant to the provisions of Article VII hereof; and

f. The rights of individual Members to the use of parking spaces as provided

in Article IV hereof; and

g. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility.

Section 4. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, such Member's right of enjoyment to the Common Area and facilities to the members of such Member's family, any tenants renting a Living Unit from a Member pursuant to a lease approved by the Association, or the guests or invitees of a Member.

**ARTICLE IV**  
**PARKING RIGHTS**

Subject to reasonable rules and conditions, the Association shall designate at least one parking space conveniently located with respect to each Living Unit for the exclusive use of the Member(s) residing therein, their families and guests. The use of such space by any other Member or person may be enjoined by the Association or Members entitled thereto. The right to the exclusive use of such parking space and to its maintenance and designation by the Association shall be appurtenant to and shall pass with the title to each Living Unit.

**ARTICLE V**  
**COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to be a Member of the Association and hereby covenants and agrees to pay the Association:

monthly assessments or charges for the purposes stated in Section 2 hereof, and (2) special

assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessments is made in accordance with Section 9 hereof. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was made. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by such successor(s) or otherwise required by applicable law.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of (a) promoting the pleasure, recreation, health, safety and welfare of the residents in Amesbury West Development, (b) for the improvement and maintenance of the Lots comprising the Property, (c) services and facilities devoted to the use and enjoyment of the Common Area and of the homes in Amesbury West Development including but not limited to, insurance covering the Common Area, utility charges, and maintenance of the Common Area, and (d) ordinary maintenance of Lots pursuant to Article IX, including but not limited to the cost of labor, equipment, materials, management and supervision.

Section 3. Maximum Monthly Assessment. The maximum assessment may be increased each year by not more than 5% above the maximum assessment for the previous calendar year without a vote of the membership.

a. From and after January 1 of each calendar year, the maximum monthly assessment may be increased above 5% by a vote of two-thirds (2/3-22 votes) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

b. The Board of Directors of the Association may, after consideration of

current maintenance costs and future needs of the Association, fix the actual assessment for any month at an amount not in excess of the maximum.

c. Monthly assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Property and its Common Area that must be maintained, repaired or replaced on a periodic basis and are not payable by special assessments.

Section 4. Special Assessments for Capital Improvements. In addition to the monthly assessments authorized by Section 3 hereof, the Association may levy in any calendar year a special assessment for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto; provided, however, that any such assessment shall have the assent of two-thirds (2/3 - 22 votes ) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose. In addition, the Association may levy as a special assessment, without the two-thirds (2/3 -22 votes) assent referred to above, the amount of any delinquent assessments, including any fees, late charges, fines or interest owing on account of unpaid assessments, which have been extinguished pursuant to a mortgage foreclosure or other proceeding in lieu thereof as provided for in Article V, Section 10.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60% - 20 votes) of all the votes of the 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. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. With the exception of assessments for extraordinary maintenance levied under Article IX, Section 4, and except as provided in Section 3.c., both monthly regular and special assessments shall be fixed at a uniform rate for all Lots of the same type.

Section 7. Date of Commencement of Monthly Assessments Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The monthly assessments shall become due and payable on the first day of each month commencing on the date fixed for commencement as herein before provided, except that the Board of Directors by resolution may require that the monthly assessment be prepaid for a period of six months or, for a period of three months for those Members who elect to pay monthly assessments on a quarterly basis. The due date of any special assessment under Section 4 shall, be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall at that time prepare a roster of the properties and assessments applicable thereto which shall be kept by the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any

assessment therein stated to have been paid. -10-

Section 9. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (pursuant to Section 7) then such assessment shall become delinquent and shall, together with interest thereon and costs of collection thereof, as hereinafter provided, become a continuing lien on the Lot commencing thirty (30) days after said due date, which lien shall bind such properties in the hands of the then Owner, his or her heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain such Owner's personal obligation for the statutory period and shall not pass to an Owner's successors in title unless expressly assumed by such successor or as otherwise required by law.

