

AMENDED AND RESTATED DECLARATION  
OF EVERGREEN HOME OWNERS ASSOCIATION

This Amended and Restated Declaration of Evergreen Home Owners (“Declaration”) is made by the Evergreen Home Owners Association, a Minnesota nonprofit corporation (hereinafter referred to as the “Association”), this \_\_\_\_ day of \_\_\_\_\_, 2018.

WHEREAS, a Declaration of Evergreen Home Owners (“Original Declaration”) was filed in the office of the Registrar of Titles for Scott County, Minnesota on February 19, 1981 as Document No. 22454 subjecting the real property described on Exhibit A hereto (“Property”) to the terms and conditions of such Original Declaration; and

WHEREAS, in accordance with the provisions of the Original Declaration, the Association now seeks to amend and restate the Original Declaration in its entirety; and

WHEREAS, the Association intends that this Declaration replace and supersede the Original Declaration and all Amendments or supplements to the Original Declaration, whether or not referenced herein or previously recorded; and

WHEREAS, the real property subject to this Declaration is legally described on Exhibit A, attached hereto and incorporated herein,

NOW THEREFORE, the Association declares that the Property is and shall be held, transferred, conveyed, sold, leased, occupied and developed, subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value, desirability and attractiveness of the Property, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns, and which shall run with the land to the benefit of each Owner thereof, and the heirs, successors and assigns of each Owner. This Declaration hereby amends, restates and supersedes, in its entirety, the previously filed Original Declaration, as follows:

SECTION 1  
DEFINITIONS

The following words used in this Declaration shall have the following meanings, unless the context indicates otherwise:

1.0 “Act” shall mean the Minnesota Non-profit Corporations Act, Minnesota Statutes 317A.

1.1 “Assessments” shall mean and refer to all Assessments levied by the Association pursuant to Section 6 of this Declaration, including Annual Assessments, Special Assessments and Limited Allocation Assessments.

1.2 "Association" shall mean Evergreen Home Owners Association, a nonprofit corporation, which has been created pursuant to the Act.

1.3 "Board" shall mean the Board of Directors of the Association as provided for in the Bylaws.

1.4 "Bylaws" shall mean the Amended and Restated Bylaws governing the operation of the Association, as may be further 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 Assessments and items otherwise identified as Common Expenses in this Declaration or in the Bylaws.

1.7 "Eligible Mortgagee" shall mean any Person (see definition in 1.14) 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, 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.

1.9 "Limited Common Elements" shall mean those Common Elements that are designated for the exclusive use of the Unit Owners of the Unit or Units to which the Limited Common Elements are allocated. Limited Common Elements are more fully defined in Section 3.2 below.

1.10 "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.

1.11 "Occupant" shall mean any person(s), other than an Owner, in possession of or residing in a Unit.

1.12 "Owner" shall mean a Person who owns a Unit and is listed on the Certificate of Title to the Unit. Owner does not include a contract for deed vendor, mortgagee or other secured parties. The term "Owner" includes contract for deed vendees and holders of a life estate.

1.13 "Party Wall" shall mean the interior shared wall between two Units.

1.14 "Person" shall mean a natural individual, corporation, Limited Liability Company, partnership, trustee, or other legal entity capable of holding title to real property.

1.15 "Plat" shall mean the recorded plat, on file with Scott County, depicting the Property.

1.16 "Property" shall mean all of the real property submitted to this Declaration, including the Units and all other structures and improvements located thereon. The Property is legally described on Exhibit A hereto.

1.17 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time by the Board of Directors.

1.18 "Unit" shall mean the area or space contained within the perimeter walls of the dwelling as more fully described in Section 2.2 below.

1.19 "Yard Area" shall mean that portion of a Unit (or a lot) not covered by a dwelling or a driveway.

## SECTION 2 DESCRIPTION OF UNITS, BOUNDARIES AND RELATED EASEMENTS

2.1 Units. There are 43 Units. All Units 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 the Property. The identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference. The identifier for a Unit shall be its lot and block numbers and the subdivision name.

2.2 Unit Boundaries. The boundaries of each Unit shall be the interior unfinished surfaces of its perimeter walls, floors and ceilings, wallpaper, paneling, tiles and other finishing materials adhered to the interior of the Unit boundaries; provided that any load bearing portions of any interior or perimeter walls, columns, ceilings or floors, and any common utility lines or other common facilities located in or passing through a Unit, shall be Common Elements. The boundaries of each Unit shall also extend along the inside unfinished surfaces of its perimeter doors and windows, and their frames; and said perimeter doors, windows and frames, and their hardware, shall be Limited Common Elements appurtenant to such Unit. Subject to this Section and Section 3.2, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

2.3 Access Easements. Each Unit shall be the beneficiary of a perpetual appurtenant easement for access to a public street or highway on or across those portions of the Common Elements or Limited Common Elements, as shown on the Plat, if any, subject to any restrictions set forth in the Governing Documents or the Rules and Regulations.

