

**COMMON INTEREST COMMUNITY NUMBER 1989
Planned Community**

KINGSLEE HEIGHTS

AMENDED AND RESTATED DECLARATION

THIS INSTRUMENT WAS DRAFTED BY:

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KINGSLEE HEIGHTS

AMENDED AND RESTATED DECLARATION

THIS AMENDED AND RESTATED DECLARATION OF COMMON INTEREST COMMUNITY is executed as of this ____ day of _____, 20____, by Kingslee Heights Home Association, a Minnesota non profit corporation ("Association"), pursuant to Minnesota Statutes Section 515B.1-101 to 515B.4-118, commonly known as the Minnesota Common Interest Ownership Act (hereinafter the "Act") and laws amendatory thereof and supplemental thereto.

WITNESSETH:

WHEREAS, there is filed of record in the offices of the Hennepin County Registrar of Titles a certain document entitled "Amending and Completely Superseding Declaration of Covenants, Conditions and Restrictions," dated August 15, 1972, was recorded October 5, 1972, as Document No. 1048318, and amended from time to time thereafter (collectively the "Original Declaration"), and

WHEREAS, the Original Declaration established a plan for the use, operation, maintenance and preservation of the real estate described in Exhibit A attached hereto (the "Property"), and

WHEREAS, the Association and Owners desire to provide for the preservation of the residential character, value, architectural character, architectural uniformity and amenities which are a part of the Property, and for the maintenance of open spaces, and

WHEREAS, the Association and the Owners desire to amend and restate the Original Declaration in accordance herewith, and to subject the Property to the Act, and to the covenants, restrictions, easements, charges and liens set forth herein, pursuant to the requirements and procedures prescribed by Section 515B.1-102(d) of the Act, and

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B.1-106 of the Act, governing conversions to common interest ownership, does not include shoreland as defined in Minnesota Statutes Section 103F.205 and is not subject to a master association as defined in the Act.

NOW THEREFORE, with the consent of Owners entitled to cast at least sixty-six percent (66%) of the total votes in the Association, the Association hereby declares that the Property and any additions thereto shall be subject to the Act as a planned community, and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions, easements, charges and liens set forth herein; that all persons or entities having or acquiring any interest in the Property shall be bound hereby; and that the Original Declaration shall be revoked and superseded in its entirety by this Declaration upon its recording.

SECTION 1

DEFINITIONS

The following words when used in the Governing Documents shall have the following meanings (unless the context indicates otherwise):

- 1.1 "Act" shall mean Minnesota Statutes Section 515B.1-101 to 515B.4-118, commonly known as the Minnesota Common Interest Ownership Act, as the same may be amended from time to time hereafter.
- 1.2 "Association" shall mean the Kingslee Heights Home Association, a nonprofit corporation which has been created pursuant to Chapter 317 of the laws of the State of Minnesota, as amended, and Minnesota Statutes Section 515B.3-101, whose members consist of all Owners as defined herein.
- 1.3 "Board" shall mean the Board of Directors of the Association as provided for in the Bylaws.
- 1.4 "Bylaws" shall mean the Amended Bylaws governing the operation of the Association, as amended from time to time.
- 1.5 "City" shall mean the City of Bloomington, Minnesota.
- 1.6 "Common Elements" shall mean all parts of the Property except the Units, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. Common Elements are legally described on Exhibit B attached hereto and incorporated herein by reference.
- 1.7 "Common Expenses" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration or Bylaws.
- 1.8 "Common Interest Community" (also sometimes referred to herein as "CIC") shall mean the contiguous or noncontiguous real estate described on Exhibit A attached hereto that is subject to this Declaration, as more fully described in Section 515B.1-103(10) of the Act.
- 1.9 "Dwelling" shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.
- 1.10 "Eligible Mortgagee" shall mean any Person owning a mortgage on any Unit, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.

- 1.11 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.12 "Member" shall mean all Persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- 1.13 "Occupant" shall mean any Person or Persons, other than an Owner, in possession of or residing in a Unit.
- 1.14 "Owner" shall mean a Person who owns a Unit, but excluding contract for deed vendors, mortgagees and other secured parties within the meaning of Section 515B.1-103(31) of the Act. The term "Owner" includes, without limitation, contract for deed vendees, and holders of a life estate.
- 1.15 "Party Wall" shall mean the shared wall between two Dwellings.
- 1.16 "Person" shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.
- 1.17 "Plat" shall mean the recorded plat depicting the Property pursuant to the requirements of Section 515B.2-1101(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- 1.18 "Property" shall mean all of the real property submitted to this Declaration, including the Dwellings and all other structures and improvements located thereon now or in the future. The Property as of the date of this Declaration is legally described in Exhibit A attached hereto.
- 1.19 "Recreational Facility" shall mean structures and personal property, whether attached or detached from the Common Elements, acquired by the Association for the use and enjoyment of Owners and Occupants including, but not limited to, tennis courts, swimming pools, golf courses, golf putting green, tot lots and such other structures located on Common Elements which are not Dwellings.
- 1.20 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.
- 1.21 "Unit" shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements.

Any terms used in the Governing Documents, and defined in the Act and not in this Section, shall have the meaning set forth in the Act.

SECTION 2

DESCRIPTION OF UNITS AND APPURTENANCES

2.1 Units. There are sixty four (64) Units, all of which are restricted exclusively to residential use. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference, and a schedule of Units is set forth on Exhibit A. The Unit identifier for a Unit shall be its lot and block numbers and the subdivision name.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit shall be the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Units shall have no upper or lower boundaries. Subject to this Section 2, all spaces, walls, and other improvements within the boundaries of a Unit are a part of the Unit.

