

LEMAR ESTATES COMMON INTEREST COMMUNITY NUMBER 865

DECLARATION

TABLE OF CONTENTS

SECTION 1	DEFINITIONS	3
SECTION 2	DESCRIPTION OF UNITS AND APPURTENANCES	5
SECTION 3	COMMON ELEMENTS AND LIMITED COMMON ELEMENTS	6
SECTION 4	ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS	7
SECTION 5	ADMINISTRATION	9
SECTION 6	ASSESSMENTS FOR COMMON EXPENSES	10
SECTION 7	RESTRICTIONS ON USE OF PROPERTY	14
SECTION 8	ARCHITECTURAL CONTROL	16
SECTION 9	MAINTENANCE	18
SECTION 10	PARTY WALLS	19
SECTION 11	INSURANCE	20
SECTION 12	RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN ..	23
SECTION 13	EASEMENTS	23
SECTION 14	LITTER CONTROL	24
SECTION 15	COMPLIANCE AND REMEDIES	24
SECTION 16	RIGHTS GRANTED TO THE CITY OF ROGERS	27
SECTION 17	SPECIAL DECLARANT RIGHTS	28
SECTION 18	RIGHTS TO ADD ADDITIONAL REAL ESTATE	29
SECTION 19	AMENDMENTS	32
SECTION 20	RIGHTS OF ELIGIBLE MORTGAGEES	32
SECTION 21	MISCELLANEOUS	34

COMMON INTEREST COMMUNITY NUMBER 865

LEMAR ESTATES

DECLARATION

This Declaration is made in the County of Hennepin, State of Minnesota, on this 15th day of May, 1998, by LEMAR ESTATES, LLC, a Minnesota limited liability company (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Act (the "Act"), for the purpose of creating LeMar Estates, a planned community.

WHEREAS, Declarant is the owner of certain real property located in Hennepin County, Minnesota, 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, 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;

THEREFORE, Declarant makes the Declaration and submits the Property to the Act to establish a Common Interest Community ("CIC") LEMAR ESTATES, Common Interest Community Number 865, in Hennepin County, Minnesota, as a planned community (and not a condominium or cooperative), 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 or assigns. The plat of LeMar Estates, CIC Number 865, Hennepin County, Minnesota, was recorded with the County Recorder for Hennepin County, Minnesota, pursuant to Minnesota Statutes Chapter 505.

SECTION 1: DEFINITIONS

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

- 1.1 “Additional Real Estate” shall mean the real property legally described on Exhibit C, including all improvements located thereon, now or in the future, and all easements and rights appurtenant thereto which property Declarant has the right to add to the Common Interest Community.
- 1.2 “Association” shall mean the LeMar Estates Townhome Association, Inc., a non-profit corporation that has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, whose members consist of all Owners as defined herein.
- 1.3 “Board” shall mean the Board of Directors of the Association as provided in the Bylaws.
- 1.4 “Bylaws” shall mean Bylaws governing the operation of the Association, as amended from time to time.
- 1.5 “Common Elements” shall mean all parts of the Property except the Units, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants.
- 1.6 “Common Expenses” shall mean and include all expenditures made, or liabilities incurred, by or on behalf of the Association and incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration or Bylaws.
- 1.7 “Declaration” shall mean any instrument, however denominated, including any amendment to the instrument that creates a common interest community.
- 1.8 “Dispose” or “Disposition” shall mean a voluntary transfer to a purchaser of any legal or equitable interest in the common interest community, but the term does not include the transfer or release of a security interest.
- 1.9 “Dwelling” shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single-family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise within the boundaries of the Unit in which the Dwelling is located.
- 1.10 “Eligible Mortgagee” shall mean any Person owning a mortgage on any Unit, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit, and which has requested the Association, in writing, to notify it regarding any

proposed action which requires approval by a specified percentage of Eligible Mortgagees.

- 1.11 “Governing Documents” shall mean this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.12 “Member” shall mean all Persons who are Members of the Association by virtue of being Owners as defined in this Declaration. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.
- 1.13 “Occupant” shall mean any Person or Persons, other than an Owner, in possession of, or residing in, a Unit.
- 1.14 “Owner” shall mean any Person who owns a Unit, but excluding contract for deed vendors, mortgagees and other secured parties within the meaning of Section 515B.1-103(29) of the Act. The term “Owner” includes, without limitation, contract for deed vendees and holders of a life estate.
- 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 515B.2-110(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- 1.18 “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.
- 1.19 “Rules and Regulations” shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.
- 1.20 “Special Declarant Rights” shall mean rights reserved in the Declaration for the benefit of a Declarant to: (i) complete improvements indicated on the CIC Plat; (ii) add additional real estate to a common interest community; (iii) subdivide or convert Units to common elements, limited common elements, and/or units; (iv) maintain sales offices, management offices, signs advertising the common interest community, and models; (v) use easements through the Common Elements for the purpose of making improvements within the common interest community or any additional real estate; (vi) create a master association

and provide for the exercise of authority by the master association over the common interest community or its Owners; (vii) merge or consolidate a common interest community of the same form of ownership; or (vii) appoint or remove any officer or director of the Association, or the master association where applicable, during any period of Declarant control.

