

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the 13th day of August, 1983, by FRANCIS D. MIKKELSON, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain property in the City of Grand Forks, County of Grand Forks, State of North Dakota, which is more particularly described as

All of Blk J of the Replat of Lot 1, Block 6, and Lot 3, Block 12, BFM Addition, including Vacated South 25th Street adjacent thereto, according to the Plat thereof recorded in the Office of the Register of Deeds, County of Grand Forks, State of North Dakota, as Document No. 400327.

WHEREAS, Declarant has caused to be incorporated, PARKVIEW TOWNHOMES, INC., as a non-profit corporation under the Laws of the State of north Dakota, to which shall be assigned the powers and duties of maintaining and administering any common areas and facilities, and administering and enforcing the covenants and restrictions, and collection and disbursing of assessments and charges herein created.

NOW, THEREFORE, Declarant hereby declares that all of the above described real property 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, the said real property 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.

**1. ARTICLE I**

*DEFINITIONS*

- 1.1. "Association shall mean and refer to PARKVIEW TOWNHOMES, INC., its successors and assigns.
- 1.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.3. "Property" shall mean and refer to that certain real property herein-before described.
- 1.4. "Common Area" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:  
  
Lots 53, 86, 123, and 124, Blk J of the Replat of Lot1, Block 6, and Lot 3, Block 12, BFM Addition, including Vacated South 25th Street adjacent thereto, according to the Plat thereof recorded as Document No. 400327.
- 1.5. "Lot" shall mean and refer to any plot of land shown upon the recorded Plat, with the exception of the Common Area.

- 1.6. "Member" shall refer to a member of the Association as provided in Article II.
- 1.7. "Declarant" shall mean and refer to FRANCES D. MIKKELSON, his heirs, personal representatives and assigns.

## **2. ARTICLE II**

### *MEMBERSHIP AND VOTING RIGHTS*

- 2.1. Every 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.
- 2.2. The Association shall have two (2) classes of voting membership:
- 2.3. Class A members shall be all Owners, with the exception of the Declarant, who shall be entitled to one vote for each Lot owned.
- 2.4. When more than one person hold an interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they determine, and notice of such determination shall be filed with the Secretary of the Association, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B Membership, or

Such time as the Declarant shall elect to have his Class B membership classed as a Class A membership, by filing such election with the Secretary of the Association, who shall upon such filing give notice thereof to all of the Class A members.

## **3. ARTICLE III**

### *TITLE AND IMPROVEMENTS*

- 3.1. The Declarant shall convey and record marketable record title to the Common Area, subject to the dedications, restrictions or agreements contained within the Plat of the Property, to the Association, prior to the conveyance of a fee title to any Lot. The acceptance by the Association of such conveyance shall constitute an assumption by the Association of all obligations and duties of the Declarant arising out of the Plat as to such conveyed property, and the Declarant covenants and agrees with the Association that he will make and pay for all improvements as set forth in the plans and specifications on file with the Association, and delivery and acceptance of the conveyance for the common area shall not constitute a release of the Declarant of his obligation to perform such duties, nor shall this section release the Association from any obligations assumed by it upon acceptance of such conveyance. Until

the Declarant has completed the work set forth in said plans and specifications, the Declarant shall have the right to enter upon the common area, and such other areas as are reasonably necessary, for the purpose of completing such work.

3.2. Every Owner shall have the following non-exclusive appurtenant easements in the common areas:

3.2.1. Right of ingress and egress.

3.2.2. Utility easement, an easement for water, sewer, and other utilities.

3.2.3. Parking privileges, as designated by the Association.

3.2.4. Right of overhang and encroachment of improvements on a Lot which are not inconsistent with the use of the common areas by other members.

3.2.5. Right and easement of enjoyment.

Subject to the following provisions:

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

3.2.5.2. The right of the Association to suspend the voting rights and right to the use of the recreational facilities by any owner or member for any period during which any assessments against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

3.2.5.3. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, providing that no such dedication or transfer shall be effective unless an instrument in writing agreeing to such dedication or transfer is duly signed by 2/3rds of each class of members and the same has been duly recorded in the Office of the Register of Deeds.

3.3. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

#### **4. ARTICLE IV**

##### *COVENANTS FOR MAINTENANCE ASSESSMENTS*

4.1. 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 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:

4.1.1. Annual assessments or charges, and

4.1.2. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall be charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents on the Property, to pay for charges for water, garbage pickup, and sewer, for the improvement and maintenance of the Common Area, and any exterior maintenance as might be provided for in this Declaration.

4.3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six Hundred Dollars (\$600.00).

4.3.1. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

4.3.2. (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

4.3.3. (c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

4.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 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 this purpose.

4.5. 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 Sections 3 or 4 shall be sent to all members, entitled to vote, not less than 30 days nor more than 50 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%) of all votes of each class or membership shall constitute a quorum. If the required quorum is not present, another meeting shall 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.