2.3 Use and Enjoyment Easements. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements, and for use and enjoyment of any Limited Common Elements allocated to the Unit, subject to any restrictions authorized by the Declaration.

2.4 Access Easements. Each Unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across any other Unit in the Common Elements as shown on the Plat, subject to any restrictions set forth in the Declaration.

2.5 Utility and Maintenance Easements. Each Unit shall be subject to and shall be the beneficiary of appurtenant easements for all services and utilities servicing the Units and the Common Elements, and for maintenance, repair and replacement as described in Section 13.

2.6 Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of the appurtenant easements for encroachments as described in Section 13.

2.7 Recorded Easements. The Property shall be subject to such other easements as may be recorded against it or otherwise shown on the Plat.

2.8 Easements are Appurtenant. All easements and similar rights burdening or benefiting a Unit, or any other part of the Property shall be appurtenant thereto, and shall be permanent, subject only to termination in accordance with the Act or the terms of the easement. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by the Declaration.

2.9 Impairment Prohibited. No person shall materially restrict or impair any easement benefiting or burdening the Property; subject to the Declaration and the right of the Association to impose reasonable Rules and Regulations governing the use of the Property.

SECTION 3

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

3.1 Common Elements. The Common Elements and their characteristics are as follows:

- a. All of the Property not included within the Units constitutes Common Elements. The Common Elements are owned by the Association for the benefit of the Owners and Occupants.
- b. Subject to Sections 5, 6 and 9, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.
- c. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 6.

3.2 Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated, and the rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Units.

SECTION 4

ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

Membership in the Association, and the allocation to each Unit of a portion of the votes in the Association and a portion of the Common Expenses of the Association, shall be governed by the following provisions:

4.1 Membership. Each Owner shall be a member of the Association by virtue of Unit ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the unit. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be members of the Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Unit nor authorize the division of the voting rights.

4.2 Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Units, except that special allocations of Common Expenses shall be permitted as provided in Section 6.1.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interests, and the title to the Units, shall not be separated or conveyed separately. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents and the Act.

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote(s) allocated to such Unit at meetings of the Association; provided, that if there are multiple Owners of a Unit, only

the Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote(s). The voting rights of Owners are more fully described in Section 3 of the Bylaws.

SECTION 5

ADMINISTRATION

The administration and operation of the Association and the Property, including but not limited to the acts required of the Association, shall be governed by the following provisions:

5.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents, the Rules and Regulations and the Act. The Association shall, subject to the rights of the Owners set forth in the Governing Documents and the Act, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, the Act and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents or the Act. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

5.2 Operational Purposes. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations (ii) maintaining, repairing and replacing those portions of the Property for which it is responsible and (iii) preserving the value and architectural uniformity and character of the Property.

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents or the Act shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined in the Act.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws and any amendments thereto shall govern the operation and administration of the Association.

5.5 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act; provided, however, that such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and by law.

5.6 Rules and Regulations. The Board shall have exclusive authority to approve, implement and amend or revoke such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents or the Act. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

5.7 Association Assets; Surplus Funds. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, or any combination thereof, as determined by the Board.

SECTION 6

ASSESSMENTS FOR COMMON EXPENSES

6.1 General. Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in Sections 6.2 and 6.3, and the requirements of the Bylaws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated among the Units according to the Common Expenses allocations set forth in Section 4.2, subject to the following qualifications:

- a. Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited, on the basis of (i) equality; (ii) the actual cost incurred with respect to each Unit; or (iii) such other equitable basis as the Board may, in its reasonable discretion, determine.
- b. The costs of insurance may be assessed in proportion to the square footage or actual cost per Unit, as the Board may determine. The costs of utilities may be assessed in proportion to usage, as the Board may determine.
- c. Reasonable attorneys' fees and other costs if incurred by the Association in connection with (i) the collection of assessments and (ii) the enforcement of the Governing Documents, the Act, the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.
- d. Fees, charges, late charges, fines and interest may be assessed as provided in Section 14.
- e. Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.
- f. If any damage to the Common Elements or another Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess (i) the costs of repairing the damage, or (ii) any increase in insurance rates directly attributable to the act or omission of such Owner or Occupant, exclusively against the Owner's Unit to the extent not covered by insurance.
- g. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days' written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
- h. If Common Expense liabilities are reallocated for any purpose authorized by the Act, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

- i. Assessments under subsections 6.1.a-h shall not be considered special assessments as described in Section 6.3.
- j. Assessments for Common Expenses shall include an adequate reserve fund for those portions of the CIC which the Association is obligated to replace. Said fund shall be funded by monthly payments and not by extraordinary special assessments.

6.2 Annual Assessments.

- a. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Sections 6.2 and 6.3. Notwithstanding the foregoing, the increase in the annual assessment for any year (exclusive of increases due to increases in insurance premiums) shall not exceed five percent (5%) of the total annual assessment for the Association's previous fiscal year unless such increase is approved by the vote of a majority of those Owners voting (i) by mail ballot or electronically, or (ii) in person or by proxy at a meeting called for that purpose. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for the year.
- b. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of replacement of those parts of the CIC which the Association is obligated to replace.