- 1.21 “Unit” shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements.

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

SECTION 2: DESCRIPTIONS OF UNITS AND APPURTENANCES

- 2.1 Units. There are 36 Units, all of which are restricted exclusively to residential use. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act, except by the Declarant as provided in Section 17.2 and Section 18.2. The Unit identifiers and locations of Units are as shown on the Plat. The Unit identifier for the 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 part of the Unit.
- 2.3 Access Easements. Each Unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across the Common Elements as shown on the Plat, and as provided in the *Declaration Covenants, Conditions, and Restrictions and Maintenance Assessment for a Private Road*, subject to any restrictions set forth in the Declaration.
- 2.4 Use and Enjoyment Easements. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements, and for use and enjoyment of any Limited Common Elements allocated to the Unit, subject to any restrictions authorized by the Declaration.
- 2.5 Utility and Maintenance Easements. Each Unit shall be subject to, and be the beneficiary of, appurtenant easements for all services and utilities servicing the Units and the Common Elements, and for maintenance, repair and replacement as described in Section 13.

- 2.6 Encroachment Easements. Each Unit shall be subject to, and be the beneficiary of, the appurtenant easements for encroachment as described in Section 13.
- 2.7 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities described in Section 17.3
- 2.8 Recorded Easements. The Property shall be subject to such other easements as may be recorded against it or otherwise shown on the Plat.
- 2.9 Easements are Appurtenant. All easements and similar rights burdening or 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.
- 2.10 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. All of the Property not included within the Units constitutes Common Elements. The Common Elements include those parts of the Property that are designated as Common Elements on the Plat or in the Act. The Common Elements are owned by the Association for the benefit of Owners and Occupants.
 - b. The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, use, and enjoyment in favor of each Unit and its Owners and Occupants; subject to (i) the right 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.
 - d. Common Expenses for the maintenance, repair, replacement management, and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 6.

- 3.2 Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated, and the rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Units. The Limited Common Elements are described and allocated to the Units as follows:
- a. Chutes, flues, ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components or fixtures lying partially with and partially outside the boundaries of a Unit, and serving only that Unit, are allocated to the Unit they serve. Any portions of such installations serving or affecting the function of more than one Unit or any portion of the Common Elements is a part of the Common Elements but is not a Limited Common Element.
 - b. Improvements such as decks, patios, balconies, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors and windows, constructed as part of the original construction to serve a single Unit, and authorized replacements and modifications thereof, if located outside the Unit's boundaries, are Limited Common Elements exclusively to that Unit.

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 membership terminates. When more than one Person is an Owner of the Unit, all such Persons shall be Members of the Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Unit nor authorize the division of the voting rights.
- 4.2 Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Units; except that special allocations of Common Expenses shall be permitted as provided in Section 6.1.
- 4.3 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interests, and the title to the Units, shall not be separated or conveyed separately. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents and the Act.

- 4.4 Authority to Vote. The Owner, or some natural person 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 Bylaws may cast such vote. The voting right of Owners are more fully described in Section 3 of the Bylaws.
- 4.5 Declarant Control. Notwithstanding the vote of any Unit Owner to the contrary, the Declarant hereby reserves a period of Declarant control of the Association during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and directors of the Association. Said reservation of Declarant control is subject to the following:
- a. The maximum period of Declarant control may extend from the date of the of the first conveyance of a Unit to a Unit Owner other than a Declarant for a period not to exceed five (5) years.
 - b. Notwithstanding subsection a. above, the period of Declarant control shall terminate upon the earlier of (i) surrender of control by the Declarant or (ii) sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant.
 - c. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than Declarant or an affiliate of Declarant, a meeting of the Unit Owners shall be held at which not less than thirty-three and one-third percent (33 1/3%) of the members of the Board shall be elected by Unit Owners other than Declarant or an affiliate of Declarant.
 - d. Not later than the termination of Declarant control, the Unit Owners shall elect a Board of Directors of at least three members. Thereafter, the majority of the directors shall be Unit Owners other than Declarant or an affiliate of Declarant. The remaining directors need not be Unit Owners unless required by the Articles of Incorporation or Bylaws. All Unit Owners, including the Declarant and its affiliates, may cast the votes to any Unit owned by them. The Board shall elect the officers. The directors and officers shall take office upon election.
 - e. In determining whether the period of Declarant control has terminated under subsection b., or whether Unit Owners other than a Declarant are entitled to elect members of the Board of Directors under subsection c., the percentage of the Units shall be calculated based upon the assumption that all Units which the Declarant has built or reserved the right to build in the Declaration are included in the CIC.
 - f. Except as otherwise provided in this subsection, meetings of the Board of Directors must be open to all Unit Owners. To the extent practicable, the Board shall give reasonable notice to the Unit Owners of the date, time and place of the Board

meeting. If the date, time and place of the meeting provided for in this Declaration, the Articles of Incorporation, or Bylaws of the Association, were announced at the previous meeting of the Board, posted in a location accessible to the Unit Owners, and designated by the Board from time to time, or if any emergency requires immediate consideration of a matter by the Board, notice is not required. "Notice" has the meaning given in Minnesota Statutes 317A.011, subdivision 14. Meetings may be closed to discuss the following:

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

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

SECTION 5: ADMINISTRATION

The administration and operation of the Association and the Property, including but not limited to the acts 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, personal representatives, successors and assigns, and all secured parties as defined in the Act.
- 5.4 Bylaws. The Association shall have Bylaws. The Bylaws and any amendments thereto shall govern the operation and administration of the Association.
- 5.5 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act; provided, however, that such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and by law.
- 5.6 Rules and Regulations. The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating 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 personal property acquired by the Association shall be held and used for the benefit of the Owners for purposes stated in the Governing Documents. Surplus funds remaining after payment of, or provision for, Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

SECTION 6: ASSESSMENTS FOR COMMON EXPENSES

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

- a. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element undertaken by the Association may be assessed exclusively against the Unit or Units to which that Common Element is assigned, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- b. Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- c. The costs of insurance may be assessed in proportion to value, risk or coverage, and the costs of utilities may be assessed in proportion to usage.
- d. Reasonable attorneys' fees and other costs incurred by the Association in connection with (i) the collection of assessments, and (ii) the enforcement of the Governing Documents, the Act, or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.
- e. Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of the Act.
- f. Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.
- g. If any damage to the Common Elements or another Unit is caused by the act or omission of any Owner or Occupant or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
- h. If any installment of an assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full.
- i. If Common Expense liabilities are reallocated for any purpose authorized by the Act, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.
- j. Assessments under Subsections 6.1a-h shall not be considered special assessments as described in Section 6.3.

6.2 Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Sections 6.2 and 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 sufficient to cover the periodic cost of maintenance, repair and replacement of the Common Elements and those parts of the Units for which the Association is responsible.

- a. Until a Common Expense assessment is levied, Declarant shall pay all accrued expenses of the Common Interest Community.
 - b. Until January 1 of the year immediately following the year of conveyance of the first Unit to an Owner, the maximum annual assessment permitted with respect to each Unit shall be \$1,068.00 per year or, if collected monthly, \$89.00 per month. From and after January 1 of that year, assessments shall be determined by the Board. After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board, subject to Section 6.2d.
 - c. Until the termination of the period of Declarant control described in Section 12, 6.4, the increase in the annual assessment for any year shall not exceed the greater of (i) the increase in the U.S. Department of Labor Revised Consumer Price Index for Urban Wage Earners and Clerical Workers for All Items for the prior year; or (ii) Five percent (5%) of the total annual assessment for the Association's previous fiscal year, unless such increase is approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than twenty-one (21) days or more than thirty (30) days in advance of the meeting.
 - d. The annual assessment for any year shall not exceed the greater of (i) the increase in the U.S. Department of Labor Revised Consumer Price Index for Urban Wage Earners and Clerical Workers for All Items for the prior year; or (ii) five percent (5%) of the total annual assessment for the Association's previous fiscal year, unless such increase is approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written notice of the meeting shall be sent to all Owners not less than twenty-one (21) days or more than thirty (30) days in advance of the meeting.
- 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 a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose. Written

notice of the meeting shall be sent to all Owners not less than twenty-one (21) days or more than thirty (30) days in advance of the meeting.

- 6.4 Working Capital Fund. Declarant shall establish a working capital fund to meet unforeseen expenditures or to purchase additional equipment or services during the period when Declarant is conducting its sales activities. There shall be contributed on a one-time basis for each Unit sold by the Declarant an amount equal to two (2) months installments of the estimated Common Expense assessment for the Unit being conveyed. The contribution to the working capital fund may be paid either at the time of closing of sale of the Unit or when control of the Association is transferred to the Owners upon termination of the period of Declarant control. The amounts paid into this fund are in addition to the regular monthly installments of assessments. The funds shall be deposited into the Association's account, and Declarant may not use the funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficit while Declarant is in control of the Association. However, upon closing of an unsold Unit, Declarant may reimburse itself from funds collected at the closing for funds which it contributed to the working capital fund with respect to that Unit.
- 6.5 Liability of Owners for Assessments. The obligation of an Owner to pay assessments shall commence at the later of (i) the recording of the Declaration or the 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 6.6. 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 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 15, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.
- 6.6 Declarant's Alternative Assessment Program. Notwithstanding anything to the contrary in this Section 6, if a Common Expense assessment has been levied, any Unit owned by Declarant for initial sale shall be assessed at the rate of twenty-five percent (25%) of the assessment levied on other Units of the same type until a certificate of occupancy has been issued with respect to such Unit by the municipality in which the Unit is located. This reduced assessment shall apply to each Unit owned by Declarant at the time 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.

