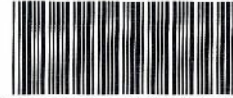


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ABSTRACT FEE

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EAGAN, MN 55121

Joel T. Beckman County Recorder
Dakota County, MN

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COMMON INTEREST COMMUNITY NUMBER 606
Dakota County, Minnesota

AMENDED AND RESTATED DECLARATION

OF

WESCOTT HILLS REVISED BUILDING ASSOCIATION

A Planned Community

DATE REVIEWED 10/23/13 DP
DAKOTA COUNTY
PROPERTY TAXATION & RECORDS

Wescott Hills Revised Building Association

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COMMON INTEREST COMMUNITY NUMBER 606

A Planned Community

Wescott Hills Revised Building Association, Inc.

AMENDED AND RESTATED DECLARATION

This Amended and Restated Declaration is made in the County of Dakota, State of Minnesota, on this 24 day of June, 2011, by Eric Drenckhahn, a single person; Tammy and Doug Mielke, a married couple; Shawn Lowry, a married person; James Beal, a married person; Jeff Johnson, a married person; Kevin Brandt, a single person; Mike Marnich, a single person; Jeni Roberts, a single person; Patti and Richard Polencheck, a married couple; Rajendran Thiagarajan, a married person; Ryan Earnster a married person; Steven Fischbach, a married person; Bill Journey, a married person; Robert Taylor; Eagan Hills Condominium Association, CIC #497; Eagan Wescott Trail Owners Association, CIC #592; hereinafter jointly called "Owners", pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), for the purpose of electing to be subject to the Act.

WHEREAS, the real property described in Article II of this Restated Declaration is benefited and/or burdened by the terms of the following documents:

- (a) Declaration of Easements, Covenants, Conditions, and Restrictions, dated May 1, 1985, recorded June 5, 1985 in the Office of the Dakota County Recorder as Document No. 689150 (hereinafter singly referred to as the "ORIGINAL DECLARATION"), and
- (b) Supplementary Declaration of Easements, Covenants, Conditions and Restrictions, dated June 18, 1985, recorded June 18, 1985 in the Office of the Dakota County Recorder as Document No. 690634 (hereinafter singly referred to as the "SUPPLEMENTAL DECLARATION"); and
- (c) Amended Declaration of Easements, Covenants, Conditions, and Restrictions, dated May 24, 2006, recorded June 16, 2006 in the Office of the Dakota County Recorder as Document No. 2438523 (hereinafter singly referred to as the "AMENDED DECLARATION")

Hereinafter collectively referred to as the "DECLARATION"; and

WHEREAS the Owners desire to submit said real property and all improvements thereon (collectively the "Property") to the Act; and

WHEREAS, the undersigned Owners together constitute not less than seventy-

five percent (75%) of the respective fee owners eligible to vote required to amend the DECLARATION as per Article XV Section 1 of the AMENDED DECLARATION recorded as Document No. 2438523 in the Office of the Dakota County Recorder and the Bylaws of the Wescott Hills Revised Building Association; and

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

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

SECTION I

DEFINITIONS

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

- 1.2 “Association” shall mean and refer to Wescott Hills Revised Building Association, a nonprofit corporation which has been created pursuant to Chapter **317A** of the laws of the State of Minnesota, whose members shall consist of all Owners as defined herein.
- 1.3 “Board” shall mean the Board of Directors of the Association as provided for in the Bylaws.
- 1.4 “Bylaws” shall mean the Bylaws governing the operation of the Association, as amended from time to time.
- 1.5 “Open Space Easement Property” shall mean and refer to all of the Property except those portions of the Property upon which Buildings are physically located and which are made subject to herein to easements for open space purposes.
- 1.6 “Building” shall mean and refer to a multi-family residential building that may be constructed on a lot.
- 1.7 “Completed Building” shall mean a building which has received a Certificate of Occupancy or such other local government approval necessary for occupancy.