6.3 Special Assessments. In addition to annual assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense; (ii) general or specific reserves for maintenance, repair or replacement; and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval of a majority of those Owners voting, in person or by proxy, at a meeting called for such purpose. Subject to approval (i) by the Board and (ii) by Unit Owners of Units to which 51 percent of the votes in the Association are allocated, the Association need not annually assess for replacement reserves to replace those components whose replacement is planned to be paid for by special assessments levied under section 515B.3-1151(c) of the Act, or by assessments levied under section 515B.3-1151(e)(2) of the Act. The approval provided for in the preceding sentence shall be effective for no more than the Association's current and three following fiscal years, subject to modification or renewal by the same approval standards.

6.4 Liability of Owners for Assessments. The obligation of an Owner to pay assessments shall commence at the later of (i) the time at which the Owner acquires title to the Unit; or (ii) the due date of the first assessment levied by the Board. The Owner at the time an assessment or any installment thereof is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. The liability is absolute and unconditional. No Owner is exempt from liability for payment of his or her share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 14, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

6.5 Assessment Lien. The Association has a lien on a Unit for any assessment levied against that Unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association pursuant to Section 515B.3-102(a)(10), (11), and (12) of the Act are liens, and are enforceable as assessments, under this Section. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

6.6 Foreclosure of Lien; Remedies. A lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale, provided, however, that in a foreclosure by advertisement, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of Minn. Stat. Section 582.01, subdivisions 1 and 1a. (In a foreclosure by action, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees as the court shall determine.). The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other Person claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Unit. The commencement of an action to recover the sums is not an election of remedies if it is dismissed before commencement of foreclosure of the lien provided for by Section 515B.3-116 of the Act.

6.7 Lien Priority; Foreclosure; A lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Original Declaration, (ii) any first mortgage encumbering the fee simple interest in the Unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if (i) a first mortgage on a Unit is foreclosed, (ii) the first mortgage was recorded on or after June 1, 1994, and (iii) no Owner redeems during the Owner's period of redemption provided by Chapters 580, 581, or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to a lien in favor of the Association for unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-1151(a), (e)(1) to (3), (f), and (i) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

6.8 Voluntary Conveyances; State of Assessments. In a voluntary conveyance of a Unit the buyer shall not be personally liable for any unpaid assessments and other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance by the buyer, unless expressly assumed by the buyer. However, the lien of such assessments shall remain against the Unit until satisfied. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid assessments against the Unit, including all assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

SECTION 7

RESTRICTIONS ON USE OF PROPERTY

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in the Property, or by their occupancy of a Unit, covenant and agree that, in addition to any other restrictions which may be imposed by the Act or the Governing Documents, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

7.1 General. The Property shall be owned, conveyed, encumbered, leased (in accordance with Section 7.7 hereof), used and occupied subject to the Governing Documents and the Act, as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

7.2 Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, and any Rules and Regulations of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, rules or regulations, shall be grounds for action to recover sums due, for damages, or for injunctive relief.

7.3 Use of Common Elements. There shall be no obstruction, littering, defacement or misuse of Common Elements nor shall anything be stored in the Common Elements except in areas designated for such storage by the Board of Directors of the Association.

7.4 Subdivision Prohibited. Except as permitted by the Act, no Unit or any part of the Common Element, may be subdivided or partitioned without the prior written approval of all Owners and all secured parties holding first mortgages on the Units.

7.5 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential dwellings, and not for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 7.6. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of less than 7 days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes.

7.6 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Unit or the Common Elements; except (i) an Owner or Occupant residing in a Unit may keep and maintain his or her business or professional records in such Unit and handle matters relating to such business by telephone or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve physical alteration of the Unit and do not involve any observable business activity such as signs, advertising displays, excessive bulk mailings or deliveries, or excessive visitation or use of the Unit by customers or employees and (ii) the Association may maintain offices on the Property for management and related purposes.

7.7 Leasing of Units. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) no Unit shall be leased for transient or hotel purposes; (ii) no Unit may be subleased; (iii) all leases shall be in writing; and (iv) all leases shall provide that they are subordinate and subject to the provisions of the

Governing Documents, the Rules and Regulations and the Act, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the leasing of Units, consistent with this Section.

7.8 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Units, and shall use the Property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the Property by other Owners and Occupants and their guests.

7.9 Compliance with Law. No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owner or Occupant.

7.10 Alterations. No alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "alterations") shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests, in any part of the Common Elements or in any part of the Unit which affects the Common Elements, another Unit or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8. The Board, or the appointed committee if so authorized by the Board, shall have authority to establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied.

7.11 Time Shares Prohibited. The time share form of ownership, or any comparable form of lease, occupancy rights or ownership which has the effect of dividing the ownership or occupancy of a Unit into separate time periods, is prohibited.

7.12 Access to Units. In case of emergency or crisis, all Units are subject to entry, without notice and at any time, by an officer or member of the Board of the Association, by the Association's management agents or by any public safety personnel. Entry is also authorized for maintenance purposes under Section 9 and for enforcement purposes under Section 14; for such maintenance and enforcement purposes, the Association shall use its best efforts to provide reasonable advance notice of entry to Unit Owners.

