

# SAND CREEK TOWNHOMES

KNOW ALL PERSONS BY THESE PRESENTS: That SVK Development, Inc., a Minnesota corporation, fee owner of the following described property situated in the County of Anoka, State of Minnesota, to wit:

All that part of Outlot B, Sherbrook, lying easterly of a line drawn from a point on the south line of said Outlot B distant 246.17 feet east of the southwest corner of said Outlot B to a point on the North line of said Outlot B distant 245.09 feet east of the northwest corner of said Outlot B.

Has caused the same to be surveyed and platted as SAND CREEK TOWNHOMES and does hereby donate and dedicate to the public for public use forever the drainage and utility easements as shown on the plat.

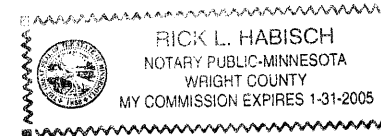
In witness whereof said SVK Development, Inc., a Minnesota corporation, has caused these presents to be signed by its proper officer this 13 day of December, 2001.

SVK DEVELOPMENT, INC.

By Scott Keitt, as Pres.

STATE OF Minnesota  
COUNTY OF Wright  
The foregoing instrument was acknowledged before me this 13 day of December, 2001, by Scott Keitt, as Pres. of SVK Development, Inc., a Minnesota corporation, on behalf of said corporation.

[Signature]  
Notary Public, \_\_\_\_\_ County, Wright  
My Commission Expires 1-31-05



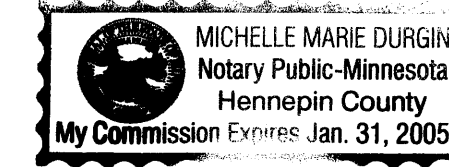
I hereby certify that I have surveyed and platted the land described in the dedication on this plat as SAND CREEK TOWNHOMES; that this plat is a correct representation of said survey; that all distances are correctly shown on the plat in feet and hundredths of a foot; that all monuments have been correctly placed in the ground as shown or will be placed as required by the local governmental unit; that the outside boundary lines are correctly designated on said plat and that there are no wetlands or public highways to be designated on said plat other than shown thereon.

[Signature]  
Daniel L. Thurmes, Land Surveyor  
Minnesota License No. 25718

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

The foregoing Surveyor's Certificate was acknowledged before me this 11<sup>th</sup> day of December, 2001, by Daniel L. Thurmes, Land Surveyor.

[Signature]  
Notary Public, Hennepin County, Minnesota  
My Commission Expires January 31, 2005.



PLANNING COMMISSION OF THE CITY OF COON RAPIDS

The plat of SAND CREEK TOWNHOMES was approved by the Planning Commission of the City of Coon Rapids, Minnesota, this 24th day of May, 2001.

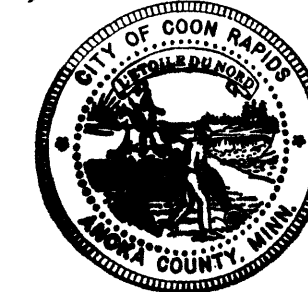
By Doreen M. Nave, chairman

CITY OF COON RAPIDS

We hereby certify that the City of Coon Rapids, Anoka County, Minnesota duly accepted and approved this plat of SAND CREEK TOWNHOMES at a regular meeting held this 21st day of August, 2001. If applicable, the written comments and recommendations of the Commissioner of Transportation and the County Highway Engineer have been received by the City or the prescribed 30 day period has elapsed without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 505.03, Subdivision 2.

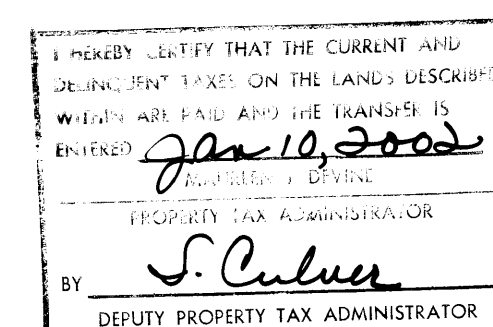
By [Signature], Mayor

By [Signature], Clerk



This plat has been checked and approved this 10<sup>th</sup> day of January, 2001.

By [Signature]  
Anoka County Surveyor



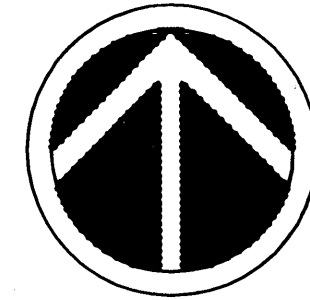
388237  
Office of REGISTRAR OF TITLES  
STATE OF MINNESOTA  
COUNTY OF ANOKA  
I hereby certify that the within instrument was filed in this office on JAN 10 2002 at 10:06 o'clock AM  
Maureen J. Devine, Registrar of Titles  
By RMT Deputy Registrar of Titles