- 1.8 “Lot” shall mean and refer to any one of the platted lots on the Property.
- 1.9 “Eligible Mortgagee” shall mean any Person owning a mortgage on any Unit, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.
- 1.10 “Governing Documents” shall mean this Restated Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.11 “Member” shall mean and refer to all Owners who are members of the Association as provided in Section 4, hereof. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- 1.12 “Parking Easement Properties” shall refer to that portion of the properties comprised in the Open Space Easement Property which is legally described in **Exhibit A** of the Original Declaration.
- 1.13 “Owner” shall mean and refer to the (i) record owner, whether one or more persons or entities, of the fee simple title to any Lot or if the Lot is being sold on a contract for deed, then the contract for deed vendee(s) but excluding contract for deed vendors, mortgagees and other secured parties within the meaning of Section 515B. 1-103(29) of the Act and (ii) a Condominium Association formed pursuant to Chapter 515B of the Minnesota Statutes, or any amendments thereto (the “Act”) and which covers a Lot or Lots.
- 1.14 “Party Wall” shall mean the shared wall between two (2) Buildings.
- 1.15 “Unit” shall mean any Lot subject to this Restated Declaration upon which a Building is located or intended to be located. The words “Unit” and “lot” may be used interchangeably in the Governing Documents.
- 1.16 “Plat” shall mean the recorded plat depicting the Property pursuant to the requirements of Section 515B. 2-110(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- 1.17 “Property” shall mean and refer to all of the real property submitted to this Restated Declaration, as defined in Section 2, below including all structures and improvements located thereon now or in the future.
- 1.18 “Rules and Regulations” shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.

- 1.19 “First Mortgagee” shall mean and refer to any person, corporation or other entity named as mortgagee in any mortgage deed granting a first lien upon the fee simple title to any Lot.

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

SECTION 2

PROPERTY SUBJECT TO THIS RESTATED DECLARATION AND ADDITIONS SUBJECTED THERETO

2.1. Subject Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Restated Declaration is located in the City of Eagan, County of Dakota, and State of Minnesota, and is more particularly described as follows:

Lots 1 through 16, inclusive, Block 1; and Lots 1 and 2, Block 2; Wescott Hills Revised 2nd Addition according to the recorded plat thereof on file or of record in office of the County Recorder in and for Dakota County, Minnesota; and

Lots 1 through 14, inclusive, Block 1, Wescott Hills Revised 3rd Addition according to the recorded plat thereof on file or of record in office of the County Recorder in and for Dakota County, Minnesota; and

Lots 1 through 4, inclusive, Wescott Hills 5th Additions according to the recorded plat thereof on file or of record in office of the County Recorder in and for Dakota County, Minnesota.

2.2. Released Property. Certain real property, hereinafter referred to as "Released Property", was originally subject to the covenants and restrictions of the DECLARATION respectively recorded as Doc. No. 689150 and 690634 in the Office of the County Recorder in and for Dakota County, but was subsequently released and discharged by Quit Claim Release of Declaration recorded as Doc. Number 1195726 in the Office of the County Recorder in and for Dakota County. The Released Property is located in the City of Eagan, County of Dakota, and State of Minnesota is more particularly described as follows:

Lots 20, 21, 22, 23, and 24, Block 1., Wescott Hills Revised 3rd Addition, according to the recorded plat thereof on file or of record in office of the County Recorder in and for Dakota County, Minnesota.

The Released Property is NOT subject to the burdens, covenants, or restrictions of this Restated Declaration.

SECTION 3

DESCRIPTION OF UNITS, EASEMENTS AND PARKING

3.1. Units. There are **thirty (30)** Units, all of which are restricted exclusively to

residential use. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Units identified and locations of the Units are as shown on the Plat, which is incorporated herein by reference. The Unit identifier for a Unit shall be its lot and block numbers and the subdivision name.