7.13 Hazardous Activities and Waste: Alterations. Nothing shall be done or kept in any Unit or the Common Element which will increase the rate of insurance on the CIC, or the contents thereof, or result in increased water, sewer or other utility charges, without the prior written consent of the Board of Directors of the Association. No Unit Owner or occupant of a Unit shall permit anything to be done or kept in any Unit the Common Elements which will result in the cancellation of insurance on the CIC, or contents thereof, or which will be in violation of applicable law or ordinance. No waste shall be committed in the Common Elements. No Unit Owner shall make any improvement or alterations to his or her Unit that impair the structural integrity or mechanical systems or lessen the support of any portion of the CIC.

7.14 "Small Dish" Satellite-Type and Any Other Antennae. One "small dish" satellite antenna no larger than one (1) meter in diameter or antennae for purposes of receiving direct broadcast/satellite service, video programming services or television broadcast signals may be installed on a Unit, as permitted by federal law. However, the Board or an Architectural Control Committee (ACC) appointed by the Board may require that the antenna be installed so as to minimize its visibility from the front of the Unit and otherwise camouflage its appearance, unless

such requirements would (1) unreasonably delay installation; (ii) unreasonably increase the cost of installation, maintenance, or use of the antenna; or (iii) preclude reception of an acceptable quality signal. Such installation shall be subject to all governmental laws, codes and ordinances, including any limit on the height of television broadcast antennae. The Board shall have the authority to impose further, reasonable requirements consistent with law. The Owner or Occupant of the Unit shall perform and pay for the installation, maintenance and repair of the antenna. Any and all damage caused by use of these devices shall be the sole responsibility of the Owner installing the device. Subject to federal law, short wave radio antennae are not allowed in the Association.

7.15 Exterior Appearance of Units and Dwellings. No Owner or Occupant shall allow refuse or trash to accumulate in his or her Unit. Personal property may not be stored outside of a Dwelling, on a garage apron or elsewhere outside a Dwelling. Such prohibition shall apply to, without limitation, bicycles, garbage cans, motorcycles, and snowmobiles, all of which must be stored in the Dwelling. Use or storage of window air conditioning units in any Unit is prohibited. Only standard window treatments (e.g., shades, curtains, blinds, etc.) may be used to cover windows; use of blankets, sheets, etc., as window coverings is prohibited. Subject to regulation by the Board, lawn furniture and/or grills may be stored on patios through the winter months. Firewood must be stored in a garage; storage of firewood outside a Dwelling, including on decks or patios, is prohibited.

7.16 Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners or Occupants, and guests and such other incidental uses as may be authorized in writing by the Association. Garages may not be used solely for storage, as their primary purpose is for parking of vehicles. The use of guest parking areas, garages and driveways on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association including, without limitation, the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property at the Unit Owner's or personal property owner's expense.

7.17 Parking of Recreational, Unlicensed Vehicles and Equipment. Boats and/or recreational equipment of any kind including, but not exclusive of, tractor trailers, trailers of all types, recreational vehicles in excess of nine thousand pounds (9,000 lbs) of gross vehicle weight, motor homes, trucks in excess of three-quarters of one ton, all terrain vehicles and snowmobiles are not allowed to be stored or parked on the Property at any time except within a garage. Unlicensed or inoperable vehicles may not be parked or stored on the exterior of the Unit. The Board shall have the exclusive authority to additionally regulate, through the rules and regulations, the parking and storage of such recreational vehicles on the Property.

7.18 Animals. No animal may be bred, kept or maintained for business or commercial purposes anywhere on the Property. For the purposes of the governing documents of the Association, "animal" shall mean a domesticated pet (dog, cat, bird). The Board of Directors shall have the exclusive authority to promulgate rules and regulations regarding such pets, enforceable against all Unit Owners, their residents and guests.

SECTION 8

ARCHITECTURAL CONTROL

8.1 Restrictions on Alterations. The following restrictions and requirements shall apply to alterations on the Property:

- a. Except as expressly provided in this Section 8, no structure, building, addition, patio, fence, wall, enclosure, window, exterior door (including both entry and storm doors), sign, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other exterior improvements to or alteration of any Dwelling or any other part of a Unit which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board of Directors or a committee appointed by it.
- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to existing improvements and topography; (ii) comparable or better quality of materials as used in existing improvements; (iii) ease of maintenance and repair; (iv) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations; and (v) compliance with governmental laws, codes and regulations.
- c. Approval of alterations which encroach upon another Unit or the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the alterations are approved; provided, that any easement for a patio other than as originally constructed shall be approved by resolution of the Board of Directors and a file of such resolutions shall be maintained permanently as a part of the Association's records. The Association is not required to maintain alterations.

8.2 Review Procedures. The following procedures shall govern requests for alterations under the Section:

- a. Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors prior to the projected commencement of construction. No alterations shall be commenced prior to approval. City Code must be complied with and any necessary permits must be applied for and a copy provided to the Board of Directors prior to project commencement.
- b. The Board of Directors shall give the Owner written notice of approval or disapproval. The Board's failure to provide approval or disapproval shall not be deemed to be an approval by the Board of a request for alteration.
- c. If no request for approval is submitted, approval shall be deemed to be denied.
- d. All fees and costs incurred by the Association in conjunction with any such request for approval, including attorneys' fees and costs or fees and costs of other professionals, shall be borne by the requesting party. Any such fee or cost which the requesting party fails to pay shall be assessed to the subject Unit and Owner of such Unit, and shall be a lien against such Unit and the personal obligation of such Unit Owner in the same manner and with the same priority and effect as assessments under Section 6 hereof.

8.3 Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owners causing or permitting the violation all attorneys' fees and costs of enforcement, whether

or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Dwelling or Unit to its prior condition if any alterations were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Unit.