If the assessments are not paid within thirty (30) days after said due date, the assessment shall bear interest from said due date at the rate of eight percent (8%) per annum and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Lot by suit in the manner provided for mechanic's liens, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and attorneys' fees to be fixed by the Court together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments, including any fees, late charges, fines or interest owing on account of unpaid assessments, provided for herein shall be subordinate to the lien or any first mortgage now or hereafter placed upon a Lot subject to assessments. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to the

acquisition of title.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

a. Any easement or other interest in a Lot dedicated to and accepted by a local public authority and devoted to public use;

b. All Lots or real property interests exempted from taxation by the laws of the State of Minnesota upon the terms and to the extent of such legal exemption;

c. The Common Area as defined in Article I, Section 1(e) hereof. Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

## **ARTICLE VI** **PARTY WALLS**

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes located on the Lots and placed on the dividing line between the Lots 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 and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

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 the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, 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 negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to 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 successors in title.

Section 6. Arbitration. In the event any dispute arises concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## **ARTICLE VII** **ARCHITECTURAL CONTROL**

No building, fence, wall or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after the 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, except that this deemed compliance shall not apply to Common Areas.

**ARTICLE VIII**  
**LEASES**

Section 1. Prohibition of Leases. In order to insure the value and desirability of Living Units in the Association, no living Unit shall be leased in its entirety or in part to anyone. Exemptions may be granted for specific, limited time periods by the consent by the Board of Directors as reflected by a resolution adopted by the Board in accordance with the Articles of Incorporation and Bylaws. Any form of ownership of Living Units which the Board of Directors determines to have as a significant purpose, declared or not, to avoid these leasing restrictions, shall be prohibited.

Section 2. Board Approval. The Board of Directors shall not have the authority to approve any lease with a term of less than 12 months, and any lease must expressly provide that the lessee shall have the legal responsibility to comply with all governing rules (including, but not by way of limitation, the Articles, Bylaws, Covenants of the Association, and resolutions of the Board of Directors of the Association) as well as all other obligations applicable to Owners. The Board shall only approve a lease if it determines that the lease will not adversely affect the character, tranquility, or nature of the Association Properties. The Association has the goal of having substantially all, if not all, Living Units being Owner occupied. The Board shall have no obligation to consent to any lease.

Section 3. Lessee Obligations. The Lessee under any lease, approved or not, shall be jointly and severally liable with the Owner of the leased Living Unit for the payment of all obligations, (including regular and special assessments, and insurance premiums) for items which cover part or all of the lease term, or which remain unpaid during the lease term. In recognition for the difficulty in determining damages for violation of this Article VIII, the Association shall have the power to seek equitable relief, including cancellation of the lease, and to seek damages at law, which the Owner

of the leased Living Unit and the lessee shall be jointly and severally liable.

**ARTICLE IX**  
**MAINTENANCE**

Section 1. Ordinary Exterior Maintenance. In addition to maintenance upon the Common Area, the Association may provide ordinary exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article V hereof as follows: paint, repair, replace and care for roofs, gutters, downspouts and exterior building surfaces (not including glass surfaces), repair or replacement of sidewalks and stoops on each Lot, snow removal on sidewalks, garage entrances, and stoops, and mowing the grass on each Lot.

Section 2. Assessment of Cost. The cost of the ordinary exterior maintenance shall be prorated and uniformly assessed against all Lots of the same type as a part of the monthly maintenance assessment determined in accordance with Article V hereof; and as part of such monthly assessment, it shall be a lien on the Lot and an obligation of the respective Owners and shall become due and payable in all respects as provided in Article V hereof; provided that the Board of Directors of the Association, when establishing the monthly assessment against each Lot for any assessment month as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that month, but shall thereafter make such adjustment with the Owners as is necessary to reflect the cost thereof.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owners, to enter upon any Lot at reasonable hours of any day.

