

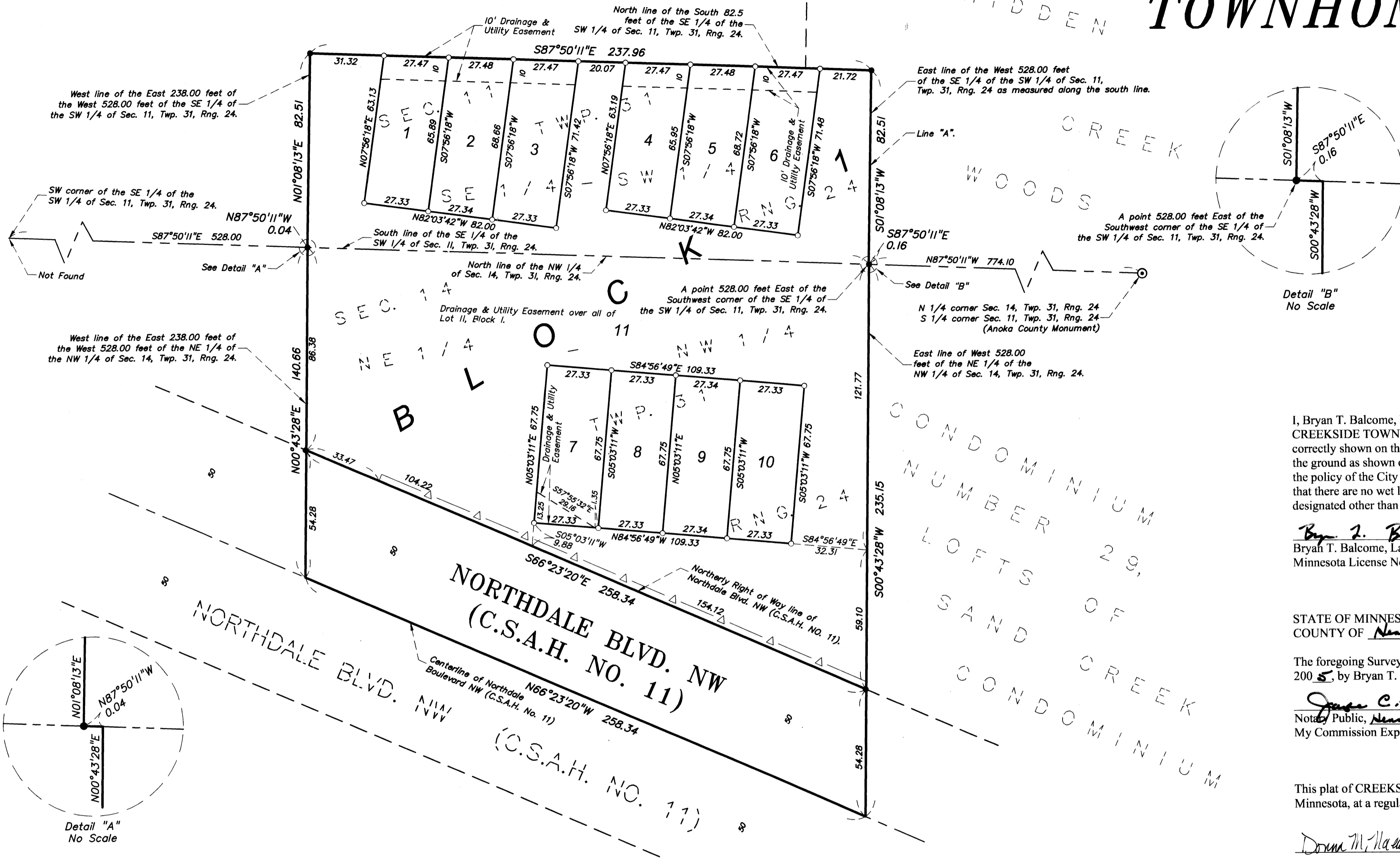
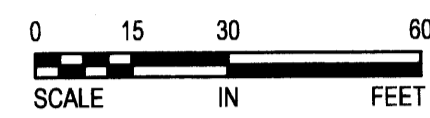
OFFICIAL PLAT

CREEKSIDE TOWNHOMES

CITY OF COON RAPIDS
COUNTY OF ANOKA
SEC. 11 & 14, T. 31, R. 24.

5269-24-25-29

1975290-001 Absr
OFFICE OF COUNTY RECORDER
STATE OF MINNESOTA, COUNTY OF ANOKA
I hereby certify that the within instrument was filed in this office for record on the 14th day of May A.D., 2005 at 3:00 o'clock P.M., and was duly recorded in book 94 page 39
Maureen J. Deane
County Recorder
By J m ti



For the purposes of this plat, the centerline of Northdale Boulevard NW (County State Aid Highway Number 11) is assumed to bear North 66 degrees 23 minutes 20 seconds West.
Denotes 1/2 inch by 14 inch iron monument set or to be set within 1 year after the date of recording of CREEKSIDE TOWNHOMES and marked by R.L.S. No. 42594.
Denotes 1/2" iron pipe found.
Denotes rights of access dedicated to Anoka County

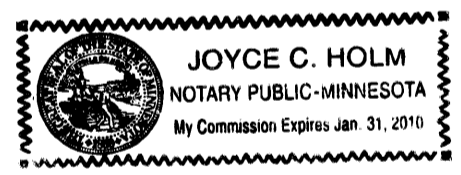
I, Bryan T. Balcome, hereby certify that I have surveyed and platted the property described on this plat as CREEKSIDE TOWNHOMES; that this plat is a correct representation of said survey; that all distances are correctly shown on the plat in feet and hundredths of a foot; that all monuments have been correctly placed in the ground as shown on said plat or will be placed as required by the local governmental unit in accordance with the policy of the City of Coon Rapids; that the outside boundary lines are correctly designated on the plat; and that there are no wet lands as defined in Minnesota Statutes 505.02, Subdivision 1, or public highways to be designated other than as shown.

Bryan T. Balcome
Bryan T. Balcome, Land Surveyor
Minnesota License No. 42594

STATE OF MINNESOTA
COUNTY OF Hennepin

The foregoing Surveyor's Certificate was acknowledged before me this 12th day of May, 2005, by Bryan T. Balcome, Land Surveyor.

Joyce C. Holm
Notary Public, Hennepin County, Minnesota
My Commission Expires Jan. 31, 2010



This plat of CREEKSIDE TOWNHOMES was approved by the Planning Commission of Coon Rapids, Minnesota, at a regular meeting thereof held this 16th day of September, 2004.

Donna M. Madec, Chairperson

I hereby certify that the City Council of the City of Coon Rapids, Anoka County, Minnesota, duly accepted and approved the plat of CREEKSIDE TOWNHOMES at a regular meeting held this 5th day of October, 2004. 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, Subd. 2.

By: [Signature], Mayor Attest: John A. Anderson, City Clerk

SURVEY DIVISION, ANOKA COUNTY, MINNESOTA

Checked and approved this 18th day of May, 2005.

By: Larry O. Hoium, Anoka County Surveyor
Larry Hoium
by Charles F. Reizen, Deputy John Oliver & Associates, Inc.
Brooklyn Center Office

KNOWN ALL MEN BY THESE PRESENTS: That Cross Country Holdings, LLC, a Minnesota limited liability company, fee owner of the following described property situated in the County of Anoka, State of Minnesota, to wit:

That part of the South 82.5 feet of the Southeast Quarter of the Southwest Quarter of Section 11, Township 31, Range 24, Anoka County, Minnesota which lies East of the West line of the East 238.00 feet of the West 528.00 feet of said Southeast Quarter of the Southwest Quarter and Westerly of the following described Line A:

Beginning at a point on the South line of said Southeast Quarter of the Southwest Quarter 528.00 feet East of the southwest corner thereof; thence Northerly parallel with the West line of said Southeast Quarter of the Southwest Quarter, a distance of 82.51 feet to the North line of said South 82.5 feet of the Southeast Quarter of the Southwest Quarter and said Line A there terminating.

And

The East 238.00 feet of the West 528.00 feet of the Northeast Quarter of the Northwest Quarter of Section 14, Township 31, Range 24, lying North of Northdale Boulevard Anoka County, Minnesota.

Has caused the same to be surveyed and platted as CREEKSIDE TOWNHOMES, and does hereby donate and dedicate to the public for public use forever the Boulevard and does also dedicate the easements as shown on this plat for drainage and utility purposes only. Also dedicating to the County of Anoka the right of access onto County State Aid Highway Number 11 as shown on this plat.

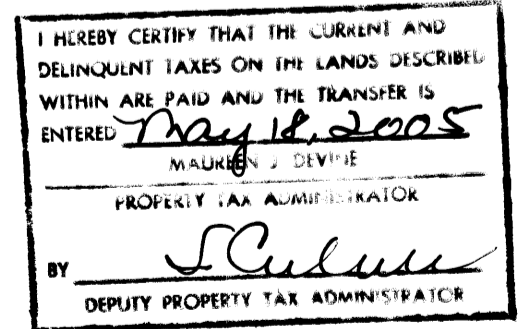
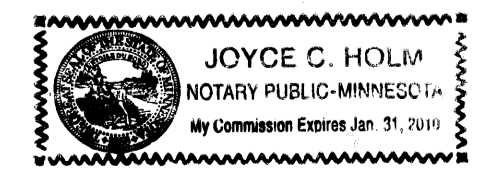
In witness whereof said Cross Country Holdings, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this 12th day of May, 2005.

Cross Country Holdings, LLC
[Signature]
Michael B. Nightingale
Chief Executive Officer

STATE OF MINNESOTA
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 12th day of May, 2005, by Michael B. Nightingale, as Chief Executive Officer of Cross Country Holdings, LLC, a Minnesota limited liability company, on behalf of the company.

