

COMMON INTEREST COMMUNITY NUMBER \_\_\_\_\_  
(Planned Community)

Mississippi River Shores

**"DECLARATION"**

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This Declaration is made in the County of Crow Wing, State of Minnesota, on this 10<sup>th</sup> day of September, 2001, by Property 3 Homes, Inc., a Minnesota Corporation. (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act, hereinafter referred to as the "Act", for the purposes of creating Mississippi River Shores, a planned community.

**WHEREAS**, Declarant is the Owner of certain real property located in Crow Wing County, Minnesota, legally described in Exhibit A attached hereto and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act, and;

**WHEREAS**, Declarant desires to establish on the property a plan for a residential community to be owned, occupied and operated for the use, health, safety and welfare of its Owners and Occupants, and their guests and for the purpose of preserving the value, the structural quality, and the 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 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 as a planned community under the name "Mississippi River Shores", 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 herein, and their heirs, personal representatives, successors and assigns.

## **SECTION 1**

### **DEFINITIONS**

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

1.1 **"Association"** shall mean Mississippi River Shores Owners Association, a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, whose members consist of all Owners as defined herein.

1.2 **"Board"** shall mean the Board of Directors of the Association as provided for in the By-Laws.

1.3 **"By-Laws"** shall mean the By-Laws governing the operation of the Association, as amended from time to time.

1.4 **"Common Elements"** shall mean all parts of the Property except the Units, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The Common Elements are legally described in Exhibit B attached hereto.

1.5 **"Common Expenses"** shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation allocation to reserve those items specifically identified as Common Expenses in the Declaration or By-Laws.

1.6 **"Dwellings"** 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.

1.7 **"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.

1.8 **"Governing Documents"** shall mean this Declaration, and the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.9 **"Limited Common Elements"** shall mean all parts of the Common Elements that are reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated from the Property except the Units.

1.10 **"Living 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.

1.11 **"Management Agent"** shall mean the person, persons, or service company, if any, hired or appointed by the Association to manage the Property from time to time.

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 a 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 life estates.

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 or having legal identity before a Minnesota Court of Law.

1.17 **"Plat"** shall mean the recorded plan 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, including any amended 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 **"Rental Management Agreement"** shall mean an agreement between an Owner and the management Agent providing for the rental, maintenance, repair, upkeep and housekeeping of a Unit during any period said Unit is designated for use under a Rental Agreement by other persons for recreation or other permitted uses.

1.20 **"Residential Use"** or "Residential Purpose" shall mean use as a dwelling, whether primary, secondary or seasonal, but not transient use such as hotels, motels, or temporary resort lodging.

1.21 **"Rules and Regulations"** shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6

1.22 **"Unit"** shall mean any Living Unit.

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** **DESCRIPTION OF UNITS AND APPURTENANCES**

2.1 **Units.** There are thirty-six (36) Living Units, all of which are restricted exclusively to residential use and restricted to parking and storage in accordance with this Declaration. Each Unit constitutes a separate parcel of real estate. No additional Units may be rented by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference, and a schedule of Units is set forth on Exhibit A. The Unit identifier for a Unit shall be its lot and block numbers and the subdivision name.

2.2 **Unit Boundaries.** The front, rear and side boundaries of each Unit shall be the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat except that the side boundaries of any two contiguous Units shall be the interior, unfinished surface of the Party Wall separating adjacent Dwellings or garages. The Units shall have no upper or lower boundaries. Subject to this Section 2 and Section 3.2, all spaces, walls and other improvements within the boundaries of a Unit are a part of the Unit.

2.3 **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, subject to any restriction set forth in the Declaration.

2.4 **Use and Environmental 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 Declarant.

2.5 **Utility and Maintenance Easements.** Each Unit shall be subject to and shall 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 shall be the beneficiary of the appurtenant easements for encroachments as described in Section 13.

2.7 **Declarant's Easements.** Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 15.6.

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 party 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.