- 6.7 Assessment Lien. The Association has a lien on a Unit for any assessment levied against that Unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines, and interest charges imposed by the Association pursuant to Section 515B.3-102(a),(10), (11) and (12) of the Act are liens, and are enforceable as assessments, under this Section. Recording of the 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.
- 6.8 Foreclosure of Lien; Remedies. A lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action or (ii) by advertisement as a lien under a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other Person claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any assessment or charge against the Unit.
- 6.9 Lien Priority; Foreclosure. A lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage on the Unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if a first mortgage on a Unit is foreclosed, the first mortgage was recorded on or after June 1, 1994, and no Owner redeems during the Owner's period of redemption provided by chapters 580, 581 or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-15(a), (h) (1) to (3), (i) and (l) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.
- 6.10 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Unit the buyer shall not be personally liable for any unpaid assessments and other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such assessments shall remain against the Unit until satisfied. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid assessments against the Unit, including all assessments payable in the Association's current fiscal year, which statements shall be binding on the Association, seller, and buyer.

SECTION 7: RESTRICTIONS ON USE OF PROPERTY

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

- 7.1 General. The Property shall be owned, conveyed, encumbered, 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 or any part of the Common Elements may be subdivided or partitioned without the prior written approval from all Owners and all secured parties holding first mortgages on the Units.
- 7.3 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential dwellings, and not for rental, transient, hotel, commercial, business, or other non-residential purposes. The number of occupants per Dwelling shall be restricted to the maximum permitted by applicable law or ordinance.
- 7.4 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted in any Unit or the Common Elements, except (i) an Owner or Occupant residing in a Unit may keep and maintain his or her business or professional records in such Unit and handle matters relating to such business by telephone or correspondence therefrom, provided that such uses are incidental to the residential use, do not involve any observable activity such as signs, advertising displays, bulk mailings, deliveries, or visitation or use of the Unit by customers or employees, and (ii) the Association may maintain offices on the Property for management and related purposes.
- 7.5 Leasing. Leasing of Units is prohibited.
- 7.6 Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. The use of garages, driveways, and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including, without limitation, the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property.
- 7.7 Animals. No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. However, the Board shall have the exclusive authority to prohibit, or to allow and regulate, by Rules and Regulations, the keeping of

animals on the Property. The word “animal” shall be construed in its broadest sense and shall include all living creatures except humans.

- 7.8 Restrictions on Use of Ponding Areas. The Association shall have the right to control and restrict the utilization of ponding areas by Owners, their families, guests and invitees, and shall be entitled to enact and enforce rules and regulations in connection therewith.
- 7.9 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Units, and shall use the Property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the Property by other Owners and Occupants and their guests.
- 7.10 Compliance with Law. No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, or otherwise cause any material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owner or Occupant.
- 7.11 Alterations. Except for those made by Declarant in consideration of its initial sale of a Unit, no alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise, (collectively referred to as “alterations”), shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests, in any part of the Common Elements or which is visible from the exterior of the Unit, without 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 the authority to establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied.
- 7.12 Time Shares Prohibited. The time share form of ownership, or any comparable form of lease, occupancy rights or ownership which has the effect of dividing the ownership of a Unit into separate time periods, is prohibited.
- 7.13 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 16.

SECTION 8: ARCHITECTURAL CONTROL

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

- a. Except as expressly provided in this Section 8, and except for alterations made by Declarant in consideration of its initial sale of a Unit, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical landscaping change, nor any other exterior improvements to, or alteration of, any Dwelling or any part of a Unit which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected or maintained in a Unit unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board of Directors or a committee appointed by it. Notwithstanding the foregoing, Declarant's written consent shall also be required for alterations until Declarant no longer owns any unsold Unit and has no further right to add Additional Real Estate to the Property.
- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to existing improvements and topography, (ii) comparable or better quality of materials as used in existing improvements, (iii) ease of maintenance and repair, (iv) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations, and (v) compliance with governmental laws, codes, and regulations.
- c. Approval of alterations which encroach upon another Unit or 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 of Directors and a file of such resolutions shall be maintained permanently as part of the Association's records.
- d. Alterations described in Section 18 shall be governed by that Section.

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

- a. Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board of Directors, then approval will not be required, and this

Section will have been deemed to have fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted.