Joyce C. Holm
Notary Public, Hennepin County, Minnesota
My Commission Expires Jan. 31, 2010



\$ 425.00



COMMON INTEREST COMMUNITY NUMBER 189

Planned Community

New { 11.31.24 34.0010
14.31.24.21.0002

CREEKSIDE TOWNHOMES

DECLARATION

Metro Legal Services
EDIRET 469348 A
464083 DEC 362245

THIS DECLARATION OF COMMON INTEREST COMMUNITY is executed as of this 14 day of May, 2005, by Cross Country Holdings, LLC, a Minnesota limited liability company ("Declarant"), pursuant to Minnesota Statutes Section 515B.1-101 to 515B.4-118, commonly known as the Minnesota Common Interest Ownership Act (hereinafter the "Act") and laws amendatory thereof and supplemental thereto, for the purpose of creating Common Interest Community Number 189, Creekside Townhomes, a planned community (hereinafter sometimes referred to as "CIC").

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property herein described ("Property"); and

WHEREAS, Declarant is desirous of developing the Property as a planned community development to be hereafter known as Common Interest Community Number 189, Creekside Townhomes; 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 resident Owners and Occupants (as those terms are defined herein), and for the purpose of preserving the value, structural quality, and the original architectural and aesthetic character, of the Property; and

WHEREAS, Declarant has improved said property by constructing thereon two (2) structures each containing a three (3) Dwellings each, and one (1) structure containing four (4) Dwellings (as that term is later defined), for a total of ten (10) Dwellings, together with appurtenances thereto, collectively known as Creekside Townhomes, said structures having been constructed as a common interest community in accordance with the plat of Creekside Townhomes recorded in Anoka County, Minnesota, pursuant to Minnesota Statutes Chapter 505, which plat is incorporated herein by this reference; and

WHEREAS, in order to effect the preservation of the values and amenities of the planned community and to receive the power to attend to and effectuate policies and programs that will enhance the pleasure and value of the planned community and to maintain, administer and enforce the covenants, conditions and easement and restrictions contained herein and to collect and disburse assessments and charges hereafter created, a corporation known as Creekside Townhome Association, Inc., has been created under Chapter 317A of the Minnesota Statutes for the purpose of exercising the aforesaid functions; and

WHEREAS, the Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates consisting of Units (as that term is

defined herein).

NOW, THEREFORE, the Declarant, as the fee owner of the Property, hereby makes the following declaration pursuant to the Act as to divisions, covenants, restrictions, limitations, conditions and uses to which the Property may be put, hereby specifying that said Declaration shall constitute covenants which shall run with the land and shall be binding on the Declarant, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE I

DEFINITIONS

The following words, when used in the Governing Documents (as that term is herein defined) shall have the following meanings, unless the context indicates otherwise:

- (1) Association shall mean the Creekside Townhome Association, Inc. (also referred to as "Creekside Townhome Association"), a non-profit 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 that term is defined herein).
- (2) Board shall mean the Board of Directors of the Association, as provided in the Bylaws.
- (3) Bylaws shall mean the Bylaws governing the operation of the Association, as amended from time to time.
- (4) 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. The Common Elements are legally described in Exhibit B attached hereto.
- (5) 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 this Declaration or the Bylaws.
- (6) Dwelling shall mean a part of a building consisting of one or more floors, designed and intended for occupancy primarily as a single family residence, and located within the boundaries of a Unit (as that term is defined herein). The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.
- (7) Eligible Mortgagee shall mean any Person (as that term is defined herein) owning a mortgage on any Unit (as that term is defined herein), which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.

- (8) Governing Documents shall mean this Declaration, and the Articles of Incorporation and the Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property. "Governing Documents" shall also include any Rules and Regulations promulgated by the Association.
- (9) Member shall mean all persons who are members of the Association by virtue of being Owners (as that term is defined herein). The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- (10) Occupant shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.
- (11) Owner shall mean a Person (as that term is defined herein) who owns a Unit (as that term is defined herein), but excluding contract for deed vendors, mortgagees and other secured parties within the meaning of Section 515B.1-103(30) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.
- (12) Party Wall shall mean the shared wall between two Dwellings.
- (13) Person shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.
- (14) 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.
- (15) 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 Exhibits A and B attached hereto.
- (16) Rules and Regulations shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Article XXI.
- (17) Unit shall mean any platted lot subject to this Declaration upon which a Dwelling (including any associated garage, whether attached or detached) is located or intended to be located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements.

Terms not otherwise defined herein shall have the meaning ascribed to them in the Act.

ARTICLE II

CREATION OF UNITS AND COMMON ELEMENTS

Section 1. Establishment of CIC. The Declarant, in order to establish a plan of CIC ownership for the above-described Property and improvements thereon hereby

covenants, agrees and declares that it hereby divides the Property into separate parcels of real estate, within the meaning of Section 515B.1-103 of the Act, and that such CIC division of such Property and improvements shall hereafter be known as "Common Interest Community Number 189, Creekside Townhomes," and such CIC Division shall be upon the terms and conditions hereinafter set forth:

- (a) **UNITS.** There are ten (10) Units each of which constitutes a separate parcel of real estate. All Units shall be restricted to residential use. 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 [e.g., "Lot _____, Block 1, Creekside Townhomes"].
- (b) **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 (b) and Section (d), all spaces, walls and other improvements within the boundaries of a Unit are part of a Unit.
- (c) **COMMON ELEMENTS.** The Common Elements and their characteristics are as follows:
 - (i) All of the Property not included within the Units constitutes Common Elements. The Common Elements include those parts of the Property described in Exhibit B 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.
 - (ii) The Common Elements shall be subject to certain easements as described in Article XV, and to the rights of Owners and Occupants in Limited Common Elements appurtenant to their Units.
 - (iii) Subject to Article III, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.
 - (iv) 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 Articles IV and V.
- (d) **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:
 - (i) Chutes, flues, pipes, wires, conduits 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 Units 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.

- (ii) Improvements such as decks, patios, balconies, shutters, awnings, window boxes (to the extent each may be permitted by the Association, pursuant to Article VII(g) hereof), doorsteps, stoops, perimeter doors and windows, and air-conditioning equipment, constructed as part of the original construction to serve a single Unit, and authorized replacements and modifications thereof, *if located outside the Unit's boundaries* are Limited Common Elements allocated exclusively to that Unit.

Section 2. **CIC Not Subject to Conversion Ordinance.** The CIC is not subject to any ordinance provided for in Section 515B.1-106 of the Act relative to the conversion of buildings to CIC ownership.

Section 3. **Timeshares.** The CIC shall not permit timeshare of any Units, Common Elements or Limited Common Elements.

Section 4. **Master Association.** The CIC is not subject to a master association.

ARTICLE III

MAINTENANCE RESPONSIBILITIES

Section 1. **Maintenance by Association and by Owners.** Except as otherwise required under the Act, the Association shall be responsible for maintenance, repair and replacement of all Common Elements. 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 (to the extent such items are located upon the Dwelling at the time of original construction): paint and replace roofs, gutters, downspouts, garages, garage doors (except hardware) and exterior siding and other building surfaces; (ii) provide for lawn maintenance (including watering) and shrub and tree maintenance (excluding watering) on all Units; and (iii) provide for maintenance of all fences, whether located in the Common Elements or within Units. The Association's maintenance obligations shall *exclude* entry doors, door hardware, air conditioning equipment, glass, windows and window frames, foundations and foundation walls, structural members and any other items not specifically referred to in this Article, unless otherwise approved under Section 2 hereof. The Association shall have easements as described in Article XV hereof to perform its obligations under this Article.

Section 2. **Optional Maintenance by Association.** In addition to the maintenance described in Section 1 hereof, the Association may, with the approval of a majority of votes cast in person or by proxy at a meeting duly called for such purpose, undertake to provide additional exterior maintenance to the Units or Dwellings, or maintenance of water and sewer systems within the Units.

Section 3. **Maintenance by Owner.** Except for the exterior maintenance required to be provided by the Association under Sections 1 or 2 above, all maintenance

of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. However, the Owners 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.

Section 4. **Damage Caused by Owner.** Notwithstanding any provision to the contrary in this Article, 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 their guests, or by a condition in a Unit which the Owner 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.

Section 5. **Party Walls.** Each Dwelling wall built as part of the original construction of the Dwelling 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 act or omissions shall apply thereto. The following shall apply to party walls:

- a) **Shared Maintenance.** The Owners of the Units which share the party walls 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 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 and assess the Owners for their respective shares of the cost to the extent not covered by insurance.
- b) **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.
- c) **Weatherproofing.** Notwithstanding any other provision of this Section, any Owner who, by his negligent or willful act, causes a party wall to be exposed to the elements shall bear the whole cost of the repairs necessary for protection against such elements.
- d) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Section shall be

appurtenant to the Unit and shall pass to such Owner's assigns and successors in title.

- e) Arbitration. In the event of a 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.

ARTICLE IV

ALLOCATION OF COMMON EXPENSES

Section 1. Common Expense Assessment. From and after the adoption of the budget and the levying expenses by the Association under Section 515B.3-115 of the Act, each Owner covenants to pay common expense assessments (as the term is used in Section 515B.2-108 of the Act). Common expense assessments shall be allocated equally among the Units, except that special allocations of Common Expenses shall be permitted as provided herein. Pursuant to Section 515B.3-115(e)(2) of the Act, the Association may assess any common expense benefiting less than all of the Units against the Units benefited, on the basis of (i) equality, (ii) square footage of the area maintained, repaired or replaced, or (iii) actual cost incurred with respect to each Unit. Common expense assessments (other than special assessments) shall be payable monthly as provided in the Bylaws.