8.4 Modifications to Allow Access to the Disabled. Subject to the provisions of applicable law, an Owner, at Owner's expense, may make improvements or alterations to a Unit as necessary for the full enjoyment of the Unit by any person residing in the Unit who has a handicap or disability, as provided in the Fair Housing Amendments Act, United States Code, Title 42, Section 3601, *et seq.*, and the Minnesota Human Rights Act, Chapter 363, and any amendments to those acts. The Association may not prohibit such improvements or alterations referred to in this Section 8.4, but may reasonably regulate the type, style and quality of the improvements or alterations, as they relate to health, safety and architectural standards. In addition, improvements or alterations made pursuant to this Section 8.4 must satisfy the requirements of Section 515B.2-113(a) (i), (ii), (iii) and (iv) of the Act.

8.5 Hold Harmless. The Owner who causes an alteration to be made, regardless of whether the alteration is approved by the Board, shall be solely responsible for the construction standards and specifications relating to the alteration, and the construction work. The Owner, and not the Association, is responsible for determining whether any alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. In no event shall the Association's review or approval of plans, specifications or related information be deemed to constitute an opinion or statement by the Association as to the adequacy or structural soundness of the alterations or their compliance with governmental laws, codes, ordinances or regulations. The Owner shall hold the Association harmless and indemnify the Association, and its officers and directors, from and against any expenses, claims, damages, losses or other liabilities, including, without limitation, attorneys' fees and costs of litigation, arising out of (i) any alteration which violates any governmental laws, codes, ordinances or regulations; (ii) the adequacy of the specifications for construction of the alterations; and (iii) the construction of the alterations.

SECTION 9

MAINTENANCE

9.1 Maintenance by Association. The Association shall provide for all maintenance, repair or replacement of the Common Elements and any Recreational Facility.

In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall provide for exterior maintenance upon the Dwelling in each Unit that is subject to assessment as follows:

- a. Painting of front, service and garage doors;
- b. Painting of siding, overhangs, trim and railings;
- c. Repair and maintenance of lawns, including mowing of grass;
- d. Snow removal from walks and driveways, all in accordance with the snow removal policies established by the Association;
- e. Maintenance, repair and replacement of driveways (excluding concrete slab aprons located between garage door and asphalt driveway) and private roadways;

- f. Maintenance, repair and replacement of cluster mailboxes, all in accordance with, at a minimum, such standards as may be established by the United States Postal Service.
- g. Maintenance, repair and replacement of sidewalks within a Unit.

All maintenance performed by the Association under this Section 9 shall be funded by annual assessments or, if necessary, special assessments, unless otherwise provided in this Section 9. Notwithstanding the foregoing, the Association reserves the right to levy and allocate the cost of any maintenance performed under this Section 9 to one or more Units, and charge the cost to the Owner of each such Unit, pursuant to the provisions of Section 6.1 of this Declaration.

The Association shall have easements as described in Section 13 to perform its obligations under this Section 9. The Association may, by Rules and Regulations, further define its obligations within the categories of maintenance obligations set forth in this Section 9.1 or added pursuant to Section 9.3 of this Declaration.

9.2 Maintenance by Owner. Unless authorized under Section 9.1 or Section 9.3, the Association's maintenance, repair and replacement obligations shall exclude the following, which shall be the responsibility of the Owner:

- a. Maintain, repair and replace the interior of the Dwelling and the garage (walls, floors, ceilings, foundations, foundation walls and all other structural elements).
- b. Maintain, repair and replace roofs and roof decking, including, without limitation, shingles, tar paper, waterproofing materials, basic roof coverings (e.g., plywood or other similar materials), vents, and flashings.
- c. Removal of snow and ice dams from roofs.
- d. Repair and replace siding (except as specifically provided in Section 9.1, above), including underlying plywood lumber and waterproofing material.
- e. Maintain, repair and replace gutters and downspouts.
- f. Maintain, repair and replace trim, railings, overhangs, front doors, service doors and garage doors (exclusive of painting), including frames, hardware, mechanics, springs, weather-stripping, openers, and other.
- g. Maintenance, repair and replacement of mailboxes on Dwellings (not cluster mailboxes), all in accordance with, at a minimum, such standards as may be established by the United States Postal Service.
- h. Maintain, repair and replace brick veneer on Dwelling.
- i. Maintain, repair and replace tuckpointing and flashing on Dwelling.
- j. Maintain, repair and replace concrete garage ramps (concrete slab aprons located between garage door and asphalt driveway) and front steps.
- k. Maintain, repair and replace decks and patios, including snow removal therefrom.

- l. Maintain, repair and replace fencing, including, but not limited to, privacy fencing/walls between patios/decks.
- m. Maintain, repair and replace chimneys and chimney flues, including mandatory cleaning thereof in accordance with standards established by the Association.
- n. Maintain, repair and replace all exterior caulking, including that of trim, overhangs, siding, doors, windows chimneys and brick veneer.
- o. Maintain, repair and replace all doors and windows (except as provided in Section 9.1), including, but not limited to, weather-stripping associated therewith.
- p. Maintain, repair and replace any permanently affixed appurtenances from the foundation or entrance/exit from a Dwelling to a sidewalk in front of or to the side of a Dwelling, or to street or driveway.
- q. Maintain, repair and replace all portions of windows and patio doors (including sashes, glass, frames, hardware, screens, etc.).
- r. Maintain, repair and replace all mechanical, electrical, plumbing, and sewer systems within a Unit.
- s. Maintain, repair and replace all lawn irrigation systems within a Unit.
- t. Maintain, repair and replace all air conditioning equipment including pads and support bases, located within a Unit.
- u. Maintain, repair and replace, any drain tile, sump pump and related discharge systems, if any, located within a Unit.
- v. Maintain, repair and replace exterior light fixtures, including light bulb replacement.
- w. Maintain, repair and replace faucets, both interior and exterior.
- x. Any other items not specifically required to be maintained by the Association under Section 9.1 or added pursuant to Section 9.3.

Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.3, all maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. Any alteration to a Unit shall be maintained at the Owner's sole cost and expense unless the Association undertakes to provide for such maintenance in accordance with the provisions of Section 9.3. The Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any exterior maintenance which the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof.

9.3 Optional Maintenance by Association. In addition to the maintenance described in this Section the Association may, with the approval of a majority of Owners who have authority to cast in excess of fifty percent (50%) of the total votes in the Association in person or by proxy at a meeting called for such purposes, undertake to provide additional exterior maintenance to the Units or Dwellings.

9.4 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of any Owner or Occupant, or their guests, or by a condition in a Unit which the Owner or Occupant has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Unit to do so), and the cost thereof may be assessed against the Unit of the Owner responsible for the damage. In the case of Party Walls between Dwellings, the Owners of the affected Dwellings shall be liable as provided in Section 10.

9.5 Maintenance Responsibilities Defined by Board of Directors. Notwithstanding any provisions to the contrary, the Board of Directors shall have the sole and exclusive authority to define the scope of maintenance and repair to be provided by the Association. The Board of Directors is hereby vested with the authority to interpret the Governing Documents and rule on any ambiguities contained therein. The Owners shall be legally bound by any decisions of the Board of Directors pertaining to the determination of the Association's maintenance obligations and the scope and extent thereof.

SECTION 10

PARTY WALLS

10.1 General Rules of Law to Apply. Each wall built as part of the original construction of the Dwellings and located on the boundary line between Units shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

10.2 Repair and Maintenance. The Owners of the Units which share the Party Wall shall be responsible for the maintenance repair and replacement of Party Wall in proportion with their use; provided (i) that any maintenance, repair or replacement necessary due to the acts or omissions of a certain Owner or Occupant sharing such Party Wall shall be paid for by such Owner, and (ii) that the Association may contract for and supervise the repair of damage caused by an Owner or Occupant and assess the Owners for their respective shares of the cost to the extent not covered by insurance.

10.3 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has use of the Party Wall may, with the consent of the Association, restore it, and the other Owner shall promptly reimburse the Owner who restored the Party Wall for his or her share of the cost of restoration thereof; provided, however, that the cost of restoration resulting from destruction or other casualty resulting from the acts or omissions of certain Owners shall be the financial responsibility of such Owners, and the Association may assess the responsible Owners for their share of the costs, without prejudice to the right of an Owner to recover a larger contribution from the other Owner. Insurance claims shall be made promptly following any casualty.

10.4 Weatherproofing. Notwithstanding any other provision of this Section, any Owner who, by his negligent or willful act, causes a Party Wall to be exposed to the elements shall bear the whole cost of the repairs necessary for protection against such elements.

10.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Unit and shall pass to such Owner's assigns and successors in title.

10.6 Arbitration. In the event of any dispute arising concerning a Party Wall, and if the same is not resolved within thirty (30) days of the event causing the dispute, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association, upon the written demand of the Association or any Owner whose Dwelling shares the Party Wall. Each party agrees that the decision of the arbitrators shall be final and conclusive of the questions involved. The fees of the arbitrators shall be shared equally by the parties, but each party shall pay its own attorney fees or other costs to prove its case.

SECTION 11

INSURANCE

11.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

- a. Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property (including Units or the Common Elements), less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies *may, but need not*, cover the following items within Units: (i) ceiling or wall finishing materials; (ii) floor coverings; (iii) cabinetry; (iv) finished millwork; (v) electrical, heating, ventilation and air conditioning equipment and plumbing fixtures serving a single Unit; (vi) built-in appliances; or (vii) other improvements and betterments, regardless of when installed. The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverages and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the Federal Housing Administration (FHA) or Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA or FNMA, obligating the Association to keep certain specified coverages or endorsements in effect.
- b. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of \$1,000,000 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from

denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverages and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Unit.

- c. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, manager, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulations of the FHA or FNMA as a precondition to the purchase or financing of a mortgage on a Unit. The fidelity bond or insurance shall name the Association as the named insured and shall, if required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing of a mortgage on a Unit, be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force, or (ii) a sum equal to three months aggregate assessments on all Units plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.
- d. Workers' Compensation insurance as required by law.
- e. Directors and officers' liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- f. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

11.2 Premiums; Improvements; Deductibles. All insurance premiums shall be assessed as a Common Expense, as more fully described in Section 6.2 of this Declaration. The insurance need not cover improvements and betterments to the Units installed by Owners, but if improvements and betterments are covered, any increased cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.

11.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, including Eligible Mortgagees, which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association.

11.4 Waivers of Subrogation. All policies of insurance shall contain waivers of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured. Nothing in this section shall prohibit any Owner from subrogating his or her individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) against the individual insurance coverage of another Owner.

11.5 Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least 30 days prior written notice to the Association, to the FHA or FNMA (if applicable), all of the insureds and all Eligible Mortgagees.

