

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by M. W. JOHNSON CONSTRUCTION, INC., a Minnesota corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Scott, State of Minnesota, which is more particularly described on Exhibit A attached hereto; and

WHEREAS, Declarant is presently constructing a planned unit development on the Property constituting a residential community; and

WHEREAS, Declarant deems it desirable to create an agency to receive the power to attend to and effectuate policies and programs that will enhance the pleasure and value of the property, and maintain, administer, and enforce covenants and restrictions and collect and disburse the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Minnesota, Thomas A. Philipp Addition Homeowners' Association, a Minnesota non-profit corporation, for the purpose of exercising the functions as aforesaid;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and are binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. This declaration hereby establishes a general plan for the individual ownership of the Residential Lots, as follows:

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Thomas A. Philipp Addition Homeowners' Association, its successors and assigns.

Section 2. "Common Area" shall mean and refer to all of the property contained within the plat of Thomas A. Philipp Addition,

except the Units, as more specifically described on Exhibit B attached hereto.

Section 3. "Board of Directors" shall mean the Board of Directors of the Association.

Section 4. "Declarant" shall mean and refer to M. W. Johnson Construction, Inc., a Minnesota corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development. However, no individual or entity shall become the Declarant solely by such acquisition, but only as a result of a specific assignment of Declarant rights.

Section 5. "First Mortgage" shall mean any recorded First Mortgage by which a Lot or any part thereof or any structure thereon is encumbered.

Section 6. "First Mortgagee" shall mean any person or entity named as the Mortgagee under any Mortgage or any successors or assigns to the interest of such persons or entity under such Mortgage.

Section 7. "Lot" or "Residential Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, whether construction of any improvement has been commenced or completed thereon or not.

Section 8. "Member" shall mean any person or entity holding membership in the Association as provided in Article III hereof.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the association.

Section 11. "Unit" shall mean an improved Lot upon which is constructed a building which is designed or intended for use as a single family residence, including garage.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot shall automatically upon becoming an Owner become a member of the Association and shall remain a member until such time as his ownership of a Lot ceases for any reason, at which time his membership shall automatically cease. Each Lot Owner, other than Declarant, shall, however, register his ownership by submitting to the Board of Directors a copy of a document creating his interest in the Lot within thirty (30) days after the date of purchase. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Ownership of a Unit shall be appurtenant to the Lot upon which it is located, and no right, title or interest in a Unit may be transferred or conveyed separately from such Lot. No person or entity other than an Owner or Declarant may be a member of the Association.

Section 2. Voting Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on December 31, 2008.

Section 3. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except as a part of and upon the transfer of the record title of a Unit and then only to the transferee thereof. Each Owner shall notify the Association with the desire of the majority of such Owners.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty

(30) days, or shall be in default in the performance of any of the other provisions of this Declaration for a period of thirty (30) days, such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until payments are brought current and all defaults remedied.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Personal Obligation. Each Owner shall be obligated to pay to the Association annual assessments in accordance with the rate of assessment established by the Association, which shall be payable in regular installments, for all common expenses of the Association. Common expenses are expenditures made or liabilities incurred on behalf of the Association, and shall include, but not be limited to, hazard and liability insurance and, to the extent approved, the Property trash removal, sewer and water charges (other than such charges as are made directly to individual Lot Owners), outside lighting, and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements which the Association may be obligated to maintain, repair and replace on a periodic basis. In addition, each Owner shall be obligated to pay special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments together with interest, costs and reasonable attorneys' fees, shall be a continuing lien against the Unit assessed from the date the first installment is due and payable. The annual assessments shall be due and payable in twelve equal monthly installments on the first day of each and every month commencing on the first day of January of each year. The special assessments shall be due and payable as determined by the Board of Directors. Each assessment, together with interest, costs and attorney's fees, shall also be the personal obligation of the Owner or Owners of each Lot on the date said assessment became due and payable, but the personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless prior to such transfer, a lien for such assessments shall have been filed in writing with the County Recorder for Scott County, Minnesota. No Owner shall avoid liability for the assessments which became due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot.