Section 2. Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Sections 2 and 4 of this Article. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of maintenance, repair and replacement of the Common Elements and those parts of the Units for which the Association is responsible.

- (a) Until a Common Expense assessment is levied, Declarant shall pay all accrued expenses of the CIC.
- (b) After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board, subject to subparagraph (c) of this Section.
- (c) An increase in assessments of more than ten percent (10%) over the previous year's assessments shall require consent of two-thirds (2/3) of all Owners. During any period of Declarant Control, consent of two-thirds (2/3) of all Owners other than Declarant shall be required.

Section 3. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence for any Unit within the Property or any phase thereof annexed to the Property on the day of conveyance of the first Unit in the Property or such phase and shall be prorated for the month of said conveyance. The

Board shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each assessment period. Should the Board fail to so fix such amount, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of the annual assessment shall be sent to every Owner subject thereto. The due dates when said annual assessments are due and payable shall be established by the Board.

Section 4. **Special Assessments**. In addition to annual assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense; (ii) general or specific reserves for maintenance, repair or replacement; and (iii) the maintenance, repair or replacement of any part of the Property and fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of a majority of those Owners voting, in person or by proxy, at a meeting duly called for that purpose. Written notice of the meeting shall be sent to all Owners not less than twenty-one (21) days nor more than thirty (30) days in advance of the meeting. Further, during the period of Declarant Control, the levying of any special assessment shall require consent of two-thirds (2/3) of all Owners other than Declarant.

Section 5. **Alternate Assessment Program; Assessment for Units Owned by the Declarant**. Pursuant to Section 515B.3-115 of the Act, the Declarant is hereby authorized to establish an alternative assessment program. Notwithstanding other provisions of this Article, the annual or special assessments for any Units owned by Declarant and improved with a completed Dwelling, but unoccupied by a tenant of Declarant, shall be limited to twenty-five percent (25%) of the amounts fixed with respect to Units owned by Owners other than Declarant until such time as a certificate of occupancy is issued by the City of Coon Rapids ("City") for the Unit(s) owned by Declarant. This alternative assessment program will not affect the allocated share of replacement reserves required for Units owned by the Declarant. Notwithstanding anything to the contrary elsewhere in this Declaration, no assessments shall be assessed, due or payable on any Unit which is not improved with a completed Dwelling.

- (a) **Maximum Amount of Assessment as to Each Unit**. Until January 1st of the year immediately following the year of conveyance of the first Unit to an Owner, the maximum annual assessment permitted with respect to each Unit shall be \$1200 annually, or, if collected monthly, \$100 per month. From and after January 1st of that year, assessments shall be determined by the Board of Directors. During any period of Declarant Control, an increase in assessments of more than ten percent (10%) over the previous year's assessments shall require consent of two-thirds (2/3) of all Owners other than Declarant. Further, during the period of Declarant Control, the levying of any special assessment shall require consent of two-thirds (2/3) of all Owners other than Declarant.
- (b) **Duration of Alternate Assessment Program**. The alternate assessment program shall be effective for a period of not less than one year, but shall not continue beyond the expiration of the period of Declarant Control.
- (c) **Expiration of Authority to Commence Program**. Declarant's authority to commence the alternate assessment program shall expire no later than the expiration of the period of Declarant control, as set forth in Article VI, Section 2 hereof.

- (d) Level of Services. The alternate assessment program shall have no effect on the level of services for items set forth in the Association's budget.

Section 6. **Capital Contribution.** At the time of the initial sale of any Unit from Declarant to any Owner, such Owner shall pay to Declarant for the use of the Association a sum equal to two months' installments of the annual assessment in effect at the time of closing. Such sum shall be delivered by Declarant to the Association for use as described in this Declaration. The Capital Contribution for any Unit shall be levied only upon the sale by Declarant to an Owner and shall not be levied on any subsequent sales of the Unit.

ARTICLE V

LIABILITY FOR ASSESSMENTS

Section 1. **Liability of Owners for Assessments.** The obligation of any 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 5 of Article IV. 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 from payment of his or her share of the Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by 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 this Declaration, in addition to any remedies provided elsewhere in the Governing Documents, the Rules and Regulations, or by law, for the purpose of enforcing its rights hereunder.

Section 2. **Lien of Association.** The Association shall have a lien on each Unit for any assessments levied against that Unit, as provided under Section 515B.3-116 of the Act and such lien shall have the priority and may be foreclosed in the manner provided in the Act. 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 pursuant to Section 515B.3-102 (a) (10), (11) and (12) of the Act shall be enforceable as assessments. Recording of this Declaration constitutes record notice and perfection of any lien under this Article, and no further recordation of any notice of or claim for the lien is required. Past due assessments, and amounts enforceable hereunder as assessments, shall bear interest at the rate established with respect to judgments under Minnesota Statutes Section 549.09.

Section 3. **Costs of Enforcement.** 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.

Section 4. **No Waiver of Liability.** Each Owner at the time an assessment is payable is personally liable to the Association for the payment of the assessment against his or her Unit, as provided in Section 515B.3-116(e) of the Act, and no Owner may exempt himself or herself from the common expense liability by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his or her Unit.

Section 5. **Voluntary Conveyances: Liability of Grantee for Unpaid Assessments.** In a voluntary conveyance of a Unit (except as provided with respect to Eligible Mortgagees under Article XVI hereof) the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against grantor for his or her share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any grantee shall be entitled, upon written request, to a statement setting forth the amount of unpaid assessments currently levied against his or her Unit, as provided in Section 515B.3-116(g) of the Act.

Section 6. **Reserve for Replacement: Monthly Assessments.** Assessments for Common Expenses shall include an adequate fund for replacement of Unit, Common Element or Limited Common Element components which the Association is so obliged to maintain, repair or replace. Said fund shall be funded by monthly payments and not by extraordinary special assessments. In addition, there shall be a capital contribution fund for the initial months of operation of the CIC equal to a sum equal to two months' installments of the annual assessment in effect at the time of closing, as more fully described in Article IV, Section 6 hereof.

Section 7. **Foreclosure of Lien: Remedies.** A lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale, provided, however, that in a foreclosure by advertisement, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the Declaration or Bylaws, notwithstanding the provisions of Minn. Stat. Section 582.01, subdivisions 1 and 1a. (In a foreclosure by action, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees as the court shall determine.) The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other Person claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Unit.

Section 8. **Lien Priority: Foreclosure.** A lien under this Article is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before this 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 (i) a first mortgage on a Unit is foreclosed, (ii) the first mortgage was recorded on or after June 1, 1994, and (iii) no Owner redeems during the Owner's period of redemption provided by 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), (e)(1) to (3), (f) and (i) 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.

Section 9. **Miscellaneous Provisions Regarding Liens and Assessments.**

- (a) 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.

- (b) If any installment of an assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days' written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full.
- (c) 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.

ARTICLE VI

VOTING RIGHTS

Section 1. **Allocation.** Voting rights in the Association shall be allocated equally among the Units, in the same manner as the Common Expenses are allocated.

Section 2. **Declarant Control.** Notwithstanding the vote of any 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 an Owner other than a Declarant for a period not exceeding three (3) 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 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 Owners other than Declarant or an affiliate of Declarant, a meeting of the 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 Owners other than Declarant or an affiliate of Declarant.
- (d) Not later than the termination of Declarant control, the Owners shall elect a Board of at least three (3) members. Thereafter, a majority of the directors shall be Owners other than Declarant or an affiliate of Declarant. The remaining directors need not be Owners unless required by the Governing Documents. All Owners, including the Declarant and its affiliates, may cast the votes allocated to any Unit 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 Owners other than a Declarant are entitled to elect members of the Board under subsection (c), the percentage of the Units which have been conveyed shall be calculated based upon the

assumption that all Dwellings which the Declarant has built or reserved the right to build in this Declaration are included in the CIC.

Section 3. **Board Meetings Open to Owners.** Except as otherwise provided in this section, meetings of the Board must be open to all Owners. To the extent practicable, the Board shall give reasonable notice to the Owners of the date, time and place of a Board meeting. If the date, time and place of meetings are provided for in the Governing Documents, were announced at a previous meeting of the Board, posted in a location accessible to the 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 Owners, between the Board or Association and Owners, or other matters in which any 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 an 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 section imposes a duty upon the Board to provide special facilities for meetings. The failure to give notice as required by this section shall not invalidate the Board meeting or any action taken at the meeting.

ARTICLE VII

MISCELLANEOUS COVENANTS

Section 1. **Miscellaneous Covenants.** Declarant, for itself, its successors and assigns, by this Declaration, and any future Owner, by acceptance of deed to a Unit, covenant and agree as follows:

- (a) **LEASES.** No Owner shall be permitted to lease his or her Unit for transient or hotel purposes. No Owner may lease less than the entire Unit and no lease shall provide an initial term (exclusive of extensions or options to renew) of less than six (6) months. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and Rules and Regulations, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. In the event any Owner leases his or her Unit, the Owner shall at all times keep the Association advised in writing of the address of his or her current residence and any changes thereto, and of the name(s) of his or her tenant(s). Other than the foregoing, there is no restriction on the right of any Owner, including the Declarant, to lease any Unit.
- (b) **ENCROACHMENTS.** If any portion of the Common Elements encroaches upon any Unit, or if any Unit shall encroach upon any other

Unit or upon any portion of the Common Elements, as a result of the present construction of a Dwelling (including patios and/or decks constructed by the Declarant), or if any such encroachment shall occur hereafter as a result of settling, expectable expansion, sag or structural adjustment of the Dwelling (as distinguished from sudden, extreme and accidental change by Acts of God or other accidental causes), a valid easement for the encroachment and for the maintenance of the same as long as the Dwelling (including appurtenant structures, if any) stands, shall exist. If a Dwelling, or any adjoining part of the Common Elements shall be partially or totally destroyed as a result of fire or other casualty and then rebuilt in substantial accordance with the Plat, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any part of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the particular Dwelling shall stand and such encroachments and easements shall not affect marketability of title. Nothing herein contained shall be construed as contrary to the conclusive presumption of Section 515B.2-115 of the Act that the existing physical boundaries of a Unit or a Unit reconstructed in substantial accordance with the Plat are to be the boundaries of the Unit, regardless of settling or lateral movement of a Dwelling.