- c. If no request for approval is submitted, approval is denied, unless (i) the alterations are reasonably visible and (ii) no written notice of the violation has been given to the Owner in whose Unit the alterations are made, by the Association or another Owner, within six (6) months following the date of completion of the alterations. Notice may be direct written notice or commencement of legal action by the Association or an Owner. The Owner of the Unit in which the alterations were made shall have the burden of proof, by clear and convincing evidence, that the alterations were completed and reasonably visible for at least six (6) months following completion, and that the notice was not given.

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

SECTION 9: MAINTENANCE

- 9.1 Maintenance by Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall (i) provide for the exterior maintenance upon the Dwelling in each Unit that is subject to assessment as follows: paint and replace roofs, garage doors (except hardware), and exterior siding and other building surfaces, and (ii) provide for lawn, shrub and tree maintenance on all Units, except for watering; (iii) provide for snow removal from driveways and parking areas for all Units. The Association's obligation to maintain exterior building surfaces shall exclude patios, entry doors, door hardware, roof gutters and downspouts, air conditioning equipment, glass and window frames, and any other items not specifically referred to in this Section, unless otherwise approved under Section 9.3. The Association shall have easements as described in Section 13 to perform its obligations under this Section 9.
- 9.2 Maintenance of Ponding Areas. The Association shall maintain any ponding areas upon the Property as located and shown on the final development plans and the on file with the City of Rogers. The cost of such maintenance shall be assessed pro-rata against all Units of the Property in accordance with Section 6 of this Declaration.

- 9.3 Optional Maintenance by Association. In addition to the maintenance described in this Section, the Association may, with the approval of a majority of votes cast in person or by proxy at a meeting called for such purposes, undertake to provide additional exterior maintenance to the Units or Dwellings, or maintenance of water and sewer systems within the Units.
- 9.4 Maintenance by Owner. Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.3, all maintenance of the Dwellings and Units shall be the sole responsibility 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 maintenance that the responsible Owner fails to or improperly performs, and assess the Unit and the Owner for the cost thereof.
- 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 and 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.
- 9.6 Maintenance of Sewer and Water. The Association shall maintain all storm sewer and water mains within the boundary of the plat, and all sanitary sewer within the boundary of the plat and adjacent to County Road #81 where it connects with the City of Rogers 10" sanitary sewer line. The maintenance shall include all manholes, catch basins, valves, hydrants, aprons, riprap or other items integral to the use of these utilities. The Association may contract for maintenance of these items with the City of Rogers or other maintenance company(s) as they deem appropriate.

SECTION 10: PARTY WALLS

- 10.1 General Rules of Laws 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 due to the acts or omissions of a certain Owner or Occupant sharing such party wall shall be paid for by such Owner, and (ii) that the Association may contract for and supervise the repair of damage caused by an Owner or Occupant and assess the Owners for their respective shares of the cost to the extent not covered by insurance.
- 10.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has use of the wall may, with the consent of the Association, restore it, and the other Owner shall promptly reimburse the Owner who restored the wall for his or her share of the cost of restoration thereof; provided, however, that the cost of restoration resulting from destruction or other casualty resulting from the acts or omissions of certain Owners shall be the financial responsibility of such Owners, and the Association may assess the responsible Owners for their share of the costs, without prejudice of 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 the attorney fees or other costs to prove its case.

SECTION 11: INSURANCE

- 11.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy of insurance in accordance with the insurance requirements as set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:
- a. Property insurance in broad form covering physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property, less deductibles, exclusive of land, footings, excavation and other items normally

excluded from coverage (but including all building service equipment and machinery). The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and Agreed Amount endorsements, if reasonably available. Such policy or policies shall include such additional endorsements with respect to the foregoing and other hazards as may be required from time to time by the regulations of the FHA or Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA or FNMA, obligating the Association to keep certain specified coverages or endorsements in effect.

- b. Comprehensive public liability coverage covering the use, operation, and maintenance of the Common Elements, with a minimum of \$1,000,000 per occurrence, against claims of death, bodily injury and property damage, and such other risks as are customarily covered by such policies or projects similar in construction, location and use of the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverages and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing, or financing a mortgage on a Unit.
- c. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or persons responsible for handling funds belonging to or administered by the Association, if deemed to be advisable by the Board or required by the regulations of the FHA or FNMA as a precondition to the purchase or financing of a mortgage on a Unit. The fidelity bond shall name the Association as the named insured and shall, if required by the regulations of the FHA or FNMA, as a precondition to their insuring, purchasing or financing on a mortgage on a Unit, be written in the amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force, or (ii) a sum equal to three months aggregate assessments on all Units plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.
- d. Workers' Compensation insurance as required by law.
- e. Directors' and officers' liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.

