

COMMON INTEREST COMMUNITY NUMBER 41  
(Planned Community)

WINGS OVER WHITE OAK II HOMEOWNERS' ASSOCIATION

DECLARATION

This Declaration is made in the County of Dakota, State of Minnesota, on this \_\_\_\_\_ day of June, 2004, by M.W. Johnson Construction, Inc., a Minnesota corporation (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), for the purpose of creating Wings over White Oak II Homeowners' Association, a planned community.

WHEREAS, Declarant is the Owner of certain real property located in Blue Earth County, Minnesota, legally described in Exhibit A attached hereto and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act, 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, and for the purpose of preserving the value, the structural quality, and the original architectural and aesthetic character of the Property, and

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

WHEREAS, in order to effectuate policies and programs to maintain, administer and enforce the terms contained herein and to collect and disburse assessments and charges hereafter created, a corporation known as Wings over White Oak II Homeowners' Association has been created under Chapter 317A of Minnesota Statutes for the purpose of exercising the aforesaid functions.

THEREFORE, Declarant makes this Declaration and submits the Property to the Act as a planned community under the name "Wings over White Oak II Homeowners' Association", consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that

the Property shall be owned, used, occupied, and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

SECTION 1.  
DEFINITIONS

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

- 1.1. "The Act" is Minnesota Statute 515B.
- 1.2 "Adjacent Units" shall mean Units on which there have been constructed Dwellings that share a Party Wall.
- 1.3 "Association" shall mean the Wings over White Oak II Homeowners' Association, a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, the Members of which consist of all Owners as defined herein.
- 1.4 "Board" shall mean the Board of Directors of the Association as provided for in the By-Laws.
- 1.5 "By-Laws" shall mean the By-Laws governing the operation of the Association, as amended from time to time.
- 1.6 "Common Elements" shall mean all parts of the Property except the Units and all improvements on the Units. The initial Common Elements are legally described on Exhibit B attached hereto.
- 1.7 "Common Expenses" shall mean all expenditures made or liabilities incurred by or on behalf of the Association that are incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration or By-Laws.
- 1.8 "Common Interest Community" or "CIC" means contiguous

or noncontiguous real estate within Minnesota that is subject to an instrument which obligates persons owning a separately described parcel of the real estate, or occupying a part of the real estate pursuant to a proprietary lease, by reason of their ownership or occupancy, to pay for (i) real estate taxes levied against; (ii) insurance premiums payable with respect to; (iii) maintenance of; or (iv) construction, maintenance, repair or replacement of improvements located on one or more parcels or parts of the real estate other than the parcel or part that the person owns or occupies. Real estate subject to a master association, regardless of when the master association was formed, shall not collectively constitute a separate common interest community unless so stated in the master declaration recorded against the real estate pursuant to section 515B.2-121, subsection (f)(1).

- 1.9 "Dwelling" shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.
- 1.10 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.11 "Limited Common Elements" shall have the meaning set forth in Section 3.2.
- 1.12 "Member" shall mean all persons who are Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- 1.13 "Occupant" shall mean any person or person, other than an Owner, in possession of or residing in a Unit.
- 1.14 "Owner" shall mean a Person who owns a Unit, but excluding 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. The Declarant is the owner of a Unit until it has been conveyed to another person.

- 1.15 "Party Wall" shall mean the shared wall between two Dwellings.
- 1.16 "Person" shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.
- 1.17 "Plat" shall mean the recorded plat depicting the Property pursuant to the requirements of Section 515A.2-110(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapters 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- 1.18 "Private Common Roadway" shall mean those parts of Common Elements paved to provide access from a public street to the Dwelling situated on a Unit and includes the guest parking areas appurtenant thereto.
- 1.19 "Private Driveway" shall mean that part of a Unit and Limited Common Elements paved to connect the Dwelling situated on such Unit to the Private Common Roadway.
- 1.20 "Private Yard Area" shall mean that part of a Unit not covered by a Dwelling or a Private Driveway.
- 1.21 "Property" shall mean all of the real property submitted to this Declaration, including the Dwellings and all other structures and improvements located thereon now or in the future. The Property as of the date of this Declaration is legally described in Exhibit A attached hereto.
- 1.22 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.
- 1.23 "Special Declarant Rights" shall mean the rights reserved in Section 15 for the benefit of Declarant.

1.24 "Unit" shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as shown on the Plat, including all improvements thereon, intended for separate ownership but excluding the Common Elements.