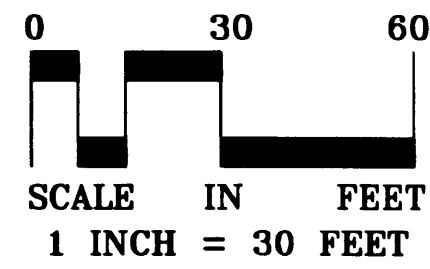
OFFICIAL PLAT

# SAND CREEK TOWNHOMES

CITY OF COON RAPIDS  
COUNTY OF ANOKA  
SEC. 10, T. 31, R. 24



NORTH



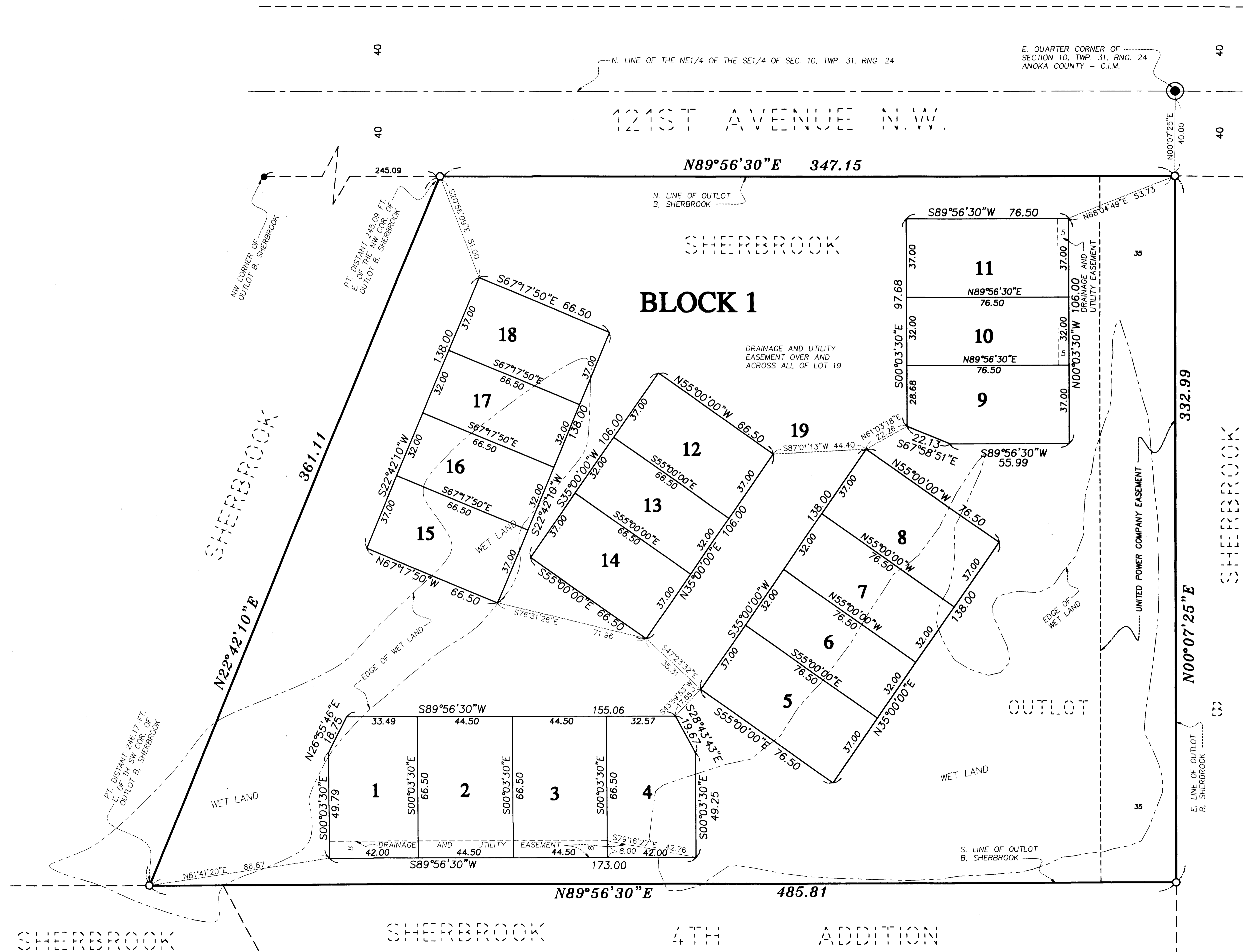
FOR THE PURPOSES OF THIS PLAT THE NORTH LINE OF OUTLOT B, SHERBROOK IS ASSUMED TO BEAR N89°56'30"E.

- Denotes iron monument found
- Denotes 1/2 inch iron pipe set and marked RLS 25718

All monuments required by Minnesota Statute and not shown on this plat will be set within 1 year of the recording date of this plat and shall be evidenced by a 1/2 inch by 14 inch iron pipe marked by RLS 25718

DRAINAGE AND UTILITY EASEMENTS ARE SHOWN THUS:

BEING OVER AND ACROSS ALL OF LOT 19, BLOCK 1, AND AS SHOWN ON THIS PLAT



2002003815 \$669.50



LANDFORM

# 388237

THIS DOCUMENT NUMBER REPRESENTS A PLAT

ALL PLATS ARE MAINTAINED ON A SEPARATE MICROFICHE IN A SEPARATE SECTION RESERVED FOR PLATS. FULL SIZE COPIES OF PLATS ARE STILL AVAILABLE FOR VIEWING.

MUNICIPALITY: COON RAPIDS CERTIFIED BY: A ON 1/10/01

MAP # 2603 PLAT BOOK: 18 OF Torrens PAGE 5

DOC. DATE: 12/12/01 NO. OF PAGES: 2 TRACT BOOK: \_\_\_\_\_ PAGE \_\_\_\_\_

PLAT SHORT NAME: SAND CREEK TOWNHOMES

LONG NAME: SAND CREEK TOWNHOMES

A/T	PARENT PINS	KEY	RES?	GRANTORS (Fees, C/Ps, Mortgagees)	Marital Status
T	10.31.24.41.0066	1466210	N	SUK Development, Inc. (fee)	

FILED BY: Dick Curry PHONE: 763-545-3557

TAXPAYER NAME: SUK Dev. Inc.

ADDRESS: 3335 PENNSYLVANIA Ave No

CITY: CRYSTAL STATE: MN ZIP: 55427

### NEW PARCELS

LOT	BLOCK	LOT	BLOCK	LOT	BLOCK
1-19	1				

19

DELO & CURRENT TAXES ARE PAID: INITIALS: RMT DATE: 1-10-02

DIV. NO.: \_\_\_\_\_

DIV. FEE: \$610

**TORRENS**

Receipt # <u>3815 / 669.50</u>	<input type="checkbox"/> Certified Copy Date Mailed _____
Date/Time <u>1/10/02, 10:00</u>	<input type="checkbox"/> Tax Liens / Releases
Doc. Order _____ of <u>1</u>	<input type="checkbox"/> Multi-Co Doc Tax Pd
✓ by: Recordability: <u>OP</u>	<input type="checkbox"/> Transfer <input type="checkbox"/> New Desc.
Filing Fees <u>59<sup>00</sup> + 610 Div Fee</u>	<input checked="" type="checkbox"/> Division <input type="checkbox"/> GAC
Well Certificate Received this Date: _____	<input type="checkbox"/> Status <input type="checkbox"/> Def. Spec
Refund Rect # _____	<input type="checkbox"/> Other <input type="checkbox"/> No Change
From Cert. # <u>93269</u> A # of <u>1</u> New Certs.: <u>0</u>	Notes: _____
Tract Updated: _____	Comp. Entry _____
Typed _____	Comp. Complete _____

BK 246 PG 93269 NO 93269

DOCUMENT NO. 388237.0 TORRENS

**ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE FOR RECORD ON **JAN 10 2002** AT **10:06 AM** AND WAS DULY RECORDED. FEES AND TAXES IN THE AMOUNT OF **\$669.50** PAID.

RECEIPT NO. 2002003815

MAUREEN J. DEVINE  
ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES  
RMT  
BY \_\_\_\_\_  
DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

388237.0 TORRENS  
SVK DEVELOPMENT INC  
3335 PENNSYLVANIA AVE N  
CRYSTAL, MN 55427



## COMMON INTEREST COMMUNITY NUMBER 113

## Planned Community

## SAND CREEK TOWNHOMES

## DECLARATION

**397885**

THIS DECLARATION is made in the County of Anoka, State of Minnesota, on this 14<sup>th</sup> day of May, 2002, by SVK Development, Inc., a Minnesota corporation (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), for the purpose of creating Sand Creek Terrace Townhomes as a planned community.