Section 4. Extraordinary Exterior Maintenance. In the event an Owner of any Lot shall fail to perform Extraordinary Exterior Maintenance of such Owner's Lot and the improvements

situated thereon in a manner satisfactory to the Board, the Association, after approval by two-thirds (2/3) of the Board, through its agents and employees, shall have the right, but not the obligation, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of its buildings and any improvement erected thereon. The cost of any such exterior maintenance the Board elects to perform shall be added to and become a part of the assessment to which said Lot is subject under Article V hereof. For purposes of this Section, “extraordinary exterior maintenance” means any reasonably necessary repairs, maintenance or restoration not included in the ordinary maintenance provided pursuant to Article IX, Section 1.

## **ARTICLE X** **EASEMENTS**

Section 1. Mutual Easements. The rights and easements of enjoyment by the Owner of each Lot, and the title of the Owner of such Lot in such Lot, shall be together with and subject to the following:

- a. a non-exclusive easement over every other Lot for areas occupied by common sidewalk entries;
- b. an exclusive easement on and over every other Lot to areas occupied by fireplaces, roof, overhangs, air conditioning compressors, decks, balconies, flower boxes, use of common utility installations and other appurtenances which are part of the original construction of any Living Unit on each Lot on which are added pursuant to the provisions of Article IX hereof.

Section 2. Extent of Association’s Easements. The rights and easements of enjoyment by the Owner of each Lot and the title of such Owner in said Lot shall be subject to the rights of the Association to an exclusive easement on and over said Lot for the Purpose of installation and maintenance of necessary utilities to serve the Common Area.

Section 3. Owner’s Right to Ingress Egress, and Support. Each owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or

her Lot and Living Unit and such right shall be appurtenant to and pass with the title to each Lot.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an owner, tenant, or the Association.

Section 5. Easements for Utilities, Etc. There is hereby reserved to the Association the power to grant blanket easements upon, across, over, and under all of the Property for ingress, egress, installation, replacing, repairing, and maintaining master television antenna systems, security, and similar systems, and all utilities, including, but not limited to, water, sewers, telephones, and electricity. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer to erect and maintain the necessary poles and other equipment on the Property and to affix and maintain utility wires, circuits, and conduits on, above, across, and under the roofs and exterior walls of the Living Units. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property, except as may be approved by the Board. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement on the Property without conflicting with the terms hereof. The

easements provided for in this Article shall in no way adversely affect any other recorded easement

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on the Properties. The Board shall have, by two-thirds (2/3) vote, the power to dedicate all or part of the Common Area to Hennepin County or other local governmental entity for utility purposes.

## **ARTICLE XI** **COVENANTS FOR INSURANCE**

### Section 1. Maintenance of Insurance by Association.

a. The Association shall maintain fire and extended coverage insurance on all insurable common property, including but not limited to the Common Area of Amesbury West Development in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost.

b. The Association shall maintain a policy or policies of comprehensive general liability insurance covering bodily injury and property damage liability of the Association, individually, and as Insurance Trustee for the benefit of the Owners as their respective interests may appear, and covering bodily injury and property damage liability of each individual Owner arising out of the ownership, use, maintenance or repair of the Common Area.

Section 2. Assessment of Cost of Insurance Maintained by Association. The cost of the insurance maintained by the Association in accordance with Section 1 or Section 3 of this Article shall be prorated and uniformly assessed against all Lots of the same type as a part of the monthly assessment determined in accordance with Article V hereof; and as part of such monthly assessment, it shall be a lien on such Lots and Living Units and an obligation of the respective Owners and shall become due in all respects as provided in Article V hereof; provided that the Board of Directors of the Association, when establishing the monthly assessment against each Lot as required under Article V hereof, may add thereto the estimated cost of the above-stated insurance for that month but shall thereafter make such adjustment with the Owners as is necessary

to reflect the cost thereof.