3.2. Unit Boundaries. The front, rear and side boundaries of each Unit shall be boundary lines of the platted lot upon which the Building is located or intended to be located as shown on the Plat. **The Units shall have no upper or lower boundaries.**

3.3. No Common Elements. There are no common elements or limited common elements.

3.4. Members' Easements. Every member shall have the following nonexclusive appurtenant easements: (i) ingress and egress of persons over and across the Open Space Easement Property; (ii) enjoyment for open space purposes over the Open Space Easement Property; (iii) right of overhang and encroachments of Lot improvements onto adjoining Lots which are not inconsistent with the use of the Open Space Easement Property; and (iv) utility, water and sewer easements over the Open Space Easement Property to the extent such services cannot otherwise be economically provided to such members Lot. In addition, every member shall have exclusive and nonexclusive appurtenant easements for parking of vehicles over those portions of the Open Space Easement Property as may be determined from time to time by the Board of Directors of the Association. Such easements shall be appurtenant to and shall pass with the title to every Lot.

3.5. Special Member Easements. The owners of Lots 1, 2 and 4, Block 1, Wescott Hills Revised 2nd Addition shall each have an appurtenant easement for ingress and egress of persons and vehicles over and across the following portions of the following Lots:

- (i) 15 feet on either side of the common boundary line of Lots 1 and 4, Block 1;
and
- (ii) 15 feet on either side of the common boundary line of Lot 2 and 4, Block 1.

The Owner of Lot 2, Block 2, Wescott Hills Revised 2nd Addition shall have an appurtenant easement for ingress and egress of persons and vehicles over and across the north 35 feet of the South 150 feet of Lot 1, Block 2, Wescott Hills Revised 2nd Addition.

Each and every member of the Association shall have an appurtenant nonexclusive easement for ingress and egress of persons and vehicles over the property described in **Exhibit B** of the Original Declaration.

3.6. Parking Easement. The owners of Lots I through 16, inclusive, Block 1, Wescott Hills Revised 2nd Addition, shall have a non-exclusive appurtenant easement for ingress and egress of persons and vehicles and for parking of vehicles over the Parking Easement Properties located on and Lots 3, 8 and 9, Block 1, Wescott Hills Revised 2nd Addition.

3.7. Parking Easement for Additional Property. All or a portion of the Additional Property shall have a non-exclusive easement for the parking of vehicles over the Parking Easement Properties located on Lots 5, 6, 7 and 16, Block 1, Wescott Hills Revised 2nd Addition on such terms as a Supplementary Declaration may provide. Notwithstanding any other provision in this Declaration to the contrary, in no event shall any of the property described in Article H, Section 1 or the Owners thereof bear the expense of maintaining (including the original construction costs thereof) the Parking Easement Properties located on Lots 5, 6, 7 and 16, Block 1, Wescott Hills Revised 2nd Addition.

3.8. Parking Rights, Regulations and Permits. The Association shall maintain upon the Lots parking spaces conveniently located for the use of the Owner of such Lot and his Tenants and guests. The Association shall issue regulations and parking permits concerning the use of parking spaces by Tenants. The Association shall charge: a fee for each parking permit issued as set forth in the regulations approved by the Association. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to the system of parking regulations and permits approved by the Association.

Each Owner of any Lot shall include an addendum in any lease agreement with any Tenant(s) including the system of parking regulations and permits set forth by the Association as part of the lease agreement.

3.9. Easement of Maintenance Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof; shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.

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

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

3.12. Recorded Easements. The Property shall be subject to such other easements as

may be recorded against it or otherwise shown on the Plat.

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

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

3.15. Shoreland. The common interest community created by this Restated Declaration does not include any "shoreland" within the meaning on Minnesota Statutes Section 103F.205.Subd.4.