2.4 Use and Enjoyment Easements. Each Unit shall be the beneficiary of perpetual appurtenant easements for use and enjoyment on and across the Common Elements or Limited Common Elements.

2.5 Water, Utility and Maintenance Easements. Each Unit shall be subject to and shall be the beneficiary of perpetual appurtenant easements for all water pipes, water meters, water service and other utilities servicing the Units and the Common Elements or Limited Common Elements and for maintenance, repair and replacement as described in Section 14.

2.6 Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of perpetual appurtenant easements for encroachments as described in Section 14.

2.7 Roadway Access Easements. The Common Elements and Limited Common Elements, if any, shall be subject to an appurtenant easement for roadway access in favor of the Owners and Occupants.

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 run with the land, and shall be permanent, subject only to termination in accordance with 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 establish and enforce reasonable Rules and Regulations governing the use of the Property.

SECTION 3  
COMMON ELEMENTS  
AND OTHER PROPERTY

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, but are not limited to all areas and items listed in this Section 3, and those parts of the Property designated as Common Elements on the Plat, if any are shown. The Common Elements, if any, are owned by the Association for the benefit of the Owners and Occupants.
- b. The Common Elements shall be subject to (i) certain easements as described in Sections 2 and 14; (ii) the rights of Owners and Occupants in

Common Elements appurtenant to their respective Units; and (iii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.

- c. Except as otherwise expressly provided below, all maintenance, repair, replacement, management and operation of the Common Elements, if any, 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 3.2 and Section 6.

3.2 Limited Common Elements. Certain portions of Common Elements are those parts of the Common Elements reserved for the exclusive use or benefit of the Owners and Occupants of the Units to which they are allocated. The Limited Common Elements allocated for the exclusive use of the respective Units include, but are not limited to the following:

- a. The Yard Areas and driveways of each Unit
- b. Garages, foundations, roofs, gutters, downspouts, exterior siding and exterior building surfaces, decks, patios, perimeter doors and windows, and their frames, doorsteps, stoops, balconies, sidewalks, patios, air conditioners or other improvements constructed as part of the original construction to serve a single Unit or Units, and authorized replacements and modifications thereof, if located wholly or partially outside the Unit boundaries.
- c. 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.

## SECTION 4

### ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

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

4.1 Membership. Each Owner shall be a member of the Association by virtue of Unit ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the Unit. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be members of the

Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Unit or 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 and more fully detailed on Exhibit B, subject to the provisions of Section 6 herein.

4.3 Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 6. Said rights, obligations and interests, and the title to the Units, shall not be separated or conveyed separately, and any conveyance, encumbrance, judicial sale or other transfer of any allocated interest in a Unit, separate from the title to the Unit, shall be void. The allocation of the rights, obligations and interests described in this Section 4 may not be changed, except in accordance with the Governing Documents.

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. If, however, there are multiple Owners of a Unit, only one Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in the Bylaws.

4.5 Voting by Proxy. An Owner may cast the vote which is allocated to the Owner's Unit and be counted as present at any meeting of the Owners by executing a written proxy naming another Person entitled to act on that Owner's behalf, and delivering the same to the management company engaged by the Association or the Association's Secretary before the commencement of any such meeting. The number of proxies any one Owner may hold is limited to one, except for the Secretary of the Association. All proxies granted by an Owner shall remain in effect until the earliest of the following events: (i) revocation by the granting Owner by written notice or by personally attending and voting at the meeting for which the proxy is effective; (ii) eleven (11) months after the date of the proxy, unless otherwise provided in the proxy; or (iii) the time at which the granting Owner is no longer an Owner. The Board of Directors pursuant to Section 6.4(n) of the Bylaws may specify the form of the proxy and proxy rules.

## SECTION 5 ADMINISTRATION

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

5.1 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents, the Rules and Regulations, and the statutes governing the Association. The Association shall, subject to the rights of the Owners set forth in the Governing Documents, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, and the statute under which the Association 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. 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 the 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 shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws shall govern the operation and administration of the Association, and shall be binding on all Owners and Occupants.