- 4.6. **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis, provided, however, that any special assessment for exterior maintenance, repair or improvements on any Lot and /or Lots, to the exclusion of any Lot and/or Lots, for the benefit of such Lot and/or Lots, shall be on the basis of the benefit to any Lot and/or Lots, as determined by the Board of Directors, and shall be payable as determined by the Board of Directors of the Association at the time of making such special assessment.
- 4.7. **Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association. There first annual assessment shall be adjusted 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 each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. 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 specified 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.
- 4.8. **Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the statutory rate of interest. The lien of the unpaid sums assessed with interest, costs, and reasonable attorney's fees may be foreclosed by action in like manner as a foreclosure of a mortgage or such other action as is permitted by the Laws of the State of North Dakota. The Association shall have the power to bid in at such foreclosure sale, and to hold, lease, mortgage, and convey the Lot and/or Lots so acquired. An action to recover a money judgment for unpaid sums assessed with interest, costs, and reasonably attorney's fees may be brought against the Owner of Lot and/or Lots against which said unpaid sums were assessed. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Lot and/or Lots.

- 4.9. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any 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 such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **5. ARTICLE V**

### *OBLIGATIONS OF ASSOCIATION*

- 5.1. **Common Areas.** The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common

Area and all improvements thereon, and shall keep the same in good, clean, attractive, and sanitary condition, order and repair.

- 5.2. Exterior Maintenance of Lot Improvements. In addition to maintenance upon the Common Area, the Association shall be responsible for and provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements, and the Board of Directors, as set forth in Section 6, Article IV, may make a special assessment against said Lot and/or Lots for providing such maintenance. Such exterior maintenance shall not include glass surfaces.

In the event any Owner and/or Owners of a Lot and/or Lots desire to provide the exterior maintenance on said Lot and/or Lots, the approval of the Board of Directors of the Association shall be first obtained in writing in order that the harmony of the external design and location in relation to surrounding structures may be maintained.

- 5.3. Services. The Association may obtain and pay for the service of any person or entity to manage its affairs, or any part thereof, to the extent that it deems advisable, as well as such other personnel as the Board of Directors of the Association shall determine to be necessary or desirable for the proper operation of the Property for the purposes as set forth in this Declaration, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services as are necessary or deemed advisable by the Board of Directors of the Association in connection with the operation and maintenance of the Property or the enforcement of any of the terms, provisions, restrictions and/or conditions of this Declaration.
- 5.4. Personal Property. The association may acquire and hold for the use of all of the members and tangible and/or intangible personal property and dispose of the same by sale or otherwise, as the Board of Directors shall deem advisable. Each member may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other members to a like use thereof.
- 5.5. Parking. The association shall maintain upon the common areas vehicle parking spaces conveniently located for the use of the owners, members of the families of the Owners, tenants, and guests, and shall have the exclusive authority to designate such parking areas for the use of such Owners, members, tenants, and guests, provided, however, that no boats, trailers, recreation vehicles, or any vehicles, other than passenger vehicles shall be parked on any driveway so as to interfere with the ingress or egress onto any other Lot. Any violation of the restrictions on parking as contained herein will authorize the Board of Directors to authorize the removal of any boat, trailer, recreation vehicle or other vehicle and charge the cost of the same to the Owner of the Lot and/or Lots responsible for such violation.
- 5.6. Rules and Regulations. The Board of Directors of the Association may adopt reasonable rules and regulations governing the use of the Lots and of the Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration for the purpose of promoting the health, safety, and welfare of the residents on the Property and to maintain the property values.

## 6. ARTICLE VI

### *INTERIOR MAINTENANCE*

- 6.1. Owners Obligation. The Owner of any Lot shall be responsible for the repair and maintenance of the interior of any building upon the Owner's Lot, provided, however, that in addition to the maintenance of the Exterior as provided in Article V, the Association may also provide the maintenance of sewer and water lines and systems which may lead to or are in or under any Lot, and which lines and systems are owned by the Association or serve two (2) or more Lots.
- 6.2. Assessment of Cost. The cost of such interior maintenance performed by the Association shall be assessed against the Lot and/or Lots upon which such maintenance is done and shall be added to and become a part of any assessment to which such Lot and/or Lots are subject under Article IV hereof, and the Association may add to any assessment the estimated cost of such exterior and interior maintenance for a year, or any shorter period, but shall thereafter make such adjustments with the Owner and/or Owners as are necessary to reflect the actual cost there of.

Any charges arising from any water meter, and garbage and sewage fees connected therewith, owned by and charged to the Association, shall be charged equally to all Lots served by said water meter, and assessed as other assessments are made under Article IV hereof.

## 7. ARTICLE VII

### *PARTY WALLS*

- 7.1. General Rules of Law Apply. Each common wall which is built as part of the original construction of the homes on the Property covered by this Declaration shall be conclusively presumed to have been constructed and placed on the dividing line between Lots, notwithstanding any errors in surveying in the platting of said Property which might subsequently be asserted, and 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 negligent or willful acts or omissions shall apply thereto.
- 7.2. 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.
- 7.3. Destruction by the 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.
- 7.4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his 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.