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Section 3. Maintenance of Insurance by the Owner. The Owner of any improved Lot, by acceptance of an interest, whether or not expressed, covenants to carry, maintain and timely pay the premium or premiums on a policy of fire, extended coverage, vandalism, and malicious mischief with all risk endorsement insurance. This insurance is to cover at a minimum the entire replacement Cost of the improvements, betterments and additions (including those added after original purchase) located on each such Lot. This insurance shall be in a form satisfactory to the Association, shall be issued in the name of the Association as insurance trustee for the Owner, and shall provide that losses be payable to the trustee and the mortgagee of record of the Lot, if any. Notwithstanding any of the above, the Association may elect to secure a master policy, which provides for such insurance. This master policy shall be issued in the name of the Association as insurance trustee for the Owners and shall provide that losses be payable to the trustee and mortgagees of record, if any. Provided, however, that nothing contained in any provision of this Section shall be construed as giving any Owner or any other party priority over any rights of first mortgagees of Lots pursuant to their mortgages in case of a distribution to Owners of insurance proceeds, or condemnation awards for losses to or a taking of common property.

a. Association as Insurance Trustee. In the event of destruction or damage by causes covered by insurance referred to above, all proceeds of the insurance coverage shall be payable to the Association as insurance trustee for the Owner of the damaged Lot and to the mortgagee of record of the damaged Lot. These insurance proceeds shall be applied and administered as follows:

- i. In the event of an insured loss to a Lot, all insurance proceeds paid to the trustee and mortgagee or mortgagees of record of the damaged Lot shall be deposited with a title insurance company acceptable to the Board to be held in escrow for restoration.

ii. In the event of an insured loss to a Lot, the Owner of the Lot with

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respect to which the insurance loss occurs shall, within 30 days after the insurance proceeds are deposited with a title insurance company in accordance with paragraph i above, enter into a firm contract with a qualified builder providing for the reconstruction of the improvement, in substantially the same condition as existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by such Owner for an amount in excess of the insurance proceeds then held by the title insurance company until additional funds are deposited in escrow as above provided by such Owner sufficient to cover all construction as determined by the title insurance company. This reconstruction shall be commenced and completed with due diligence and in no event shall this work be completed later than 180 days after the insurance proceeds are deposited in escrow as aforesaid. The Association and mortgagee of record of the Lot affected shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit construction as herein provided.

iii. In the event the Owner fails to enter into a contract, as provided in paragraph ii above, for the reconstruction of the improvement as provided above, or in the event that reconstruction is not commenced or completed as provided above, then the trustee, with consent of the mortgagee of record, or the mortgagee of record, with the consent of the trustee, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said reconstruction of the improvement on the Lot, and the trustee or mortgagee shall have the right to have the insurance proceeds applied in satisfaction of any obligations incurred pursuant to the contract, without liability of any kind to the Owner. The Association or the mortgagee may employ any bonded party or parties as its agent in exercising those functions given to it in this subsection. The

Association or the mortgagee shall be empowered to pay this agent a reasonable fee for services rendered and to collect the charge from the Owner, in the same manner as is provided in subsection c, below, for the collection of an insurance premium paid by the Association.

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iv. Disbursement of funds on deposit pursuant to paragraph i, above, for contracts for reconstruction entered into under paragraphs ii and iii, above, shall be made by the title insurance company selected as hereinabove provided, subject to the following:

(1) Article VII of these covenants entitled "Architectural Control" shall apply to all such reconstruction.

(2) Receipt by the title insurance company of written consent of any party holding a lien or encumbrance on the Lot.

(3) Receipt by the title insurance company of such construction statements, lists of subcontractors, lien waivers and as it shall determine to be appropriate. Disbursements may be periodic or progress payments, and the title insurance company may make such inspections and withhold such payments, as it deems necessary to insure completion in compliance with plans and specifications. The title insurance company shall be entitled to charge and the trustee shall be empowered to pay a reasonable fee for the services rendered by the title insurance company, and the trustee may collect the charge from the Owner in the same manner as that which is provided for in subsection c, below, for the collection of insurance premiums paid by the Association.