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. Such delegation shall not, however, 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. This authority to implement Rules and Regulations shall include, without limitation of other rules not included herein, parking rules and pet rules. 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 5. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners. In the event of any ambiguity in the provisions of the Bylaws or Declaration of the Association, the Board shall have the right to pass a Rule and Regulation which clarifies the meaning of the ambiguity.

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.

SECTION 6  
ASSESSMENTS

6.1 General. Assessments shall be determined and assessed against the Units by the Board in its discretion, subject to the requirements and procedures set forth in this Section 6 and the requirements of the Bylaws. Assessments shall include annual Assessments under Section 6.2, and may include special Assessments under Section 6.3. Annual and Special Assessments shall be allocated among the Units equally.

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board. Each Annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared equally by all Units in accordance with the allocation set forth in Section 6.1; Annual Assessments shall be payable in equal monthly installments. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of the Common Elements, if any, and those parts of the Units for which the Association is responsible. An increase in Assessments of more than fifteen percent (15%) over the previous year's Assessments shall require consent of sixty-seven (67%) percent of all Unit Owners.

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 or years, a Special Assessment against all or some Units in whole or in part, the cost of any Common Expense for the construction, re-construction, repair or replacement of any capital improvement upon the Property or for the payment of an unexpected and nonrecurring Common Expenses of the Association; this Special Assessment must be approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose, or voting as otherwise allowed in the Bylaws. Special Assessments may be levied in advance of the Association's obligation to contract or pay a vendor.

6.4 Limited Allocation Assessments. In addition to Annual Assessments and Special Assessments, the Board may, in its discretion, levy and allocate Limited Allocation Assessments among only certain Units in accordance with the following requirements and procedures:

- a. Any Common Expense or portion thereof associated with the maintenance, repair, or replacement of a Limited Common Element may be assessed exclusively against the Unit or Units to which such Limited Common Element is attached or assigned.
- b. Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited, equally, by square footage or in any other equitable manner determined by the Board;
- c. The Board shall have the authority to assess the costs of insurance purchased by the Association equally per Unit and the costs of

utilities may be assessed in proportion to usage or equally, as determined by the Board.

- 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, or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.
- e. Late charges, fines, and interest may be assessed as provided in Section 15.
- f. Assessments levied 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, including the infiltration of water from a leaking pipe or fixture serving a Unit, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit where the leak took place.
- h. If any Assessment or 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.

Assessments levied under Sections 6.4 may, at the Board's discretion, be assessed as part of, or in addition to, the Assessments levied under Section 6.2 and 6.3.

6.5 Liability of Owners for Assessments. The obligation of an Owner to pay Assessments shall commence at the time at which the Owner acquires title to the Unit. The Owner 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 Assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or other laws. 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, the Rules and Regulations, or by law, for the purpose of enforcing its rights hereunder.

6.6 Assessment Lien. The Association has a lien on a Unit for any Assessment levied against that Unit from the time the Assessment becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment

thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association are liens, and are enforceable as Assessments, under this Section 6. Recording of the Declaration constitutes record notice and perfection of any lien under this Section 6, and no further recordation of any notice of or claim for the lien is required. The release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

6.7 Foreclosure of Lien; Remedies. A lien for Assessments may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement in a like manner as a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid 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 to its other remedies, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any Assessment or charge against the Unit.

6.8 Lien Priority; Foreclosure. A lien for Assessments 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 (1) a first mortgage on a Unit is foreclosed, (2) the first mortgage was recorded on or after the date of recording of this Declaration, and (3) 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 and Special Assessments levied which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption.

## SECTION 7 TRANSFER OF PROPERTY

7.1 Sale or Transfer of Property; 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. The lien of such Assessments shall remain against the Unit until released. 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 statement shall be binding on the Association, seller and buyer.

SECTION 8  
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 law or the Governing Documents, the occupancy, use, operation, alienation and conveyance of the Property shall be subject to the following restrictions:

8.1 General. The Property shall be owned, conveyed, encumbered, used and occupied subject to the Governing Documents and Minnesota law, 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.

8.2 Subdivision Prohibited. No Unit or any part of the Common Elements may be subdivided or partitioned without the prior written approval of all Owners and all Eligible Mortgagees.

8.3 Residential Use. The Units shall be used by Owners and Occupants and their guests exclusively as private, single-family residential Units, and not for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 8.4. The number of occupants per Unit shall be restricted in accordance with occupancy restrictions of the city and county where the Property is located.