Section 2. Purpose of Assessments. The annual and special assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of the Property, and to insure, construct, manage, improve, maintain, repair and administer the Common Area and all utility installments therein.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Property, including fixtures and personal property related thereto, or any unforeseen expenditures resulting in a shortfall in the budgeted dues, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days prior to said meeting. The quorum required to take action under Section 3 and 4 shall constitute one-fifth of the votes of each class of membership. If, however, a quorum is not present at any meeting, then the quorum requirements for any subsequent meeting regarding action under Section 3 and 4 shall be as set forth in the By Laws.

Section 5. Declarant's Alternative Assessment. Notwithstanding anything to the contrary in this Article III, if a Common Expense assessment has been levied, any Unit owned by Declarant for initial sale shall not be assessed until a certificate of occupancy has been issued with respect to such Unit by the municipality in which the Unit is located. This reduced assessment shall apply to each Unit owned by Declarant at the time that the Unit is created, and shall continue until the issuance of the certificate of occupancy as previously described. There are no assurances that this alternative assessment program will have no effect on the level of services for items set forth in the Association's budget. In the event that the alternative assessment program is adopted, Declarant shall be responsible for any shortages in the association budget, such that all Association expenses are paid up to the time that the Association is turned over to the Owners. Declarant may perform some or all of the services required to be provided to the Association during said period of time.

Section 6. Effect of Nonpayment of Assessment; Remedies of Association. The annual assessments and Individual Lot Maintenance Assessments shall be fixed as provided in this Declaration. If any such assessment is not paid when due, it shall become delinquent and shall, together with interest at a rate of eight percent (8%) per annum, any cost of collection, and

any attorney's fees, become a continuing lien on the Lot and shall also be the personal obligation of the Owner of the Lot at the time the assessment is made. The lien may be enforced and foreclosed by action in the same manner in which mortgages may be foreclosed in Minnesota. Each Owner, by acceptance of a deed for any Lot, shall be deemed to give full and complete power of sale to the Association and to consent to a foreclosure of the lien by advertisement. The Association may elect to bring an action at law against the Owner personally obligated to pay the assessment.

Section 7. Subordination of Lien to First Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any first Mortgage, and the sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to any other proceeding or arrangement in lieu of such foreclosure, shall extinguish the lien of such assessments as to installments which became due prior to the effective date of such sale, transfer or acquisition by the Mortgagee to the end that no assessment liability shall accrue to an acquiring Mortgagee except with respect to installments of assessments becoming due after possession has passed to such acquiring Mortgagee, whether such possession has passed at the termination of any period of redemption or otherwise. In the event of the extinguishment of such assessment lien as aforesaid, the entire amount of such unpaid assessment shall be reallocated and assessed against the Owners of all other Lots exclusive of such mortgage Lot. No such sale, transfer or acquisition of possession shall relieve an owner or a Lot from liability for any assessments thereafter becoming due or from the lien thereof, or shall relieve the person personally obligated to pay the assessments which were levied prior to the transfer of such property from the personal obligation to pay the same.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

(a) All properties to the extent of any easement or other interest therein dedicated to and accepted by the local public authority and devoted to public use;

(b) All properties exempted from taxation by the laws of the State of Minnesota upon the terms and to the extent of such legal exemption; and

Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Maintenance of Portions of the Lots and Units.

The Association shall maintain those portions of the Lots and Units described herein in good, clean, attractive and sanitary condition, order and repair. The Association's responsibility for maintenance, repair and replacement shall include, (i) the snow plowing of any private roadways, (ii) the care, maintenance and replacement of the lawn and the landscaping approved with the Thomas A. Philipp Addition plat, or installed by the Association thereafter, but exclusive of any landscaping on individual lots, which shall be the responsibility of the Owner, (iii) the approval of any exterior architectural modifications, (iv) garbage collection services to the Owners, except where the Association has elected not to enter into a collective agreement for such services, (v) the care and maintenance of the Common Area installations including the tot lot and tennis court improvements, and (vi) snow clearing and regular maintenance of private driveways. In the event that the need for maintenance, repair or replacement is caused through the willful or negligent acts of an Owner, his family, guests or invitees, the cost of such maintenance or repair may be added to and become a part of the assessment to which such Unit is subject.

