

OFFICE OF COUNTY RECORDER
COUNTY OF CLAY, MINNESOTA

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J. BONNIE REHDER,
CLAY COUNTY RECORDER

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*Re
1-20-08
(15)*

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF SHEPHERD MEADOWS ADDITION
TO THE CITY OF MOORHEAD, MN**

Shepherd Meadows, LLC a Minnesota Limited Liability Company, whose post office address is P.O. Box 794, Moorhead, MN 56560, ("Land Developer"), and Dietrich Homes, Inc., a North Dakota corporation whose post office address is 4151 38th St S., Suite B, Fargo, ND 58104-6909, (the "Project Developer") in Shepherd Meadows First Addition to the City of Moorhead, Clay County, Minnesota (the "Development") according to the certified plat thereof hereby declare that in order to protect the community and individual land owners the said property shall be subject to the restrictions and conditions hereinafter set forth and that such restrictions and conditions shall apply to and be part of every conveyance or deed to said property or any part thereof, the same as though fully incorporated in any deed or conveyance thereof. The said restrictions and conditions shall be deemed and considered as covenants running with the land when conveyed or deeded and shall be binding on the heirs, executors, administrators, successors and assigns of any person to whom said land may have been conveyed until December 31, 2018, on which date these covenants, conditions, reservations, and restrictions shall be automatically extended for a term of 10 years and thereafter in successive 10 year terms unless on or before the end of any such extension period or the initial period by a vote of a majority the then owners shall be by written instrument, duly recorded, declare a termination, change or modification of these restrictive covenants and conditions. Although these covenants, conditions, reservations, and restrictions may expire and any and all remedies for breach of these covenants, conditions, reservations, and restrictions committed or suffered prior to the expiration shall be absolute.

Section 1. **LAND TO WHICH THESE COVENANTS APPLY.** These Covenants shall apply to the following listed lots in the Shepherd Meadows First Addition to the City of Moorhead, Clay County, Minnesota and any subsequent re-plats of the Shepherd Meadows First Addition: Lots 1-22, Block 1 and Lots 1-6, Block 2.

Section 2. DEFINITIONS.

Section 2.1. "Association" shall mean and refer to Shepherd Meadows Homeowners Association, Inc., a Minnesota non-profit corporation.

Section 2.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any of the separate lots previously described, including contract sellers or contract purchasers, but excluding those having any interest merely as security for the performance of any obligation.

Section 2.3. "Lot" shall mean and refer to each lot within Shepherd Meadows First Addition: Lots 1-22, Block 1 and Lots 1-6, Block 2.

Section 2.4. "Land Developer" shall mean and refer to Shepherd Meadows, LLC, a Minnesota limited liability company, together with its successors and assigns.

Section 2.5. "Project Developer" refers to Dietrich Homes, Inc., a North Dakota corporation, together with its successors and assigns.

Section 2.6. "Developer" shall refer to **Project Developer** unless and until notice is given by Land Developer that it is the Developer as set forth in Section 34.

Section 3. MEMBERSHIP AND VOTING RIGHTS.

Section 3.1. Every owner of a lot which is subject to this Declaration 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.

Section 3.2. The Association shall have two classes of voting membership:

Section 3.2.1. **Class A:** Class A members shall be all Owners, with the exception of Developer 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.

Section 3.2.2. **Class B:** The Class B member(s) shall be the Developer, 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:

Section 3.2.2.1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

Section 3.2.2.2. On December 31, 2012.

Section 4. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1. The Land Developer and the **Project Developer**, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, 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, 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.

Section 4.2. 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, and other maintenance and upkeep of any common facilities. Lots shall be divided into 2 categories,

Section 4.2.1. Single Family lots - Block 1 Lots 11-22

Section 4.2.2. Twin Home lots - Block 1 Lots 1-10 and Block 2
Lots 1-6

All such assessments shall be equally assessed against each of the lots in these categories regardless of the size of the lot, driveway, location or any other such variation to any of the individual lots.