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.  
DESCRIPTION OF UNITS AND APPURTENANCES

2.1 Units. There are sixty (60) 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 except as may be allowed by the Declarant under the Act. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference, and a schedule of Units is set forth on Exhibit A. The Unit identifier for a Unit shall be its lot and block numbers and the subdivision name.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit shall be the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Units shall have no upper or lower boundaries. Subject to this Section 2 and Section 3.2, all spaces, walls, and other improvements within the boundaries of a Unit are a part of the Unit.

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

2.4 Other Easements. Each Unit shall be subject to and shall be the beneficiary of appurtenant easements described in Section 13.

2.5 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 15.5.

2.6 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 Declaration.

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

### SECTION 3.

#### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

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

- a. The Common Elements are defined in Section 1.6. The Common Elements include those parts of the Property described in Exhibit B or designated as Common Elements in the Act.
- b. The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, use and enjoyment in favor of each Unit and its Owners and Occupants; subject to (i) the rights of Owners and Occupants in Limited Common Elements appurtenant to their Units and (ii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.
- c. Subject to Sections 5, 6 and 9, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association. With respect to Outlot D, said outlot is owned in joint tenancy with Wings over White Oak I Homeowners' Association. Each association shall be responsible for a share of the maintenance of Outlot D as the number of units in that association bears to the total number of units in both associations. There are 140 total units, with 80 units in Association I and 60 units in Association II. This maintenance obligation intentionally varies from the one-half

tenancy in common interest, which interest is determined for convenience, and due to the nature of the common area. The percentage obligations herein control over the tenancy in common ownership. The two associations Boards of Directors shall meet regularly to discuss and determine the maintenance requirements of the outlot. Any dispute with regard to the outlot shall be determined by binding arbitration, with each association paying one-half of the arbitration fee.

- d. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 6.

3.2 Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved by this Declaration or Section 515B.2-102(d) or (f) of the Act for the exclusive use of the Owners and Occupants of the Units to which they are allocated, and the rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Units.

#### SECTION 4. ASSOCIATION MEMBERSHIP; RIGHTS AND OBLIGATIONS

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

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

4.2 Voting. Voting rights are allocated equally among the Units except that Declarant may appoint and remove the officers and directors of the Association between the date of the first conveyance of a Unit to an Owner other than Declarant and the fifth anniversary of said date.

4.3 Common Expenses. 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 and except, further, that assessments against Units owned by Declarant shall be in accordance with Section 6.5.

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

4.5 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; provided, that if there are multiple Owners of a Unit, only the Owner or other Person designated pursuant to the provisions of the By-Laws may cast such vote. The voting rights of Owners are more fully described in of the By-Laws of the 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 and the Act. The Association shall, subject to the rights of the Owners set forth in the Governing Documents and the Act, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, the Act and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents or the Act. All references to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

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

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

5.4 By-Laws. The Association shall have By-Laws. The By-Laws and any amendments thereto shall govern the operation and administration of the Association.

5.5 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Document 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 Laws.

5.6 Rules and Regulations. The Board shall have the 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.  
ASSESSMENT 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 Section 6.2 and 6.3, and the requirements of the By-Laws. 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 4.3, subject to the following qualifications:

- a. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element undertaken by the Association may be assessed exclusively against the Unit or Units to which that Limited Common Expense 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, as determined by the Board.
- 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, as determined by the Board.
- 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. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full, and take such further action as is authorized by the Act or by this Declaration.
- e. Assessments under Section 6.1 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 this Section and in Section 6.3. 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 deemed sufficient to cover the periodic cost of maintenance, repair and replacement of the Common Elements and those parts of the Limited Common Elements and Units for which the Association is responsible. After a Common Expense assessment is levied, the annual assessment may be subsequently increased or decreased by the Board, based upon a budget approved at least annually by the Board.

6.3 Special Assessments. In addition to annual assessments, and subject to the limitations set forth hereafter, the Board may levy in any assessment year a special assessment against all Units for the purpose of defraying in whole or in part (i) the cost of any unforeseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of any part of the Property, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of 2/3 of those Owners voting, in person or by proxy, at a meeting called for that purpose.

6.4 Liability of Owners for Assessments. The obligation of an Owner to pay levied assessments shall commence at the later of (i) the recording of the Declaration or amendment thereto which creates the Owner's Unit, or (ii) the time at which the Owner acquires title to the Unit, subject to the alternative assessment program described in Section 6.5. 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 rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 14, in addition to

any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

6.5 Declarant's Alternative Assessment Program. When a common expense assessment has not been levied, the Declarant shall pay all accrued expenses of the common interest community. That part of any levied assessment that is allocated to replacement reserves shall be fully levied against a Unit, including any unit owned by Declarant, on the earlier of substantial completion of the exterior of (i) the building containing the unit or (ii) any building located within the unit. The Declarant's liability for the assessments other than replacement reserves, on any unit owned by Declarant, shall be limited to 25 percent of any assessment levied, until the unit or any building located in it is substantially completed. Substantial completion shall be evidenced by a certificate of occupancy in any jurisdiction that issues the certificate.