- 7.5. Right to Contribution Runs with the 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.
- 7.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all arbitrators shall be binding on all Owners.

## **8. ARTICLE VIII**

### **ARCHITECTURAL CONTROL**

- 8.1. From and after the completion of construction and sale of any Lot covered by this Declaration, no building, fence, wall, or other structure shall be commenced, erected, removed, altered, or maintained upon any such Lot, 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, location in relation to the surroundings structures, and topography by the Board of Directors of the Association or by an architectural control committee composed of three (3) or more members appointed by the Board of Directors.

In the event the Board of Directors of the committee fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it or in any event if no suit to enjoin the addition, change or alteration has been commenced prior to the completion thereof, approval will not be required and this Article shall be deemed to have been fully complied with.

The prevailing party in an action brought by the Association pursuant to this Article shall be deemed entitled to recover costs and disbursements in connection therewith.

All such plans and specifications shall be submitted to the Secretary of the Association, and any time limit herein contained shall commence from the date of such submission.

## **9. ARTICLE IX**

### ***RESTRICTIONS***

- 9.1. No Lot shall be used except for residential purposes, except that the Declarant shall be entitled to maintain model townhouses on the Lots.
- 9.2. No animals, livestock, or poultry of any kind shall be raised or kept on any Lot, excepting that dogs, cats, and other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose, and are controlled at all times so as not to be an annoyance to any other Owner and/or member.
- 9.3. No sign of any kind shall be displayed to public view on any Lot or any improvement on any Lot, except that a "For Sale" sign may be displayed, provided that it is in such form as the



Board of Directors of the Association may require, except that the Declarant shall be permitted to erect and maintain upon any Lot such signs as he deems appropriate to advertise the Development until the Declarant conveys the fee title to said Lot.

- 9.4. No garbage, rubbish or trash shall be kept on any Lot, except sanitary containers. All incinerators or other equipment used or kept for this storage or disposal of any such material shall be kept in a clean and sanitary condition.
- 9.5. No noxious or offensive activities shall be carried on upon any Lot nor within any improvement upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or any other Lot owner and/or member.
- 9.6. No structure of a temporary nature or character, or a basement, trailer, shack, garage, barn or other building shall be used on any Lot as a residence, either temporarily or permanently.
- 9.7. No television or radio antennas shall be erected or placed upon the exterior of any Lot or improvement thereon, without the written consent of the Board of Directors of the Association.
- 9.8. No clothesline shall be permitted upon any Lot or improvement thereon, without the written consent of the Board of Directors of the Association.
- 9.9. No wall or window air conditioning units shall be installed, operated, or maintained upon any Lot or any improvement thereon.
- 9.10. All sporting equipment, toys, outdoor cooking equipment (except permanent installations) and other equipment and supplies necessary or convenient for residential living shall, when not in use, be stored within the townhouse or improvement on the Lot, or shall be screened from view, subject to the provisions of Article VIII as to type and location of screening, if not part of the original construction by Declarant.
- 9.11. No Lot or improvement thereon shall be used for the storage of materials not customary, necessary, or convenient for residential living.
- 9.12. The harboring of the source of any noise or activity, which disturbs the peace, tranquility, comfort, or serenity of other owners and/or members is prohibited
- 9.13. No owner, member, guest, or invitee shall violate any speed limits established by the Board of Directors of the Association on the non-dedicated street within the Property as shown on the Plat.
- 9.14. The Board of Directors of the Association may adopt additional restrictions for the purpose of promoting the health, safety, and welfare of the residents on the Property and to maintain the property values.

## 10. ARTICLE X

### *GENERAL PROVISIONS*

- 10.1. 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 insure to the benefit of the Association or any Owner and/or Owners subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds, County of Grand Forks, State of North Dakota, after which time said covenants and restrictions shall be automatically renewed for successive periods of ten (10) years.
- 10.2. Enforcement of Covenants and Restrictions. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter posed 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, unless otherwise specifically provided in this Declaration.
- 10.3. Notices. Any notices required to be sent to any Owner and/or member under the provisions of this Declaration shall be deemed to have been properly sent and given when mailed prepaid to the last known address of the person and/or persons who appear as an Owner and/or member on the records of the Association at the time of such mailing.
- 10.4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions of this Declaration and they shall remain in full force and effect.
- 10.5. Amendment. This Declaration may be amended during the first twenty (20) year period by an instrument in writing signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument in writing signed by not less than seventy-five percent (75%) of the Lot Owners. All amendments shall be recorded in the Office of the register of Deeds, County of Grand Forks, State of North Dakota.
- 10.6. FHA/VA Approval. As long as there is a Class B membership the following actions will require prior approval of the Federal Housing Administration or the Veterans Administration, (a) Annexation of additional properties. (b) Dedication of Common Area. (c) Amendment of this Declaration of Covenants, Conditions and Restrictions