2.11 **Parking.** The Association shall maintain, upon the common Elements, vehicle parking spaces conveniently located for the use of the Owners, the Owners' families, tenants and guests. Any vehicle, snowmobiles, watercraft or trailers not in regular use shall not be kept on

the Property unless stored within an enclosed garage structure. The Association may establish specific parking areas for overflow parking and may from time to time establish additional rules and regulations concerning the use of these parking spaces and may cause to be towed, from the Common Elements, improperly parked vehicles or personal property, at the owner's expense.

**2.12 Personal Property for Common Use.** The Association may acquire and hold for the use of all the Members tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in such property shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Member may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Members. The Association shall have the authority to impose reasonable rules, regulations and charges upon the use of such 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 described in Exhibit B; designated as Common Elements on the Plat; or in the Act. The Common Elements are owned by the Association for the benefit of the Owners and Occupants. The Association may construct not more than sixteen (16) docks on the common element all of which shall be under the control and supervision of the Association, to be rented to members only on terms established by the Association.
- 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, and their guests; subject to (i) the rights of Owners and Occupants in Limited Common Elements appurtenant to their Units and (ii) the right of the Association to establish

reasonable Rules and Regulations governing the use of the Property.

- c. Subject to Sections 5, 6, and 9, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.
- 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 within and partially outside the boundaries of a Unit, and serving only that Unit, are allocated to the Unit they serve. Any portion of such installations serving or affecting the function of more than one Unit or any portion of the Common Elements is a part of the Common Elements, but is not a Limited Common Element.
- 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 allocated exclusively to that Unit.

#### **SECTION 4**

#### **ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS**

Membership in the Association, and the allocation to each Living 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 his or her ownership of a Unit, and the membership shall be transferred with the conveyance of the Owner's interest in the Unit. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be members of the Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Living 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 Living Units as described in Exhibit "C"; except that special allocations of Common Expenses shall be permitted as provided in Section 6.1. Voting rights, however, are further subject to the following:

a. The Association shall have two classes of voting membership:

(i) **Class A.** Class A members shall be all owners, with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Unit of which they are the owner. When more than one person is the owner of any Unit, all such persons shall be members, but the owners of such Unit shall be collectively entitled to only one (1) vote for that Unit. When there is more than one owner of a Unit, the vote shall be cast by one person properly designated as provided in the By-Laws. Any voting authority established in writing by the multiple owners of a Unit and filed with the Association shall be valid until revoked in writing by such owners and filed with the Association.

(ii) **Class B.** The Class B member shall be Declarant, who shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership upon the occurrence of the earliest of the following:

(1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;

(2) The date of July 1, 2004; or



(3) Upon the Declarant's voluntary conversion of its Class B membership to Class A membership.

b. Members shall have no rights of cumulative voting. Members may vote by voice, ballot, proxy, mail or other reasonable means.

4.3 **Appurtenant Rights and Obligations.** The ownership of a Living Unit shall include the voting rights and Common Expense obligations described in Section 4.2. Said rights, obligations and interest, 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 other 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 Living Unit at meetings of the Association; provided, that if there are multiple Owners of a Unit, only the Owner or other Person designated pursuant to the provisions of the By-Laws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the By-Laws.

## **SECTION 5** **ADMINISTRATION**

The administration and operation of the Association and the Property, including but not limited to the acts required by 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 Rules and Regulations (ii) maintaining, repairing and replacing those portions of the Property for which it is responsible and (iii) preserving the value and architectural uniformity and character of the Property.

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

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

**5.5 Management.** The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing 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 the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents or the Act. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice has been given to the Owners.

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

## **SECTION 6**

### **ASSESSMENTS FOR COMMON EXPENSES**

**6.1 General.** Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in Sections 6.2 and 6.3, and the requirements of the By-Laws. Assessments for Common Expenses shall include annual assessments and may include Special Assessments. Assessments shall be allocated among the Units according to the Common Expense allocations set forth in Section 4.2, 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 Limited 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, as appropriate.
- c. The Costs of insurance may be assessed in proportion to value, risk or coverage.
- d. The costs of utilities may be assessed in proportion to usage.
- e. 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.
- f. Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of the Act.
- g. Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied against

the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.

- h. 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.
- i. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
- j. 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.
- k. Assessments under Subsections 6.1.a-j shall not be considered special assessments as described in Section 6.3.