- (c) **INGRESS AND EGRESS OF UNIT OWNERS.** There shall be no restriction upon any Owner's right of ingress to and egress from his or her Unit.
- (d) **ADMINISTRATION.** The administration of the CIC shall be in accordance with the provisions of the Act and the Governing Documents.
- (e) **COMPLIANCE WITH GOVERNING DOCUMENTS AND RULES AND REGULATIONS.** Each Owner, tenant or Occupant of a Unit shall comply with the provisions of the Governing Documents and Rules and Regulations, as lawfully amended from time to time, and failure to comply with any such provisions, rules or regulations, shall be grounds for action to recover sums due, for damages, or for injunctive relief.
- (f) **USE OF COMMON ELEMENTS.** There shall be no obstruction, littering, defacement or misuse of Common Elements nor shall anything be stored in the Common Elements except in areas designated for such storage by the Board.
- (g) **EXTERIOR APPEARANCE OF BUILDING.** No Owner or Occupant of any Unit shall cause or permit anything to be hung, displayed, or placed on the outside windows of any Dwelling (with the exception of draperies, blinds and shades, which nonetheless shall be of a neutral or white color on all surfaces visible from the outside of the Dwelling), on the outside of exterior doors, or on the outside walls or roof of such buildings; no exterior awnings, shutters, canopies, radio or television antennas shall be erected (except as provided in subsection (n) of this Section 1) nor any signs affixed to or placed upon exterior walls or roofs or any part thereof or other parts of the Common Elements (except for Declarant's right to place signs pursuant to Article XII hereof); nor shall any change in the outside appearance of any exterior surface of a Dwelling be made without the prior written consent of the Architectural Committee, pursuant to

Article IX hereof.

- (h) **RESIDENTIAL USE.** The Property is hereby restricted to residential dwellings, and ancillary and accessory uses and buildings in connection therewith (except for model homes and sales offices which may be operated by Declarant or its designees during the construction or sales period). Notwithstanding the foregoing, 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 (except as permitted by the Association pursuant to review by the Architectural Control Committee described in Article IX hereof), advertising displays, bulk mailings, deliveries, or visitation or use of the Unit by customers or employees. Under no circumstances, however, shall an Owner or Occupant maintain a business in his or her Unit which involves (i) food preparation for sale and distribution to the public, (ii) retail sales, (iii) industrial products of any type, (iv) distribution of products in bulk, or (vi) hazardous activities or substances. The foregoing list is not intended to be exhaustive, and the Association reserves the right to prohibit such other activities or businesses which, in the Association's determination, constitute a nuisance or hazard to the Members. The Association may maintain offices on the Property for management and related purposes. All buildings or structures erected on the Property shall be of new construction and no buildings or structures shall be moved from other locations to the CIC. No building or structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be placed on or used on any Unit at any time as a residence either temporarily or permanently.
- (i) **ANIMALS.** No animals shall be permitted to be kept on the Property by any Owner or Occupant except conventional domesticated animals kept as pets. Conventional domestic animals specifically exclude among other animals, snakes, reptiles of any sort, and large cats such as tigers, lions, cougars and the like. No kennel, doghouse or outside run shall be constructed or maintained on the Property. No pet shall be kept for any commercial purpose nor shall pets be bred for a commercial purpose upon the Property. Any cat or dog, whenever outside of a Unit, shall be kept under the direct control of the pet owner or another person able to control the pet. No pet shall be left outside unattended, whether leashed or otherwise. The person in charge of the pet must clean up after it. The Board may adopt more specific rules and regulations and penalties not inconsistent with the foregoing, and may make all or specified portions of the Common Elements off-limits to pets. Upon the petition of seventy-five percent (75%) of the Owners of Units located within sixty-five (65) feet of the Unit in which resides a specified pet, the Board may order the removal of a particular pet for constant and uncontrolled barking in violation of applicable City ordinances, repeated instances of wandering unleashed or other repeated behavior reasonably offensive to others, provided that the Owner of the Unit harboring the pet shall first have thirty (30) days' written notice in which to correct the pet's offensive behavior. Notwithstanding the foregoing, the Association specifically reserves the right to promulgate rules and regulations regarding pets on the Property,

including, but not limited to, the size of pets permitted and/or the prohibition of pets on the Property, pursuant to Minn. Stat. Sec. 515B.3-102 (a)(1)(iii).

- (j) **COMMERCIAL ACTIVITIES, NUISANCES.** Except as permitted pursuant to Article VII (1) (h) hereof, no advertising signs, billboards, objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on any Unit, nor shall any Unit be used in any way or for any purpose which may endanger the health or unreasonably disturb the residents of the CIC except that no more than one (1) "for sale" sign or "for rent" sign of not more than five (5) square feet shall be maintained on any Unit. No commercial activities of any kind whatsoever shall be conducted in any Dwelling or on any portion of the Property except as permitted under Article VII (1) (j) hereof. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its designees, or the use or operation of sales offices or model Units on any Units by the Declarant or its designees during the construction and sales period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents and Rules and Regulations, as the same may be amended from time to time. The Declarant and its successors and assigns shall have the right to rent any or all Units owned by Declarant.
- (k) **SCREENING, TRASH REMOVAL.** All woodpiles shall be screened by adequate planting so as to conceal them from view of neighboring Units and streets. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. There shall be no trash piles or storage piles on the property of any Unit. The foregoing restrictions shall not apply to the activities of Declarant, its designees and those working for or on behalf of Declarant during the construction and sales period.
- (l) **DERRICKS, ETC.** No derrick or other structure designed for use in boring, mining, or quarrying for oil or natural gas, precious minerals, shall be erected, maintained or permitted upon any Unit, provided that nothing in this Declaration shall be construed to restrict a public utility from erecting, maintaining, and operating upon any Unit owned by it within the Property, a well, housing, and equipment for the purpose of extracting from the sub-surface and/or the treatment, storage and distribution of water through the system of such public utility.
- (m) **RADIO, T.V., "SMALL DISH" ANTENNAE.** Subject to the provisions herein, no radio or television receiving or transmitting antennae or external apparatus shall be installed on any Unit; normal radio and television installations wholly within a building are excepted. No "small dish" antennae in excess of eighteen inches (18") in diameter shall be affixed to any portion of the CIC, nor shall any C-band antennae be erected on or affixed to any portion of the CIC without prior written consent of the Board. The Board of Directors of the Association may provide guidelines regarding the use, installation and location of "small dish" antennae.
- (n) **MAINTENANCE OF EASEMENT AREAS.** Easements for installation and maintenance of the utilities, sewer pipelines and facilities and drainage facilities over each of said Units, and in the Common Elements are

reserved as shown on the CIC Plat or as created in accordance with this Declaration or any amendments hereof. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction in the flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Unit and all improvements in it shall be maintained continuously by the Owner of the Unit, except for those improvements for which a public authority, a private or public utility company or the Association is responsible. The easement area of the Common Elements shall be maintained continuously by the Association. In the event the City or its agent must enter upon the Property to maintain, repair or replace any portion of the public water or sewer system, then the City shall have no obligation to restore any landscaping or asphalt damaged as a result of such maintenance, repair or replacement of such public water or sewer system. All restoration shall be the responsibility and obligation of the Association, unless such damage is the result of the negligence of the City, where, but for such negligence, no damage would have occurred, in which case the City shall be obligated to restore such landscaping or asphalt damage resulting from the City's negligence at the City's sole cost and expense.

- (o) **PROHIBITION OF FENCES, CLOTHESLINES AND STORAGE SHEDS.** There shall be no fences, clothes lines, service sheds or storage sheds constructed or placed on any Unit within the CIC.
- (p) **STORAGE.** Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment (except lawn furniture, in appropriate seasons, and one gas grill per Unit which may be left on balcony, deck or patio, if any), yard and garden tools and equipment and trash and garbage containers (except on the day of pick-up) shall not be allowed. No boats, snowmobiles, trailers, camping vehicles, tractor/trailer or trucks in excess of 2,000 pounds gross weight or unlicensed or inoperable vehicles shall at any time be stored or parked outside of a Unit garage nor on the Common Elements without the express written approval of the Board, which approval may be withheld without a stated reason.
- (q) **HAZARDOUS ACTIVITIES AND WASTE: ALTERATIONS.** Nothing shall be done or kept in any Unit or any Common Elements which will increase the rate of insurance on the Property, or the contents thereof, or result in increased water, sewer or other utility charges, without the prior written consent of the Board. No Owner or Occupant shall permit anything to be done or kept in any Unit or in the Common Elements which will result in the cancellation of insurance on the Property, or contents thereof, or which will be in violation of applicable law or ordinance. No waste shall be committed in the Common Elements. No Owner shall make any improvement or alterations to his or her Unit that impair that structural integrity or mechanical systems or lessen the support of any portion of the Property or Dwelling without the prior written approval of the Board, which written approval may be conditioned upon (i) the furnishing to the Association of complete plans and specifications for such alteration or improvement prepared by a licensed architect or engineer; and

(ii) the furnishing to the Association of financial guarantees or assurances satisfactory to the Association that all claims for labor or material furnished in connection with such alternation or improvement will be fully paid and that no claims or liens will arise therefrom.