WHEREAS, Declarant is the owner of certain real property located in Anoka County, Minnesota, legally described in Exhibit A attached hereto, and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act as a planned community, and,

WHEREAS, Declarant also owns the real property legally described in Exhibit C attached hereto (the "Additional Real Estate"), and has the option to add all or a part of the Additional Real Estate to the Property, and

WHEREAS, Declarant desires to establish on the Property a plan for a permanent residential community to be owned, occupied, and operated for the use, health, safety and welfare of its residents, owners, and occupants, and for the purpose of preserving the value, the structural quality, and the original architectural and esthetic character of the Property; and

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B.1-106 of the Act, governing conversions of common interest ownership, and is not subject to a master association as defined in the Act;

THEREFORE, Declarant makes the Declaration and submits the Property to the Act as a planned community under the name "Sand Creek Townhomes", initially consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property, and all Additional Real Estate added thereto, shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

**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 the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B, as amended.
- 1.2        "Additional Real Estate" shall mean the real property legally described in Exhibit C, including all improvements located thereon now or in the future, and all easements and rights appurtenant thereto, which property Declarant has the right to add to the common interest community.
- 1.3        "Assessments" shall mean all assessments levied by the Association pursuant to Section 6 of this Declaration, including annual assessments, special assessments and limited allocation assessments.
- 1.4        "Association" shall mean the Sand Creek Townhomes Association of Coon Rapids, a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, whose members consist of all Owners as defined herein.
- 1.5        "Board" shall mean the Board of Directors of the Association as provided for in the By-Laws.
- 1.6        "By-Laws" shall mean the By-Laws governing the operation of the Association, as amended from time to time.
- 1.7        "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. A Common Element is legally described in Exhibit B attached hereto.
- 1.8        "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 By-Laws.
- 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 Mortgages.
- 1.11 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.12 "Limited Common Elements" shall mean a portion of the Common Elements allocated by the Declaration or by operation of Section 515B.2-102(d) or (f) of the Act for the exclusive use of one or more but fewer than all of the Units.
- 1.13 "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.
- 1.14 "Occupant" shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.
- 1.15 "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 515.B1-103(29) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.
- 1.16 "Party Wall" shall mean the shared wall between two Dwellings.
- 1.17 "Person" shall mean a natural individual, corporation, limited liability company, partnership, trustee, other or legal entity capable of holding title to real property.
- 1.18 "Plat" shall mean the recorded plat depicting the Property pursuant to the requirements of Section 515B.2-110(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.



- 1.19        "Private Driveway" shall mean and refer to an access driveway from streets or highways to Dwellings within Units.
- 1.20        "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.
- 1.21        "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.
- 1.22        "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, BOUNDARIES AND RELATED EASEMENTS**

- 2.1        Units. There are three (3) Units subject to the right of the Declarant to add additional Units in accordance with Section 16. All Units are restricted exclusively to residential use. 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 and Section 3.2, all spaces, walls, and other improvements within the boundaries of a Unit are a part of the Unit.
- 2.3        Access Easements. Each Unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across the Common Elements, including Lot 19, Block 1, SAND CREEK TOWNHOMES,

subject to any restrictions set forth in this Declaration.

- 2.4 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.
- 2.5 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 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 15.6.
- 2.8 Recorded Easements. The Property shall be subject to such other easements as may be recorded against it or otherwise shown on the Plat.
- 2.9 Easements are Appurtenant. All easements and similar rights burdening or benefitting 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 benefitting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.
- 2.10 Impairment Prohibited. No person shall materially restrict or impair any easement benefitting 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.
- 2.11 Benefit of Easements. All easements benefitting a Unit shall benefit the Owners and Occupants of the Unit, and their families and guests. However, an Owner who has delegated the right to occupy the Unit to an Occupant or Occupants, whether by a lease or otherwise, does not have the use and other easements rights in the Property during such delegated occupancy, except as a guest of an Owner or Occupant or in connection with the inspection of the Unit or recovery of possession of the Unit from the Occupant pursuant to law.

2.12 Driveway Maneuvering Easement. That part of hard surfaced areas of each Private Driveway built as part of the original construction of the Dwellings and located within five (5) feet on each side of the boundary line between Units shall constitute a limited common driveway for the purposes hereinafter set forth for the joint and mutual use of the affected units. Each such Unit which is served and benefitted by a common Private Driveway shall be subject to and burdened with a maneuvering easement running in favor of the Owner of the other Unit also served by such driveway for the purposes of backing, turning or otherwise maneuvering vehicles. No conduct, passive or affirmative, including the parking or storage of vehicles, shall be permitted which would in any manner restrict the rights of the Owners of each benefitted Unit otherwise to fully utilize his driveway for vehicular ingress and egress to his Dwelling.

**SECTION 3**  
**COMMON ELEMENTS, LIMITED COMMON ELEMENTS**  
**AND OTHER PROPERTY**

- 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 include, but are not limited to all areas and items listed in this Section 3, and those parts of the Property described in Exhibit B attached hereto or designated as Common Elements on the Plat or in the Act. The Common Elements are owned by the Association for the benefit of the Owners and Occupants.
  - b. The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, use and enjoyment in favor of each Unit and its Owners and Occupants; subject to (i) the rights of Owners and Occupants in Limited Common Elements appurtenant to their Units and (ii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.
  - c. Except as otherwise expressly provided in the Governing Documents, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.
  - d. 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. The Limited Common Elements are described and allocated to the Units as follows:

- a. Those items or areas designated as Limited Common Elements on the Plat or by the Act.
- b. Chutes, flues, ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components or fixtures lying partially within and partially outside the boundaries of a Unit, and serving only that Unit, are allocated to the Unit they serve. Any portion of such installations serving or affecting the function of more than one Unit or any portion of the Common Elements is a part of the Common Elements, but is not a Limited Common Element.
- c. Improvements, if any, such as decks, patios, balconies, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors and windows, constructed as part of the original construction to serve a single Unit, and replacements and modifications thereof authorized pursuant to Section 8, if located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.
- d. Heating, ventilating or air conditioning equipment serving only a certain Unit or Units, and located wholly or partially outside the Unit or Unit's boundaries, are allocated to the Unit or Units served by such equipment.

3.3 Annexation of Other Property. In addition to the Additional Real Estate annexed by Declarant, other real property may be annexed to the common interest community as Units or Common Elements, or any combination thereof, and subjected to this Declaration, with the approval of (i) Owners (other than Declarant) of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association and (ii) Declarant so long as Declarant owns any unsold Unit for sale.

**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, subject to Sections 6.4 and 6.7.
- 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 designed to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote 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 By-Laws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the By-Laws.
- 4.5 Declarant Control. Notwithstanding the vote of any unit Owner to the contrary, the Declarant hereby reserves a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and directors of the Association. Said reservation of Declarant control is subject to the following:
- a. The maximum period of Declarant control may extend from the date of the first conveyance of a Unit to

- a Unit Owner other than a Declarant for a period not exceeding five (5) years.
- b. Notwithstanding subsection a. above, the period of Declarant control shall terminate upon the earlier of (i) surrender of control by the Declarant or (ii) sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant.
  - c. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than Declarant or an affiliate of Declarant, a meeting of the Unit Owners shall be held at which not less than thirty-three and one-third percent (33-1/3%) of the members of the Board shall be elected by Unit Owners other than Declarant or an affiliate of Declarant.
  - d. Not later than the termination of Declarant control, the Unit Owners shall elect a Board of Directors of at least three members. Thereafter, a majority of the directors shall be Unit Owners other than Declarant or an affiliate of Declarant. The remaining directors need not be Unit Owners unless required by the Articles of Incorporation or By-Laws. All Unit Owners, including the Declarant and its affiliates, may cast the votes allocated to any Units owned by them. The Board shall elect the officers. The directors and officers shall take office upon election.
  - e. In determining whether the period of Declarant control has terminated under subsection b., or whether Unit Owners other than a Declarant are entitled to elect members of the Board of Directors under subsection c, the percentage of the Units which have been conveyed shall be calculated based upon the assumption that all Units which the Declarant has built or reserved the right to build in the Declaration are included in the CIC.
  - f. Except as otherwise provided in this subsection, meetings of the Board of Directors must be open to all Unit Owners. To the extent practicable, the Board shall give reasonable notice to the Unit Owners of the date, time and place of a Board meeting. If the date, time and place of meetings are provided for in this Declaration, the Articles of Incorporation or By-Laws of the Association, were announced at a previous meeting of the Board, posted in a location accessible to the Unit Owners

and designated by the Board from time to time, or if an emergency requires immediate consideration of a matter by the Board, notice is not required. "Notice" has the meaning given in Minnesota Statutes Section 317A.011, subdivision 14. Meetings may be closed to discuss the following:

- (1) personnel matters;
- (2) pending or potential litigation, arbitration or other potentially adversarial proceedings, between Unit Owners, between the Board or Association and Unit Owners, or other matters in which any Unit Owner may have an adversarial interest, if the Board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the Board or Association or the privacy of a Unit owner or occupant of a Unit; or
- (3) criminal activity arising within the CIC if the Board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize the investigation of the activity.