**6.2 Annual Assessment.** Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Section 6.2 and 6.3. Each annual assessment shall cover all of the anticipated Common Expenses 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. After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board, subject to Section 6.2.c.
- c. Until the termination of the period of Declarant Control described in Section 15.7, the increase in the annual assessment for any year shall not exceed the greater of 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 21 days nor more than 30 days in advance of the meeting.

**6.3 Special Assessment.** 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 non-budgeted 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 21 days nor more than 30 days in advance of the meeting.

**6.4 Capital Improvement Fund.** The Association shall establish a capital improvement fund to meet expenditures for improvements to the Common Elements as approved by the Association. 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 to make up any budget deficit while Declarant is in control of the Association.

**6.5 Liability of Owners for Assessment.** The obligations of an Owner to pay assessments shall commence at the later of (i) the recording of the Declaration or amendment thereto which creates the Owner's Unit, or (ii) the time at which the Owner acquires title to the Unit, subject to the alternative assessment program described in Section 6.7. 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 rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 16, 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 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 City of Brainerd. This reduced assessment shall apply to each Unit owned by Declarant at the time that the Unit is created, and shall continue until the issuance of the Certificate of Occupancy as previously described. There are no assurances that this alternative, assessment program will have no effect on the level of services for items set forth in the Association's Budget. There shall be no assessment on lots on which no Living Unit has yet been constructed.

**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 515.B3-102(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 their governmental assessments or charges against the Unit. Notwithstanding the foregoing, if a first mortgage on a Unit is foreclosed and no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes, Chapters 580, 581, or 582, then the holder of the Sheriff's Certificate of Sale from the foreclosure of

the first mortgage shall take title to the Unit subject to unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-115(a), (h)(1) to (3), (l), and (1) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's Period of Redemption.

## **SECTION 7**

### **RESTRICTIONS ON USE OF PROPERTY**

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

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

7.2 **Subdivision Prohibited**. Except as permitted by the Act, no Unit nor any part of the Common Elements may be subdivided or partitioned without the prior written approval of all Owners, all secured parties holding first mortgages on the Units, and compliance with the City's Ordinances and approvals.

7.3 **Use**. The Units shall be used by Owners, Occupants, and their guests exclusively for Residential Purposes and for no other commercial, business, professional or other non-residential purposes, except as provided in Section 7.4. No changes in the use of the Property shall be made without prior receipt of all appropriate governmental approvals.

**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 or a guest temporarily occupying 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, telecomputing or correspondence therefrom, or other home office occupations as allowed by local ordinance, provided that such uses are incidental to the residential use, do not involve physical alteration of the Unit and do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries, or visitation or use of the Unit by customers or employees and (ii) the Association may maintain offices on the Property for management and related purposes and (iii) the Declarant and his agents may conduct sales activities and have sales and construction offices or other office activities related to the development of Woodridge Townhomes.

**7.5 Rental.** Rental of Units shall be allowed for a minimum period of 28 days, subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no Unit may be subleased, (ii) that no Garage may be leased separately from the attendant Living Unit, (iii) that all leases shall be in writing, and (iv) that all leases shall provide that they are subordinate and subject to the provisions of the Governing Documents, the Rules and Regulations and the Act and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the rental of Units, consistent with this Section.

**7.6 Parking.** Parking areas and any garages on the Property shall be used only for parking of vehicles owned or leased by Owners, 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, but without limitation, the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property.

**7.7 Storage.** Outside storage of any items, including , but without limitation, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed. Household trash and garbage shall be regularly collected and may not be kept outside the Unit except on those days designated as pick-up days by a commercial or Municipal service, and then only if in tightly



covered containers or as stipulated by the Municipality or the Association. No watercraft, inoperable automobiles, snowmobiles, fish houses, trailers, camping vehicles, recreational vehicles, tractor/trailers, buses, or trucks in excess of 1500 pounds gross weight, shall at any time be stored outside any Unit, except that watercraft, snowmobiles, and trailers in regular use may be temporarily parked in the owners driveway for a period not to exceed 48 hours. No exterior LP gas storage tanks shall be permitted on the property.