- f. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.
- 11.2 Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as a Common Expense. The insurance need not cover improvements and betterments to the Units installed by Owners, but if improvements and betterments are covered, any increased cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly.
- 11.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, including Eligible Mortgagees, which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association.
- 11.4 Waivers of Subrogation. All policies of insurance shall contain waivers of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured.
- 11.5 Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be cancelled or substantially modified, for any reason, without at least thirty (30) days prior written notice to the Association, to the FHA or FNMA (if applicable), all of the insureds and all Eligible Mortgagees.
- 11.6 Restoration in Lieu of Cash Settlement. All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable (i) without the written approve of the Association (or any Insurance Trustee), or (ii) when in conflict with any provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.
- 11.7 No Contribution. All polices of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners or their Eligible Mortgagees.

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

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

SECTION 12: RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

- 12.1 Reconstruction. The obligations and procedures for repair, reconstruction or disposition of the Property, following damage to or destruction thereof, shall be governed by the Act. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved upon. Notice of substantial damage or destruction shall be given pursuant to Section 20.10.

- 12.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provision of the Act shall govern; provided that notice shall be given pursuant to Section 20.10. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and Governing Documents, as their interests may appear.

- 12.3 Notice. All Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property, and the Association shall give written notice thereof to an Eligible Mortgagee pursuant to Section 20.10.

SECTION 13: EASEMENTS

- 13.1 Easement for Encroachments. Each Unit and the Common Elements, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, 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 of 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 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 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 other Units for all such services, including without limitation any sewer or water lines serving other Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utilities companies providing service to 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 Common Elements for purposes of maintenance, repair, replacement and reconstruction.
- 13.5 Structural Encroachments. Except as otherwise specifically provided in this Section 13, no structural encroachments shall be allowed within easements.

SECTION 14: LITTER CONTROL

Two cleanups of litter and other unnatural material from the Common Elements and yard areas shall be conducted each year, once subsequent to the last snow melt in the spring and prior to May 15, and once between September 15 and November 1 in the fall. In addition, any fences, berms, plantings and improvements on the Common Elements and yard areas shall be kept in good repair and condition, including painting of fences, if required, and proper watering and maintenance of plantings.

SECTION 15: COMPLIANCE AND REMEDIES

Each Owner and Occupant, and any other Person owning or acquiring an 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 relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

- 15.1 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 assessment payable to the Association or take (or omit) other action in violation of the Governing Documents, the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.
- 15.2 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 of the following actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents, the Rules and Regulations or the Act:
- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
 - b. Impose late charges of up to fifteen percent (15%) for each late payment of assessment or installment thereof.
 - c. In the event of a default of more than thirty (30) days in the payment of any assessment or installment thereof, all remaining installments 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 such 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 Elements 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 thirty (30) days thereafter, for each violation.

- f. Restore any portions of the Common Elements or Limited Common Elements damaged or altered, or allowing 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 and safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Dwelling or other part of 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.

15.3 Rights to Hearing. In the case of imposition on any of the remedies authorized by Section 15.2,d,e,or f of this Section, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (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 ten (10) days prior written notice to the offender. If the offending Owner fails to appear at the hearing, then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of 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.

15.4 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 in 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.

- 15.5 Costs of Proceeding and Attorneys' Fees. With respect to any collection measures, or any measure or action, legal, administrative or otherwise, which the Association takes to enforce the provisions of the Act, 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.
- 15.6 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 deductible amount and/or increase in insurance rate resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.
- 15.7 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 16: RIGHTS GRANTED TO THE CITY OF ROGERS

- 16.1 Purpose. The City of Rogers has executed various agreements with, and secured certain covenants from, the Declarant and has a continuing interest in the performance of those agreements and covenants. Further, the City of Rogers is concerned that conditions requested by the City of Rogers are complied with and that the Property is developed and maintained in accordance with the plan contemplated by this Declaration.
- 16.2 Release of Liability. The Declarant, for itself, its successors and assigns and, by accepting a conveyance to a Unit, any Owner, for himself, his family and invitees, release and hold harmless the City of Rogers (including its elected and appointed officials, employees, servants and agents) from all liability for enforcement or for nonenforcement of this Declaration, and further expressly acknowledge that the City of Rogers is not obligated to perform or to enforce performance by the Declarant, the Association or others of any obligations contained in this Declaration.
- 16.3 Specific Rights Enforceable by the City of Rogers. The City of Rogers, at its option and in its sole discretion, may enforce for the benefit of itself the specific provisions of Sections 7, 8, 9 and 13 of this Declaration.

- 16.4 Notice and Procedure. In the event the Declarant and/or the Association fail to perform any obligation referred to in Section 16.3, the City of Rogers may, after ten (10) days written notice to the Declarant and/or the President or Secretary of the Association, perform such obligations (directly or with contract personnel or by personnel of the City of Rogers). The Declarant, Association and all Owners hereby waive all notice requirements except as hereinabove provided and further waive all procedural and other objections to actions taken by the City of Rogers.

- 16.5 Payment for City Maintenance. The Association, Declarant and Owners shall reimburse the City of Rogers or its designee, on demand, for the costs of any Declarant, Association or Owner obligations undertaken by the City of Rogers or its designee pursuant to this Section. Such costs, including but not limited to reasonable attorneys' fees and costs and expenses incurred in connection with collection, shall be an obligation of each Owner, enforceable in any way available to the City under law.