SECTION 4

ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

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

4.1. Membership. Every person or entity who is a record owner of an undivided fee simple interest in any Lot which is subject by covenants of record to assessment by the Association, or other Owner as defined herein, shall be a member of the Association, and the membership shall be transferred with the conveyance of the Owner's interest in the Unit. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one (1) Person is an Owner of a Lot, all such Persons shall be Members of the Association, but multiple ownership of a Lot shall not increase the voting rights allocated to such Lot or authorize the division of the voting rights, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

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

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

4.4. Authority to Vote. The Owner, or some natural person designated to act as proxy

on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association.

4.5. Condominium Associations. Notwithstanding anything herein to the contrary, any Condominium Association which is deemed an Owner herein shall be entitled to such number of votes as is equal to the number of Lots which are covered by such Condominium Association.

SECTION 5

ADMINISTRATION

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

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

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

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

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

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

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

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

SECTION 6

ASSESSMENTS FOR COMMON EXPENSES

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

- a. Any Common Expense associated with the maintenance, repair, or replacement of Parking Easement Properties undertaken by the Association may be assessed exclusively against the Unit or Units to which the Parking Easement Properties is assigned, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- b. Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- c. The costs of insurance may be assessed in proportion to value, risk or coverage, and the costs of utilities may be assessed in proportion to usage.
- d. Reasonable attorneys fees and other costs incurred by the Association in connection with (i) the collection of assessments and (ii) the enforcement of the Governing Documents, the Act, or the Rules and Regulations, against an Owner

or Occupant or their guests, may be assessed against the Owner's Unit.

- e. Fees, charges, late charges, fines and interest may be assessed as provided in Section 14 of this Restated Declaration.
- f. Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.
- g. If any damage to the Open Space Easement Property or another Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
- h. If any installment of an assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice of the Owner, declare the entire amount of the annual assessment or special assessment immediately due and payable in full.
- i. If Common Expense liabilities are reallocated for any purpose authorized by the Act, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.
- j. Assessments under Subsections 6.1 a-h shall not be considered special assessments as described in Section 6.3.

6.2. Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Section 6.2 and 6.3. Each annual assessment shall cover all of the anticipated Common Expenses for 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 Open Space Easement Property and those parts of the Units for which the Association is responsible.

6.3. Maximum of Annual Assessments. Until the year beginning January 1, 1987, the maximum annual assessment shall be Six Thousand and 00/100ths Dollars (\$6,000.00) per Lot payable as hereinafter provided. From and after January 1, 1987, the maximum annual assessment may be increased each year not more than Fifty Percent (50%) above the maximum assessment for the previous year without a vote of the membership. The Board of Directors of the Association may, after consideration of current assessment costs and future needs of the Association, fix the actual assessment for any year at a lesser amount. The maximum annual assessment may be increased above Fifty Percent (50%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this 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..

6.4. 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 foreseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by a vote of a majority of those Owners voting, in person or by proxy, at a meeting 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.

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

Both annual and special assessments shall be fixed at a uniform rate for all Units and may be collected on a monthly basis.

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

6.7. 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. 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.

6.8. Lien Priority: Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Restated 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 Chapters 580, 581, or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-115(a), (h)(1) to (3), (i), and (1) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

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

SECTION 7

RESTRICTIONS ON USE OF PROPERTY

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

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

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

7.3. Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, multi-family residential dwellings, and not for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 7.4.

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

7.5. Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no Unit shall be leased for transient or hotel purposes, (ii) that no Unit may be subleased, (iii) that no lease agreement between any Owner of any Lot may be executed without prior approval of the prospective Tenant or Tenants by a majority of the Board of Directors of the Association or of a tenant screening committee appointed by the Board, and (iv) that all leases shall be in writing, and (v) that all leases shall provide that they are subordinate and subject to the provisions of the Governing Documents, the Rules and Regulations and the Act, and (vi) that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the leasing of Units, consistent with this Section. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of less than seven (7) days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes.