Nothing in this subsection imposes a duty upon the Board to provide special facilities for meetings. The failure to give notice as required by this subsection shall not invalidate the Board meeting or any action taken at the meeting.

#### **SECTION 5** **ADMINISTRATION**

The administration and operation of the Association and the Property, including but not limited to the acts 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 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 By-Laws. The Association shall have By-Laws. The By-Laws 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 and implement 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.



**SECTION 6**  
**ASSESSMENTS FOR COMMON EXPENSES**

- 6.1 General. Assessments shall be determined and assessed against the Units by the Board, in its discretion; subject to the requirements and procedures set forth in this Section 6, and the requirements of the Bylaws. Assessments shall include annual assessments under Section 6.2, and may include special assessments under Section 6.3 and limited allocation assessments under Section 6.4. Annual and special assessments shall be allocated among the Units equally, in accordance with the allocation formula set forth in Section 4.2. Limited allocation assessments under Section 6.4 shall be allocated to Units as set forth in that Section.
- 6.2 Annual Assessments. Annual assessments shall be established and levied by the Board, subject to the limitations set forth hereafter. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared equally by all Units in accordance with the allocation set forth in Section 4.2. Annual assessments shall be payable in equal monthly installments. Annual assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of the Common Elements and those parts of the Units for which the Association is responsible.
- 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 equally in accordance with the allocation formula set forth in Section 4.2. Special assessments shall be used for the purpose of defray in whole or in part of the cost of any unforeseen and unbudgeted Common Expense.
- 6.4 Limited Allocation Assessments. In addition to annual assessments and special assessments, the Board may, at its discretion, levy and allocate limited allocation assessments among only certain Units in accordance with the following requirements and procedures:
- a. Any assessment associated with the maintenance, repair, or replacement of a Limited Common Element may be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned.
  - b. Any assessment or portion thereof benefitting fewer than all of the Units may be assessed exclusively against the Unit or Units benefitted.

- c. The costs of insurance may be assessed in proportion to the square footage or actual cost per Unit, and the costs of utilities may be assessed in proportion to usage.
- d. Reasonable attorneys' fees and other costs incurred by the Association in connection with
  - (i) the collection of assessments and
  - (ii) the enforcement of the Governing Documents, the Act, or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.
- e. Late charges, fines and interest may be assessed as provided in Section 14.
- f. 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.
- g. 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 the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
- h. If any assessment or installment of an assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
- i. 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.
- j. Assessments levied under Subsections 6.4, a-g may, at the Board's discretion, be assessed as a part of, or in addition to, the Assessments levied under Section 6.

6.5 Working Capital Fund. There shall be established a working capital fund to meeting unforeseen expenditures or to purchase additional equipment or services during the Association's beginning years of operation. The Board shall include in each subsequent annual budget a

reasonable amount of working capital, based upon the anticipated needs of the Association for the year in question. There shall be contributed on a one-time basis for each Unit sold an amount equal to two (2) months installments of the estimated Common Expense Assessment for the Unit. The contribution shall be paid at the earlier of the time of closing of sale of the Unit or the time of termination of the period of Declarant control under Section 15.7. The contributions to this fund are in addition to the regular monthly installments of the Assessments. The funds shall be deposited into a segregated Association account no later than the termination of the period of Declarant control. Declarant may not use the funds to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficit while Declarant is in control of the Association. However, upon the closing of the sale of an unsold Unit, Declarant may reimburse itself from funds collected from the purchaser at the closing for any contributions made by Declarant to the working capital fund with respect to that Unit.

6.6 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, subject to the alternative assessment program described in Section 6.7. The Owner at the time an assessment 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 Assessments 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, the Rules and Regulations, or bylaws, for the purpose of enforcing its rights hereunder.

6.7 Declarant's Alternative Assessment Program. The following alternative assessment program is established pursuant to Section 515B.3-115(a)(2) of the Act. Notwithstanding anything to the contrary in this Section 6, if a Common Expense assessment has been levied, any unsold Unit owned by Declarant shall be

assessed at the rate of twenty-five percent (25%) of the Assessments levied on other Units of the same type until a certificate of occupancy has been issued with respect to such Unit by the municipality in which the Unit is located. This reduced Assessment shall apply to each Unit owned by Declarant at the time that the Unit is created, and shall terminate with respect to each such Unit upon the issuance of the certificate of occupancy for the Unit. Although this alternative Assessment program will not affect the allocated share of replacement reserves attributable to Units owned by Declarant, there are no assurances that there will be no effect on the level of services for items set forth in the Association's budget.

6.8 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 6. Recording of the Declaration constitutes record notice and perfection of any lien under this Section 6, and no further recordation of any notice of or claim for the lien is required. The release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

6.9 Foreclosure of Lien; Remedies. A lien for Assessments may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement in a like manner as a mortgage containing a power of sale. 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 to its other remedies, 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.

6.10 Lien Priority; Foreclosure. A lien for Assessments is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the Unit, and (iii) liens for real estate taxes and other

governmental assessments or charges against the Unit. Notwithstanding the foregoing, if (1) a first mortgage on a Unit is foreclosed, (2) the first mortgage was recorded on or after the date of recording of this Declaration, and (3) no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes 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 unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-115(a), (h)(1) to (3), (i), and (l) of the Act which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption.

- 6.11 Voluntary Conveyances; Statement 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 seller's Unit prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such Assessments shall remain against the Unit until released. 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, encumbered, leased, 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 Subdivision Prohibited. Except as permitted by the Act, no Unit nor any part of the Common Elements may be subdivided or partitioned without the prior written approval of all Owners and all secured parties holding first mortgages on the Units.

7.3 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 7.4. Declarant may maintain offices, sales facilities, and other business facilities on the Property in connection with exercise of its special declarant rights. 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.

7.4 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, bulk mailings, deliveries, or 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.
- (iii) Declarant may maintain offices, sales facilities and other business facilities on the Property in connection with the exercise of its special declarant rights.

7.5 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and (unless with the Association's consent) subject to the following conditions:

- (i) that no Unit shall be leased for transient or hotel purposes,

- (ii) that no Unit may be subleased,
- (iii) that all leases shall be in writing, and
- (iv) that 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.