6.6 Assessment Lien. The Association shall have a lien, as provided for in Section 515B.3-116 of the Act, on a Unit for any assessment levied against that Unit as well as for 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. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

6.7 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 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 Voluntary conveyances; Statement of Assessments. In a voluntary conveyance of a Unit the buyer shall jointly and severally be liable with the seller 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,

without prejudice to the buyer's right to recover against the seller where applicable. The buyer shall be entitled, upon written request, to a statement setting forth the amount of unpaid assessments currently levied against the Unit, as provided in Section 515B.3-116(g).

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 nor any part of the Common Elements may be subdivided or partitioned without the prior written approval of at least 75% of the Owners and at least 75% of any secured parties holding first mortgages on the Units of the approving Owners.

7.3 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential dwellings, and not for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 7.4. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of less than 7 days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes.

7.4 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.

7.5 Business Use Restricted. Subject to the prior written approval of the Board, 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, providing 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 clients, customers, employees or independent contractors. The Association may maintain offices on the Property for management and related purposes.

7.6 Signs. No signs of any kind shall be displayed to the public view on any Unit except for one sign of not more than five (5) square feet advertising the property for sale, except that Declarant shall be permitted to erect and maintain upon the Property such signs as Declarant deems appropriate to advertise the Property until the first anniversary of the date on which Declarant owns no Unit.

7.7 Antennas/Satellite Dish. No television or satellite dish or other antennas visible from the exterior of any Dwelling shall be erected or maintained within a Unit, except a satellite dish smaller than 25 inches and approved by the Board, or the appointed committee if so authorized by the Board.

7.8 Exterior Facilities. No playground equipment, furnishings or furniture (including basketball hoops and swing sets), whether temporary or permanent, shall be erected or placed on any Unit except as approved by the Board, or the appointed committee if so authorized by the Board, and, if so approved, shall not be altered, modified or removed except if approved by the Board or such committee. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other building shall be used on any Unit at any time as a residence, either temporarily or permanently.

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

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

7.10 Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. The use of garages, driveways and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property. No boats, trailers, automobiles or other motor equipment, licensed or unlicensed, shall be stored or parked anywhere on the Property except for short-term parking of less than 48 hours and then only on the Private Driveway of the Owner of said vehicles and equipment. Temporary guest parking is allowed on the Private Driveway of the Unit owned by the guest's host for a period not to exceed 48 hours. Temporary guest parking shall be allowed on the Private Common Roadway subject to the Rules and Regulations but such parking must not interfere with access by other users of said Private Common Roadway and overnight parking is prohibited. No parking shall be allowed in the areas of the Private Common Roadway designated for emergency vehicle turn-around.

7.11 Animals. No animals shall be permitted to be kept on the Property by any Owner or occupant of a Unit 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, 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 and/or the prohibition of pets on the Property, pursuant to Minn. Stat. Sec. 515B.3-102 (a)(1)(iii).

7.12 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. Nothing shall be done or kept on any Unit or part thereof which would (i) increase the rate of insurance on any other Unit over what the Owner of such other Unit, but for such activity, would pay without the prior written consent of the Board, or the appointed committee if so authorized by the Board, or (ii) which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Property or the buildings situated thereon shall be committed by any Owner or any invitee of any Owner and each Owner agrees to indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or such Owner's invitees. No noxious, destructive or offensive activity shall be allowed on any Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner or any other Person at any time lawfully residing on the Property.

7.13 Trash. No Unit shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. No part of any Unit may be used at any time for the storage or abandonment of junked automobiles or other motor equipment. Garbage, rubbish and trash shall not be kept on any Unit except in sanitary containers. All equipment used or kept for the storage or disposal of such materials shall be kept in a clean and sanitary condition inside a garage.

7.14 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.

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

7.16 Soil Removal. Except as approved by the Board, or the appointed committee if so authorized by the Board, no sod, soil or gravel shall be sold or removed from any Unit. All soil or gravel available from any excavation for the construction or alteration of any Dwelling or any appurtenance on any Unit and by whomsoever owned shall be hauled and disposed of to other points within the boundaries of the Property at the discretion of the Board or such committee. Except as approved by the Board, or committee thereof, the finished landscaping, sod and shrubbery shall not be removed, added to or altered in any manner.