7.6. Tenant Approval Procedure. Any Owner of any Lot wishing to lease their property must submit the required information regarding the Prospective Tenant(s) to the tenant screening committee or a third party designated by the Board or the tenant screening committee. Such information may be submitted in writing, by facsimile or other electronic means. The screening may include, but is not limited to review of the Tenant's rental history, credit report, and criminal record if any. The approval or denial of the said Board or its designated committee may be issued in writing, by facsimile or other electronics means. In the event said Board or its designated committee fails to approve or disapprove the application of a prospective Tenant(s) within seven (7) business days after said information have been submitted to it, approval will not be required and this article shall be deemed to have been fully complied with.

7.7 Parking. Parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized herein or in writing by the Association. The use of driveways and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property.

7.7. Outside Storage. Outside storage of items, including but not limited to, sporting equipment, toys, outdoor cooking equipment, yard and garden tools, and trash and garbage

containers shall be governed by the Rules and Regulations adopted from time to time by the Board. Outside storage or parking of boats, snowmobiles, motorcycles, trailers, camping or recreational vehicles, tractors and trailers, trucks in excess of nine thousand 9,000 pounds gross weight, unlicensed or inoperable passenger vehicles, is not permitted.

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

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

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

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

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

7.13. Access to Units. In case of emergency, all Units are subject to entry, without notice and at any time, by an officer or member of the Board of the Association, by the Association's management agents or by any public safety personnel. Entry is also authorized for maintenance purposes under Section 9 and for enforcement purposes under Section 14.

SECTION 8

ARCHITECTURAL CONTROL

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

- a. Except as expressly provided in this Section 8, no structure, building, addition, 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 of Directors or a committee appointed by it.
- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to existing improvements and topography, (ii) comparable or better quality of materials as used in existing improvements, (iii) ease of maintenance and repair, (iv) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations, and (v) compliance with Governmental laws, codes and regulations.
- c. Approval of alterations which encroach upon another Unit or the Open Space Easement Property shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the alterations are approved; provided, that any easement for a deck or patio other than as originally constructed shall be approved by resolution of the Board of Directors and a file of such resolutions shall be maintained permanently as a part of the Association's records.
- d. Alterations described in Section 16 shall be governed by that Section.

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

- a. Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information

requested by the Board of Directors, then approval will not be required, and this Section shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted.

- c. If no request for approval is submitted, approval 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 six (6) months 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 six months following completion and that the notice was not given.

8.3 Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner causing or permitting the violation, all attorneys' fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Dwelling or Unit to its prior condition if any alterations were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Unit.

SECTION 9

MAINTENANCE

9.1. Maintenance by Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Open Space Easement Property. The Association shall have easements as described in Section 3 to perform its obligations under this Section.

9.2 Exterior Maintenance. In addition to maintenance upon the Open Space Easement Property, the Association shall provide exterior maintenance upon each Building which is subject to assessment under Article VI hereof as follows: paint, repair, replace and care for roofs, gutters, downspouts and exterior building surfaces including glass surfaces; and repair or replace sidewalks, stoops and outside parking surfaces on each Lot.

9.3. Optional Maintenance by Association. In addition to the maintenance described in this Section the Association may, with the approval of a majority of votes cast in person or by proxy at a meeting called for such purposes, undertake to provide additional exterior maintenance to the Units or Buildings, or provide interior maintenance for each Building which is subject to assessment under Section 6 hereof, as follows: sewers and sewage system; plumbing, heating and air conditioning system; and electrical system.

9.4. Assessment of Cost. The cost of such exterior and interior maintenance shall be assessed against the Lot upon which said maintenance is done and shall be added to and become a part of the annual maintenance assessment or charge to which such Lot is subject under Section 6 hereof; and as part of such annual assessment or charge, it shall be a lien or obligation of the Owner and shall become due and payable in all respects as provided in Section 6 hereof, provided that the Board of Directors of the Association, when establishing the annual assessment against each Lot for any assessment year as required under Section 6 hereof, may add thereto the estimated cost of the exterior and interior maintenance for that year but shall hereafter make such adjustment with the Owner as is necessary to reflect the cost thereof.