- 16.6 Right to Assess. In addition to the right of collection as stated in Section 16.5, the City of Rogers may, in any assessment year, levy against the Units an assessment for all costs and expenses incurred by the City or its designee pursuant to this Section. The assessment shall be prorated among all Units and shall be enforceable by the City in the same manner as provided in Section 6 of this Declaration.

- 16.7 Exclusive Rights. The rights granted by this Section are exclusive to the City of Rogers and may be exercised only by the City, in its sole discretion. No other person or entity, including the Association, the Declarant or Owners, whether or not a resident of Rogers, shall be entitled to request or require the City to act pursuant to this Section. The rights of the City of Rogers under this Section cannot be rescinded, cancelled or amended by the Declarant or the Owners without the written consent of the City.

SECTION 17: SPECIAL DECLARANT RIGHTS

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

- 17.1 Complete Improvements. To complete all the Units and other improvements indicated on the Plat, or otherwise included in the Declarant's development plans or allowed by the Declaration, and to make alterations in the Units and Common Elements to accommodate its sales facilities.

- 17.2 Relocate and Alter Units. To relocate boundaries between Units and to otherwise alter Units owned by it, to the extent permitted by Section 18.2.

- 17.3 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.

- 17.4 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.
- 17.5 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.
- 17.6 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 sixty (60) days after conveyance to the Owners other than a Declarant of seventy-five percent (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 thirty-three and one-third percent (33-1/3%) of the Directors at the meeting of the Owners, which shall be held within sixty (60) days following the conveyance by Declarant of fifty percent (50%) of the total number of Units authorized to be included in the Property.
- 17.7 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 the Declarant's rights under the Governing Documents.

**SECTION 18: RIGHTS TO ADD ADDITIONAL REAL ESTATE,
RELOCATE UNIT BOUNDARIES AND ALTER UNITS**

- 18.1 Declarant's Rights to Add Additional Real Estate. Declarant hereby expressly reserves the right to add Additional Real Estate to the Property, by unilateral action under Section 515B.2-111 of the Act, subject to the following conditions:
- a. The right of Declarant to add Additional Real Estate to the Property shall terminate ten (10) years after the date of recording of this Declaration or upon earlier express written withdrawal of such right by Declarant or a successor Declarant, unless extended by a vote of the Owners pursuant to Section 515B.2-106(2) of the Act. There are no other limitations of Declarant's rights hereunder, except as may be imposed by law.

- b. The Additional Real Estate is described in Exhibit C. The Additional Real Estate may be added to the Property in parcels consisting of one or more platted lots or portions thereof.
- c. There are no assurances as to the times at which all or any part of the Additional Real Estate will be added to the Property, the order in which it will be added, the number of parcels per phase, nor the size of the parcels. Declarant is under no obligation to add the Additional Real Estate to the Property, and the Additional Real Estate may be developed by Declarant or its successors in interest for other purposes, subject only to the approval by the appropriate governmental authorities.
- d. The maximum number of Units that may be created in the Additional Real Estate as such on the date of this Declaration is 4. All Units created on the Additional Real Estate shall be restricted exclusively to residential use.
- e. Any Units, including Dwellings and other structures, created upon the Additional Real Estate, when and if added, shall be compatible with the other Dwellings, structures and Units which are part of the Property in terms of architectural style, quality of construction and size; subject (i) to any changes required by governmental authorities or lenders and (ii) to any interior and minor exterior changes made by Declarant to meet changes in the market.
- f. All covenants and restrictions contained in this Declaration affecting the use, occupancy and alienation of Units shall apply to all Units created on the Additional Real Estate.
- g. The statements made in subsections c. through f. above shall not apply to any Additional Real Estate, which is not added to the Property.

18.2 Rights to Relocate Boundaries and Alter Units. Existing or future Units may be altered, and Unit boundaries may be relocated only in accordance with the following conditions:

- a. Combining Units. An Owner may make improvements or alterations to such Unit as 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 Section d. of this Subsection.
- b. Relocation of Boundaries. The boundaries between adjoining Units may be relocated in accordance with Section 515B2-114 of the Act and Section d. of this Subsection.
- c. Subdivision or Conversion. Additional Units may be created by the Declarant in the manner provided in Section 515B.2-112 of the Act by the subdivision or

conversion of a Unit (within the meaning of the Act) into two or more 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 useable 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 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 reasonably be 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 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 19: 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, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 20 as to matters prescribed by said Section and (iii) the consent of Declarant to certain amendments as provided in Section 17.7. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees and the Declarant shall be in writing. 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 20: RIGHTS OF ELIGIBLE MORTGAGEES

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

- 20.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least fifty-one percent (51%) of Units that are subject to first mortgages held by Eligible Mortgagees (based upon one voter per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessments, assessment liens, or priority of assessment liens; (iii) reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interest in the Common Elements or Limited Common Elements or rights to their use; (vi) redefinition of any Unit boundaries; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (ix) insurance or fidelity bonds; (x) leasing of Units; (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association to establish self-management when professional management is in effect as required previously by the Governing Documents or an Eligible Mortgagee; (xiii) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the unit after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit Eligible Mortgagees or insurers or guarantors of mortgages.