7.17 Trees. No live trees or shrubs shall be removed, damaged or altered in appearance except in connection with the initial construction by Declarant. Nothing in this provision, however, shall prevent careful removal of dead trees, diseased limbs of trees, pruning of shrubs or removal of dead shrubs by the Association.

7.18 Access to Units. In case of emergency, all Units and Limited Common Elements are subject to entry, without notice and at any time, by an officer or member of the Board of the Association, by the Association's management agents or by any public safety personnel. Entry is also authorized for

maintenance purposes under Section 9 and for enforcement purposes under Section 14.

Nothing contained in the foregoing provisions of this Section 7 or in the following provisions of Section 8 shall be construed to limit the rights of Declarant to alter the Property or to construct or modify improvements thereon, or to limit the manner in which such improvements, alterations, or modifications may be made as to Units owned by Declarant.

SECTION 8.  
ARCHITECTURAL CONTROL

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

- a. Except as expressly provided in this Section 8, and except for alterations made by Declarant in connection with its initial sale of a Unit, no structure, building, addition, deck, patio, fence (whether of vegetation or otherwise), 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 it. Notwithstanding the foregoing, Declarant's written consent shall also be required for alterations until Declarant no longer owns any unsold Unit.
- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to existing improvements and topography, (ii) comparable or better quality of materials as used in existing improvements, (iii) ease of maintenance and repair, (iv) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations, and

compliance with governmental laws, codes and regulations.

- c. Approval of alterations which encroach upon another Unit or the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the alterations are approved; provided, that any easement for a 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.
- 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 (the "Plans"), in form and content acceptable to the Board, shall be submitted to the Board at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. In the event the Board has not delivered written approval of the Plans within sixty (60) days after the Plans have been submitted to it, the Plans will be deemed to be disapproved.
- c. The Plans are required to be submitted by first class mail, registered or certified, postage prepaid and return receipt requested or delivered personally to the Board.

8.3 Remedies for Violation. 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 Common Area. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements.

9.2 Exterior Maintenance. For purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall provide for exterior maintenance upon the Dwelling in each Unit that is subject to assessment and the Private Yard Areas and Private Driveways of such Units, which maintenance shall include, but not be limited to, the following: (i) the maintenance and repair of the exterior surfaces of all buildings on the Property, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, gutters, downspouts, and overhangs (but excluding all maintenance and repair to glass and other window surfaces and frames, air conditioning equipment, patios, entry doors and door hardware unless otherwise approved under Section 9.3); (ii) mowing, trimming, and other care of grass, trees, and other plants upon the Private Yard Areas, exclusive of watering, unless the Property, or any part thereof, has an underground sprinkler system, in which case the Association shall be responsible to operate and maintain; (iii) the maintenance and repair of walks, Private Driveway and Private Common Roadways, including snow removal therefrom, and (iv) maintenance of that portion of all private service water and sewer pipelines from the exterior walls of each Dwelling to the point at which such service pipelines connect to the lateral water and sewer pipelines located within the street right-of-way or utility and drainage easements. All maintenance and repair of individual Dwellings shall be the sole obligation and responsibility and expense of the individual Owners thereof, except to the extent that the exterior maintenance and repair is provided by the Association. The Association shall be responsible for all damage done to the Units and the improvements thereon in the course of such maintenance and repair and shall perform the restoration of and repairs to such improvements. Any cause of action against third parties relating to portions of the Property which are maintained by the Association shall belong solely to the

Association for the benefit of all Owners even though such cause of action relates to property owned by one or more Owner.

9.3 Optional Maintenance By Association. In addition to the maintenance in this Section, the Association may, with the approval of a majority of votes cast in person or by proxy at a meeting called for such purposes, undertake to provide additional exterior maintenance to the Units or Dwellings, or maintenance of water and sewer systems within the Units.

9.4 Maintenance by Owner. Except for the exterior maintenance to be provided by the Association under Section 9.1, 9.2 or 9.3, all maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. However, the Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any exterior maintenance which the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof. Without limiting the foregoing, in the event that underground sprinkler systems do not service the applicable area, each owner shall be responsible for the watering of grass, trees, shrubs, and other landscaping within their Private Yard Area, and extending into the Adjoining Common Area. For the purposes of this provision, the Adjoining Common Area shall include the Common Area within the extension of the Unit lot lines to the common boundary lines with adjoining properties not governed by the Association. In the event that the extension of the Unit lot lines would result in an overlap of common area with other Unit Owners to be maintained hereunder, each Owner shall maintain the one-half of said common area contiguous to that owner's Private Yard Area or Unit.