7.6 Delegation of Use. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Unit to persons living in the Unit pursuant to a legal right of possession; provided, that such persons shall be subject to the Governing Documents and the Rules and Regulations. If lessees, or other persons other than the Owner or the Owner's family, have been given the legal right to possess the Owner's Unit, then those persons shall have the right to use any common recreational facilities, parking, storage and other amenities on the Property in lieu of the Owner and the Owner's family.

7.7 Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. The use of garages, driveways and other parking areas 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.

7.8 Animals. No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. However, the Board shall have the exclusive authority to prohibit, or to allow and regulate, by Rules and Regulations, the keeping of animals on the Property. The word "animal" shall be construed in its broadest sense and shall include all living creatures, except humans.

7.9 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.

- 7.10 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.
- 7.11 Alterations. Except for those made by Declarant in consideration of its initial sale of a Unit, 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 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.
- 7.12 Ponds, Wetlands and Trees. Ponds, marshes, wetland areas, vegetation and trees, whether located on the Units or the Common Elements, and whether natural or otherwise, shall be maintained in substantially the same condition as originally established, subject only to (i) changes authorized by the Association consistent with all statutes, requirements, rules and regulations imposed on such areas and items by governmental authorities having jurisdiction and (ii) the prior approval of any such governmental authorities, if required. No cutting, mowing, trimming, draining, dredging or other alteration of such areas and items shall be permitted, except as authorized by this Section 7.12, it being the intention that such areas and items remain and be maintained in substantially their condition as of the date of recording of this Declaration, and subject to natural changes.
- 7.13 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.



- 7.14 Access to Units. In case of emergency, all Units and Limited Common Elements 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.

**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, and except for alterations made by Declarant in consideration of its initial sale of a Unit, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other exterior improvements to the 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. Notwithstanding the foregoing, Declarant's written consent shall also be required for alterations until Declarant no longer owns any unsold Unit.
  - 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) substantial preservation of other Owners' sight lines, if material, and compliance with governmental laws, codes and regulations.
  - (vi) The Board, or the appointed committee if so authorized by the Board, shall be the material, and sole judge of whether the criteria are satisfied.
- 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; notwithstanding any contrary requirement in the Governing Documents or the Act. A file of such resolutions shall be maintained permanently as a part of the Association's records.
  - d. Alterations described in Section 16 shall be governed by that Section.

8.2 Review Procedures. The following procedures shall govern requests for alterations under this 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 at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board of Directors, then approval will not be required, and this Section shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted.
- c. If no request for approval is submitted, approval shall be denied.

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 Owner 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 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. 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 (collectively referred to as "maintenance") of the Common Elements, except for exterior front doors of Units and replacement of a Unit's glass - which will be the obligation of the Owner of the affected Unit. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall
- (i) provide for exterior maintenance upon the Dwelling in each Unit that is subject to assessment as follows: paint and replace roofs, gutters, down spouts, decks and patios (if so elected to do by the Association, otherwise deck and patio repair and maintenance shall be the responsibility of the Owner), garage doors (except hardware), and exterior siding and other building surfaces,

- (ii) provide for lawn, shrub and tree maintenance on all Units, including watering by irrigation systems, sidewalks and driveways; and
- (iii) provide maintenance of any ponding areas upon the Property as located and shown on the final development plans and within SAND CREEK TOWNHOMES; and
- (iv) the Association shall provide for snow removal of all private driveways and sidewalks; and
- (i) The Association's obligation to maintain exterior building surfaces shall exclude decks and patios (unless elected by the Association to so do), entry doors, door hardware, air conditioning equipment, glass and window frames, and any other items not specifically referred to in this Section, unless otherwise approved under Section 9.3. The Association shall have easements as described in Section 13 to perform its obligations under this Section 9.

9.2 Maintenance Ponding Areas. The Association shall maintain any ponding areas upon the property as located and shown on the final development plans and the plat on file with the City of Coon Rapids, to the extent that the City itself has not maintained any such ponding areas. The cost of such maintenance performed by the Association shall be assessed pro-rata against all Units on the property in accordance with Section 6 of this Declaration.

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 votes cast in person or by proxy at a meeting called for such purposes, undertake to provide additional exterior maintenance to the Units or Dwellings, or maintenance of water and sewer systems within the Units.

9.4 Maintenance by Owner. Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.2, all maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. However, 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.

- 9.5 Damages 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 an 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 Owner of the affected Dwellings shall be liable as provided in Section 10.

**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 the 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. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit(s).
- 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 wall may, with the consent of the Association, restore it, and the other Owner shall promptly reimburse the Owner who restored the 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 provisions 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 assign 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, 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

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 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 and paid as a Common Expense. 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 or 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.
- 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.
- 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 may obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the

Unit, personal property or personal liability. 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 upon. Notice of substantial damage or destruction shall be given pursuant to Section 18.10.
- 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 18.10. 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 interests may appear.
- 12.3 Termination and Liquidation. The termination of the common interest community, and the distribution of any proceeds therefrom, shall be governed by the Act. Any distribution of funds shall be based upon the value of the Units as determined by their relative value for property insurance purposes, and shall be made to Owners and their mortgage holders, as their interests may appear, as provided in the Act.
- 12.4 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 18.10.
- 12.5 Association's Authority. In all cases involving reconstruction, condemnation, eminent domain, termination or liquidation of the common interest community, the Association shall have authority to act on behalf of the Owners in all proceedings, negotiations and settlement of claims. All proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and their mortgage holders, as their interests may appear, in accordance with the Act.

**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, eaves, roof overhangs, air conditioning systems, decks, balconies, 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 in compliance with 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 the proposed improvements 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 Dwelling and other improvements located within the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.
- 13.3 Utility Easements. The Property shall be subject to non-exclusive, appurtenant easements in favor of all public utility companies and other utility providers for the installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable, TV and other electronic communications, water and sewer, septic systems, wells, and similar services, and metering and control devices, which exist or are constructed as part of the development of the Property or the Additional Real

Estate, or which are referred to in the Plat or otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall also be subject to a non-exclusive, appurtenant easement in favor of the other Units for all such utilities and services; provided, that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Units by the Owners and Occupants, nor affect the structural or architectural integrity of the Units or Dwellings.

- 13.4 Emergency Access to Units. In case of emergency, all Units and Limited Common Elements are subject to an easement for access, without notice and at any time, by an officer or member of the Board, by the Association's management agents or by any public safety personnel. The Board may require that an Owner or Occupant leave keys to the Unit with another Owner of his or her choice and to advise the manager or Board of the locations of the keys, so as to allow access for emergencies when the Owner or Occupant is absent for extended periods.
- 13.5 Project Sign Easements. Declarant shall have the right to erect and maintain monument signs identifying the common interest community and related decorative improvements on the Common Elements. Those parts of the Property on which monument signs or related decorative improvements are located shall be subject to appurtenant, exclusive easements in favor of the Association for the continuing use, maintenance, repair and replacement of said signs and improvements. In exercising its rights under said easements, the Association shall take reasonable care to avoid damaging the improvements to the Property.
- 13.6 Roadway Access Easements. The Common Elements shall be subject to an appurtenant easement for roadway access in favor of the owners and occupants of any part of the Additional Real Estate which is not added to the Property, and which Declarant has no further right to add to the Property, over those parts of the Common Elements which are paved and dedicated to use as connecting streets.
- 13.7 Reservation of Easements. Declarant hereby reserves the right, in the event that the Additional Real Estate is not added to the common interest community (whether due to lapse of time or otherwise) to exercise the following rights and create the following perpetual, non-exclusive easements (the "Reserved Easements") appurtenant to the Additional Real Estate over, upon, and under portions of the Common Elements, all in

accordance with the following authority and conditions:

- a. To connect any improvements constructed on the Additional Real Estate which is not added to the Property (hereinafter referred to as the "Excluded Parcel") to any natural gas, storm sewer, sanitary sewer, electrical, telephone or other utility line, cable TV line, pipe, wire or other facilities which are or may be located within or serve the Property, including the right to connect any improvements constructed on the Excluded Parcel into, and the right to utilize, such lines, pipes, wires or other facilities.
- b. To obtain natural gas, water, electricity, telephone, cable TV and other utility services from, and to discharge storm and sanitary waste into, all such lines, pipes, wires or other common utility facilities which are or may be located within or serve the Property.
- c. To install, repair, maintain, operate and replace all such natural gas, storm sewer, water sanitary sewer, electrical, telephone or other facilities which are or may be located within or serve the Property.
- d. To do such other acts as are necessary in order to connect into and/or to utilize such utility facilities to serve any improvement constructed or to be constructed on the Excluded Parcel; provided, however, that the owner or owners of the Excluded Parcel benefitted by any reserved elements shall be responsible for the restoration of any damage done in connection with or use of such easements.
- e. Non-exclusive easements for the purposes of: (i) affording the Excluded Parcel and any improvements constructed or to be constructed thereon with access to and from a public road; (ii) installing, repairing, maintaining, surfacing, resurfacing, grading, replacing and extending any private drives, streets, roads, rights-of-way over which the easements hereby reserved are or may be located; and (iii) performing such other acts as are necessary in order to afford any improvement constructed or to be constructed on the Excluded Parcel with access to a public road; provided, that Declarant, its successors or assigns, as the owner or owners of the Excluded Parcel, shall be responsible for the restoration of any land, driveways, streets, roads or rights-of-way which are disturbed in connection with the use of such

easements, and provided further, that the location of the easements hereby reserved shall, to the extent practicable, be limited to the location of the driveways, streets, roads, easements areas and rights-of-way existing within the Common Elements at the time or times that said easements are created.

13.8 Documentation of Easements. The Reserved Easements may be created from time to time as required to provide the necessary access and utility services to the Property and any Excluded Parcel. As evidence of the creation of one or more of the Reserved Easements, the then owner or owners of the Excluded Parcel for whose benefit the easement is created shall execute and cause to be filed for record a Declaration of Easement or comparable instrument setting forth a description of the easements created and a description of the Excluded Parcel benefitted by the easements. No consent or joinder of the Association or any Owner or any mortgagee or other secured party in any Unit or the Excluded Parcel, nor any release therefrom, shall be required to create the easements. In addition, the owner of the Excluded Parcel or of a platted lot within the Excluded Parcel may at any time waive or terminate its easement rights by the execution and recording of an instrument specifying such waiver or termination, and without the necessity of any consent or joinder by the Association, any Owner, or any mortgagee or other secured party in any Unit or any part of the Excluded Parcel. Such waiver or termination shall not affect any obligations incurred by any owner of the Excluded Parcel arising out of its act or omissions prior to such determination.

13.9 Maintenance of Easements. In the event that the Reserved Easements are created, the Unit Owners and the owner of the Excluded Parcel benefitted by such easements shall, so long as the easements are in existence, share all expenses of maintaining, repairing and replacing the private drives, lanes, streets, roads, or rights-of-way, and the utility lines, pipes, wires and other facilities, which may be commonly used pursuant to the easements in the following manner. A portion of any such expenses equal to a fraction, the numerator of which is the number of Units, and the denominator of which is the total number of Units plus the total number of dwellings, lots or other individual parcels within the Excluded Parcel benefitted by such easements, shall be paid by the Unit Owners. The balance of any such expenses shall be paid by the owner or owners of the Excluded Parcel benefitted by such easements. Any portion of the expenses to be paid by the Owners shall be paid by the Association as a Common

Expense. Notwithstanding the foregoing, if the Excluded Parcel benefitted by such easements is used for other than residential purposes, then such costs and expenses shall be apportioned to, and shared by the Owners and the owner or owners of the Excluded Parcel on a fair and equitable basis as agreed upon by the Association and such other owner or owners.

- 13.10 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 13 shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement area through the Units and the common Elements for purposes of maintenance, repair, replacement and reconstruction. All easement rights shall include a right of reasonable access to maintain, repair and replace the utility lines and related equipment.

#### **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 only against Owners and Occupants and/or their guests (other than Declarant) late charges of up to 15% of each late payment of an assessment or installment thereof.
- 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. Reasonable 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 Element amenities; provided, that this limitation shall not apply to Limited Common Elements or deck, balcony 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 after, for each violation.
- f. Restore any portions of the Common Elements or Limited 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 or Limited Common Element in which, or as to which, a violation or breach of the 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 or Limited Common Elements 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, or f 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 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty days of receipt of the hearing request by the Board, and with at least 10 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 ten days 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, 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 Owner's 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 act 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**  
**SPECIAL DECLARANT RIGHTS**

Declarant hereby reserves exclusive and unconditional authority to exercise the following special declarant rights within the meaning of Section 515B.1-103 (31) of the Act for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

- 15.1 Complete Improvements. To complete all the Units and other improvements indicated on the Plat, or otherwise included in Declarant's development plans or allowed by the Declaration, and to make alterations in the Units and Common Elements to accommodate its sales facilities;
- 15.2 Add Additional Real Estate. To add Additional Real Estate to the Property as described in Section 16.

- 15.3 Relocate Boundaries and Alter Units. To relocate boundaries between Units and to otherwise alter Units owned by it, to the extent permitted by Section 16;
- 15.4 Sales Facilities. To construct, operate and maintain a sales office, management office, model Units and other development, sales and rental facilities within the Common Elements and any Units owned by Declarant from time to time, located anywhere on the Property.
- 15.5 Signs. To erect and maintain signs and other sales displays offering the Units for sale or lease, in or on any Unit owned by Declarant and on the Common Elements;
- 15.6 Easements. To have and use easements for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements for the purpose of exercising its special declarant rights;
- 15.7 Control of Association. To control the operation and administration of the Association, including, without limitation, the power to appoint and remove the members of the Board pursuant to Section 515B.3-103 of the Act, until the earliest of:
- (i) voluntary surrender of control by Declarant,
  - (ii) an Association meeting which shall be held within 60 days after conveyance to Owners other than a Declarant of 75% of the total number of Units authorized to be included in the Property or
  - (iii) the date five (5) years following the date of the first conveyance of a Unit to an Owner other than a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall have the right to nominate and elect not less than 33-1/3% of the directors at a meeting of the Owners which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Property.
- 15.8 Consent to Certain Amendments. As long as Declarant owns any unsold Unit, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects or may affect Declarant's rights under the Governing Documents.