Section 4.3. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be \$85.00 per Twin Home lot or \$115.00 per Single Family lot per month including the association annual assessment. All undeveloped lots held by the Land Developer or **Project Developer** shall not be assessed. **Project Developer** lots with a completed structure and landscaped yard will be subject to the association's annual assessment.

Section 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 percent above the maximum assessment for the previous year without a vote of the membership.

Section 4.3.2. 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 percent 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.

Section 4.4. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that calendar 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.

Section 4.5. Written notice of any meeting called for the purpose of taking any authorized action shall be sent to all members not less than 10 days or 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 50 percent of all the votes of each class of membership shall constitute a quorum.

Section 4.6. Both annual and special assessments must be fixed at a uniform rate for all lots in each category and may be collected on a monthly basis.

Section 4.7 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.

Section 4.8. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 8 percent 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 or be released from liability for the assessments provided for herein by abandonment of his/her lot.

Section 4.9. 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.

Section 5. **EXTERIOR MAINTENANCE**. The Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder, as follows: mowing and edging of grass and bagging as needed, snow removal from public sidewalks, driveways and front door sidewalks as needed, and any other maintenance which the Association may undertake by action of its Board of Directors. Homeowners will be responsible for the maintenance of all trees, landscaping, flower and vegetable gardens, patios and any other exterior yard items on their individual lot.

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 a Lot in the Development 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 on 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.

Section 6. **DWELLING SIZE, QUALITY AND DRAINAGE**

Section 6.1. No building shall be erected on any lot unless the design, location, materials, and workmanship are in harmony with existing structures and locations in the residential portions of the Development and such building must conform to these restrictive covenants.

Section 6.2. All structures shall be erected or altered with front yard and side yard set backs in compliance with the zoning ordinance of the City of Moorhead as existing on the date thereof.

Section 6.3. Any dwelling structure on the lots within the Development (excluding porches, decks, basements and garages) shall have a minimum structural area outlined as follows:

Lake Lots	All Other Lots	
<u>1700 sq.ft.</u>	<u>1400 sq.ft.</u>	Rambler and 1 1/2 Story home.
<u>2200 sq.ft.</u>	<u>1700 sq.ft.</u>	Standard 2 Story home.
<u>Not Allowed</u>	<u>Not Allowed</u>	Bi-Level home.
<u>2400 sq.ft.</u>	<u>2000 sq.ft.</u>	Split-Level home (excluding lowest basement level)
<u>Not Allowed</u>	<u>1300 sq.ft.</u>	Rambler per side for twin homes on those lots designed by the Land Developer for the twin home use.
<u>Not Allowed</u>	<u>1700 sq.ft.</u>	2 Story per side for twin homes on those lots designed by the Land Developer for the twin home use.
<u>Not Allowed</u>	<u>Not Allowed</u>	Bi-Level / Split-Level twin home.

Section 6.4. Within twelve (12) months of occupancy, all lots in the Development shall have trees on the boulevards according to the requirements of the City of Moorhead zoning ordinances as existing on the date hereof and all lots shall have not less that one (1) tree in the front of the lot with a diameter of not less than one and one-half (1½) inches and shall have a sodded or seeded yard with sidewalks where required by the City of Moorhead.

Section 6.5. All plans and specifications for the erection or alteration of each dwelling house require approval from the Developer. The Developer may grant variances from literal compliance with these restrictive covenants in writing. In the event that Developer does not disapprove any plans within fifteen (15) working days from the day that the Developer receives the plans said plans shall be considered as approved. No construction shall be permitted during the fifteen (15) day review period. Requirement for pre-approval of plans by the Developer shall cease and become null and void when all of the lots in Shepherd Meadows First Addition are improved and

occupied or when Developer gives notice that approval is no longer required by Affidavit recorded with the Clay County Recorder.

Section 6.6. Plans submitted for approval shall include the following:

Section 6.6.1. One complete set of floor plans, elevations, sections, one site plan, one landscaping plan and material samples if requested.

Section 6.6.2. The dwelling plans should indicate construction materials and specifications, roofing material, and exterior finishes and colors.