(4) In the event a contract is entered into pursuant to paragraph ii, above, the written consent of the Owner to said payment.

v. Nothing contained in this subsection shall be construed to make the  
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Association or the mortgagee of record responsible for collection or noncollection of any insurance proceeds. The Association or mortgagee is responsible solely for the insurance proceeds, which come into their hands. The Owner of a Lot damaged or destroyed by causes referred to above shall collect or cause to be collected from the insurance carrier involved the proceeds of the policy covering his Lot, for the use of the trustee and mortgagee as hereinabove provided.

vi. In the event that a reconstruction contract is, for any reason, not entered into pursuant to the provisions of paragraphs ii and iii, above, within 180 days after deposit of insurance proceeds with the title insurance company, as herein provided, the title insurance company shall disburse the proceeds to the mortgagee of record of the affected Lot as its interest appears to retire the indebtedness secured under the mortgage and shall disburse the remaining deposits, if any, to the Lot Owner, as the interest may appear.

b. Waiver of Subrogation. All policies of physical damage insurance shall contain waivers of subrogation against the Association and all other Owners, and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be cancelled or substantially modified without at least ten days' prior written notice to all of the insureds and all of the mortgagees of record of the Lots.

c. Lien for Premiums. The Association may, but shall not be required to make payment of insurance premiums on behalf of any Owner who becomes delinquent in such payment. In the event that the Association does make such payment, then the payment and the cost thereof shall be treated as part of the monthly assessment as described in Article V hereof and shall be a charge and a continuing lien on the Lot for whose benefit such premium payment is made and shall

also be the personal obligation of the Owner of such Lot at the time when such premium payment is made.

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**ARTICLE XII**  
**CONDEMNATION**

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area or part thereof. The award made for such taking shall be payable to the Association, as Trustee for all Owners, to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five percent (75% - 24 votes) of the Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area, to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the provisions in Article XI hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**ARTICLE XIII**  
**RIGHTS OF FIRST MORTGAGEES**

Section 1. Priority. The provisions of this Article take precedence over any other

conflicting provisions of this Declaration.

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Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot legal description or address, any first mortgagee, insurer or guarantor thereon will be entitled to timely written notice of:

a. Any condemnation loss or any casualty loss which affects a material portion of any Lot on which there is a first mortgage held, insured, or guaranteed by such mortgagee, insurer or guarantor, as applicable;

b. Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first mortgage held, insured or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 60 days;

c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

d. Any proposed action, which would require the consent of a specified percentage of eligible mortgage holders as specified below or in Article XIV.

Section 3. Right of First Refusal and Unpaid Assessments. Any first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage, or by foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, will be exempt from any right of first refusal contained in the Declaration or Bylaws and shall not be liable for the unpaid assessments of the Lot which accrue prior to the acquisition of title to such Lot by the mortgagee.

Section 4. Mortgagee or Owner Consent. Unless at least two-thirds (2/3) of the first mortgagees of Living Units, based upon one vote for each first mortgage owned have given their consent, the Association shall not be entitled to:

a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property, including but not limited to the Common Area, owned, directly or

indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common area shall not be deemed a transfer within the meaning of this subsection;

b. Change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner;

c. y act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of the Common Area party walks or common fences and driveways, or the upkeep of lawns and plantings;

d. Fail to maintain fire and extended coverage on insurable common property in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; or

e. Use hazard insurance proceeds for losses to any common property otherwise than for the repair, replacement or reconstruction of such common property.

Section 5 Books and Records. First mortgagees shall have the right to examine the books and records of the Association, and upon request by the holders of fifty-one percent (51% -17 votes) or more of the first mortgages shall be entitled to have an audited financial statement of the Association prepared at their own expense, if one is not otherwise available.