**SECTION 16**  
**RIGHTS TO ADD ADDITIONAL REAL ESTATE,**  
**RELOCATE UNIT BOUNDARIES AND ALTER UNITS**

- 16.1 Declarant's Rights to Add Additional Real Estate.  
Declarant hereby expressly reserves the right to add the Additional Real Estate to the Property, by unilateral action under Section 515B.2-111 of the Act, subject to the following conditions:
- a. The right of Declarant to add the Additional Real estate to the Common Interest Community shall terminate ten (10) years after the date of recording of this Declaration or upon earlier express written withdrawal of such right by Declarant or a successor Declarant, unless extended by a vote of the Owners pursuant to Section 515B.2-106(2) of the Act. There are no other limitations on Declarant's rights hereunder, except as may be imposed by law.
  - b. The Additional Real Estate is described in Exhibit C. The Additional Real Estate may be added to the Property in parcels consisting of one or more platted lots, outlots or portions thereof.
  - c. There are no assurances as to the times at which all or any part of the Additional Real Estate will be added to the Property, the order in which it will be added, the number of parcels per phase nor the size of the parcels. Declarant is under no obligation to add the Additional Real Estate to the Property, and the Additional Real Estate may be developed by Declarant or its successors in interest for other purposes, subject only to approval by the appropriate governmental authorities.
  - d. The maximum number of Units that may be created within the Additional Real Estate described as such on the date of this Declaration is 30. All Units created on the Additional Real Estate shall be restricted exclusively to residential use.
  - e. Any Units, including Dwellings and other structures, crated upon the Additional Real Estate, when and if added, shall be compatible with the other Dwellings, Structures and Units which are a part of the Property in terms of architectural style, quality of construction, principal materials employed in construction and size; subject (i) to any changes required by governmental authorities or lenders and (ii) to

any interior and minor exterior changes made by Declarant to meet changes in the market.

- f. All covenants and restrictions contained in this Declaration affecting the use, occupancy and alienation of Units shall apply to all Units created on the Additional Real Estate.
- g. The statements made in Subsections a through f above shall not apply to any Additional Real Estate which is not added to the Property.

16.2

Rights to Relocate Boundaries and Alter Units.

Existing or future Units may be altered and Unit boundaries may be relocated only in accordance with the following conditions:

- a. Combining Units. An Owner may make improvements or alterations to such Unit or, may, after acquiring an adjoining Unit, remove or alter any intervening partition or create apertures therein in accordance with Section 515B.2-113 of the Act and Subsection d of this Section.
- b. Relocation of Boundaries. The boundaries between adjoining Units may be relocated in accordance with Section 515B.2-114 of the Act and Subsection d of this Section.
- c. Subdivision of Conversion. No additional Units may be created by the subdivision or conversion of a Unit (within the meaning of the Act) into two or more Units, nor into other Units, Common Elements or Limited Common Elements.
- d. Requirements. The alteration, relocation of boundaries or other modification of Units or the Dwellings or other structures located therein (collectively referred to herein as "alteration" or "alterations") pursuant to this Section, Section 8, and the Act may be accomplished only in accordance with the following conditions:
  - (1) No Unit may be altered if, thereafter, the Dwelling located therein, or any other Dwelling affected by the alteration, would no longer be habitable or practicably usable for its intended purpose or would violate any law, code or ordinance of any governmental authority having jurisdiction over the Property.
  - (2) No alteration may be made which adversely affects the structural or functional

integrity of any building system or the structural support or weather tight integrity of any portion of any building or other structure.

- (3) The prior written consent of the Association shall be required for any alteration, except alterations by Declarant. Where required, such consent shall be requested in writing by each Owner whose Unit is proposed to be altered, accompanied by such explanation, drawings and specifications relating to the proposed alterations as may be reasonably required by the Association or the first mortgagee of the Unit. The Association shall give such Owner(s) notice in an expeditious manner, granting, denying or qualifying its consent.
- (4) As a precondition to consenting to alterations the Association may require, among other things, the following:
  - (i) that all alterations will be done in a workmanlike manner and without impairing the structural, mechanical or weather-tight integrity of the Building;
  - (ii) that the Common Elements and altered Units will be repaired and/or restored in the future as required by the Association;
  - (iii) that the construction of the alterations will not create dangerous conditions for any Owners or Occupants;
  - (iv) that the Property, the first mortgagees and the Owners and Occupants will be protected from liens and other liability arising from the alterations; and
  - (v) that the alterations will be done in compliance with the applicable laws, regulations and ordinances of the governmental authorities having jurisdiction over the Property.
- (5) The Association may require that the Owners of the Units to be altered pay all costs of processing and documentation for the request and the preparation and recording of any necessary amendment to the Governing Documents, including, without limitation,

such costs as filing, architects and attorneys' fees, incurred by the Association in connection with the alterations.

**SECTION 17**  
**AMENDMENTS**

- 17.1 Approval Requirements. Except for amendments by Declarant pursuant to Sections 515B.2-111 and 515B.2-112(c) of the Act, this Declaration may be amended only by the approval of:
- a. Owners of Units to which are allocated at least sixty-seven percent (67%) of the total votes in the Association.
  - b. The percentage of Eligible Mortgages (based upon one vote per Unit financed) required by Section 16 as to matters described by said Section.
  - [c. The FHA or VA, as applicable, during the period of Declarant control under Section 15.7, as to the following matters:
    - (1) The annexation of Additional Real Estate.
    - (2) The merger or consolidation of the Association with another Association or other legal entity.
    - (3) The dissolution of the Association.
    - (4) The amendment of this Declaration, or the Articles of Incorporation or By-Laws of the Association.]
  - c. Declarant as to certain amendments as provided in Section 15.8

- 17.2 Procedures. Approval of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consents of Eligible Mortgages, the FHA, the VA, and Declarant shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The amendments 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 18**  
**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:

- 18.1 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) any amendment to the Governing Documents which causes any change in the following: (i) voting rights;
  - (ii) assessments, assessment liens, or priority of assessment liens;
  - (iii) reserves for maintenance, repair and replacement of Common Elements;
  - (iv) responsibility for maintenance and repairs;
  - (v) reallocation of interests in the Common Elements or Limited 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) insurance or fidelity bonds;
  - (x) leasing of Units;
  - (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
  - (xii) a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or an 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 condominium after substantial destruction or condemnation occurs; or
- (xv) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

18.2 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 held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required to

- (i) abandon or terminate the condominium;
- (ii) change the allocations of voting rights, Common Expense obligations or interest in the Common Elements;
- (iii) partition or subdivide a Unit except as permitted by statute;
- (iv) abandon, partition, subdivide, encumber or sell the Common Elements; or
- (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

18.3 Consent to Subdivision. No Unit may be partitioned or subdivided without the prior written approval of the owner and Eligible Mortgagee thereof, and the Association.

18.4 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.

18.5 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 unreimbursed assessments or charges may be reallocated among all Units in accordance with their interests in the Common Elements.