Section 2. Services. The Association may obtain and shall pay for the services of any persons or entities, to manage its affairs, or any part thereof, to the extent it deems advisable, including the legal and accounting services it deems necessary or desirable. Any agreement for professional management of the Property, or any other contract providing for services by Declarant or any entity owned or controlled by the Declarant, must provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one year, but may be renewable by agreement of the parties for successive one-year terms.

Section 3. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners, personal property, which shall be deemed a Property of the Association, and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot.

Section 4. Access. For the purpose solely of performing the repairs, replacements and maintenance authorized by this Declaration, the Association and any Owner of an adjoining Lot, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, except in an

emergency, to enter upon any Unit or Lot. In the event of an emergency or to perform emergency repairs under this Article, or of taking emergency action to seal a Unit from weather or otherwise to prevent damage or destruction to any Lot or Unit, the Association through its duly authorized agents or employees, shall have the right to enter upon any Lot or Unit at any time, without notice, with such men and material as the Association deems necessary, to accomplish such emergency repairs or to take such emergency action. The Association or Owner, as the case may be, shall repair any damage occasioned by its entry onto a Lot or into a Unit.

Section 5. Utilities. The Association shall pay as common expense all charges for water, sewer and other utilities used upon all Lots, except such charges as are made directly to individual Lot Owners.

Section 6. Insurance.

A. The Association shall maintain comprehensive Public Liability Insurance covering claims arising from the use, ownership and maintenance of the common areas of the Property, and legal liability arising out of lawsuits related to employment contracts of the Association. Such insurance shall contain a severability of interest endorsement and coverage limits of not less than One Million Dollars (\$1,000,000.00) per occurrence against claims for death, bodily injury and property damage and such other insurance coverage, other than title insurance, as the Board, in its sole discretion, or as FNMA, FHLMC or HUD, if applicable, may determine from time to time to be required or in the best interest of the Association and the Owners.

B. Each policy, to the extent appropriate and available, shall further provide:

1. All policies shall be written in the name of the Association for the use and benefit of the Owners and shall contain a standard mortgage clause or equivalent endorsement.

2. The insurer waives its right to subrogation under the policy against Owners, their respective occupants, tenants, guests, invitees, employees or agents, and against the Association and members of the Board of Directors.

3. If, at the time of the loss under the policy, there is other insurance in the name of any Owner covering the same property covered by the policy, the policy is primary insurance not contributing with other insurance.

4. No act or omission by an Owner or First Mortgagee, unless acting within the scope of his authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy.

5. The policy shall not be canceled or substantially modified without at least thirty(30) days prior written notice to all of the insureds.

C. An Owner shall obtain insurance for his own benefit. The Association shall have no responsibility for, and shall provide no insurance for loss or damage to individual units, personal property, furnishings, or fixtures of any kind and nature, belonging to Owners, occupants, tenants, guests or invitees, which may be installed, located or stored on or within the property, or for personal injury to Owners, occupants, tenants, guests or invitees on a Lot or within a Unit thereon. Any insurance obtained by an Owner for loss or damage to property or for personal injury shall provide that the insurer waives his right to subrogation as to any claims against other Owners, the Association, the Declarant, the Board of Directors and their respective employees, agents, guests, invitees and tenants.

Section 7. Insurance Premiums. Premiums for any insurance coverage purchased by the Association shall be common expenses to be paid by assessments levied by the Association.

ARTICLE V OWNERS' MAINTENANCE

Section 1. Upkeep and Maintenance. Except as provided for in Article IV, each Owner shall be responsible for the upkeep and maintenance of his Lot and Unit including, without limitation, the maintenance and repair of the exterior portion of the Unit, including all sidewalks, driveways, fences, decks, and patios, the repair or replacement of all glass and other fixtures and improvements therein or thereto and all other areas, features or parts of his Lot or Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of a Unit, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Units, Lots or Owners. An Owner shall perform all maintenance and repairs to his Unit, not otherwise reserved to the Association.