8.4 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:

- a. An Owner or Occupant residing in a Unit may maintain a home occupation in such Unit and handle matters relating to such home occupation by telecommunications or correspondence therefrom; provided, that such uses are incidental to the residential use; do not involve physical alteration of the Unit visible from the exterior; are in compliance with all governmental laws, ordinances and regulations; and do not involve any observable business activity such as signs, advertising displays, regular deliveries, or pedestrian or vehicular traffic to and from the Unit by customers or employees.

8.5 Leasing Restrictions.

- a. Beginning on the date of recording of this Declaration (“Recording Date”) no Persons taking title to a Unit or Units in the Association shall have the ability to rent or lease such Unit, without the express written approval of the Association.

- b. Notwithstanding the aforesaid provision, any Owner in title to a Unit prior to the Recording Date, may rent or lease such Unit until it is sold or transferred to another party.
- c. No more than five (5) Units may be in rental or be leased at any time. For purposes of this section, lease shall mean any use of a Unit, for consideration or no consideration, by a Person not on title to the Unit. If an Owner actually resides in the Unit as his/her primary residence, such Owner may have a roommate who contributes money to the Owner and such arrangement shall not be considered a rental.
- d. Prior to entering into any lease agreement, a Unit Owner must provide the Association notice of their intent to lease and receive confirmation from the Association that the tenant occupancy percentage will be in accordance with the terms herein. If the Association is at the five Unit capacity limit, the Association shall keep a wait list of Owners who wish to lease their Unit(s), and Owners will be notified when an opening to lease a Unit occurs. The Association may pass policies and rules in order to administer any of the provisions contained in this Section 8.5.
- e. Any lease agreement for a Unit must be in writing for a term greater than ninety (90) days, all leases must also provide that:
  - i. the lease is subject in all respects to the Association Governing Documents, including the Declaration and Rules and Regulations, and that failure of any lessee to comply with the terms of such documents shall be a default under the lease;
  - ii. that no subleasing is permitted;
  - iii. the lease must be for the entirety of a Unit, not a portion thereof;
  - iv. Owners that lease a Unit shall advise the Association, in writing, of the address of his/her own current residence, and any changes thereto, and the names of all tenants or lessees of the Unit.
  - v. Upon request, Owners must provide the Association with a copy of the lease.
- f. Any Owner entering into a lease permitted hereunder shall be deemed to grant and pledge to the Association a security interest in the rents payable under such lease subject to the interest of the prior mortgagees and encumbrances of record, if any. In the event that the Owner is more than sixty (60) days delinquent in the payment of any sums due to the Association, the Association may seek to collect, by self-help or by court

action, all sums due by the tenant to the Owner under the lease agreement, up to the amount owed by the Owner to the Association. This provision hereby grants a power of attorney from each Owner to the Association to execute any checks or negotiable instruments, up to the amount owed by the Owner to the Association, obtained from tenants of an Owner's Unit.

- g. Any Owner entering into a lease permitted hereunder shall be deemed to grant to the Association a non-exclusive right to evict any tenant under such lease for a violation of the Association's Declaration or the Rules and Regulations of the Association after notice to the Owner. This grant is automatically coupled with a power of attorney to execute a summons and complaint for unlawful detainer and any other required documents to accomplish such eviction and to sign the name of the Owner, as may be necessary. Notwithstanding the foregoing, the powers of the Association authorized under this section may only be invoked in the event a tenant has violated the Association's Declaration or Rules and Regulations a minimum of three times in any twelve-month period and the Board of Directors has voted on and approved an eviction.
- h. The Association may adopt any rules and regulations to implement the processes and procedures for enforcement and carrying out the provisions and intent of this Section.

8.6 Delegation of Use. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Unit to persons living in the Unit pursuant to a legal right of possession; provided that such persons shall be subject to the Governing Documents and the Rules and Regulations.

8.7 Parking and Garages. 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. No boat, snowmobile, recreational vehicle, trailer, or other vehicle other than automobiles shall be stored or parked in any driveway or roadway or anywhere else on the Property except inside a garage, unless allowed by the Rules and Regulations of the Association for a specific time period. No abandoned, inoperable, or motor vehicles without current licenses and tabs shall be permitted to remain upon the driveways or parking areas of the Property. No truck with a gross weight in excess of five tons shall operate or travel on a regular basis upon any drive of the Association. Garage doors shall be kept closed except during times of access to the garage or when the occupant is in the immediate vicinity. Garages may only be used for the storage of vehicles and may not be used as a living area. 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, in its complete discretion, including without limitation the right of the Association to tow wrongfully parked vehicles, without notice or to remove unauthorized personal property. The Board may also prohibit or allow garage sales in its sole discretion. In the event of violation of any of these provisions in Section 8.7 or any other Rules and Regulations adopted by the Association related to parking and garages, the Association may remove such boat, snowmobile, recreational

vehicle, trailer, or other vehicle, without notice, at the cost of the homeowner, or avail itself of any other remedy available pursuant to its governing documents or Minnesota law. The Board may adopt any other rules, regulations, or policies related to parking consistent with this Section.