11.6 Restoration in Lieu of Cash Settlement. All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable (i) without the prior written approval of the Association (or any insurance trustee) or (ii) when in conflict with provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

11.7 No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners or their Eligible Mortgagees. Nothing in this section shall prohibit an Owner's individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) from providing "gap coverage" for any deductible under the Association's policy assessed to an Owner pursuant to Section 11.2 hereof.

11.8 Effect of Acts Not Within Association's Control. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner or Eligible Mortgagee, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

11.9 Owner's Personal Insurance. Each Owner shall obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability, as well as those items set forth in Section 11.1a hereof which are not covered by the Association's policy or policies. In addition, such coverage shall include loss assessment coverage in an amount at least equal to the deductible under the Association's policy or policies. Each Owner shall be responsible for any deductible or related expenses to said personal property or personal liability insurance coverage. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.

SECTION 12

RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

12.1 Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage to or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved. The Association shall have all authority necessary to cause the Property to be reconstructed, including without limitation the authority (i) to require the Owners to enter into reconstruction contracts on their respective Units, or (ii) to contract for the reconstruction of the Units on behalf of the Owners. Notice of substantial damage or destruction shall be given pursuant to Section 16.10.

12.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern; provided that notice shall be given pursuant to Section 16.10. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and the Governing Documents, as their interest may appear.

12.3 Notice. All Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property, and the Association shall give written notice thereof to an Eligible Mortgagee pursuant to Section 16.10.

SECTION 13

EASEMENTS

13.1 Easement for Encroachments. Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, decks, balconies, porches patios, utility installations and other appurtenances (i) which are part of the original construction on the adjoining Unit or the Property or (ii) which are added pursuant to Section 8. If there is an encroachment by a Dwelling, or other building or improvement located in a Unit, upon another Unit or Dwelling as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of any encroaching Dwelling, building or improvement, and for the maintenance thereof, shall exist; provided that with respect to improvements or alterations added pursuant to Section 8, no easement shall exist unless the same have been approved and constructed as required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

13.2 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents. The Association shall use its best efforts to provide reasonable advance notice to Unit Owners prior to seeking access to a Unit for the purposes set forth herein.

13.3 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Units for all such services, including without limitation any sewer or water lines servicing other Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utilities companies providing service to the Units for the installation and maintenance of utilities metering devices.

13.4 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this Section shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction.

SECTION 14

COMPLIANCE AND REMEDIES

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Governing Documents, the Rules and Regulations, the decisions of the Association, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

14.1 Entitlement to Relief. The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, the Act or the decisions of the Association. However, no Owner may withhold any assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents, the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

14.2 Sanctions and Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents, the Rules and Regulations or the Act:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges as determined by the Board for each past due assessment or installment thereof, and interest at up to the highest rate permitted by law.
- c. In the event of default of more than 30 days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Ten days' advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- d. Impose reasonable fines, penalties or charges for each violation of the Act, the Governing Documents or the Rules and Regulations of the Association.
- e. Suspend the rights of any Owner or Occupant and their guests to use any Common Elements amenities; provided, that this limitation shall not apply to deck, balcony, porch or patio easements, appurtenant to the Unit, and those portions of the Common Elements providing utilities service and access to the Unit. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents, and for up to 30 days thereafter, for each violation.

- f. Restore any portions of the Common Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
- g. Enter any Unit in which, or as to which, a violation or breach of Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Dwelling or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner.
- h. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state where the Property is located.

14.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 14.2.d, e, f or g of this Section, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least five (5) days prior written notice to the offender. If the offending Owner fails to appear at the hearing then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within a reasonable time following the hearing, if not delivered to the offender at the hearing.

14.4 Lien for Charges, Penalties, Etc. Any assessments, charges, fines, penalties or interest imposed under this Section shall be a lien against the Unit of the Owner or Occupant against whom the same are imposed and the personal obligation of such Owner in the same manner and with the same priority and effect as assessments under Section 6. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board gives written notice following the hearing. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of the right to pursue any others.

14.5 Costs of Proceeding and Attorneys Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, the Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including, without limitation, fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

14.6 Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance

rates, resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

14.7 Enforcement by Owners. The provisions of this Section shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents, the Rules and Regulations, and the Act as provided therein.

SECTION 15

AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 16 as to matters prescribed by said Section. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

SECTION 16

RIGHTS OF ELIGIBLE MORTGAGEES

Notwithstanding anything to the contrary in the Governing Documents, and subject to any greater requirements of the Act or other laws, Eligible Mortgagees shall have the following rights and protections:

16.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least fifty one percent (51%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or priority of assessment liens; (iii) reductions in reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements, or rights to their use; (vi) redefinition of any Unit boundaries; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (ix) hazard or fidelity insurance requirements; (x) leasing of Units; (xi) imposition of any restrictions on the leasing of Units; (xii) if the common interest community consists of 50 or more Units, a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or any Eligible Mortgagee; (xiii) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the common interest community after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit mortgage holders or insurers or guarantors of mortgages. Notwithstanding the foregoing, implied approval of a proposed amendment shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within 60 days after its receives proper notice of the proposal, provided that the notice was delivered by certified mail with a return receipt requested.

16.2 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Units that are subject to first mortgages (based upon one vote per first mortgage owned) shall be required to abandon or terminate the common interest community, subject to any greater requirements contained in the Act.

16.3 Consent to Subdivision. No Unit may be partitioned or subdivided without the prior written approval of the Owner and Eligible Mortgagees thereof, and the Association.