9.5. Maintenance by Owner. Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.2, all maintenance of the Buildings and Units shall be the sole responsibility and expense of the Owners thereof. However, the Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any exterior maintenance which the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof.

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

SECTION 10

PARTY WALLS

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

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

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

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

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

10.6. Easements for Encroachments. In addition, each member (i) shall have an exclusive easement for encroachment purposes upon the Open Space Easement Property to areas occupied by fireplaces, roof overhangs, air conditioning compressors, flower boxes, decks, balconies and other appurtenances which are part of the original construction of any Building or which are added pursuant to the provisions of Section 8 hereof and (ii) shall have an exclusive easement for encroachment purposes upon adjacent Lots to the extent such member's Building encroaches on an adjacent Lot by reason of the construction, reconstruction, rehabilitation, alteration, improvement, settlement, movement or shifting of any of the Buildings, provided that with respect to improvements or alterations added pursuant to Section 8, no easement shall exist unless the same has been approved, and the proposed improvements constructed, as required by this Restated Declaration. Such easements shall be appurtenant to and shall pass with the title to every Lot.

10.7. Dispute Resolution. In the event of any dispute arising concerning a party wall, and if the same is not resolved within thirty (30) days of the event causing the dispute, the matter shall be submitted to mediation, through a mutually agreeable mediation provider. In the event the parties reach an impasse, the matter in dispute shall be submitted to binding arbitration at a mutually agreeable arbitration provider. The rules of arbitration within Minnesota Statutes shall apply. In the event the parties in dispute cannot choose a mutually agreeable arbitration provider, the Board of Directors shall choose the arbitration provider and the decision of the Board shall be final. Each party agrees that the decision of the arbitrator shall be binding and conclusive of the questions involved. The fees of the mediator and arbitrator, if any, shall be shared equally by the parties, but each party shall pay its own attorney fees or other costs.

SECTION 11

INSURANCE

11.1. Required Coverage. The Association shall, to the extent reasonably available, obtain and maintain a master policy or policies of insurance in accordance with the insurance requirements set forth in Minn. Stat §515B.3-113 and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

- a. Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall also cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverages and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the FHA or Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA or FNMA, obligating the Association to keep certain specified coverages or endorsements in effect.
- b. Comprehensive public liability insurance for the Association covering the ownership, existence, management, use, operation and maintenance of the Property and the Common Elements, with minimum limits of one million and 00/100ths dollars (\$1,000,000) per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverages and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Unit.
- c. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, manager, trustees, employees or persons responsible for handling funds belonging to or administered by the Association may be obtained if deemed to be advisable by the Board or is required by the regulations of the FHA or FNMA as a precondition to the purchase or financing of a mortgage on a Unit. The fidelity bond or insurance shall name the Association as the named insured and shall, if required by regulations of the FHA or FHMA as a precondition to their insuring,

purchasing or financing of a mortgage on a Unit, be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force, or (ii) a sum equal to three months aggregate assessments on all Units plus reserves. If the policy would not otherwise cover volunteers, an appropriate endorsement to the policy to cover any person who serves without compensation or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.

- d. Workers' Compensation insurance as required by law.
- e. Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- f. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

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

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

11.4. Waivers of Subrogation. All policies of insurance shall contain waivers of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured.

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

11.6. Restoration in Lieu of Cash Settlement. All policies of property insurance

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

11.7. No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners or their Eligible Mortgagees.

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

11.9. Owner's Personal Insurance. Each Owner may obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability. All insurance policies maintained by the Owners shall provide that they are without contribution as against the insurance purchased by the Association.

SECTION 12

RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

12.1. Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage 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 to cause the Property to be reconstructed, including without limitation the authority (i) to require the Owners to enter into reconstruction contracts on their respective Units, or (ii) to contract for the reconstruction of the Units on behalf of the Owners. Notice of substantial damage or destruction shall be given pursuant to Section 18.10.