- 20.2 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Units that are subject to first mortgages (based upon one vote per first mortgage owned) shall be required to (i) abandon or terminate the Unit; (ii) change the allocations of voting rights, Common Expense obligations or interest in the Common Elements; (iii) partition or subdivide a Unit except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Common Elements; or (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.
- 20.3 Consent to Subdivision. No Unit may be partitioned or subdivided without the prior written approval of the Owner and Eligible Mortgagee thereof, and the Association.
- 20.4 No Right of First Refusal. The right of the Owner to sell, transfer or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restrictions.
- 20.5 Priority Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgage holder or purchaser; (i) except as provided in Section 6.9 and the Act and (ii) except that any unreimbursed or charges may be reallocated among all Units in accordance with the interests in the Common Elements.
- 20.6 Priority of Taxes and Other Charges. All taxes, assessments and charges which may become liens prior to the first mortgage under state law relate only to the individual Units and not to the Property as a whole.
- 20.7 Priority for Condemnation Awards. No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and/or Common Elements. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.
- 20.8 Requirements Management Agreements. The term of any agreement for professional management of the Property may not exceed two (2) years. Any such agreement must provide at a minimum without penalty or termination fee by either party, (i) with cause upon thirty (30) days prior written notice, and (ii) without cause upon ninety (90) days prior written notice.
- 20.9 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business

hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, including those which are audited, shall be available within one hundred twenty (120) days of the end of the Association's fiscal year. If a request is made by FNMA or any institutional guarantor or insurer of a mortgage loan against a Unit, for an audit of the Association's financial statements for the preceding year, the Association shall cause an audit to be made and deliver a copy to the requesting party.

- 20.10 Notice Requirements. Upon written notice to the Association, identifying the name and address of the holder, insurer or guarantor of a mortgage on a Unit, and the Unit number or address, the holder, insurer or guarantor shall be entitled to timely written notice of:
- a. a condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;
 - b. a 60-day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
 - c. a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
 - d. a proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

SECTION 21: MISCELLANEOUS

- 21.1 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.
- 21.2 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.
- 21.3 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 render 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.

- 21.4 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board of Directors, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail; except that registrations pursuant to Section 2.2 of the Bylaws shall be effective upon receipt by the Association.
- 21.5 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the Bylaws or any Rules and Regulations approved by the Association, the Act shall control. As among the Declaration, Bylaws and Rules and Regulations, the Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.
- 21.6 Variances. The restrictions applicable to the Property as specified in Section 7 of this Declaration are intended for the benefit of all Property Owners. The Declarant, however, acknowledges that exceptional conditions of a particular Property may create peculiar and practical difficulties mitigating against the strict enforcement of a provision contained in Section 7. In the event an Owner believes that such exceptional conditions on the Property create a hardship or special situation, an Application for Variance may be made by an Owner through the Board in accordance with Section 8.2 of this Declaration. An Application for Variance shall state on the application the reasons for allowing the variance, including: (i) that there are special circumstances or conditions affecting the Property such that the strict application of a provision of the Declaration would deprive the Owner of the reasonable use of the Property; (ii) the variances are necessary for the preservation and enjoyment of a substantial property right of the Owner; (iii) the granting of the variance will not be detrimental to the public welfare or injurious to other Owners or Property subject to the Declaration; and (iv) that issuance of the variance will not have an adverse effect on the health, welfare and safety of the Owners benefited by this Declaration. In consideration of a request for a variance from the strict application of Section 7 of this Declaration, the Board shall make a finding showing that all of the foregoing conditions exist, and the Board may impose any reasonable condition in the granting of such variance in order to protect other Property and Owners.

EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY

The legal description of the Property is as follows:

Lots 1 – 33, Block 1; Outlot A; Outlot B; and Outlot C, LeMar Estates according to the Plat thereof and on file at the Hennepin County Recorder's office.

EXHIBIT B: LEGAL DESCRIPTION OF COMMON ELEMENTS

The legal description of Common Elements is as follows:

Lot 33, Block 1, LeMar Estates according to the Plat thereof and on file at the Hennepin County Recorder's office.

EXHIBIT C: LEGAL DESCRIPTION OF ADDITIONAL REAL ESTATE

The legal description of the property is as follows:

Outlot A; Outlot B; and Outlot C, LeMar Estates according to the Plat thereof and on file at the Hennepin County Recorder's office.