Section 6.6.3. The site plans should indicate the basement outline with projections shown as a dotted line. The garage "footprint" and exterior steps or decks should be indicated. The site plan should indicate sidewalks, walkways, driveway location, and sizes. Accessory Structures such as pools, pool houses, gazebos, decks, play structures, and kennels should be indicated on the site plan.

Section 6.7. The top of the foundation or lowest opening of all residential structures within the Development shall be not less than 900 feet above sea level or 2½ feet above the top of the curb directly in front of the structure, whichever is higher.

Section 7. **CONSTRUCTION TIME AND REQUIREMENTS**. No white or light colored roofs shall be permitted unless approved by the Developer. No evaporative cooler shall be placed, installed, or maintained on the roof or wall of any building structure. All coolers shall be concealed. Construction of all primary structures shall be substantially completed within nine (9) months after issuance of any building permits for the structure. Landscaping shall be completed as soon as weather permits following substantial completion of the primary structure, but in any event, within 12 months of issuance of the Certificate of Occupancy. No outside storage of building materials shall be permitted on any lot after the nine (9) month construction period.

New Construction: All improvements constructed on Lots shall be new construction framed completely on site and no buildings or other structures shall be moved from other locations onto any Lot. Construction shall commence after plan approval within six (6) months of closing of the Lot.

Section 8. **GARAGES AND OUTBUILDINGS**. All homes shall have an attached garage capable of storing a minimum of 2 conventional automobiles. Accessory Structures such as pools, pool houses, gazebos, decks, play structures, and kennels should be indicated on the site plan. Outbuildings including but not limited to sheds, detached garages, and other storage type buildings shall be not be allowed.

Section 9. **BASKETBALL BACKBOARDS AND HOOPS.** No basketball backboards or hoops shall be attached to a dwelling structure on any Lot. A separate pole for installation of such equipment erected and maintained at the expense of the lot owner shall be permitted.

Section 10. **DRAINAGE.** Drainage ways shall conform to requirements of the City of Moorhead and of all lawful public authorities including the engineer or other appropriate authority of Clay County, Moorhead, Minnesota having jurisdiction thereof.

Section 11. **OCCUPANCY.** No private dwelling house erected upon any lot shall be occupied in any manner while in the course of construction or at any time prior to full completion as indicated by a Certificate of Occupancy. Nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans and covenants, conditions, reservations, and restrictions herein set forth. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home, recreational vehicle or other temporary structure shall be placed or erected upon any lot unless approved by the Developer.

Section 12. **LETTER AND DELIVERY BOXES.** The Developer shall determine the location, color, size, lettering, and all other particulars of all mail or delivery boxes, standards, brackets, and name signs for such boxes. No delivery boxes other than boxes for the U.S. Mail shall be permitted on any lot or abutting any such lot without written authorization of the Developer. Developer may locate such delivery boxes, or clusters of delivery boxes on any one or more lots.

Section 13. **TANKS AND STORAGE.** No elevated tanks of any kind shall be erected, placed or permitted on any part of the Development or lots located therein. Any tanks used in connection with any residence shall be located inside of the primary structure or buried or walled sufficiently to conceal them from view of the neighboring lots, roads, or streets. The Developer must approve plans for all enclosures of this nature.

Section 14. **VEHICLE PARKING, STORAGE.** No commercial vehicles or construction equipment shall be permitted on any lot in the Development except during the normal course of business provided by such vehicles. Motor homes, travel trailers and like vehicles shall be temporarily permitted on the lots for the purpose of loading and unloading such vehicles or for temporary visits of less than two (2) weeks by visitors to the lots. Recreation vehicles, boats, travel trailers and like vehicles may be stored on the lots only if they are stored in a garage. All motor vehicles kept on or about a property shall be currently licensed and shall be maintained in an operable condition at all times, temporary mechanical difficulties and breakdowns excepted.

Section 15. **HORSES AND PETS.** No horses shall be kept or stabled on any of the lots within the Development. No animals of any kind other than customary household pets (including birds) shall be kept or allowed on any part of the Development or any lots thereof.

Section 16. **UTILITY LINES, RADIO, AND TELEVISION ANTENNAS.** All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. There shall be no free standing antennae and any satellite dish attached to a roof shall not be more that two (2) feet above the roof, not including the height of the chimney. Satellite dishes over 20" in diameter are not permitted unless approved by the Developer.