Section 6. Payment of Expenses. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the common property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 7. Distribution of Insurance or Condemnation Proceeds. No provision of the

Declaration or Bylaws shall be construed as giving to the Owner or to any other party priority over  
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any rights of first mortgagees of Lots pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of common property.

Section 8. Other Provisions for First Mortgagees. To the extent permitted by applicable law, first mortgagees shall be afforded the following rights

a. Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the original plans and specifications, unless other action is approved by first mortgagees holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to first mortgages.

b. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of first mortgagees holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to first mortgages.

c. No reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of first mortgagees holding mortgages on all remaining Lots whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Lots subject to first mortgages.

d. When professional management has been previously required by any first mortgage holder or insurer or guarantor thereon, whether such entity became a first mortgage holder or insurer or guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of Owners to which at least seventy-five percent (75% - 24 votes) of the votes in the Association are allocated and the approval of first mortgagees

holding first mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to first mortgages.

**ARTICLE XIV**  
**AMENDMENT**

The following provisions do not apply to amendments to the Declaration or termination of the Association made as a result of destruction, damage or condemnation of the Amesbury West Development.

Section 1. Consent Required for Particular Items. The consent by vote of at least two-thirds (2/3 - 22 votes) of Owners shall be required to add to or amend any material provisions of this Declaration which establishes, provides for, governs, or regulates any of the following:

- a. Voting;
- b. Assessments, assessment liens or subordination of such liens;
- c. Reserves for maintenance, repair and replacement of the Common Areas (or Living Units if applicable);
- d. Insurance or Fidelity Bonds;
- e. Rights to use of the Common Areas;
- f. Responsibility for maintenance and repair of the Properties;
- g. Expansion or contraction of the Amesbury West Development or the addition, annexation or withdrawal of property thereto or therefrom;
- h. Boundaries of any Lot or Common Area;
- i. The interests in the general or limited common areas;
- j. Convertibility of Lots into common areas or of Common Areas into Lots;

k. Leasing of Lots or Living Units;

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l. Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Living Unit.

m. Any provision which are for the express benefit of first mortgagees.

Section 2. Technical Changes. An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

Section 3. Other Amendments. Except as provided above, the covenants and restrictions of this Declaration may be amended by an instrument consented to by a vote of not less than seventy-five percent (75% - 24 votes) of the Owners; unless such amendment is for the purpose of correcting technical errors, or for clarification only, in which case fifty percent (50% - 16 votes) of the Owners must vote to consent to such amendment.

Section 4. Amendments Validated. No action to challenge the validity of an amendment or supplemental declaration hereto may be brought more than two (2) years after such amendment or supplemental declaration is filed with the Hennepin County Registrar of Titles.

## **ARTICLE XV** **GENERAL PROVISIONS**

Section 1. Duration. The easements created hereby shall be permanent and the covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date the original Declaration was recorded, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the

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provisions of this Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of the mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions by the Association or any aggrieved Owner may be by any proceeding at law or in equity against any person, including the Association, violating or attempting to violate any covenant or restriction or decision of the Board of Directors of the Association made pursuant hereto, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the Court shall be assessable against and payable by any persons, including the Association, violating the terms contained herein.

Section 4. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and Bylaws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within Amesbury West Development, except as hereinabove provided.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by  
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judgment or court order shall not affect any other provision, which shall remain in full force and effect.

Section 6. Annexation. Additional residential property and common area may be annexed to Amesbury West Development with the consent of two-thirds (2/3 - 22 votes) of Members.

Section 7. Full Amendment and Restatement. This Corrective Declaration supersedes and fully replaces all prior declarations, covenants, conditions and restrictions with respect to the Amesbury West Development.

## **ARTICLE XVI**

### **ADDITIONAL RESTRICTIONS**

Section 1. Residential Use. No Lot shall be used other than for residential purposes.