ARTICLE VI PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real estate subject to this Declaration is located in Scott County, Minnesota and is described on Exhibit A attached hereto.

Section 2. Additions. Additional residential property and common area may be annexed to the Property with the consent of 75% of the members, by an amendment to this Declaration.

ARTICLE VII
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. There shall be established an Architectural Control Committee (ACC) consisting of three persons. The members of the ACC shall be appointed as provided for in the Bylaws. After the termination of Declarant's right to appoint the ACC members, members shall be appointed and serve at the pleasure of the Board of Directors of the Association. Until such time as the Declarant has conveyed every lot to an individual Owner, Declarant shall have the right to appoint the members of the ACC.

Section 2. Original Construction. A site plan, landscaping plan and plans and specifications for the construction of a Living Unit on any Lot shall be submitted to the ACC for its written approval before any construction activity is begun.

Section 3. Review of Modifications. After the completion of an original Living Unit on a Lot, the construction or modification of any building or structure, including fences and mailboxes or the retaining walls or monuments constructed by the Declarant, or modification of exterior colors, shall require prior written approval by the ACC of the plans and specifications for the construction, in accordance with the standards set forth in Section 4 hereof.

Section 4. Standard of Review. The ACC may promulgate detailed standards and procedures governing its areas of responsibility and practice. In addition, the following shall apply: the plans and specifications shall be reviewed as to quality of workmanship, design and harmony of external design with existing structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of that Owner's residence or to paint or decorate the interior of that Owner's residence any color desired.

Section 5. Procedure. If the ACC fails to approve or disapprove plans and specifications within thirty (30) days after the submission of the same to it, approval will be deemed to have been denied. In the event of disapproval by the ACC, the

requesting Owner may give written notice that the Owner wishes to appeal the ACC decision and request a hearing by the Association's Board of Directors. Such notice must be furnished to the ACC within ten (10) days of its decision. The hearing shall be at a special meeting of the Board of Directors to be held within thirty (30) days of the receipt of the Owner's notice of appeal.

Section 6. Removal and Abatement. The ACC or the Association shall have the right to order an Owner to remove or alter any structure on any Lot erected in violation of the terms of this Declaration, and to employ appropriate judicial proceedings to compel the alteration or demolition of any nonconforming construction or other violation. Any cost incurred by the ACC in enforcing this section shall be levied as an individual Lot Maintenance Assessment as provided in Article III.

Section 7. Variances. Reasonable variances to the covenants, conditions and restrictions may be granted by the ACC after review, in order to overcome practical difficulties to prevent unnecessary hardship. A variance may only be granted if it is not detrimental to other property and shall not defeat the purpose of this Declaration.

ARTICLE VIII

GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS OF OWNERS

Section 1. Unit and Lot Owners. No more than one Unit shall be erected or maintained on each Lot. No Unit shall be used for purposes other than as a single family residence, or for purposes contrary to municipal ordinances, state or federal laws now or hereafter existing. No trade or business of any kind shall be carried on within a Unit or upon a Lot, without approval of the Board of Directors.

Section 2. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or any part thereof which (i) would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association 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 exterior of the Property and buildings shall be committed by any Owner or his guests, invitees, tenants, agents or employees or any invitee of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from such damage or waste caused by him or his guests, invitees, tenants, agents or employees, to the Association, or other Owners. No noxious, destructive or

offensive substance or activity shall be allowed on any Lots or any part thereof, nor shall anything be done thereon which constitutes a nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 3. Fences. No Owner shall install, relocate, heighten, lower or otherwise move or change any fence upon the Property except as provided in Article V of this Declaration.

Section 4. No Unsightly Uses. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any Lot so as to be visible from the street.

Section 5. Animals. No animals of any kind shall be raised, bred or kept in Units or on any Lot or any part thereof, except that household pets of a mature size may be kept in Units or on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes.