7.8 **Animals**. No animal may be kept, bred, 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. Nothing herein shall prevent the Association from establishing the prohibition of keeping any or all animals on the Property except those used to aid those persons with handicaps.

7.9 **Quiet Enjoyment: Interference Prohibited**. All Owners, 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 the other Owners, Occupants, and their guests.

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

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, Occupant, or their guests, in any part of the Common or Limited Elements, or in any part of the Unit which affects the Common or Limited Elements or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8. The Board, or the appointed committee if so authorized by the Board, shall have authority to

establish reasonable criteria and requirements for alterations, and shall be the sole judge of whether the criteria are satisfied.

**7.12 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 agent or by any public safety personnel. An easement is hereby reserved across all of the streets within the plat to provide access to any Unit or to the Common Areas for emergency vehicles. Entry is also authorized for maintenance purposes under Section 9 and for enforcement purposes under Section 14.

## **SECTION 8** **ARCHITECTURAL CONTROL**

**8.1 Restrictions on Alteration.** 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, additions, deck, patio, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other exterior improvements to or alteration of any Dwelling or any other part of a Unit which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board of Directors or a committee appointed by it. Notwithstanding the foregoing, Declarant's written consent shall also be required for alterations until Declarant no longer owns any unsold Unit.
- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size, location, type and design in relation to existing improvements and topography, (ii) comparable or better quality or 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. No alterations of the Property shall encroach upon an existing Unit.
- d. Approval of alterations which encroach upon the Common or Limited 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 a part of the Association's records.
- e. Alterations described in Section 16 shall be governed by that Section.

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

- a. Detailed plans, specifications, and related information for any proposed alteration, in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board of Directors, then approval will not be required, and this Section shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted and in conformity with the Act, the Declaration, and all governmental law, ordinances, and regulations.
- 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 twelve months following the date of completion of the alterations. Notice may be direct written notice or the commencement of legal action by the Association or an Owner. The Owner of the Unit in which the alterations are made shall have the burden of proof, by clear and convincing evidence, that the alterations were completed and reasonably visible for at least twelve months following completion and that the notice was not given.

**8.3 No Liability.** The Board or architectural control committee shall not be liable in damage to any person submitting requests for approval or to any owner within the property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests.

**8.4 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 attorney's fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Dwelling or Unit to its prior condition if any alterations were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Unit.

## **SECTION 9** **MAINTENANCE**

**9.1 Maintenance by Association.** The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common and Limited Elements. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall (i) provide for exterior maintenance upon the Dwelling in each Unit that is subject to assessment as follows: refinishing, repairing, and replacement of roofs, gutters, down spouts, decks, patios, rails, fences, trellises, planters, exterior doors, exterior windows, exterior siding, trim and other building surfaces or elements, and (ii) provide for lawn, shrub and tree maintenance, landscape services on all Units as determined by the Association, and (iii) provide for maintenance on all driving and parking surfaces including snow removal. The Association's obligation to maintain

exterior building surfaces shall exclude patios, entry doors, door hardware, air conditioning equipment, glass and window frames, and any other items not specifically referred to in this Section; unless otherwise approved under Section 9.2, the Association shall have easements as described in section 13 to perform its obligations under this Section 9.

**9.2 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 of Dwellings, or maintenance of water and septic systems within the Units.

**9.3 Maintenance by Owner.** Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.2, all maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. 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 also undertake any exterior maintenance which the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof.

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

## **SECTION 10** **PARTY WALLS**

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

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

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

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

## **SECTION 11**

### **INSURANCE**

**11.1 Required Coverage.** The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements 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 all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "Replacement cost" of the Property, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall 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, coverage and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the FHA or Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including with limitation the FHA or FNMA, obligating the Association to keep certain specified coverage or endorsements in effect.
- b. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits of \$1,000,000 per occurrence against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupants because of negligent acts of the Association or of the Owners of Occupants. The policy shall include such additional endorsements, coverage and limits with respect to such hazards as may be required by the regulations of the FHA or FNMA as a

precondition to their insuring, purchasing or financing a mortgage on a Unit.