16.4 No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restrictions.

16.5 Priority of Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgage holder or purchaser; (i) except as provided in Section 6.7 and the Act and (ii) except that any unpaid assessments or charges with respect to the Unit may be reallocated equally among all Units except the foreclosed Unit in accordance with the formula set out in Section 4.2 hereof.

16.6 Priority of Taxes and Other Charges. All taxes, assessments and charges which may become liens prior to the first mortgage under state law shall relate only to the individual Units and not to the Property as a whole.

16.7 Priority for Condemnation Awards. No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagees of the Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and the Common Elements. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

16.8 Management Agreement Requirements. The term of any agreement for professional management of the Property may not exceed two (2) years. Any such agreement must provide at a minimum for termination without penalty or termination fee by either party, (i) with cause upon thirty (30) days prior written notice, and (ii) without cause upon ninety (90) days prior written notice.

16.9 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive upon written request, copies of the Association's annual reports and other financial statements at a charge to be determined by the Board. Financial statements, including those which are audited, shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. If a request is made by FNMA or any institutional guarantor or insurer of a mortgage loan against a Unit, for an audit of the Association's financial statements for the preceding year, the Association shall cause an audit to be made and deliver a copy to the requesting party.

16.10 Notice Requirements. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a mortgage on a Unit, and the Unit number or address, the holder, insurer or guarantor shall be entitled to timely written notice of:

- a. A condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;
- b. A 60 day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
- c. A lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- d. A proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

SECTION 17

MISCELLANEOUS

17.1 Severability. If any term, covenant, or provision of this instrument or any exhibit attached hereto is held to be invalid or unenforceable for any reason whatsoever, such determination shall not be deemed to alter, affect or impair in any manner whatsoever any other portion of this instrument or exhibits.

17.2 Construction. Where applicable the masculine gender of any word used herein shall mean the feminine or neutral gender, or vice versa, and the singular of any word used herein shall mean the plural, or vice versa. References to the Act, or any section thereof, shall be deemed to include any statutes amending or replacing the Act, and the comparable sections thereof.

17.3 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board of Directors, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2.2 of the Bylaws shall be effective upon receipt by the Association. Notice to the Association shall be made upon the Association's registered address; notice to an Owner shall be made upon the address provided to the Association pursuant to Section 2.2 of the Bylaws. Notice to an Occupant shall be made upon the Unit.

17.4 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, this Declaration, the Bylaws or any Rules and Regulations approved by the Association, the Act shall control. As among this Declaration, Bylaws and any Rules and Regulations, this Declaration shall control, and as between the Bylaws and any Rules and Regulations, the Bylaws shall control.

[signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first set forth in accordance with the requirements of the Act.

KINGSLEE HEIGHTS HOME ASSOCIATION

By: _____

Its: _____

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____ 20____, by _____, the _____ of Kingslee Heights Home Association, a Minnesota nonprofit corporation, on behalf of the corporation.

Notary Public

This instrument drafted by:

HELLMUTH & JOHNSON, PLLC
8050 W. 78th Street
Edina, MN 55439
(952) 941-4005

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COMMON INTEREST COMMUNITY NUMBER 1989

KINGSLEE HEIGHTS

EXHIBIT A TO AMENDED DECLARATION

SCHEDULE OF UNITS/LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 4, inclusive, Block 1

Lots 1 through 4, inclusive, Block 2

Lots 1 through 6, inclusive, Block 3

Lots 1 through 6, inclusive, Block 4

Lots 1 through 6, inclusive, Block 5

Lot 1, Block 6

Kingslee Heights Addition

AND

Lots 1 through 6, inclusive, Block 1

Lots 1 through 6, inclusive, Block 2

Lots 1 through 6, inclusive, Block 3

Lots 1 through 4, inclusive, Block 4

Lots 1 through 6, inclusive, Block 5

Lots 1 through 4, inclusive, Block 6

Lots 1 through 6, inclusive, Block 7

Lot 1, Block 8

Kingslee Heights Third Addition

All in Hennepin County, Minnesota

Note: Each Unit's unit identifier is its lot and block numbers and the subdivision name.

COMMON INTEREST COMMUNITY NUMBER 1989

KINGSLEE HEIGHTS

EXHIBIT B TO AMENDED DECLARATION

LEGAL DESCRIPTION OF COMMON ELEMENTS

Lot 1, Block 6, Kingslee Heights Addition

Lot 1, Block 8, Kingslee Heights Third Addition

All in Hennepin County, Minnesota

AFFIDAVIT OF SECRETARY

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The undersigned, Secretary of Kingslee Heights Home Association, a Minnesota nonprofit corporation, being first duly sworn and upon oath, hereby swears and certifies, pursuant to the applicable provisions of Minnesota law and the Original Declaration, that the Amended and Restated Declaration for Kingslee Heights has been duly approved by a vote of the Board of Directors of the Association, and by the requisite number and percentage of Owners and lenders, in compliance with the requirements of Minnesota law and the Original Declaration.

Kingslee Heights Home Association

By: _____
Its: Secretary

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

Signed and sworn to before me this ____ day of _____, 20__, by
_____, Secretary of Kingslee Heights Home Association, a
Minnesota nonprofit corporation.

Notary Public

This instrument drafted by:

HELLMUTH & JOHNSON, PLLC
8050 W. 78th Street
Edina, MN 55439
(952) 941-4005