9.5 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 of the Owner responsible for the damage. In the case of party

walls between Dwellings, the Owners of the affected Dwellings shall be liable as provided in Section 10.

SECTION 10.  
PARTY WALLS

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

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

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, subject to the provisions of Section 12, 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 provision of this Section, any Owner who, by his negligent or willful act, causes a party wall to be exposed to the elements shall bear the whole cost of the repairs necessary for protection against such elements.

10.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section

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

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

## SECTION 11. INSURANCE

11.1 Statutory Requirements. The Association shall commencing not later than the time of the first conveyance of a Unit to a Unit Owner other than Declarant, maintain, to the extent reasonably available:

- a. Subject to subsection b, property insurance (i) on the 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; and
- b. 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 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 a Unit Owner or Board member. The Unit 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.

11.2 Inclusions. The insurance maintained under subsection 11.1a shall include the Units and the Common Elements, except as may otherwise be applicable to the Units under Section 11.12 hereafter. The insurance need not cover improvements and betterments to the Units installed by the Unit 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 Unit Owners of the Units affected to pay the deductible amount directly. If the insurance described in sections 11.1a 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 Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association, the Unit Owners or officers, directors or agents of the Association.

11.3 Requirements. Insurance policies carried pursuant to sections 11.1a and b shall provide that:

- a. Each Unit Owner and secured party is an insured person under the policy with respect to liability arising out of the Unit Owner's membership in the Association;
- b. The insurer waives its right to subrogation under the policy against the Unit Owner or members of the Unit Owner's household and against the Association and members of the Board of Directors;
- c. No act or omission by any Unit 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
- d. If at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy is primary insurance.

11.4 Losses. Any loss covered by the property policy under section 11.1a 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 Unit 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. Unit 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.

11.5 Certificates. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance, upon request, to any Unit 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 Unit Owner and each secured party for an obligation to whom certificates of insurance have been issued.

11.6 Repair, replacement. 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 Unit Owners, including every Unit Owner and holder of a first mortgage 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 Unit Owner.

11.7 Partial destruction. 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.

11.8 Reallocation. If the Unit Owners and First Mortgagees (as that term is later defined) 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 the 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.

11.9 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.

11.10 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.

11.11 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 Unit Owners shall be applied. The insurance company providing blanket coverage may assess the insurance premiums against individual units from and after the time of closing on the first sale of a unit. The insurance assessment, as to new units and resales, may include a one year,

paid in advance premium on a unit, together with monthly payments thereafter. The Owner is responsible for those insurance premiums, which may be billed through the Association, or the insurance company, or collected at closing, regardless of whether the Declarant has deferred adoption of the balance of assessments. Any unused premium on a Unit will be refunded to an Owner at the time of the sale and closing of a Unit, or at such earlier date as determined by the Association, but only as to Owners who have paid premiums in advance at closing, and have unused premium credits.

11.12 Additional Owner Insurance Obligation. In the event that property insurance is not reasonably available to the Association, then the Owner shall obtain and maintain the property insurance required under Section 11.1a above, in the amount of the full insurable value of the Owner's property (Dwelling and improvements within the Unit), and naming the Association as an additional insured, providing further:

- a. The insurance shall be written on a form and a company reasonably acceptable to the Association.
- b. The Owner shall provide a Certificate of Insurance (or similar assurance) upon each renewal of the insurance, or upon the issuance of new coverage.
- c. The policy shall contain the usual and customary loss payable and notice provisions providing minimum 30 day notice to the Association of any cancellation or substantial modification of the policy.
- d. Upon renewal, and at least annually, Owner shall review the policy limits and adjust the coverage to continue the coverage at the full insurable value of the Owner's property.
- e. In the event that Owner fails or refuses to maintain the insurance at full insurable value, Association may obtain the necessary insurance coverage (including through Owner's insurance carrier) and charge the Owner for the cost and expense of obtaining said coverage. Assessment of the cost and expense shall be governed by Section 6 hereinabove.
- f. The Association shall give notice to Owner in the event that Owner shall be obligated to obtain and maintain the insurance coverage herein.

SECTION 12.  
RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

12.1 Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage to or destruction thereof shall be governed by the Act, except as more specifically referenced in Section 11 above.

12.2 Approval of Board. If a Unit is partially or totally damaged or destroyed by fire or other casualty, no such reconstruction shall be commenced without the written approval of the plans and specifications therefor by the Board.