- c. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, manager, trustee, 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 or insurance 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 of a mortgage on a Unit, be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force, or (ii) a sum equal to three months aggregate assessments on all Units plus reserves. 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 coverage 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 betterment to the Units installed by Owners, but if improvements and betterment 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 canceled or substantially modified, for any reason, without at least 30 days prior written notice to the Association, to the FHA or FNMA (if applicable), all of the insured 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 prior written approval of the Association (or any Insurance Trustee) or (ii) when in conflict with provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

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

**11.8 Effect of Acts Not Within Association's Control.** All policies of insurance maintained by the Association shall provide that the coverage shall not be avoided 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 the 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 18.9.

**12.2 Condemnation and Eminent Domain.** In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern; provided that notice shall be given pursuant to Section 18.9 Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and the Governing Documents, as their interests may appear.

**12.3 Notice.** 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 18.9.

## **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 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 the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.

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

**13.4 Continuation and Scope of Easements.** Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or an 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 Unit and the Common Elements for purposes of maintenance, repair, replacement and reconstruction.

## **SECTION 14**

### **COMPLIANCE AND REMEDIES**

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

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

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

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

written notice of the effective date of the acceleration shall be given to the defaulting Owner.

- d. Impose reasonable fines, penalties or charges for each violation of the Act, the Governing Documents or the Rule and Regulations of the Association.
- e. Suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities; provided, that this limitation shall not apply to Limited Common Elements or deck, balcony or patio easements, appurtenant to the Unit, and those portions or the common Elements providing utility services and access to the Unit. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents, and for up to 30 days thereafter, for each violation.
- f. Restore any portions of the Common Elements or Limited Common Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant, or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
- g. Enter any Unit or Limited Common Element in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Dwelling or other part of the Property or the property of the Owners, Occupants and or their guests, 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 as allowed by law.

**14.3 Rights to Hearing.** In the case of imposition of any of the remedies authorized by Section 14.2.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 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty days of receipt of the hearing request by the Board, and with at least 10 days prior written notice to the offender. If the offending Owner fails to appear at the hearing then the right to a hearing shall be waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten days following the hearing, if not delivered to the offender at the hearing.

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

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

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

Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

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

## **SECTION 15** **SPECIAL DECLARANT RIGHTS**

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

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

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

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

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

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

**15.6 Control of Association.** To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board pursuant to Section 515B.3-103 of the Act, until the earliest of: (i) voluntary surrender of control by Declarant, (ii) an Association meeting which shall be held within 60 days after conveyance to Owners other than a Declarant of 75% of the total number of Units authorized to be included in the Property or (iii) the date three (3) years following the date of the first conveyance of a Unit to an Owner other than a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall have the right to nominate and elect not less than 33-1/3% of the directors at a meeting of the Owners which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Property.

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

## **SECTION 16** **RIGHTS TO RELOCATE UNIT** **BOUNDARIES AND ALTER UNITS**

**16.1 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. **Relocation of Boundaries.** Upon receipt of all appropriate governmental approvals, the boundaries between adjoining Units may be relocated in accordance with Section 515B.2-114 of the Act and Subsection c of this Section.
- b. **Subdivision or Conversion.** No additional Units may be created by the subdivision or conversion of a Unit (within the meaning of the Act) into two or more Units, nor into other Units, Common Elements or Limited Common Elements.
- c. **Requirements.** The alteration, relocation or boundaries or other modifications of Units or the Dwellings or other structures located therein (collectively referred to herein as "alteration" or "alterations") pursuant to this Section, Section 8 and the Act may be accomplished only in accordance with the following conditions:



- (1) No Unit may be altered if, thereafter, the Dwelling located therein, or any other Dwelling affected by the alteration, would no longer be habitable or practicably usable for its intended purpose or would violate any law, code or ordinance of any governmental authority having jurisdiction over the Property.
- (2) No alteration may be made which adversely affects the structural or functional integrity of any building system or the structural support or weather-tight integrity or 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, drawing and specifications relating to the proposed alteration as may be reasonable 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, or their guests; (iv) that the Property, the first mortgagees and the Owners and Occupants will be protected from liens and other liability arising from the alterations; and (v) that the alterations will be done in compliance with the applicable laws, regulations and ordinances of the governmental authorities having jurisdiction over the Property.