8.8 Animals. No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. Subject to this restriction, the Board shall have the exclusive authority to prohibit, allow, regulate, or require the removal of, animals on the Property, by adopting Rules and Regulations consistent with this provision.

8.9 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Units. The Property shall be occupied and used in such a manner as will not cause a nuisance, or unduly restrict, interfere with or impede the use and quiet enjoyment of the Property by other Owners and Occupants and their guests. The Board shall have full and complete authority to determine what constitutes a nuisance and may take any actions deemed appropriate to obtain compliance with this provision, including the levying of significant amounts of fines to cause the Owners or Occupants to cease the nuisance causing behavior.

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

8.11 Alterations. No alterations (as defined in Section 9) shall be made, or caused or allowed to be made, in any part of the Common Elements, or in any part of a Unit which affects the Common Elements, Limited Common Elements or another Unit or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 9.

8.12 Trees and Vegetation. Vegetation, plants, shrubs and trees, located on the Units or on the Property shall be maintained in accordance with a landscaping plan determined by the Board of Directors. The Board of Directors shall have the authority to permit or deny all landscaping, including vegetable or flower gardens and to determine their size and locations.

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

8.14 Access to Units. In case of emergency, all Units and Common Elements are subject to entry, without notice and at any time, by an Association officer or member of the Board, or by the Association's management agents with public safety personnel. Entry is also authorized for maintenance purposes after notice to the Occupant is attempted, under Sections 10 and 13 and for enforcement purposes and in the case of foreclosure.

8.15 Signs. The Board shall have the authority to determine the type and size of signs, including for sale signs, garage or estate sale signs and political signs, which may be placed on the Unit or in the Common Elements, if any, in its sole discretion.

8.16 Satellite Dishes. The Board shall have the authority to pass Rules and Regulations, in compliance with all federal laws and orders, concerning the use and installation of satellite dishes on the Property.

8.17 Prohibition of Activities. Nothing shall be done or kept on any Lot which would increase the rate of insurance on the Property or any part thereof. No noxious, destructive or offensive activity shall be allowed on any Lots nor shall anything be done thereon which is or may become a nuisance to any other Owner or Occupant.

8.18 No Unsightly Uses/Exterior Storage. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung on a Lot so as to be visible from outside the Lot. No patio or fenced in areas shall be used for storage of personal property.

8.19 Fences, Walls and Patios. No Owner may relocate, heighten, lower or otherwise move or change any fence, wall or patio upon the Property except as provided in Section 9 below.

8.20. Administration and Enforcement. The Board of Directors may adopt such other Rules and Regulations as may be necessary to administer, enforce, and carry out the intent of the restrictions contained within this Section 8.

## SECTION 9 ARCHITECTURAL STANDARDS

9.1 Restrictions on Alterations. One of the purposes of this Declaration is to ensure that those parts of the Units which are visible from the exterior be kept architecturally attractive and uniform in appearance. Therefore, the following restrictions and requirements shall apply to alterations on the Property:

- a. Except as expressly provided in this Section 9, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, or any other exterior improvements to or alteration of any Unit or any other part of a Unit which affects the Limited Common Elements or another Unit, or which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected or maintained, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board or a committee appointed by it.

- b. The Board may act as the architectural committee or it may appoint, supervise and establish an architectural committee, and specifically delegate to it part or all of the functions which the Board exercises under this Section 9, in which case the references in this Section 9 to the Board shall refer to the architectural committee where appropriate. The architectural committee shall be subject to the supervision of the Board.
- c. The Board shall establish the criteria for approval of alterations, which shall include and require, at a minimum:
  - i. substantial uniformity of color, size, location, type and design in relation to existing Units and topography,
  - ii. comparable or better quality of materials as used in existing Units,
  - iii. adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations,
  - iv. substantial preservation of other Owners' sight lines, if material, and
  - v. compliance with governmental laws, codes and regulations.

