

OFFICE OF COUNTY RECORDER  
COUNTY OF CLAY, MINNESOTA

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J. BONNIE REIDER, *ds*  
CLAY COUNTY RECORDER

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Hampton South Ponds Townhomes / Mhd  
all*

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5/10/07*

(RESERVED FOR RECORDING DATA)

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
HAMPTON SOUTH PONDS TOWNHOMES

ARTICLE I.  
SUBMISSION OF PROPERTY

Erickson Contracting of Fargo-Moorhead, Inc., a Minnesota corporation, as owner of the property hereinafter described, hereinafter referred to as the Declarant, submits the following land owned by Erickson Contracting of Fargo-Moorhead, Inc., in fee simple, together with the buildings and improvements erected thereon, so as to provide that all of the said 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 real property, and be binding upon all of the parties having any right, title, or interest in the described property, or any part thereof, and their respective heirs, successors, assigns and personal representatives, and shall inure to the benefit of the owner of any portion thereof, said property described as follows, to-wit:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9) and Ten (10), in Block One (1) of Hampton South Ponds Townhome Addition to the City of Moorhead, Clay County, Minnesota.

ARTICLE II.  
NAME AND ADDRESS

The property described above shall be known as Hampton South Ponds Townhomes. The said property is located in the City of

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Moorhead and comprises all of Hampton South Ponds Townhome Addition to the City of Moorhead, Clay County, Minnesota.

Vehicular access to each of the lots will be from dedicated public streets adjacent to the premises described in Article I.

ARTICLE III.  
DEFINITIONS

A. "Association" shall mean and refer to Hampton South Ponds Townhomes, Inc., a Minnesota non-profit corporation.

B. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot as described above, including contract sellers or contract purchasers, but excluding those having any interest merely as security for the performance of any obligation.

C. "Properties" shall mean and refer to Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9) and Ten (10), in Block One (1) of Hampton South Ponds Townhome Addition to the City of Moorhead, Clay County, Minnesota.

D. "Townhome unit" shall mean and refer to each individual lot as more particularly described above.

E. "Declarant" shall mean and refer to Erickson Contracting of Fargo-Moorhead, Inc., a Minnesota corporation, together with the other individual lot owners hereinafter described, their respective successors and assigns.

ARTICLE IV.  
PROPERTY RIGHTS

A. OWNERS' EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to any easement area set aside for trees and green space as described in any of the deeds to any of the said lots. There are no common areas as part of Hampton South Ponds Townhome Addition to the City of Moorhead, Clay County, Minnesota. There is a common area easement for trees and green space as set forth on the plat of Hampton South Ponds Townhome Addition to the City of Moorhead, Clay County, Minnesota. The said easement area shall be for the use of all association members and their guests and invitees and shall be maintained by the association.

ARTICLE V.  
MEMBERSHIP AND VOTING RIGHTS

A. 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 separate from ownership of any lot which is subject to assessment.

B. The Association shall have two classes of voting membership:

**Class A:** Class A members shall be all Owners, with the exception of Erickson Contracting of Fargo-Moorhead, Inc., 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. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

**Class B:** The Class B member(s) shall be Erickson Contracting of Fargo-Moorhead, Inc., and it 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:

1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
2. On December 31, 2009.

ARTICLE VI.  
COVENANT FOR MAINTENANCE ASSESSMENTS

A. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each lot owned within the properties, hereby covenants, and 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 covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest,

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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.

B. 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 properties and of the homes situated upon the premises. Such assessments shall include, but not be limited to, snow removal, lawn maintenance, lawn watering system, and upkeep of any trees or green areas described on any deed to any of the lots. All such assessments shall be equally assessed against each of the lots regardless of the size of driveway, location and use of watering systems or any other such variation to any of the individual lots.

C. 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 \$50.00 per lot per month including the association annual assessment.

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.

2. 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 3/4ths of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

D. 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 related thereto, provided that any such assessment shall have the assent of 3/4ths of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

E. 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

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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 fifty percent (50%) of all the votes of each class of membership shall constitute a quorum.

F. 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.

G. 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 first lot. The 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 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 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.

H. 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 rate of eight percent (8%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

I. 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.

ARTICLE VII.  
EXTERIOR MAINTENANCE

The Association shall provide lawn mowing services for each of the lots which are subject to assessments hereunder, and shall also provide for snow removal of driveways and sidewalks and any other maintenance which the Association may undertake by action of its Board of Directors.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests, or invitees of the owner of the lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

In the event an owner of any lot in the properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by 3/4ths vote of the Board of Directors, shall have the right, through its agent and employees, to enter upon said parcel and to repair, maintain and restore the lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

ARTICLE VIII.  
ARCHITECTURAL CONTROL

No building, fence, wall, hedge, 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 said Board, or its designated committee, fails to approve or disapprove such design and location with 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.

ARTICLE IX.  
RESERVED EASEMENTS

A. EASEMENTS. The Association shall reserve and retain unto itself, for the benefit of the Association and its members, a permanent easement for pedestrian ingress and egress and for the installation, maintenance, repair and replacement of utility services to serve the properties and each lot, which shall include but not be limited to walks, sanitary sewer, storm sewer, and water lines that provide service to one or more of the properties and/or lots which are subject to this declaration of covenants, conditions and restrictions, together with an easement for ingress and egress from and to each for the replacement of all such utility services, and each lot shall be subject to this easement reserved by the Association for the indicated purposes.

The Association shall also be the beneficiary of easements as set forth on any deed to any lot for trees and green space as described on any such deed for the benefit of the members of the Association.

B. COST OF REPAIRS AND MAINTENANCE. The cost of reasonable repairs and maintenance of any utility service that serves more than one of the properties and/or lots shall be shared equally by the owners who make use of the service. The costs of repairs and maintenance of any portion of the utility service that serves only one of the properties shall be borne solely by the owner of that individual property.

C. EFFECTIVE DATE. The easement referred to above is hereby granted by the Declarant to the Association and shall be effective upon the conveyance of the first lot to an owner from the Declarant.

ARTICLE X.  
GENERAL PROVISIONS

A. ENFORCEMENT. 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 approved 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.

B. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provision which shall remain in full force and effect.