Section 17. **SIGNS.** No billboards or advertising signs of any kind or character shall be erected, placed, permitted, or maintained on any lot or improvement unless the same is a "for sale" sign modest in the customary size of a realtor or except as herein expressly permitted. A name and address sign used solely for the purpose of identification of dwelling occupants may be placed on the lot by said occupants provided that the design of the sign is approved by the Developer prior to installation. The provisions of this paragraph may be waived by the Developer when in its discretion the same is necessary to place or maintain such a sign structure, or structures as it deems necessary for the operation or identification of the Development.

Section 18. **NUISANCES, REFUSE CONTAINERS, AND RECYCLING.** No lot shall be used in whole or in part for storage of rubbish of any kind whatsoever nor for the storage of any property or things that will cause such lot to appear untidy, unclean, or obnoxious to the human eye; nor shall any substance, thing or material be kept on any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quite, comfort or serenity of the occupants of the surrounding property. Collection and disposal of trash, garbage, and recycling shall be in compliance with the City of Moorhead. Storage of any and all refuse and recycling containers shall be walled in to conceal them from view of neighboring lots, roads, streets, parks, or ponds or stored in the homes garage except for the day they are emptied by the City of Moorhead.

Section 19. **DIVISION OF LOTS OR USE OF MORE THAN ONE LOT.** No lots shall be subdivided except as approved by the Developer. All transfers of less than the entire lot shall be prohibited without a prior written approval of the **Project** Developer. If more than one lot is used for erection of a single primary structure the two or more lots thus used shall be considered as a single lot for the purposes of Association votes, but shall be subject to Association assessments based on the exact number of lots purchased.

Section 20. **FENCES.** All fencing provided by any owner or person other than the Developer shall be approved by the Developer prior to installation. In the event fencing material is utilized on any lot lines bordering the pond or city park, a split rail natural wood with optional brown dipped plastic liner fence is required, with the top rail being no more than 42" off of the ground and the above ground post height measuring no higher than 48". Split rail fencing shall not be stained or painted. Any other fencing must be made from cedar or redwood board-on-board fencing material no more than six (6) feet high. In the event facing material is utilized on lot lines connected to fenced lot lines bordering the pond or city park, the last 25' of the higher fence shall be tapered to dip to the height of the shorter, split rail fence. No fence shall be constructed to extend beyond the front of the primary structure facing the front of the lot (that side of the lot facing a street) except on corner lots as approved by the Developer. Any fencing shall be maintained in good condition by the lot owner and in a condition maintaining its original appearance.

Section 21. **REMOVAL OF DIRT.** When excavating for structures, leveling of lots or doing any dirt work, no earth or soil shall be removed from the Development except with the written consent of the Developer and then only to such places as directed by such written consent.

Section 22. **MINING.** No derrick other structure designed for the use of burrowing for oil, or natural gas shall be erected, placed or permitted upon any part of the Development nor shall any oil, natural gas, petroleum, asphalt, or hydrocarbon products or minerals of any kind be produced or extracted anywhere in the Development. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted on any lot or any part of the Development nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted on any part of the Development.

Section 23. **BASEMENTS.** No basement shall be constructed for temporary residential purposes and no basement structure shall be used for residential purposes unless and until the entire primary structure has been erected thereon and complies with the building code of the City of Moorhead, nor shall any trailer, tent, shack, garage, barn or other outbuilding erected on any lot at any time be used as a residence, temporary or permanent, nor shall any structure of a temporary character be used as a residence.

Section 24. **SUBSEQUENT TRANSFERS.** No house or structure shall be moved in on any of the lots located in the Development and no structure, when erected, shall be at any time altered or changed so as to permit its use in any manner that would be in violation of these restrictions and conditions.