Section 2. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes, and provided they are kept on leash at all times while in or about the Common Area.

Section 3. Signs and Flags. No sign of any kind shall be displayed to public view on any lot, including for sale, for rent or open house signs. No flag shall be displayed except for the official flags of the United States of America and the State of Minnesota. Upon the written request of a Member, the Board may, in its sole discretion, approve the display of signs or flags that are prohibited by this Section 3.

Section 4. Garbage. Garbage, rubbish and trash shall not be kept on a Lot except in sanitary containers. All incinerators or other equipment used or kept for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 5. Nuisance. No noxious or offensive activities shall be carried on upon any

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Lot nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

Section 6. Temporary Structures. No structure of a temporary character, trailer, tent, shack, barn, or other temporary building shall be used on any Lot or the Common Area at any time, either temporarily or permanently.

Section 7. Antennae. No telecommunications, television, radio or wireless antennae shall be erected or placed upon the exterior of a Lot unless first approved by two-thirds (2/3) of the Board or the Architectural Committee.

Section 8. Clothes Lines. No clotheslines shall be permitted upon a Lot.

Section 9. Other Structures. No improvement or structure other than single-family dwelling houses, together with any garage, fence, patio or other structure accessory to the dwelling house, may be erected, placed, or maintained upon any Lot unless first approved by two-thirds (2/3) of the Board or the Architectural Committee.

Section 10. Storage. All sporting equipment, toys, outdoor cooking equipment (except permanent installations), tents, trailers, campers, boats, recreational vehicles, and other equipment and supplies necessary or convenient to residential living shall be enclosed or shall be screened from view. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other natural substances, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of Owners is prohibited. No Lot shall be used for the storage of materials not customary to or necessary and convenient for residential living.

*[Signature Page Follows]*



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTIES**

Lots 1, 2, 3 and 4, Block 1; Lots  
1, 2, 3 and 4, Block 2; Lots 1, 2,  
3, 4, 5 and 6, Block 3; Lots 1, 2, 3  
and 4, Block 4; Lots 1 and 2,  
Block 5;  
Lots 1 and 2, Block 6;  
Lots 1 and 2, Block 7;  
Lots 1 and 2, Block 8;  
Lots 1 and 2, Block 9;  
Lots 1 and 2, Block 10; and  
Lots 1 and 2, Block 11; and  
Outlots A, B, C and D,

Amesbury West, according to the plat thereof on file or of record with the Registrar of Titles,  
Hennepin County, State of Minnesota.

AND:

That part of Sunset Lane dedicated in MINNETONKA MANOR, and dedicated in "HOLTMERE,  
LAKE MINNETONKA, MINN." as Lake William Road, lying east of a line drawn perpendicular  
to the centerline of said Sunset Lane from the southeast corner of Lot 13, "HOLTMERE, LAKE  
MINNETONKA, MINN." to the south line of said Sunset Lane as dedicated in MINNETONKA  
MANOR. Except Outlot D, AMESBURY WEST, and that part of Sunset Lane vacated by C.R.  
Doc. No. 5734487.

**EXHIBIT B**

**LEGAL DESCRIPTION OF COMMON AREAS**

Outlots A, B, C and D,

Amesbury West, according to the plat thereof on file or of record with the Registrar of Titles, Hennepin County, State of Minnesota.

AND:

That part of Sunset Lane dedicated in MINNETONKA MANOR, and dedicated in "HOLTMERE, LAKE MINNETONKA, MINN." as Lake William Road, lying east of a line drawn perpendicular to the centerline of said Sunset Lane from the southeast corner of Lot 13, "HOLTMERE, LAKE MINNETONKA, MINN." to the south line of said Sunset Lane as dedicated in MINNETONKA MANOR. Except Outlot D, AMESBURY WEST, and that part of Sunset Lane vacated by C.R. Doc. No. 5734487.