ARTICLE VIII

CIC ASSOCIATION

Section 1. **Membership.** Every person or entity, including the Declarant, who is a record owner of a fee or an undivided fee interest in any Unit which is subject to this Declaration, shall be a member of the Association and each purchaser of any Unit by acceptance of a deed or contract for deed therefor covenants and agrees to be a member of the Association whether or not it shall be so expressed in any deed or other conveyance. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation including contract vendors (unless the contract for deed provides otherwise), until such time as such person acquires a fee simple interest in such Unit by foreclosure or by a proceeding in lieu thereof, or, as to a contract vendor, until such time as the contract for deed is cancelled. For each Unit owned, the Owner thereof shall be entitled to one (1) membership. Membership shall be appurtenant to and may not be separated from the fee ownership of any Unit. For the purpose of this Declaration, the word "Member" shall include any beneficiary of a trust holding legal title to one or more Units.

Section 2. **Transfer.** Membership held by an Owner of a Unit is an appurtenance to such Unit and shall not be transferred, alienated, or pledged in any way, except upon the sale or encumbrance of such Unit, and then only to the purchaser of such Unit. Any attempt to make a transfer except by the sale or encumbrance of a Unit is void. Reference to the transfer of membership need not be made in an instrument of conveyance or encumbrance of such Unit for the transfer to be effective, and the same shall automatically pass with title to the Unit.

ARTICLE IX

ARCHITECTURAL CONTROL

Section 1. **Restrictions on Alterations.** The following restrictions and requirements shall apply to alterations on the Property:

- (a) Except as expressly provided in this Article, 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 or alteration of any Dwelling or any other part of a Unit which is visible from the exterior of the Unit (collectively referred to as "Alterations") shall be commenced, erected, or maintained in a Unit unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the Alterations shall have been approved in writing by the Board or a committee appointed by the Board. 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) compliance with governmental laws, codes and regulations.
- (c) Approval of Alterations which encroach upon another Unit or the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the Alterations are approved; provided, however, that any easement for a deck or patio other than as originally constructed shall be approved by resolution of the Board and a file of such resolutions shall be maintained permanently as a part of the Association's records.

Section 2. **Review Procedures.** The following procedures shall govern requests for Alterations under this Article:

- (a) Detailed plans, specifications and related information regarding any proposed Alteration, in form and content acceptable to the Board, shall be submitted to the Board at least ninety (90) days prior to the projected commencement of construction. No Alterations shall be commenced prior to approval.
- (b) The Board shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within ninety (90) days after receipt of said plans and specifications and all other information requested by the Board, then approval will not be required, and Article 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 is denied, unless (i) the Alterations are reasonably visible, and (ii) no written notice of the violation has been given to the Owner in whose Unit the Alterations are made, by the Association or another Owner, within one (1) year following the date of completion of the Alterations. Notice may be direct written notice or the commencement of legal action by the Association or an Owner. The Owner of the Unit in which the Alterations are made shall have the burden of proof, by clear and convincing evidence, that the Alterations were completed and reasonably visible for at least one (1) year following completion and that the notice was not given.

Section 3. **Remedies for Violations.** The Association may undertake any measures, legal or administrative, to enforce compliance with this Article and shall be entitled to recover from the Owner causing or permitting the violation all attorneys' fees and costs of enforcement, whether or not 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 Article, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Unit.

Section 4. **Modification to Allow Access to the Disabled.** Subject to the provisions of applicable law, an Owner, at Owner's expense, may make improvements or alterations to a Unit as necessary for the full enjoyment of the Unit by any person residing in the Unit who has a handicap or disability, as provided in the Fair Housing Amendments Act, United States Code, Title 42, Section 3601, et seq., and the Minnesota Human Rights Act, Chapter 363, and any amendments to those acts. The Association may not prohibit such improvements or alterations referred to in this Section 4, but may reasonably regulate the type, style and quality of the improvements or alterations as they relate to health, safety and architectural standards. In addition, improvements or alterations made pursuant to this Section 4 must satisfy the requirements of Section 515B.2-113(a) (i), (ii), (iii) and (iv) of the Act.

ARTICLE X

INSURANCE: DAMAGE OR DESTRUCTION

Section 1. **Statutory Requirements.** The Association shall:

- (a) Commencing no later than the time of the first conveyance of a Unit to an Owner other than Declarant, maintain, to the extent reasonably available:
 - (1) subject to subsection (b), property insurance (i) on the Common Elements and also on property that must become Common Elements, (ii) for broad form covered causes of loss, and (iii) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, at the time the insurance is purchased and at each renewal date, exclusive of items normally excluded from property policies. At the discretion of the Board, the policy or policies may, but need not, cover the following items within Units: (i) ceiling or wall finishing materials; (ii) floor covering; (iii) cabinetry; (iv) finished millwork; (v) electrical or plumbing fixtures serving a single Unit; (vi) built-in appliances; or (vii) other improvements and betterments, regardless of when installed. The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverages and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the Federal Housing Administration ("FHA") or Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA or FNMA, obligating the Association to keep certain specified coverages or endorsements in effect; and
 - (2) commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Property in an amount not less than \$1,000,000.00 or otherwise deemed sufficient in the judgment of the Board, insuring the Board, the Association, the management

agent and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in its capacity as an Owner or Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

- (b) The insurance maintained under subsection (a)(1) shall include the Units and the Common Elements. The insurance need not cover improvements and betterments to the Units installed by the Owners, but if improvements and betterments are covered, any increased cost may be assessed by the Association against the Units affected. The Association may, in the case of a claim for damage to a Unit or Units, (i) pay the deductible amount as a common expense, (ii) assess the deductible against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.
- (c) If the insurance described in subsections (a) and (b) is not reasonably available, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. The Association may carry any other insurance it considers appropriate to protect the Association, the Owners or officers, directors or agents of the Association.
- (d) Insurance policies carried pursuant to subsections (a) and (b) shall provide that:
 - (1) each Owner and secured party is an insured person under the policy with respect to liability arising out of the Owner's membership in the Association;
 - (2) the insurer waives its right to subrogation under the policy against the Owner or members of the Owner's household and against the Association and members of the Board;
 - (3) no act or omission by any Owner or secured party, unless acting within the scope of authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy; and
 - (4) if at the time of a loss under the policy there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy is primary insurance.
- (e) Any loss covered by the property policy under subsection (a)(1) shall be adjusted by and with the Association. The insurance proceeds for that loss shall be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and secured parties as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements and Units. Owners and secured parties are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the

Common Elements and Units have been completely repaired or restored or this CIC is terminated.

- (f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance, upon request, to any Owner or secured party. The insurance may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each secured party for an obligation to whom certificates of insurance have been issued.
- (g) Any portion of this CIC which is damaged or destroyed as a result of a loss covered by the Association's insurance policy shall be promptly repaired or replaced by the Association unless (i) this CIC is terminated and the Association votes not to repair or replace all or part thereof, (ii) repair, replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) eighty percent (80%) of the Owners, including every Owner and Eligible Mortgagee on a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the Common Elements in excess of insurance proceeds and reserves shall be paid as a common expense, and the cost of repair of a Unit in excess of insurance proceeds shall be paid by the respective Owner.
- (h) If less than the entire CIC is repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of this CIC; (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units, including Units to which the Limited Common Elements were assigned, and the secured parties of those Units, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners and secured parties as their interests may appear, in proportion to their common expense liability.
- (i) If the Owners and Eligible Mortgagees vote not to rebuild a Unit, that Unit's entire votes in the Association and common expense liability are automatically reallocated upon the vote as if the Unit had been condemned under Section 515B.1-107 of the Act and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, if this CIC is terminated, insurance proceeds not used for repair or replacement shall be distributed in the same manner as sales proceeds pursuant to section 515B.2-119 of the Act.

Section 2. Owner's Insurance for Liability and Contents of Units. Each Owner shall maintain at his or her own cost and expense such insurance coverage as he or she may desire with respect to (i) personal liability for acts and occurrences upon his or her Unit and within his or her Unit, and (ii) physical damage losses for personal property and the contents for his or her Unit and any improvements, additions or betterments installed either by a person or entity other than as a part of the initial construction, whether made inside or outside his or her Unit, and shall further maintain, at his or her cost and expense, any special flood hazard insurance as may be required by the first mortgagee of his or her Unit. The Association shall have no obligation in connection therewith.

Section 3. **Workers' Compensation and Fidelity Insurance.** The Association shall obtain and maintain a policy or policies of insurance with reputable insurance carriers providing the following coverage:

- (a) Workers' Compensation and employers' liability insurance in such form and in such amounts as may be necessary to comply with applicable laws;
- (b) Fidelity insurance or bonds in reasonable amounts for all officers and employees having fiscal responsibilities, naming the Association as obligee; and
- (c) Such other insurance in such limits and for such purpose as the Association may, from time to time, deem reasonable and appropriate.

Section 4. **Insurance Premium Expense.** The expense of insurance premiums paid by the Association under this Article shall be an expense of the Association to which the assessments collected by the Association from the Owners shall be applied.

ARTICLE XI

RECONSTRUCTION, CONDEMNATION & EMINENT DOMAIN

Section 1. **Reconstruction.** The obligations and procedures for the repair, reconstruction or disposition of the Property following damage or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved. The Association shall have all authority necessary to cause the Property to be reconstructed, including, without limitation, the authority (i) to require the Owners to enter into reconstruction contracts on their respective Units, or (ii) to contract for the reconstruction of the Units on behalf of the Owners. Notice of substantial damage or destruction shall be given pursuant to Article XVI.

Section 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, however, that notice shall be given pursuant to Article XVI. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with priorities established by the Act and the Governing Documents, as their interests may appear.