Section 25. **EASEMENTS**. Easements are established for the installation and maintenance of public utilities. The easements for public utilities in the Development are hereby dedicated and made a part hereof as easements and restrictions on the use of property in the Development. Within these easements no structure, planting, or other materials shall be placed or permitted or interfere with the installation and maintenance of public utilities except as permitted by the public utility using such easement. The easement area and all improvements thereon shall be maintained continuously by the owner of the lot, except for those Improvements for which a public authority or utility is responsible. Perpetual easements for the above and within described Development are granted over, across and under the respective lots and parcels of land in the locations set forth on the plat of Shepherd Meadows First Addition filed and recorded with the office of the Clay County Recorder on December 28, 2007, and recorded as Document Number 650946, which is made a part hereof as if fully set for herein. All claims for damages, if any, arising out of the construction, maintenance and repair of the utilities or on account of temporary or other inconvenience caused thereby against the Land Developer, or **Project Developer**, or any utility company or municipality or any of its agents or servants are waived by the owners. Land Developer reserves the right to change, layout new or discontinue any street, avenue, or way shown on the plats of the Development not necessary for ingress or egress to and from a lot or premise subject to the approval of the appropriate governing authority of the City of Moorhead if such approval is required.

Section 26. **PRIVATE WATER AND SEWER**. No private septic tank, drain fields, private or community wells shall be permitted in the Development or on any lot consisting a part thereof.

Section 27. **DRIVEWAYS**. All driveways must be hard surface. Permitted materials for driveway constructions include interlocking paving stones and cast in place concrete. No pre-cast concrete slab pavers are permitted as the city approach or front yard sidewalk.

Section 28. **MORTGAGES**. The breach of any of the foregoing covenants, conditions, reservations, or restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lot or portions of lots in the Development but these covenants, conditions, reservations, and restrictions shall be binding upon and effective against any mortgage or trustee or owner, whose title or whose grantors title is or was acquired by foreclosure, trustee sale or otherwise.

Section 29. **WAIVER**. No delay or omission on the part of the Developer or the owners of any lots in the Development in exercising any right, power or remedy herein provided, in the event of any breach of the covenants, conditions, reservations, or restrictions herein contained, shall be construed as a waiver thereof or acquiesce therein and no right of action shall accrue nor shall any action be brought or maintained

by anyone whatsoever against the Land Developer or **Project Developer** for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions or for imposing restrictions herein which may be unenforceable by the Land Developer or **Project Developer** or and other party.

Section 30. **RIGHT TO ENFORCE**. The restrictions set forth shall run with the land and bind the present owner or owners heirs, executors, administrators, successors, and assigns and all parties claiming by, through or under them, all such parties shall hold and hereby agree and covenant and assigns, and with each of them, for themselves and their successors, to confirm to and observe said restrictions as to the use of said lots hereby restricted and construction of improvements thereon. No restrictions, however, shall be personally binding on any person except in respect to breaches committed during his or their ownership of the particular property upon which such violations occurred. For any violation of the restrictions herein set forth the Developer or the owner or owners of any lots shall have the right to sue for and obtain an injunction to prevent the breach of or to enforce any of the restrictions herein set forth at the time of the violation. Any delay in doing so shall in no event be deemed a waiver of the right to do so thereafter.

Section 31. **SEVERABILITY**. In the event any one or more of the foregoing covenants, conditions, reservations, or restrictions is declared for any reason by a court of competent jurisdiction to be null and void the judgment or decree shall not in any manner whatsoever affect, modify, change, or nullify any of the covenants, conditions, reservations, or restrictions not declared to be void or unenforceable but all of the remaining covenants, conditions, reservations, or restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

Section 32. **DEDICATED RIGHT**. The Development shall be subject to any and all rights and privileges which the City of Moorhead or the County of Clay or the State of Minnesota may have acquired through dedication or the filing or recording of maps or addition plats as authorized by law and provided further that no covenants, conditions, reservations or restrictions or acts performed shall be in conflict with any zoning ordinance, land use law, building code or applicable law of the City of Moorhead, County of Clay or State of Minnesota.