12.3 Waiver of Subrogation. To the extent permitted by the standard Minnesota Form of Fire and Extended Coverage Insurance and to the extent benefits are paid under such a policy, each Owner and the Association does hereby mutually release each from the other and each other Owner, and their respective officers, agents, employees and invitees, from all claims for damage or destruction of their respective physical properties if such damage or destruction results from one or more of the perils covered by the standard Minnesota Form of Fire and Extended Coverage Insurance.

12.4 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.

SECTION 13.  
EASEMENTS

13.1 Easement for Encroachments. Each Unit and the Common Elements, and the right 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, patios, utility installations and other appurtenances (i) which are part of the original construction on the adjoining Unit or the Property or (ii) which are added pursuant to Section 8. If there is an encroachment by a Dwelling, or other building or improvement located in a Unit, upon another Unit or Dwelling as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of any encroaching Dwelling, building or improvement, and for the maintenance thereof, shall exist;

provided that with respect to improvements or alterations added pursuant to Section 8, no easement shall exist unless the same shall have been approved and constructed as required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

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

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

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

#### SECTION 14. COMPLIANCE AND REMEDIES

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Governing Documents, the Rules and Regulations, the decisions of the Association, and

such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

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

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

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges of up to 15% of each late payment of an assessment or installment thereof.
- c. In the event of default of more than 30 days in the payment of any assessment or installment thereof, all remaining installments of assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.

- d. Impose reasonable fines, penalties or charges for each violation of the Act, the Governing Documents or the Rules and Regulations of the Association.
- e. Suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities; provided, that this limitation shall not apply to Limited Common Elements or deck, balcony or patio easements, appurtenant to the Unit, and those portions of the Common Elements providing utilities service and access to the Unit. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents, and for up to 30 days 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 any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
- g. Enter any Unit or Limited Common Element in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the Owner, Owners, or Occupants, or their guests, or the safety or soundness of any dwelling or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit or Limited Common Elements which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner.
- h. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state where the Property is located.

14.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by Subsections d, e, or f of this Section, the Board shall, upon written request of the offender,

grant to the offender a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty days of receipt of the hearing request by the Board, and with at least 10 days prior written notice to the offender. If the offending Owner fails to appear at the hearing then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten days following the hearing, if not delivered to the offender at the hearing.

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

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

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

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

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

SECTION 15.  
SPECIAL DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following special Declarant rights within the meaning of Section 515B.1-103(32) of the Act for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

15.1 Complete Improvements. To complete all the Units and other improvements indicated on the Plan, or otherwise included in Declarant's development plans or allowed by the Declaration, and to make alterations in the Units and Common Elements to accommodate its sales facilities. To subdivide units or convert units into common elements, limited common elements, and/or units.

15.2 Relocate Boundaries and Alter Units. To relocate boundaries between Units and to otherwise alter Units owned by it, to the extent permitted by Section 16.

15.3 Sales Facilities. To construct, operate and maintain a sales office, management office, model Units and other development, sales and rental facilities within the Common Elements and any Units owned by Declarant from time to time, located anywhere on the Property.

15.4 Signs. To erect and maintain signs and other sales displays offering the Units for sale or lease, in or on any Unit owned by Declarant and on the Common Elements.

15.5 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements for the purpose of exercising its Special Declarant Rights.

15.6 Control of Association. To control the operation and administration of the Association, including without limitation

the power to appoint and remove the members of the Board pursuant to Section 515B.3-103 of the Act, until the earliest of; (i) voluntary surrender of control by Declarant, (ii) an Association meeting which shall be held within 60 days after conveyance to Owners other than a Declarant of 75% of the total number of Units authorized to be included in the Property or (iii) the date five (5) years following the date of the first conveyance of a Unit to an Owner other than a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall have the right to nominate and elect not less than 33 1/3% of the directors at a meeting of the Owners which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Property. In determining whether the period of Declarant control has been terminated, or whether unit owners other than Declarant are entitled to membership on the Board, the percentage of units conveyed shall be based upon assumption that all units which Declarant has built or reserved the right to build in the Declaration are included in the CIC.

15.7 Consent to Certain Amendments. As long as Declarant owns any unsold Unit, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects or may affect Declarant's rights under the Governing Documents.