Section 3. **Notice.** All Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property, and the Association shall give written notice thereof to an Eligible Mortgagee pursuant to Article XVI.

ARTICLE XII

SPECIAL DECLARANT RIGHTS

Section 1. **Special Declarant Rights.** The Declarant expressly reserves the exclusive and unconditional authority to exercise the following special declarant rights, as the term is used in Section 515B.1-103(32) of the Act, for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

- (a) To elect, or cause persons designated by it to elect, the officers and

members of the Board in accordance with Article VI hereof.

- (b) To complete improvements indicated on the Plat, if any, or otherwise included in Declarant's development plans or allowed by this Declaration, and to make alterations in the Units and Common Elements to accommodate its sales facilities.
- (c) To construct, operate and maintain sales offices, management offices, signs advertising the CIC, and models, under Section 515B.2-116 of the Act (which models may be any Unit owned from time to time by Declarant).
- (d) To use easements through and over the Common Elements for the purpose of making improvements within the CIC and for the purpose of exercising its special declarant rights.
- (e) To create Units, Common Elements or Limited Common Elements within the CIC.
- (f) To subdivide Units (subject to the restrictions of Article XVII, Section 1 of this Declaration) or convert Units into Common Elements, Limited Common Elements and/or Units.
- (g) To relocate boundaries between Units and to otherwise alter Units owned by Declarant.
- (h) To create a master association and provide for the exercise of authority by the master association over the CIC or its Owners.
- (i) To merge or consolidate the CIC with another common interest community of the same form of ownership.
- (j) To require that as long as Declarant owns any unsold Unit for sale, Declarant's written consent shall be required for any amendments to the Governing Documents or Rules and Regulations which directly or indirectly affect or may affect Declarant's rights under the Governing Documents or the Act.

Notwithstanding the special declarant rights set forth in Section 515B.1-103 (32) of the Act, the Declarant shall not, during the period of Declarant Control, undertake any of the activities delineated in paragraphs (e) through (i) of this Section 1 without the prior written consent of the U.S. Department of Housing & Urban Development ("HUD") and the U.S. Department of Veterans Affairs ("VA"), where such consent was required as part of the approval of the project by HUD or the VA.

ARTICLE XIII

JOINT CONNECTION OF SEWER, WATER, ELECTRICAL GAS, TELEPHONE LINES AND CABLE TELEVISION

The rights and duties of the Owners of Units with respect to sewer, water, gas, telephone and cable television shall be governed by the following :

- (a) Wherever joint house connections of sanitary and storm sewer, water,

electricity, gas, telephone or cable television lines are installed within the CIC, and the connections, or any portion thereof, lie in or upon Units owned by others than the Owners served by said connection, the Association shall have the right and are hereby granted an easement to the full extent necessary therefor, to enter upon Units or have the utility companies enter upon the Units within the CIC in or upon which said connection, or any portion thereof, lies, to read and install meters, repair, replace and generally maintain said connection as and when the same may be necessary as set forth below, and further, if a majority of the Board deems the repair, replacement or maintenance of such connection to be an emergency, the Association shall have the right to repair, replace or maintain such connection and assess the costs thereof against the Units served by such connection in the amounts the Owners would otherwise be responsible for under subsections (c) and (d) herein, and each Owner, for himself or herself, his or her heirs, successors and assigns, covenants that he will pay the Association (or its collecting agent) said assessment upon demand or in such periodic payments as may be determined by the Board, and that said assessment, if not paid on the date when due, shall become delinquent, shall become a continuing lien on the Unit and the personal obligation of the Owner and shall be subject to collection, enforceability, foreclosure and remedies of the Association in the matter set forth in Articles IV and V hereof for other assessments by the Association.

- (b) Wherever joint house connection of storm and sanitary sewer, water, electricity, gas, telephone or cable television lines are installed within the CIC and the connections serve more than one Unit, the Owners of each Unit serviced by said connection shall be entitled to the full use and enjoyment of such portions of said connection as services his Unit.
- (c) In the event any portion of said connection or line is obstructed, damaged or destroyed through the act of an Owner of a Unit being served by said connection, or any of his agents, guests, or members of his family, whether or not such act is negligent or otherwise culpable, so as to deprive the other Owners being served by said connection of the full use and enjoyment of said connection, then the Owner shall forthwith proceed to replace or repair the same to as good a condition as formerly, without cost to the other Owners served by said connection.
- (d) In the event any portion of said connection or line is obstructed, damaged or destroyed by some cause other than the act of any Owner being served by said connection, his agents, or members of his family (including ordinary wear and tear and deterioration from lapse of time), then in such event if said obstruction, damage or destruction shall prevent the full use and enjoyment of such connection by the other Owners served by said connection, all such Owners who are thereby deprived of said use and enjoyment shall proceed forthwith to replace or repair said connection to as good a condition as it was formerly at their joint and equal expense.

ARTICLE XIV

MUNICIPAL ORDINANCES

Section 1. **City Ordinances Prevail.** None of the covenants, conditions, restrictions or provisions of this Declaration are intended to supersede or prevail over the

ordinances of general applicability of the City, and in the event of any conflict, the applicable ordinances of said City shall supersede and prevail over the covenants, conditions, restrictions and provisions of this Declaration.

Section 2. **Standards of Maintenance.** The Standards of Maintenance of the Units and the residences and improvements located thereon, and the Common Elements, as adopted by the Association from time to time, shall be at least equal to those set forth in the ordinances of general applicability of the city in which this CIC is located, in effect from time to time which govern and control the maintenance of private property.

ARTICLE XV

EASEMENTS GENERALLY

Section 1. **Easement for Encroachments.** Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, decks, balconies, porches, patios, utility installations and other appurtenances (i) which are part of the original construction of the adjoining Unit or the Property; or (ii) which are added pursuant to Article IX. If there is an encroachment by a Dwelling, or other building or improvement located on 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, however, that with respect to improvements or alterations added pursuant to Article IX, no easement shall exist unless the same has been approved, and the proposed improvements constructed, as required by this Declaration. Such easement shall continue for as long as the encroachment exists and shall not affect the marketability of title.

Section 2. **Access Easements.** Each Unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across those portions of the Common Elements paved for use as streets and walkways, or as shown on the Plat, subject to any restrictions set forth in the Governing Documents.

Section 3. **Use and Enjoyment Easements.** Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements, subject to any restrictions set forth in the Governing Documents.

Section 4. **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 and Limited Common Elements for the purposes of maintenance, repair, replacement and reconstruction of Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents. In addition, the Association shall have a reasonable right of entry to and upon each Unit and its Limited Common Elements to effect emergency or other repairs which the Owner has failed to perform.

Section 5. **Easement for Pedestrian Traffic.** Declarant hereby grants a non-exclusive easement on, over, across and through the north ten (10) feet of Lots 1 through 6, inclusive, Block 1, Creekside Townhomes, for the benefit of Owners and Occupants of Units and their guests, for pedestrian traffic through the Property. Use of any vehicle or mode of transportation other than one's feet on said easement is prohibited without prior

written consent of the Board.

Section 6. **Easements are Appurtenant.** All easement and similar rights burdening or benefiting a Unit or any other part of the Property shall be appurtenant thereto, and shall be permanent, subject only to termination in accordance with the Act or the terms of the easement. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

Section 7. **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 Article shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction.

Section 8. **Impairment Prohibited.** No Person shall materially restrict or impair any easement benefiting or burdening the Property, subject to this Declaration, and subject to the rights of the Association to impose reasonable rules governing the use of the Property.

ARTICLE XVI

RIGHTS OF ELIGIBLE MORTGAGEES

Section 1. **Conflicting Provisions.** The provisions of this Article take precedence over any other conflicting provisions of this Declaration. Notwithstanding anything to the contrary in the Governing Documents, and subject to any greater requirements in the Act or other laws, Eligible Mortgagees shall have the rights and protections set forth in this Article.

Section 2. **Notice of Action.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a first mortgage on a Unit in the CIC and the Unit number or address, an Eligible Mortgagee shall be entitled to timely written notice of:

- (a) Any condemnation loss or casualty loss which affects a material portion of the CIC or any Unit on which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit owner of a Unit subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified elsewhere in this Article.

Section 3. **Certain Amendments to Declaration or Bylaws.** In addition to statutory requirements for amendment of this Declaration and the Bylaws of the

Association, and to all other requirements set forth herein, the written consent of Eligible Mortgagees representing at least fifty-one percent (51%) (or such higher percentage as is required by law or this Declaration) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote for each first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following:

- (a) Voting rights;
- (b) Assessments, such that the change results in an increase that raises the previously assessed amount by more than twenty-five percent (25%);
- (c) Assessment liens, or priority of assessment liens;
- (d) Reserves for maintenance, repair and replacement of Common Elements (but only so far as such change is a reduction of such reserves);
- (e) Responsibility for maintenance and repairs;
- (f) Reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- (g) Redefinition of any Unit boundaries;
- (h) Convertibility of Units into Common Elements or vice versa;
- (i) Expansion or Contraction of the Property or the addition, annexation or withdrawal of property to or from the Property;
- (j) Hazard or fidelity insurance requirements;
- (k) Leasing of Units;
- (l) Imposition of any restrictions on the leasing of Units;
- (m) Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (n) Any action to terminate the legal status of the CIC (except in accordance with procedures set forth in the Act or this Declaration in the event of amendment or termination made as a result of destruction, damage or condemnation); or
- (o) Any provisions that expressly benefit mortgage holders or insurers or guarantors of mortgages.

Section 4. **Amendments to Abandon or Terminate CIC.** In addition to statutory requirements for amendment of the Governing Documents and to other requirements set forth herein, the written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of Units that are subject to first mortgages (based upon one vote per first mortgage owned) shall be required to abandon or terminate the CIC, subject to any greater requirements contained in the Act.