Section 6. Prohibited Structures. No structure of a temporary character, trailer, boat, camper, bus, tent, or shack, nor any shed, outbuilding, pole barn, or other detached structure shall be maintained on any Lot so as to be visible from outside such Lot without the approval of the Association.

Section 7. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view outside the Lot by enclosures or fencing.

Section 8. Signs. No sign of any kind (other than designations, in such styles and materials as the Association shall by regulations approve, of street addresses and names of occupants) shall be displayed to the public view on any Lot unless prior approval is granted in writing by the Board of Directors, provided, however, that this provision shall not limit the Declarant's rights as otherwise stated herein.

Section 9. Rentals. An Owner may lease his Unit subject to the following: (i) all leases shall provide that the terms of this lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Association and that any failure by the lessee to comply therewith shall be a default under the lease, (ii) all leases shall be in writing, (iii) no Unit may be leased for a period of less than ninety (90) days, and (iv) no lease shall be for less than an entire Unit.

Section 10. Rules and Regulations. The Board shall adopt such rules and regulations from time to time governing the use and enjoyment of the Property as the Board in its sole discretion deems appropriate or necessary.

Section 11. Fertilizers, Trees. No Owner shall make application of fertilizer to any portions of any Lot without the written permission of the Association. No fertilizers shall be used by any person or persons that shall contain phosphorus. No trees shall be removed except with Association approval. Owners shall give the Association notice of any dead or diseased trees on their Lot as soon as practical after the discovery of such fact.

Section 12. Easements. Each Owner grants to the Association a perpetual easement over and across that portion of their Unit as is necessary for the Association to meet its maintenance and repair obligations herein. In particular, and without limitation, portions of the private driveways extend into the platted Lots and are the subject of the easements granted. Several Units have shared driveways with a contiguous Unit. Each Unit Owner grants an easement to the contiguous Unit Owner of a shared driveway over and across any portion of the shared driveway that extends into the platted Lot that is reasonably necessary for ingress and egress to the garage of the benefiting Unit. No right to park within the easement area is granted herein.

ARTICLE IX ADMINISTRATION

Section 1. Discontinuance of Professional Management. When professional management has been previously required by an Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Insurer or Guarantor or Mortgage Holder at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Lots to which at least sixty-seven (67%) percent of the votes in the Association are allocated and the approval of Eligible Holders holding Mortgages on Lots which have at least fifty-one (51%) percent of the votes of Lots subject to Eligible Holder Mortgages.

Section 2. Termination and Reallocation. An election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must have the written approval of the Eligible Holders holding mortgages on Units which have at least fifty-one (51%) percent of the votes of the Lots subject to Eligible Holder Mortgages. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of

the project may be effected without the prior written approval of Eligible Mortgage Holders holding Mortgages on all remaining Lots whether existing in whole or in part, and which have at least fifty-one (51%) percent of the votes of such remaining Units subject to Eligible Holder Mortgages.

Section 3. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

Section 4. Certain Amendments. In addition to other requirements set forth herein, unless at least sixty-seven (67%) percent (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 sixty-seven (67%) percent (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor, developer, or builder including the Declarant) of the Units (based upon one vote for each Lot) have given their prior written approval neither the Association nor the Owners shall be entitled to:

A. Terminate the legal status of the project (except in accordance with the procedures set forth in these Declaration and Bylaws for the amendment or termination made as a result of destruction, damage or condemnation);

B. Add or amend any material provisions of the constituent documents of the project which establish, provide for, govern or regulate any of the following:

1. Voting;
2. Assessments, assessment liens or subordination of such liens;
3. Reserves for maintenance, repair and replacement;
4. Insurance or Fidelity Bonds;
5. Rights to use of the Property;
6. Responsibility for maintenance and repair of the several portions of the project;
7. Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;

8. Boundaries of any Lot;
9. Leasing of Lots, Units;
10. Imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer, or otherwise convey his or her Lot or Unit;
11. Any provisions which are for the express benefit of Mortgage Holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of first mortgages on Lots except in accordance with procedures set forth in these Declaration and Bylaws in the event of amendment or termination made as a result of destruction, damage or condemnation.

C. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units, the exterior maintenance of Units, party walks or common fences and driveways, or the upkeep of lawns and plantings.

For purposes of this section, an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or send to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 5. Payment of Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default.

Section 6. Distribution of Insurance Proceeds and Condemnation Awards. No provision of the Declaration or Bylaws shall be construed as giving to the Owner or to any other party priority over any rights of First Mortgagees of Lots and Units pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses.

Section 7. Designation of Representative. Any Holder of a first mortgage on a Unit may designate a representative to attend meetings of Members.

ARTICLE X
SPECIAL PROVISIONS

Section 1. Deed Restrictions. A Declaration of Covenants and Restrictions has been placed on Lots 9, 10, and 16, Block 1; Lot 20, Block 2; Lots 8 and 9, Block 4; and Lots 1, 2, 12, and 13, Block 5. The restrictions run in the favor of the City of Shakopee, providing restrictions more specifically set forth in the Declaration, but generally restricting fences or structures within dedicated utility and drainage easements.

Section 2. Noise Mitigation. Pursuant to City of Shakopee Resolution No. 5961, the Association is responsible for any noise mitigation that it deems necessary as that relates to 17th Avenue and its existence through the subdivision.

Section 3. Easement of Use. The Association has or will grant an Easement of Use to the Southern Meadows' Homeowners Association for the use of the trails, tot lot and tennis court within the Common Area. In turn, Thomas A. Philipp Homeowners' Association will be granted an Easement of Use for Trail and Common Area amenities within the Southern Meadows Addition. Neither association is responsible for any cost or maintenance of the facilities contained within the other association.

ARTICLE XI
GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and Bylaws of the Association may be by a proceeding at law or in equity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the Property, to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the Court shall be assessable against and payable by any persons violating the terms contained herein.

Section 2. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and Bylaws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by

operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Property, except as hereinafter provided.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Notices. Any notice or other writing required to be given hereunder to any Member or the Association under the provision of this Declaration shall be deemed to have been properly given if personally delivered or mailed, postage prepaid, as to Members, to the last known address of such Member appearing on the records of the Association at the time of such mailing, and as to the Association, to the office of the Association at:

Thomas A. Philipp Addition Homeowners' Association
c/o M.W. Johnson Construction, Inc.
17645 Juniper Path
Lakeville, MN 55044

or to such other address as any Member notifies the Association or other members, as appropriate, in accordance herewith.

Section 5. Captions. The Articles and Section headings are intended for convenience only and shall not be given any substantive effect.

Section 6. Construction. In the event of an apparent conflict between this Declaration and the Bylaws, the provisions of this Declaration shall govern.

Section 7. FHA or VA Approval. As long as Declarant is in control of the Association, and Declarant has elected FHA and VA financing approvals, the prior approval of the VA or FHA will be required for (i) annexation of additional properties, (ii) dedication of any portion of the Common Area or (iii) Amendment of the Declaration.

Section 8. Miscellaneous. The singular shall be deemed to include the plural wherever appropriate, and the masculine shall be deemed to include the feminine and neuter genders where appropriate.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this ____ day of _____.

M. W. JOHNSON CONSTRUCTION, INC.,
a Minnesota corporation

By _____
M. William Johnson
Its President

STATE OF MINNESOTA)
)ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 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.
10657 165th St W
Lakeville MN 55044
(952) 432-8129
Attorney ID No. 45639

EXHIBIT A

Lots 1-17, Block 1;

Lots 1-21, Block 2;

Lots 1-12, Block 3;

Lots 1-12, Block 4;

Lots 1-14, Block 5;

Lots 1-5, Block 6;

Thomas A. Philipp Addition, Scott County, Minnesota

and

Outlot B, Southern Meadows, Scott County, Minnesota

EXHIBIT B

Lot 17, Block 1;

Lot 21, Block 2;

Lot 12, Block 3;

Lot 12, Block 4;

Lot 14, Block 5;

Lot 5, Block 6;

Thomas A. Philipp Addition, Scott County, Minnesota

and Outlot B, Southern Meadows, Scott County, Minnesota