15.8 Add Additional Real Estate. To add Additional Real Estate to the property as described in Section 16.

#### SECTION 16.

##### 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, Common Elements or Limited Common Elements.
- d. Requirements. The alteration, relocation of boundaries or other modification of Units or the Dwellings or other structures located therein (collectively referred to herein as "alteration" or "alterations") pursuant to this Section, Section 8, and the Act may be accomplished only in accordance with the following conditions:

(1) No Unit may be altered if, thereafter, the Dwelling located therein, or any other Dwelling affected by the alteration, would no longer be habitable or practicably usable for its intended purpose or would violate any law, code or ordinance of any governmental authority having jurisdiction over the Property

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

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

(4) As a precondition to consenting to alterations the Association may require, among other things, the following: (i) that all alterations will be done in a workmanlike manner and without impairing the structural, mechanical or weather-tight integrity of the Building; (ii) that the Common Elements and altered Units will be repaired and/or restored in the future as required by the Association; (iii) that the construction of the

alterations will not create dangerous conditions for any Owners or Occupants; (iv) that the Property, the first mortgagees and the Owners and Occupants will be protected from liens and other liability arising from the alterations; and (v) that the alterations will be done in compliance with the applicable laws, regulations and ordinances of the governmental authorities having jurisdiction over the Property.

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

#### SECTION 17. AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association and (ii) the consent of Declarant to certain amendments as provided in Section 15.7. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consent of Declarant 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 18. RIGHTS OF FIRST MORTGAGES

18.1 Conflicting Provisions. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

18.2 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 ("First Mortgagee") and the Unit number or address (a holder of a first mortgage on a Unit who has so requested such notice

shall be referred to herein as an "eligible mortgage holder" and an insurer or guarantor of a mortgage on a Unit who has so requested such notice shall be referred to herein as an "eligible insurer or guarantor"), any such eligible mortgage holder or eligible insurer or guarantor 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 mortgage holder or eligible insurer or guarantor, as applicable;
- 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 120 days;
- c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- d. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified elsewhere in this Article XIII.

18.3 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, unless at least 67% (or such higher percentage as is required by law or this Declaration) of the first mortgagees of the Units or their assigns (based upon one vote for each first mortgage owned), and at least 67% (or such higher percentage as is required by law or this Declaration) of the Unit Owners (other than any sponsor, developer, builder, or the Declarant) of the Units have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

- a. 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);
- b. By act or omission, seek to abandon, partition,

subdivide, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed such a transfer);

- c. Use hazard insurance proceeds for losses to any CIC property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such CIC property, except as provided by statute in case of substantial loss to the units and/or Common Elements of the CIC.

18.4 Certain Amendments to Material Provisions of Declaration, Articles, or Bylaws. In addition to statutory requirements for amendment of the Declaration, Articles and Bylaws, and to other requirements set forth herein, the written consent of at least 67% of Unit Owners, and the written consent of eligible mortgage holders representing at least 67% (or such higher percentage as is required by law or this Declaration) of the votes of Units that are then subject to mortgages held by eligible mortgage holders shall be required to add or amend any material provisions of this Declaration, the Articles or Bylaws of the Association. A change to provisions of the Declaration, the Articles or Bylaws of the Association governing any of the following would be considered material:

- a. Voting rights;
- b. Assessments, assessment liens, or the priority of assessment liens;
- c. Reserves for Maintenance, repair and replacement of the Common Elements (and Units, if applicable);
- d. Insurance or fidelity bonds;
- e. Reallocation of interests in the Common Elements, or rights to use of the Common Elements, except a change in accordance with the procedures set forth in the Act or the Declaration and Bylaws as a result of destruction, damage or condemnation or with respect to a reallocation of interests in the Common Elements which might occur pursuant to any plan of expansion or phased development contained in the original Declaration or Bylaws, or a change of Common Elements into Limited Common Elements;

- f. Increase in the number of Units (except as provided in Section 15 hereof);
- g. Creation or increase in Special Declarant Rights;
- h. Responsibility for maintenance and repairs;
- i. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- j. Boundaries of any Unit;
- k. Convertibility of Units into Common Elements or of Common Elements into Units;
- l. Changing the authorized use of a Unit from residential to non-residential;
- m. Imposition of any right of first refusal or any other restriction on the right of a Unit Owner to sell transfer, or otherwise convert his or her Unit;
- n. Any provisions that expressly benefit mortgage holders, insurers or guarantors;
- o. A decision by the Association to establish self-management when professional management had been required previously by an eligible mortgage holder;
- p. Restoration or repair of the project (after casualty or partial condemnation) in a manner other than that specified in this Declaration and the Bylaws.