**16.2 Costs of Fees and Filing.** The Association may require that the Owners of the Units to be altered to pay all costs of processing and

documentation for the request and the preparation and recording of any necessary amendment to the Governing Documents, including without limitation such costs as filing, architects and attorneys' fees, incurred by the Association in connection with the alterations.

## **SECTION 17** **AMENDMENTS**

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least seventy-five percent ( 75 % ) of the votes in the Association, (ii) the percentage of Eligible Mortgagees (based upon one vote per first mortgage owned) required by Section 18 as to matters prescribed by said Section and (iii) the consent of Declarant to certain amendments as provided in Section 15.7. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consent of 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 18** **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:

**18.1 Consent to Certain Amendments.** The written consent of Eligible Mortgagees representing at least fifty-one percent (51%) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) assessments, assessments liens, or priority of assessment liens; (iii) reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) relocation of interests in the Common Elements or Limited Common Elements, or right 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 restriction 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; (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 condominium after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

**18.2 Consent to Certain Actions.** The written consent of Eligible mortgagees representing at least seventy-five percent ( 75 % ) of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per first mortgage owned) shall be required to (i) abandon or terminate the condominium; (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.

**18.3 No Right of First Refusal.** The right of an Owner to sell, transfer or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restrictions.

**18.4 Priority of Lien.** Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid assessments or any other charges or liens imposed against the Unit by the Association which 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 and the Act and (ii) except that any un-reimbursed assessments or charges may be reallocated among all Units in accordance with their interests in the Common Elements.

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

**18.6 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 the Common Elements. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

18.7 **Management Agent.** The Property may be managed by a Management Agent in accordance with a management agreement reasonably acceptable to the Association.

18.8 **Access to Books and Records & Audits.** 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 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.

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

- b. a condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;
- c. a 60 day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
- d. a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- e. a proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

**SECTION 19**  
**MISCELLANEOUS**

19.11 **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.

19.12 **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 statute amending or replacing the Act, and the comparable sections thereof.

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

19.14 **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 Owner 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 By-Laws shall be effective upon receipt by the Association.

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

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

Property 3 Homes, Inc.

By: Alan Smith

Its: Vice President

STATE OF MINNESOTA       )  
  ) ss  
COUNTY OF CROW WING    )

The foregoing instrument was acknowledged before me this 10 day of September, 2001, by the Vice President of Property 3 Homes, Inc., on behalf of Property 3 Homes, Inc.

Jonathan J. Nyberg  
Notary Public



This instrument was drafted by:  
Thomas R. Borden  
BORDEN, STEINBAUER & KRUEGER, P.A.  
302 South Sixth Street  
P.O. Box 411  
Brainerd, MN 56401  
Telephone: 218-829-1451

**COMMON INTEREST COMMUNITY NO.**\_\_\_\_\_

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**EXHIBIT "A" TO DECLARATION**

**SCHEDULE OF UNITS/LEGAL DESCRIPTION OF PROPERTY**

Lots 1 through 36, Inclusive, Mississippi River Shores in Crow Wing  
County, Minnesota.

**COMMON INTEREST COMMUNITY NO. \_\_\_\_\_**

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**EXHIBIT "B" TO DECLARATION**

**LEGAL DESCRIPTION OF COMMON ELEMENTS**

Lot 37, Mississippi River Shores in Crow Wing County, Minnesota \_\_\_\_\_



COMMON INTEREST COMMUNITY NO. \_\_\_\_\_

**EXHIBIT "C" TO DECLARATION**

**ALLOCATION OF VOTING RIGHTS  
AND COMMON EXPENSES**

**LIVING UNIT NUMBER**

**PERCENTAGE VOTE  
IN ASSOCIATION AND  
PERCENTAGE  
COMMON EXPENSE LIABILITY**

Units 1 though 36

.0277777 % each Unit

Office of County Recorder }  
County of Crow Wing, MN }

I hereby certify that the within instrument was filed  
in this office for record on the 10 day of Sept  
A.D. 2001 at 11:30 o'clock 4 M.  
and was duly recorded as Doc. No. 0593343

[Signature]  
County Recorder  
By [Signature]  
Deputy