12.2. Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern: provided, that notice shall be given pursuant to Section 18.10. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and the Governing Documents, as their interests may appear.

12.3. Notice. Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property, and the Association shall give written notice thereof to an Eligible Mortgagee pursuant to Section 18.10.

SECTION 13

COMPLIANCE AND REMEDIES

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

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

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

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges of up to fifteen percent (15%) of the amount due, for each past due assessment or monthly 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. Restore any portions of the Open Space Easement Property damaged or altered, or

allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.

- f. Enter any Unit in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Building or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to an arbitration award, a court order or with the agreement of the Owner.
- g. 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.

13.3. Rights to Hearing. In the case of imposition of any of the remedies authorized by Section 13.2.d., e., f. or g. of this Section, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least ten (10) days prior written notice to the offender. If the offending Owner fails to appear in the hearing then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten (10) days following the hearing, if not delivered to the offender at the hearing.

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

13.5. Costs of Proceeding and Attorneys Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys

fees and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

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

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

SECTION 14

RIGHTS TO RELOCATE UNIT BOUNDARIES AND ALTER UNITS

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

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

(2) No alteration may be made which adversely affects the structural or functional integrity of any building system or the structural support or weather-tight integrity of any portion of any building or other structure.

(3) The prior written consent of the Association shall be required for any alteration. Where required, such consent shall be requested in writing by each Owner whose Unit is proposed to be altered, accompanied by such explanation, drawings and specifications relating to the proposed alterations as may be reasonably required by the Association or the first mortgagee of the Unit. The Association shall give such Owner(s) notice in an expeditious manner, granting, denying or qualifying its consent.

(4) As a precondition to consenting to alterations the Association may require, among other things, the following: (i) that all alterations will be done in a workmanlike manner and without impairing the structural, mechanical or weather-tight integrity of the Building, (ii) that the altered Units will be repaired and/or restored in the future as required by the Association; (iii) that the construction of the alterations will not create dangerous conditions for any Owners or Occupants; (iv) that the Property, the first mortgagees and the Owners and Occupants will be protected from liens and other liability arising from the alterations; and (v) that the alterations will be done in compliance with the applicable laws, regulations and ordinances of the governmental authorities having jurisdiction over the Property.

(5) The Association may require that the Owners of the Units to be altered pay all costs of processing and documentation of the request and the preparation of recording of any necessary amendment to the Governing Documents, including without limitation such costs as filing fees and architects and attorneys fees, incurred by the Association in connection with the alterations.

SECTION 15

AMENDMENTS

The Restated Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 18 as to matters prescribed by said. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

SECTION 16

RIGHTS OF ELIGIBLE MORTGAGEES

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

16.1. Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least fifty-one percent (51 %) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessment liens, or priority of assessment liens; (iii) reserves for maintenance, repair and replacement of Open Space Easement Property; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Open Space Easement Property, or rights to their use; (vi) redefinition of any Unit boundaries; (vii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (viii) insurance or fidelity bonds; (ix) leasing of Units; (x) imposition of any restrictions on the Owner's rights to sell or transfer his or her Unit; (xi) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xii) any action to terminate the legal status of the common interest community after substantial destruction or condemnation occurs; (xiii) a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or an Eligible Mortgagee; or (xiv) any provisions that expressly benefit mortgage holders, or insurers or guarantors of mortgages. Notwithstanding the foregoing, implied approval of a proposed amendment shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided that the notice was delivered by certified mail with a return receipt requested.

16.2 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Units that are subject to first mortgages (based upon one vote per first mortgage owned) shall be required to (i) abandon or terminate the common interest community, (ii) change the allocations of voting rights, Common Expense obligations or interest in the Common Elements; (iii) partition or subdivide a Unit except as permitted by statute; (iv) use hazard insurance proceeds for other than repair, replacement or reconstruction of the Property, except as otherwise provided by law, subject to any greater requirements contained in the Act.