Section 33. **AMENDMENTS**. This Declaration of Restrictive Covenants and Reservation of Public Utility Easements may be amended by the Developer at any time until it divests itself of the responsibility for architectural control. It shall be conclusively presumed that the Developer has not divested itself of responsibility for architectural control unless there is a sworn affidavit of record so stating. After that time, this Declaration may be amended by an instrument signed by the owners of not less than 80 percent of the lots. Any instrument, modifying or canceling this Declaration must be properly recorded before it shall be effective.

Section 34. **REPLACEMENT OF DEVELOPER.** Land Developer and Project Developer have entered into several agreements between them including a Developer's Agreement and Purchase Option dated May 2, 2007, including amendments and additions. In the event of a material breach under the terms of that Agreement as amended by Project Developer or a person or entity affiliated with Project Developer, which breach or default is not corrected within 30 days following written notice from Land Developer, Land Developer will have the right to remove and replace Project Developer as the Developer pursuant to the terms of this Declaration of Covenants, Conditions, and Restrictions of Shepherd Meadows Addition. This will be accomplished by Land Developer, Shepherd Meadows, LLC, recording with the Clay County Recorder a Notice of Replacement setting forth that Land Developer has replaced Project Developer as Developer under the terms of this Agreement. Land Developer will thereafter have all rights of Developer pursuant to the terms of this Declaration. The Notice of Replacement will be effective upon recording with the Clay County Recorder's office. Any owner, mortgagee, or third party may reply upon the recording of that document and may thereafter deal with Shepherd Meadows, LLC, as the Developer.

Section 35. **FHA/VA APPROVAL.** As long as there is a Class B membership, the Class B member may amend this Declaration and any related documents if such amendments are required to obtain FHA or VA approval for this project and/or the financing of any individual lot.

Section 36. **PARTY WALLS.**

Section 36.1. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between any 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 36.2. 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 36.3. 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 36.4. 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.

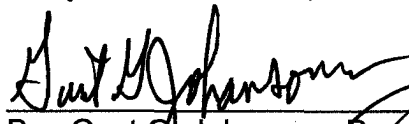
Section 36.5. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 36.6. In the event of any dispute 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 shall be by a majority of all the arbitrators. All arbitration shall be in Clay County, Minnesota and the parties shall share in the cost of the neutral arbitrator. The parties to the arbitration will equally share in the cost of arbitration. Each party will be responsible for the costs of its own representation in arbitration.

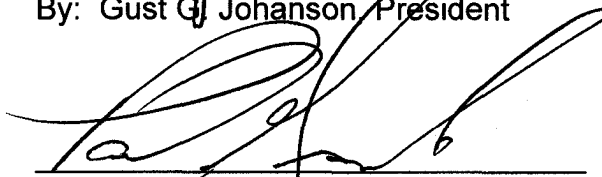
IN WITNESS WHEREOF, Shepherd Meadows LLC, a Minnesota Limited Liability Company and Dietrich Homes, Inc., a North Dakota corporation, have caused this Declaration to be executed this 21 day of March 2008.

Land Developer:

Shepherd Meadows, LLC



By: Gust G. Johanson, President



By: Paul Grinde, Secretary

Project Developer:

Dietrich Homes, Inc.



By: Clay Dietrich, President/Secretary

STATE OF North Dakota
COUNTY OF Cass)
: ss.

On this 27 day of March 2008, before me, a Notary Public in and for said County and State, personally appeared Gust G. Johanson and Paul Grinde, to me known to be the President and Secretary, respectively, of Shepherd Meadows, LLC, the limited liability company that is described in and that executed the foregoing instrument, and acknowledged before me that such limited liability company executed the same.

Loretta K Askew
Notary Public:

STATE OF North DAKOTA)
COUNTY OF Cass)
: ss.

LORETTA K ASKEW
Notary Public
State of North Dakota
My Commission Expires Nov. 20, 2008

On this 21 day of March 2008, before me, a Notary Public in and for said County and State, personally appeared Clay Dietrich, to me known to be the President and Secretary of Dietrich Homes, Inc., the corporation that is described in and that executed the foregoing instrument, and acknowledged before me that such corporation executed the same.

Loretta K Askew
Notary Public:

LORETTA K ASKEW
Notary Public
State of North Dakota
My Commission Expires Nov. 20, 2008