- 18.6 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.
- 18.7 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 Mortgagee 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/or 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.
- 18.8 Requirements of Management Agreements. 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.
- 18.9 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books of the Association upon reasonable notice during normal business hours, and to receive, free of charge, upon written request, copies of the Association's annual reports and other financial statements. 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.
- 18.10 Notice of 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 19**  
**RIGHTS GRANTED TO THE CITY OF COON RAPIDS**

- 19.1 Rights Enforceable by the City of Coon Rapids. The City of Coon Rapids, at its option and in its sole discretion, may enforce for the benefit of itself the specific provisions of Sections 7, 8, 9 and 13 of this Declaration.
- 19.2 Notice and Procedure. In the event the Declarant and/or the Association fails to perform any obligation referred to in Section 19.1, the City of Coon Rapids may, after 10 days' written notice to the Declarant and/or the President or Secretary of the Association, perform such obligations (directly or with contract personnel or by personnel of the City of Coon Rapids). The Declarant, Association and all Owners hereby waive all notice requirements except as hereinabove provided and further waive all procedural and other objections to action taken by the City of Coon Rapids.
- 19.3 Payment for City Maintenance. The Association, Declarant and Owners shall reimburse the City of Coon Rapids or its designee, on demand, for the costs of any Declarant, Association or Owner obligations undertaken by the City of Coon Rapids or its designee pursuant to this section. Such costs, including but not limited to reasonable attorneys' fees and costs and expenses incurred in connection with collection, shall be an obligation of each Owner enforceable in any way available to the city under law.
- 19.4 Right to Assess. In addition to the right of collection as stated in Section 19.3, the City of Coon Rapids may, in any assessment year, levy against the Units an assessment for all costs and expenses incurred by the city or its designee pursuant to this section. The assessment shall be prorated among all Units and shall be enforceable by the city in the same manner as provided in Section 6 of this Declaration.
- 19.5 Exclusive Rights. The rights granted by this section are exclusive to the City of Coon Rapids and may be executed

only by the city, in its sole discretion. No other person or entity, including the Association, the Declarant or Owners, whether or not a resident of Coon Rapids, shall be entitled to request or require the city to act pursuant to this section. The rights of the City of Coon Rapids under this section cannot be rescinded, canceled or amended by the Declarant or the Owners without the written consent of the City.

**SECTION 20**  
**MISCELLANEOUS**

- 20.1 Severability. If any term, covenant, or provision of his 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.
- 20.2 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.
- 20.3 Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to the Act, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.
- 20.4 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 By-Laws shall be effective upon receipt by the Association.
- 20.5 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the By-Laws or any Rules or Regulations approved by the Association, the Act shall control. As among the Declaration, By-Laws and Rules and Regulations, the Declaration shall control; and as between the By-Laws and the Rules and Regulations, the By-Laws shall control.

20.6 Variances. The restrictions applicable to Property as specified in Section 7 of this Declaration are intended for the benefit of all Property Owners. The Declarant, however, acknowledges that exceptional conditions of a particular Property may create peculiar and practical difficulties mitigating against the strict enforcement of a provision contained in Section 7. In the event an Owner believes that such exceptional conditions on Property create a hardship or special situation, an Application for Variance may be made by an Owner through the Board in accordance with Section 8.2 of this Declaration. An Application for Variance shall state on the application the reasons for allowing the variance, including:

- (i) that there are special circumstances or conditions affecting the Property such that the strict application of a provision of the Declaration would deprive the Owner of the reasonable use of the Property;
- (ii) the variances necessary for the preservation and enjoyment of a substantial property right of the Owner;
- (iii) the granting of the variance will not be detrimental to the public welfare or injurious to other Owners or Property subject to the Declaration; and
- (iv) that the issuance of the variance will not have an adverse effect upon the health, welfare and safety of the Owners benefitted by this Declaration.

20.7 Variance Required. In considering a request for a variance from the strict application of Section 7 of this Declaration, the Board shall make a finding showing that all of the foregoing conditions exist and the Board may impose any reasonable condition in the granting of such variance in order to protect other Property and Owners.

**SECTION 21**  
**ACCESS EASEMENT TO CITY OF COON RAPIDS**

21.1 City Easement. The Common Elements shall be subject to a non-exclusive easement in favor of the City of Coon Rapids for the purpose of ingress and egress for police, fire, rescue and other emergency calls, animal control, health and protective inspections and to provide to the Owners other public services deemed necessary by the City of Coon Rapids for the purposes set forth in this Section 21.1. No part of the Common Elements may be released from the terms of the easements described in this Section 21.1 as herein declared without the prior



COMMON INTEREST COMMUNITY NUMBER 113

PLANNED COMMUNITY

SAND CREEK TOWNHOMES

EXHIBIT A TO DECLARATION

SCHEDULE OF UNITS/LEGAL DESCRIPTION OF PROPERTY

Lots 9, 10 and 11, Block 1;  
Lot 19, Block 1;  
All in SAND CREEK TOWNHOMES,  
Anoka County, Minnesota

**NOTE:** Each Unit's unit identifier is its lot and block numbers,  
SAND CREEK TOWNHOMES, COMMON INTEREST COMMUNITY  
NUMBER 113, Anoka County, Minnesota

COMMON INTEREST COMMUNITY NUMBER 113

PLANNED COMMUNITY

SAND CREEK TOWNHOMES

EXHIBIT B TO DECLARATION

LEGAL DESCRIPTION OF COMMON ELEMENTS

Lot 19, Block 1;

SAND CREEK TOWNHOMES, COMMON INTEREST  
COMMUNITY NUMBER 113, Anoka County, Minnesota



COMMON INTEREST COMMUNITY NUMBER 113

PLANNED COMMUNITY

SAND CREEK TOWNHOMES

EXHIBIT C TO DECLARATION

ADDITIONAL REAL ESTATE

Lots 1 through 8, inclusive, Block 1;  
Lots 12 through 18, inclusive, Block 1;

All in SAND CREEK TOWNHOMES

**TORRENS**

2002 06/13/02 Receipt # 06/13/02	<input type="checkbox"/> Certified Copy Date Mailed _____
Date/Time: 5/15/02, 14:55	<input type="checkbox"/> Tax Liens / Releases
Doc. Order 2 of 2	<input type="checkbox"/> Multi-Co Doc Tax Pd
✓ by: Recordability: [Signature]	<input type="checkbox"/> Transfer <input type="checkbox"/> New Desc.
Filing Fees: 35.50	<input checked="" type="checkbox"/> Division <input type="checkbox"/> GAC
Well Certificate Received this Date: _____	<input type="checkbox"/> Status <input type="checkbox"/> Def. Spec
Refund Rect # _____	<input type="checkbox"/> Other <input type="checkbox"/> No Change
From 93269 A # of Tract _____	Notes: 40 pages, 150 pgs
Cert. # 93269	New Certs.: 0
Typed _____	Tract Updated: _____
	Comp. Entry _____
	Comp. Complete _____

BK 266 PG 93269 NO 93269

DOCUMENT NO. 397885.0 TORRENS

**ANOKA COUNTY MINNESOTA**

I HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS FILED IN THIS OFFICE FOR RECORD ON **MAY 15 2002** AT **2:55 PM** AND WAS DULY RECORDED. FEES AND TAXES IN THE AMOUNT OF **\$34.50** PAID.

RECEIPT NO. 2002061133  
MAUREEN J. DEVINE

ANOKA COUNTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

GKE

BY \_\_\_\_\_  
DEPUTY PROPERTY TAX ADMINISTRATOR/RECORDER/REGISTRAR OF TITLES

397885.0 TORRENS  
SVK DEVELOPMENT INC  
3335 PENNSYLVANIA AVE N  
CRYSTAL, MN 55427