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

16.4. No Right of First Refusal. The right of an Owner to sell, transfer or otherwise

convey his or her Unit shall not be subject to any right of first refusal or similar restrictions.

16.5 Priority of Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid assessments or any other charges or liens imposed against the Unit by the Association which accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgage holder or purchaser; (i) except as provided in Section 6.8 and the Act and (ii) except that any unpaid assessments or charges with respect to the Unit may be reallocated among all Units in accordance with this Restated Declaration.

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

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

16.8. 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.

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

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

- a. a condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;
- b. a sixty (60) day delinquency in the payment of assessments or charges owed by

the Owner of a Unit on which it holds a mortgage;

- c. a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- d. a proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

SECTION 17

MISCELLANEOUS

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

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

17.3 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board of Directors, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing, if properly addressed, with postage prepaid and deposited in the United States mail.

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

This instrument was drafted by:
Donald A. Perron
2103 E. County Rd. D, Suite C
Maplewood, MN 55109

IN WITNESS WHEREOF; unless otherwise noted, the undersigned have executed this instrument on the date set forth opposite their respective names.

EXHIBIT A

All of the following property located in WESCOTT HILLS REVISED 2ND ADDITION, Dakota County, Minnesota:

The south 65.00 feet of the north 80.00 feet of the west 25.00 feet of the east 53.00 feet of Lot 3, Block 1, WESCOTT HILLS REVISED 2ND ADDITION, according to the recorded plat thereof.

The northeasterly 20.00 feet of the southerly 25.00 feet of Lot 5, Block 1, WESCOTT HILLS REVISED 2ND ADDITION, according to the recorded plat thereof.

The southeasterly 25.00 feet of the southwesterly 35.00 feet of Lot 7, Block 1, WESCOTT HILLS REVISED 2ND ADDITION, according to the recorded plat thereof and its southwesterly continuation and its southeasterly extension.

The southerly 25.00 feet of the southwesterly 35.00 feet of Lot 7, Block 1, WESCOTT HILLS REVISED 2ND ADDITION, according to the recorded plat thereof and its southwesterly continuation and its southeasterly extension.

The north 65.00 feet and that part lying northeasterly of the southwesterly 70.00 feet of Lot 8, Block 1, WESCOTT HILLS REVISED 2ND ADDITION, according to the recorded plat thereof, and its northwesterly extension.

That part of said Lot 9, lying west of a line drawn at right angles to the north line of said Lot 9 distant 75.00 feet west from the northeast corner of said Lot 9, to the intersection with the southwesterly line of said Lot 9.

The southerly 25.00 feet of the westerly 50.00 feet of Lot 16, Block 1, WESCOTT HILLS REVISED 2ND ADDITION, according to the recorded plat thereof

EXHIBIT B

A 33.00 foot wide strip of land which lies within Lots 2, 3, 4, 5 and 6 , Block 1, WESCOTT HILLS REVISED 2ND ADDITION, according to the recorded plat thereof, Dakota County, Minnesota, the centerline of which is described as follows:

Commencing at the northeast corner of said Lot 3; thence on an assumed bearing of North 89 degrees 31 minutes 45 seconds West along the north line of said Lot 3, a distance of 25.298 feet to the point of beginning of said center line, thence South 06 degrees 22 minutes 44 seconds West, 52.75 feet, thence southwesterly 85.27 feet along a tangential curve concave to the west having a radius of 103.50 feet and a central angle of 47 degrees 12 minutes 26 seconds; thence South 53 degrees 38 minutes 57 Seconds West along a line tangent to last described curve, 96.23 feet; thence southwesterly 43.82 feet along a nontangential curve concave to the southeast having a radius of 74.21 feet a central angle of 33 degrees 49 minutes 50 seconds and a chord that bears South 26 degrees 47 minutes 48 seconds West and said center line there terminating.