The Board, or the appointed committee if so authorized by the Board, shall be the sole judge of whether the criteria are satisfied.

- d. Approval of alterations which encroach upon another Unit or the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the alterations are approved, notwithstanding any contrary requirement in the Governing Documents or Minnesota law. A file of the resolutions approving all alterations shall be maintained permanently as a part of the Association's records.
- e. Notwithstanding the foregoing, the installation of an antenna one (1) meter or less in diameter for the purpose of receiving direct broadcast/satellite service or video programming services, or any antenna for receiving television broadcast signals, may be installed on a Unit, as permitted by applicable federal law and the Rules and Regulations. The Board shall have authority to impose further, reasonable requirements on any such installation consistent with law.

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

- a. Detailed plans, specifications and related information regarding any proposed alterations, in form and content acceptable to the Board, shall be

submitted to the Board at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.

- b. The Board shall give the Owner written notice of approval or disapproval within sixty (60) days after receipt of said plans and specifications and all other information requested by the Board. If the Board fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications, then approval shall be deemed to be granted; provided that 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 shall be deemed to be denied.

9.3 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 incurred by the Association, 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 restore any part of the 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. It is understood that previous decisions of the Association may now be contrary to the decisions made under the architectural standards of this Amended and Restated Declaration.

9.4 Hold Harmless. The Owner who causes an alteration to be made, regardless of whether the alteration is approved by the Board, shall be solely responsible for the construction standards and specifications relating to the alteration, and the construction work. The Owner, and not the Association, is responsible for determining whether any alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. The Owner shall hold the Association harmless, defend and indemnify the Association, and its officers and directors, from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorneys' fees and costs of litigation, arising out of (i) any alteration which violates any governmental laws, codes, ordinances or regulations, (ii) the adequacy of the specifications for construction of the alterations, (iii) the construction of the alterations, and (iv) payment for the alterations.

## SECTION 10 MAINTENANCE

10.1 Association Maintenance. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements, including Limited Common Elements, unless excepted below and to the extent such maintenance is not required to be done by the Owner in accordance with Section 10.2, as follows: (i) provide

for exterior maintenance, to the extent necessary upon any Unit that is subject to assessment as follows: paint and replace roofs, gutters, downspouts, and exterior siding and other exterior building surfaces, including exterior light fixtures; (ii) provide for maintenance to exterior concrete, driveways and fences, if necessary; (iii) provide for lawn, shrub and tree maintenance of originally constructed landscaping or Association managed improvements (but not watering) and snow plowing to the extent it deems appropriate; and (iv) provide for maintenance of the parking areas, roadways, street drainage facilities, Association signage, mailboxes, and irrigation and sprinkler systems.

The Association's obligation to maintain exterior building surfaces shall exclude the Owner-installed changes to the exterior such as fireplaces, chimney stacks, skylights, painting of perimeter doors and garage doors; maintenance, repair and replacement of decks and patios and any other items not specifically referred to in this Section unless otherwise approved under Section 10.2. In addition, upon an Owner's request and the Board's architectural approval, the Board of Directors may allow Owners to perform their own maintenance of their Limited Common Elements and to pay for such improvements directly. The Association shall have easements as described in Section 14 to perform its obligations under this Section 10. The Association shall have the authority, by and through its Board of Directors, to make such rules and regulations as it deems appropriate for the maintenance provided in this Section.

10.2 Optional Maintenance by Association. In addition to the maintenance described in Section 10.1, 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 maintenance to the Units, at the cost of the individual Owners.

10.3 Maintenance by Owner. Each Owner shall be responsible for the upkeep and maintenance of his or her Unit, shared interior walls, decks and patios, garages including garage doors (except painting) and garage mechanical, and all other features or portions of his/her Unit, including exterior repair and maintenance of all improvements not maintained by the Association. The maintenance required to be performed by the Owner specifically includes maintenance, repair and replacement of foundations, drain tiles, air conditioner units/compressors, window glass, window screens, interior window trim, and the painting of exterior doors, and the upkeep and maintenance (including watering) of any Owner planted gardens, trees, shrubs or exterior landscaping alterations.

Additionally, Owners shall be responsible for the removal or treatment of rodents, pests, insects, animals or other similar maintenance work impacting their Units and Lot and shall also be responsible for changing exterior light bulbs. The Association shall have the authority to require performance or to itself perform any work or improvements that the Owner(s) fails to perform, after fifteen (15) days' notice, and to undertake the necessary maintenance and repair of the Unit or other improvements located on the Lots; the Association shall assess these costs of repair, replacement and maintenance to the Owners and Units benefitted. The Association may require that any maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association.