In each instance of an addition or amendment that is not a material change (such as the correction of a technical error or the clarification of a statement), an eligible mortgage holder who is given a written proposal for such amendment and from whom no response is received within 30 days after notice of the proposal is given shall be deemed to have approved such proposal.

18.5 Examination of Association Books and Records: Financial Statements. The Association shall make available to any Unit Owner, or to any holder, insurer or guarantor of any first mortgage, a current copy of the Declaration, the Bylaws,

and other rules governing the CIC 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 Declaration, the Bylaws of the Association and other rules governing the CIC and the most recent annual audited financial statement if such is prepared. The holders of at least 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 5 shall be furnished within reasonable time following such request.

18.6 Priority of Lien of First Mortgage. To the maximum extent permitted by law, the lien for any assessments or other charges becoming payable on or after the date of recordation of the first mortgage on any Unit shall be subordinate to the lien of such first mortgage. Any lien for assessments hereunder shall not be affected by any sale or transfer of the Unit, except that the sale or transfer of title to a Unit pursuant to foreclosure of a first mortgage or deed or proceedings in lieu of foreclosure shall extinguish any subordinate lien for assessments which became payable prior to such sale or transfer of title or which became payable during the redemption period after the foreclosure sale. Specifically, if, prior to commencement of foreclosure, an Owner conveys title to his or her Unit by deed or proceedings in lieu of foreclosure to the First Mortgagee or to the insurer or guarantor of said first mortgage, and the grantee accepts said deed in lieu of foreclosure, then the grantee of said deed takes title to the Unit free of any lien for unpaid and expense assessments which were due and payable at the date of transfer. Any assessments so extinguished may be reallocated and reassessed against all Units as a common expense. 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.

18.7 Insurance or Condemnation Proceeds. Other than as provided elsewhere in this Declaration, no provisions of this

Declaration or the Bylaws of the Association shall be construed to give any Unit Owner, or any other party, priority over the rights of any first mortgagee of a Unit pursuant to its first mortgage in the case of a distribution of a Unit Owner of insurance proceeds or condemnation award for losses to or a taking of 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, the holder of any first mortgage on a Unit will 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 holder of any first mortgage on a Unit will be entitled to timely written notice of any such proceedings or proposed acquisition.

18.8 Attendance at Meetings of Association. Any eligible holder of a first mortgage who so requests shall be given notice of all meetings of the Association as if such First Mortgagee was a Unit owner entitled to notice. Each such First Mortgagee shall have the right to designate a representative to attend all such meetings, which shall not have the right to cast a vote.

SECTION 19.  
SUBDIVISION OR CONVERSION OF UNITS

19.1 Right to Subdivide or Convert. The right is hereby reserved by the Declarant to subdivide or convert Units in the CIC, pursuant to section 515B.2-1 12 of the Act. Any Unit, whether or not owned by the Declarant, may be subdivided as provided in Section 515B.2-1 12 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.

SECTION 20.  
MISCELLANEOUS

20.1 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.

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

20.3 Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to the Act, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

20.4 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board, 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.

20.5 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the By-Laws or any Rules or Regulations approved by the Association, the Act shall control. As among the Declaration, By-Laws and Rules and Regulations, the Declaration shall control, and as between the By-Laws and the Rules and Regulations, the By-Laws shall control.

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

M.W. Johnson Construction, Inc.

By \_\_\_\_\_  
M. William Johnson  
Its President

STATE OF MINNESOTA                    )  
  )ss.

COUNTY OF DAKOTA )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of June, 2004, by M. William Johnson, the President of M.W. Johnson Construction, Inc., a corporation under the laws of Minnesota, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY :  
Richard K. Hocking, P.A.  
7570 West 147th Street  
Apple Valley MN 55124  
(952) 432-8129  
Attorney ID No. 45639

COMMON INTEREST COMMUNITY NO. 41

WINGS OVER WHITE OAK II HOMEOWNERS' ASSOCIATION

EXHIBIT A TO DECLARATION

SCHEDULE OF UNITS/LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 12, Block 6;

Lots 1 through 12, Block 7;

Lots 1 through 12, Block 8;

Lots 1 through 12, Block 9;

Lots 1 through 12, Block 10;

An undivided one-half interest in Outlot D;

Wings over White Oak, Blue Earth County, Minnesota.

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

COMMON INTEREST COMMUNITY NO. 41

WINGS OVER WHITE OAK II HOMEOWNERS' ASSOCIATION

EXHIBIT B TO DECLARATION

LEGAL DESCRIPTION OF COMMON ELEMENTS

An undivided one-half interest in Outlot D, Wings over White Oak, Blue Earth County, Minnesota.