Section 5. **Implied Approval of Eligible Mortgagees.** Notwithstanding anything to the contrary contained in this Article, implied approval of a proposed amendment shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided that the notice was delivered by certified mail, return receipt requested.

Section 6. **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.

Section 7. **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.

Section 8. **Examination of Association Books and Records; Financial Statements.** The Association shall make available to any Owner, or to any Eligible Mortgagee, a current copy of the Governing Documents and the books, records and financial statements of the Association. "Available" means for inspection, upon request, during normal business hours or under other reasonable circumstances. The Association also shall make available to prospective purchasers current copies of the Governing Documents and the most recent annual audited financial statement if such is prepared. The holders of at least fifty-one percent (51%) of first mortgages shall be entitled to have an audited financial statement prepared at their expense if such statement is not otherwise available. Any financial statement requested pursuant to this Section shall be furnished within reasonable time following such request.

Section 9. **Priority of Lien of First Mortgage.** Any holder of a first mortgage on a Unit, or any purchaser of a first mortgage at a foreclosure sale, that comes in 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, except (i) as provided in Article V, or (ii) any unpaid assessments or charges with respect to the Unit may be reallocated among all Units in accordance with their interests in the Common Elements.

Any such sale or transfer of title pursuant to a foreclosure or deed or proceedings in lieu of foreclosure of a first mortgage shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit for, the lien of any assessments made thereafter. To the maximum extent permitted by law, there should be subordinated to any first mortgage the lien of any fees, late charges, fines or interest that may be levied by the Association in connection with unpaid assessments, in the same manner as the subordination of assessments hereunder.

Section. 10. **Insurance or Condemnation Proceeds.** Other than as provided elsewhere in this Declaration, no provisions of the Governing Documents shall be construed to give any Owner, or any other party, priority over the rights of any Eligible Mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation award for losses to or a taking of the Common Elements or any portion thereof or any Unit or portion thereof. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, Eligible Mortgagees shall be entitled to timely written notice of such damage or destruction. If any Unit or portion thereof or the Common Elements or any portion thereof is made the

subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Eligible Mortgagees shall be entitled to timely written notice of any such proceedings or proposed acquisition.

Section 11. **Attendance at Meetings of Association.** Any Eligible Mortgagee who so requests shall be given notice of all meetings of the Association as if such Eligible Mortgagee was an Owner entitled to notice. Each such Eligible Mortgagee shall have the right to designate a representative to attend all such meetings, which representative shall not have the right to cast a vote.

Section 12. **Requirements; 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.

ARTICLE XVII

SUBDIVISION OR CONVERSION OF UNITS

Section 1. **Right to Subdivide or Convert.** The right is hereby reserved by the Declarant for Owners other than the Declarant to subdivide or convert Units in the CIC, pursuant to Section 515B.2-112 of the Act. Any Unit other than Units owned by the Declarant, may be subdivided as provided in Section 515B.2-112 of the Act. Any such subdivision or conversion shall be in accordance with the procedures specified in the Act. During the period of Declarant Control, the right to subdivide or convert Units shall require the prior written consent of HUD and the VA where such consent was required as a condition of approval of the project by HUD and the VA.

ARTICLE XVIII

COMPLIANCE BY OWNER

Section 1. **Right of Action in Owners and Association.** Failure of any Owner to comply with the provisions of the Act or Governing Documents, Rules and Regulations, decisions of the Association and such amendments thereto as may be made from time to time shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages, or for injunctive relief, or both. The foregoing is not intended to restrict or limit the application of Section 515B.4-116 of the Act.

Section 2. **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, Rules and Regulations, the Act or decisions of the Association. However, no Owner may withhold assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents, Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

Section 3. **Sanction 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 anyone or more of the following actions

against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents, the Rules and Regulations or the Act:

- (a) Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- (b) Impose late charges of up to the greater of Twenty and no/100 Dollars (\$20.00), or fifteen percent (15%) of the amount due, for each past due assessment or installment thereof, and interest at up to the highest rate permitted by law.
- (c) In the event of default of more than thirty (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, however, that this limitation shall not apply to Limited Common Elements or deck, balcony, porch or patio easements, appurtenant to the Unit, and those portions of the Common Elements providing utilities service and access to the Unit. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents, and for up to thirty (30) days thereafter, 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 an 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 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, however, 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.

Section 4. **Rights to Hearing.** In the case of imposition of any of the remedies authorized by Section 3 (d), (e), (f) or (g) of this Article, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least ten (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 hearing 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 (10) days following the hearing, if not delivered to the offender at the hearing.

Section 5. **Lien for Charges, Penalties, Etc.** Any assessments, fines, penalties, charges or interest imposed under this Article 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 Article V. 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 any right to pursue any others.

Section 6. **Costs of Proceeding and Attorneys' Fees.** With respect to any collection measures, or any measure or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, the Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including, without limitation, fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate permitted by law) on the delinquent amounts owed to the Association.

Section 7. **Liability for Owners' and Occupants' Acts.** An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rate resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

Section 8. **Enforcement by Owners.** The provisions of this Article shall not limit or impair the independent rights of other Owners to enforce the provisions of the Governing Documents, Rules and Regulations and the Act as provided therein.

ARTICLE XIX

AMENDMENT

Except as limited by 515B.2-118(d) of the Act requiring additional agreement in the case of alteration of Limited Common Elements, and except insofar as a higher voting requirement may be otherwise required under this Declaration, or the Act, this

Declaration may be amended by the Association only upon consent of (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Article XVI as to matters prescribed by said Article, and (iii) the consent of the Declarant to certain amendments as provided in Article XII. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees and the Declarant shall be in writing.

In addition, the written consent of HUD and VA shall be required, so long as the period of Declarant Control set forth in Article VI hereof shall not have terminated, in accordance with said Article XII and the Act, for any amendment to this Declaration, to the extent such consent was required as a condition of approval of the project by HUD or the VA. Any such amendment to this Declaration shall be effective only when filed or recorded as required by 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.

ARTICLE XX

ADMINISTRATION

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

Section 1. **General.** The operation and administration of the Association and the Property shall be governed by the Governing Documents, the Rules and Regulations and the Act. The Association shall, subject to the rights of the Owners set forth in the Governing Documents and the Act, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, the Act and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval of 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.

Section 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.

Section 3. **Binding Effect of Actions.** All agreements and determinations made by the Association in accordance with the power 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.

Section 4. **Bylaws.** The Association shall have Bylaws. The Bylaws and any amendments thereto shall govern the operation and administration of the Association.

Section 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.

Section 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, however, that the Rules and Regulations shall not be inconsistent with the Governing Documents and 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 in this Article. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

Section 7. **Association Assets; Surplus Funds.** All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

Section 8. **Conflict among Documents.** In the event of any conflict among the provisions of the Act, this Declaration, the Bylaws or any Rules and Regulations approved by the Association, the Act shall control. As among this Declaration, the Bylaws and Rules and Regulations, this Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first written above.

CROSS COUNTRY HOLDINGS, LLC
a Minnesota limited liability company

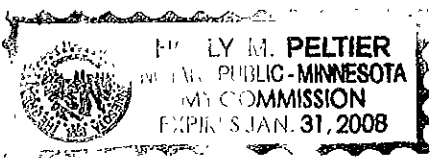
By: *Michael Nightingale*

Its: *C.E.O.*

STATE OF MINNESOTA)
) ss.
COUNTY OF Ramsey)

The foregoing instrument was acknowledged before me this 19 day of May, 2005, by Michael Nightingale, the CEO of Cross Country Holdings, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Holly M Peltier
Notary Public



s:\Cross Country Holdings\Creekside Townhomes\Declaration

EXHIBIT A TO DECLARATION

COMMON INTEREST COMMUNITY NUMBER 189

Planned Community

CREEKSIDE TOWNHOMES

Legal Description of the Property

UNITS:

Lots 1 through 10, inclusive, Block 1, Creekside Townhomes, Anoka County, Minnesota.

COMMON ELEMENTS:

Lot 11, Block 1, Creekside Townhomes, Anoka County, Minnesota.

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

EXHIBIT B TO DECLARATION

COMMON INTEREST COMMUNITY NUMBER 189

Planned Community

CREEKSIDE TOWNHOMES

Legal Description of Common Elements

Lot 11, Block 1, Creekside Townhomes, Anoka County, Minnesota.

**COMMON INTEREST COMMUNITY NUMBER 189
Planned Community**

CREEKSIDE TOWNHOMES

DECLARATION

THIS INSTRUMENT WAS DRAFTED BY:

Hellmuth & Johnson, PLLC (NTP)
10400 Viking Drive, Suite 500
Eden Prairie, Minnesota 55344
(952) 941-4005

DISCLOSURE STATEMENT

**Common Interest Community Number 189
Creekside Townhomes
Coon Rapids, Minnesota
Cross Country Holdings, LLC
(Seller and Declarant)
1081 South Birch Lake Blvd.
White Bear Lake, MN 55127
Telephone: (651) 612-327-6331**

The information in this Disclosure Statement is accurate as of 5-19-05

ATTACHMENTS

Declaration

Bylaws

Articles of Incorporation

Balance Sheet and Projected Budget

Copy of M.S. 515B.4-112 through 515B.4-115 and 327 A

Description of Blanket Insurance

Pet Policy

RECEIPT

I (We) hereby acknowledge receipt of a copy of the booklet containing the foregoing disclosure documents and information for Creekside Townhomes.