10.4 Damage Caused by Owner. Each Owner must maintain the inside temperature

of his or her Unit at a minimum of 55 degrees Fahrenheit. 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 maintained by the Association 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 the yard area of any Unit to do so), and the cost thereof may be charged and assessed against the Unit of the Owner responsible for the damage. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit. In the case of party walls between Units, the Owners of the affected Units shall be liable as provided in Section 11.

## SECTION 11 PARTY WALLS

11.1 General Rules of Law to Apply. Each interior wall built as part of the original construction of the Units 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.

11.2 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 proportions; provided that (i) 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) 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. Such cost shall be a personal obligation of the Owner(s) and a lien against the Owner's Unit(s).

11.3 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 shall 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 relating to 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 determine the responsibility of adjoining Owners for their share of the costs, without prejudice to the right of an Owner to recover a larger contribution from the other Owner.

11.4 Weatherproofing. Notwithstanding any other provision of this Section 11, any Owner who, by his or her 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.

11.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section 11 shall run with the land and shall pass to such Owner's assigns and successors in title.

11.6 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 Unit 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, and each party shall pay its own attorneys' fees or other costs incurred in the arbitration.

## SECTION 12 INSURANCE

12.1 Owner's Personal Insurance. Each Owner shall obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability, as well as those items set forth in Section 12.2(a) herein, which are not covered by the Association's policy or policies. In addition, such coverage shall include loss assessment coverage in an amount at least equal to the deductible, as it may change from time to time, under the Association's policy or policies, which shall provide for loss assessment coverage regardless of the manner in which the Association assesses any deductible. Each Owner shall be responsible for any deductible or related expenses to said personal property or personal liability insurance coverage. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association. Each Owner shall provide such proof of insurance as may be deemed acceptable to the Board. Each Owner must also list the Association as an interested third-party and take such actions as may be necessary to provide the Association a certificate of insurance on a yearly basis and require the Association be notified in the event the Owner cancels his/her policy required under this Section. The Board may adopt such Rules and Regulations as may be necessary to enforce and administer the Owner insurance requirements contained in this Declaration. In the event of noncompliance with the Owner insurance requirements contained herein, the Association may avail itself of any remedy available to it pursuant to its governing documents or at law, including but not limited to, purchasing an Owner insurance policy on behalf of a noncompliant Unit Owner (a "Forced Insurance Policy"). If a Forced Insurance Policy is purchased by the Association, all premiums paid for by the Association shall be levied against the benefitted Unit in accordance with Section 6 herein, shall contribute to the Association's lien for Assessments, and shall be the personal obligation of the Unit Owner to pay.

12.2 Required Coverage. The Association shall obtain and maintain, and shall be entitled to select, a master policy or policies of insurance in accordance with the insurance 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, machinery, or similar items). The policy or policies shall cover personal property owned by the Association. The policy or policies may, if selected by the Association, cover the following items within Units: (i) ceiling or wall finishing materials; (ii) floor covering; (iii) cabinetry; (iv) finished millwork; (v) electrical or plumbing fixtures; (vi) built-in appliances; or (vii) other improvements, betterments or fixtures, regardless of when installed. Such policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverages and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the Federal Housing Administration ("FHA"), the U.S. Department of Veterans' Affairs ("VA") or the Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit.
  
- b. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Area, with minimum limits of one million dollars (\$1,000,000) per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverages and limits with respect to such hazards as may be required by the regulations of the FHA, VA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Unit.
  
- c. Fidelity bond insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or other persons responsible for handling funds belonging to or administered by the Association. 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 (3) 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.

12.3 Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as annual Assessments, and allocated among the Units as determined by the Board consistent with the Governing Documents. The Association may, in the case of a claim for damage to a Unit or Units (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly. The Association is not responsible for damage to the interior of the Unit that is not covered by the Association's master policy of insurance even if such damage is caused by water infiltration through the roof or exterior surfaces of the Units. All such damage and repair shall be the responsibility of the Owner and may be insured against as set forth under the Section on Owner's Personal Insurance below.

12.4 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, who 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.

12.5 Required Policy Provisions. All policies of property insurance carried by the Association shall provide that:

- a. Each Owner and secured party is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.
- b. The insurer waives its right to subrogation under the policy against the Association, or an Owner, members of the Owner's household, officers or directors of the Association, as applicable, and if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured. However, nothing in this paragraph shall prohibit any Owner from subrogating his or her individual insurance coverage (as differentiated from the insurance obtained and maintained by the Association) against the individual insurance coverage of another Owner.