DATED: _____

UNITS: _____

This Disclosure Statement is furnished pursuant to the requirements of the Minnesota Common Interest Ownership Act, Chapter 222, Session Laws of Minnesota for 1993, Minnesota Statutes section 515B.4-102. Prospective Purchasers are not to construe the contents of this Disclosure Statement or any pages appended hereto or any communication in connection herewith as legal or tax advice. Each Purchaser should consult his own counsel and tax adviser as to legal and tax matters and related matters concerning this purchase.

The following information is provided pursuant to the requirements of the Minnesota Common Interest Ownership Act, Chapter 222, Session Laws of Minnesota for 1993, Minnesota Statutes Section 515B.4-102, as amended.

(a) Name and principal address of the Declarant (Seller):

Cross Country Holdings, LLC
1081 South Birch Lake Blvd.
White Bear Lake, MN 55127

Address, name and number of Common Interest Community ("CIC"):

Creekside Townhomes
CIC Number 189
Coon Rapids, Minnesota

(b) General description of the Common Interest Community:

The common interest community involves only new construction.

The planned community CIC will contain two (2) structures consisting of three (3) residential townhome units each, and one (1) structure containing four (4) residential townhome units, for a total of ten (10) residential townhome units. It is contemplated by the Declarant and approved in principle by the City in which this CIC resides, that the total development will consist of two (2) buildings containing three (3) residential units each, and one (1) building containing four (4) residential units, for a total of ten (10) units. The buildings will be two stories and of wood frame construction. The exterior is vinyl. At least one garage unit for each residential unit is built within the building. There are no recreational facilities, common rooms, or similar amenities.

It is contemplated, subject to construction delay, that the buildings will be completed by April, 2005. Each unit will be substantially completed at the time of conveyance to Purchaser. If each Unit were not so completed, Declarant would be responsible for completing and paying for the construction of the Unit.

All of the garages, surfaced driveways, parking ways, and walkways which are shown on the Floor Plans as in existence or as "Must Be Built" (as part of each phase) will be completed substantially contemporaneously with the last completed unit (in that phase), subject to weather or seasonal restrictions. No units may be added to the CIC beyond those included in the Declaration.

A maximum number of ten (10) Units may be created in this CIC, to be used exclusively for residential use. All or any portion of such Units may be constructed upon any portion of the real estate, provided, however, that the total number of Units on the portions shall not exceed the number stated in this Paragraph.

- (c) As previously stated, the CIC will consist of two (2) buildings containing three (3) Units each, and one (1) building containing four Units, for a total of ten (10) Units.

The Declarant has no present intention to rent or market blocks of units to investors, but reserves the right to do so in the face of changing market conditions.

No building was wholly or partially occupied for any purpose before it was added to the CIC except for Units used as models.

- (d) Copies of the Declaration, Bylaws of the Association, Articles of Incorporation for the Association and pet policy are attached hereto. There are no additional rules and regulations, although the Directors of the Association have the right to promulgate the same. There are no contracts or leases to which the unit owners or Association will be subject and which may not be canceled upon thirty (30) days notice by the Association except such as have been included with this package.
- (e) A projected budget for the Association for the first full or partial year during which a unit is conveyed to a unit owner other than Declarant is attached hereto. No projected budget for future years has been adopted by the Association. The projected budget was prepared by Declarant.
- (f) There are no supplies and services not reflected in the budget or projected budget referred to above which the Declarant provides, or expenses which it pays and which it expects may become at any subsequent time, a common expense of the Association.
- (g) The Purchase Agreement provides that an amount equal to two months' installment of the annual assessment in effect as of the date of closing will be due from the Purchaser to the Association at closing.

This amount is not in prepayment of or substitution for monthly

assessments, but is intended as a contribution to the Association's initial working capital and reserves; a portion may be used to purchase hazard insurance for the Common Elements of the Association. This payment will not be credited to your account as monthly dues payments.

- (h) The liens, defects or encumbrances on or affecting the title to the CIC after the contemplated conveyance shall be as follows :
- i) Existing roads and utilities.
 - ii) Utility and drainage easements as shown on recorded plat.
 - iii) The provisions of Minnesota Common Interest Ownership, Chapter 222, Session Laws of Minnesota for 1993, Minnesota Statutes Sections 515B.1-101 to 515B.4-118.
 - iv) The provisions of the Declaration (and any amendments thereto), Bylaws of the Association and Floor Plans of record as of the date of closing.
 - v) The lien of real estate taxes against the Unit (including installments of special assessments and interest thereon payable therewith, if any), due and payable in the year of closing and thereafter and special assessments hereafter levied.
 - vi) Applicable building and zoning laws and other regulations and ordinances.
 - vii) The rights of Purchaser therein, if any, and any liens, encumbrances, or other interests created or suffered to be created due to act or omission of Purchaser.
 - viii) Mineral rights of the State of Minnesota.
- (i) There are no roads, trails or utilities located in the common elements that the Association will be required to maintain, except as follows:
- private roads and driveways serving the community (if any)
 - utilities service between roadway and unit
- (j) There are no delinquent real estate taxes for the Unit or any real property owned by the Association, if any. The real estate taxes, including special assessments certified for payment with the real estate taxes due and payable in the current year, total \$_____.
- (k) To the best of Declarant's actual knowledge, after reasonable inquiry, there

are no unsatisfied judgments or lawsuits to which the Association is a party.

- (l) Financing, if any, offered by Declarant at the date of this statement is described in an attachment. If no such description is attached, no such financing is then offered.

- (m) Any earnest money paid in connection with the purchase of a Unit will be held by Declarant in an escrow account until (i) closing, in which case the funds shall be released to Declarant; (ii) Purchaser's default under the terms of the Purchase Agreement, in which case the funds shall be released to Declarant; or (iii) termination of the Purchase Agreement, in which case the earnest money will be returned to the Purchaser, subject to the terms set forth in the Purchase Agreement, if the Purchaser cancels in Purchase Agreement pursuant to Minnesota Statutes Section 515B.4-106. If the Purchaser elects to cancel a Purchase Agreement pursuant to that section, he may do so by giving written notice to Declarant either in person or by first class mail in an envelope addressed to Declarant, postage prepaid. Such cancellation is without penalty and all payments made by the Purchaser before cancellation shall be refunded promptly.

Declarant has appointed _____ as escrow agent for all earnest money paid by Purchaser. Escrow Agent's address is as follows:

- (n) The insurance provided for the CIC is as set forth in Article X of the Declaration, a copy of which is attached hereto.

Pursuant to Minnesota Statutes Section 515B.3-113(b), the following "X"d items located within each Unit are insured by the Association:

_____ ceiling or all finishing materials	_____ floor coverings
_____ cabinetry	_____ finished millwork
_____ built-in appliances	_____ electrical or plumbing fixtures serving a single Unit

_____ other improvements or betterments, regardless of when installed. (If any betterments or improvements are covered, any increased cost may be assessed by the Association against the Units affected.)

- (o) There are no current or expected fees or charges other than assessments for Common Expenses, to be paid by unit owners for the use of Common Elements or any other improvements or facilities .

- (p) Declarant acknowledges that it is bound by the terms of Minnesota Common Interest Ownership Act, Section 515A.4-111 (express warranties) and 515B.4-113 (implied warranties) and Minnesota Statutes Chapter 327A (statutory warranties), copies of which are reproduced and attached hereto. Declarant hereby disclaims any express representation or warranty except with respect to description of the quantity or extent of the real estate comprising the CIC, subject to customary tolerances.
- (q) Pursuant to Minnesota Statutes Section 515B.3-115(b), the Declaration of Common Interest Community provides that the Declarant's liability, and the assessment lien for assessments other than replacement reserves on any Unit owned by the Declarant may be limited to twenty-five percent (25%) of any assessment levied, until the Unit is substantially completed. "Substantial completion" shall be evidenced by a certificate of occupancy in any jurisdiction that issues the certificate.
- (r) The Declarant has applied for final project approval from the following governmental agencies:

_____ Federal National Mortgage Association (FNMA)
_____ Federal Home Loan Mortgage Corporation (FHLMC)
_____ Department of Housing & Urban Development (HUD)
_____ Department of Veterans Affairs (VA)

The CIC has received final project approvals from the following governmental agencies:

_____ Federal National Mortgage Association (FNMA)
_____ Federal Home Loan Mortgage Corporation (FHLMC)
_____ Department of Housing & Urban Development (HUD)
_____ Department of Veterans Affairs (VA)

The Declarant contemplates receiving final approval for this Unit from applicable agencies before closing.

- (s) No special financing arrangements have been made to provide for completion of all improvements that the Declarant is obligated to build pursuant to the Minnesota Common Interest Ownership Act.
- (t) Please note the following:

STATUTORY NOTICES

Cancellation

- i) Within **five (5)** days after receipt of a Disclosure Statement,

a Purchaser may, prior to conveyance, cancel any Purchase Agreement of a unit from Declarant (Cross Country Holdings, LLC);

- ii) If a Declarant fails to provide a Disclosure Statement in substantial compliance with the Minnesota Statutes to a Purchaser before conveying a unit, that Purchaser may recover from the Declarant the amount of \$1,000.00, in addition to any damages or other amounts recoverable under the Minnesota Common Interest Ownership Act. Any action brought under this subsection shall be commenced within six (6) months after conveyance of a Unit; and
- iii) If a Purchaser receives the Disclosure Statement more than five (5) days before he signs a Purchase Agreement, he cannot cancel the agreement.

ANOKA COUNTY MINNESOTA

Document No.: 1975958.003 ABSTRACT

I hereby certify that the within instrument was filed in this
office for record on: 06/16/2005 11:07:00 AM

Fees/Taxes In the Amount of: \$57.50

MAUREEN J. DEVINE

Anoka County Property Tax

Administrator/Recorder/Registrar of Titles

DLA, Deputy

Record ID: 1563844