- c. No act or omission by any Owner or secured party, unless acting within the scope of authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy.
- d. If at the time of a loss under the policy there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy is primary insurance; however, if the claim is less than the amount of the deductible in the Association's master policy, the Association may decline to submit a claim and the Owner may submit the claim to his/her personal policy.

12.6 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, VA or FNMA (if applicable), all of the insureds.

12.7 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.

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

12.9 Effect of Acts Not Within Association's Control. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner or First 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.

## SECTION 13 RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

13.1 Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage or destruction thereof shall be governed by Minnesota law and the Governing Documents of the Association. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property. Notice of substantial damage or destruction shall be given as provided in Section 17.10.

13.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, (i) the Association shall be the attorney-in-fact to represent the Owners in any related proceedings, negotiations, settlements or agreements, and (ii) any awards or proceeds shall be payable to the Association for the benefit of the Owners and the mortgagees of their Units. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Governing Documents, as their interests may appear.

13.3 Termination and Liquidation. The termination of the common interest community and the distribution of any proceeds therefrom, shall be governed by Minnesota law. Any distribution of funds shall be based upon the value of the Units as determined by the relative value for property insurance purposes, and shall be made to Owners and their mortgage holders, as their interests may appear.

13.4 Notice. The Association shall give written notice of any condemnation proceedings or substantial destruction of the Property to the Eligible Mortgagees entitled to notice under Section 17.10.

#### SECTION 14 EASEMENTS

14.1 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, porches, patios, utility installations and other appurtenances (i) which are part of the original construction of the adjoining Unit or the Property, or (ii) which are added in compliance with Section 9. If there is an encroachment by a Unit, or other building or improvement located in a Unit, upon another Unit or Units 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 Unit, building or improvement, and for the maintenance thereof, shall exist; provided, that with respect to improvements or alterations added pursuant to Section 9, no easement shall exist unless the same have been approved, and the proposed improvements 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.

14.2 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 other improvements located within the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.

14.3 Utility Easements. The Property shall be subject to non-exclusive, appurtenant easements in favor of all public utility companies and other utility providers for the installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable TV and other electronic communications, water, sewer, septic systems, wells, and similar services,

and metering and control devices, which exist or are constructed as part of the development of the Property, or which are referred to in the Plat or otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall also be subject to a non-exclusive, appurtenant easement in favor of the other Units for all such utilities and services; provided that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the use and quiet enjoyment of the Units by the Owners and Occupants, and so as not to affect the structural or architectural integrity of the Units.

14.4 Roadway Access Easements. The Common Elements shall be subject to an appurtenant easement for roadway access in favor of the owners and occupants over those parts of the Common Elements which are paved and dedicated to use as connecting streets.

14.5 Reservation of Easements. The Association hereby reserves the right to exercise the following rights and create the following perpetual, non-exclusive easements appurtenant to the Common Elements, all in accordance with the following authority and conditions:

- a. To connect any improvements constructed on the Property to any natural gas, storm sewer, sanitary sewer, electrical, telephone or other utility line, cable TV line, pipe, wire or other facilities which are or may be located within or serve the Property.
- b. Cable TV and other utility services from, and to discharge storm and sanitary waste into, all such lines, pipes, wires or other common utility facilities which are or may be located within or serve the Property.
- c. To install, repair, maintain, operate and replace all such natural gas, storm sewer, water, sanitary sewer, electrical, telephone or other utility lines, pipes, wires or other facilities which are or may be located within or serve the Property.
- d. To do such other acts as are necessary in order to connect into and/or to utilize such utility facilities to serve any improvement constructed or to be constructed on the Property.

14.6 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 14 shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction. All easement rights shall include a right of reasonable access to maintain, repair and replace the utility lines and related equipment.

SECTION 15  
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 Governing Documents, the Rules and Regulations, and such amendments thereto as may be made from time to time, and the decisions of the Association. A failure to comply shall entitle the Association to the relief set forth in this Section 15, in addition to the rights and remedies authorized elsewhere by the Governing Documents and Minnesota law.

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 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 to enforce compliance with the Governing Documents, the Rules and Regulations, Minnesota law or the decisions of the Association. Owners may also enforce compliance with the Governing Documents, the Rules and Regulations, by a private legal action, independent of this Section. 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 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, express 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 or the Rules and Regulations:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges or fees in such amounts as determined appropriate by the Board of Directors, from time to time, for each past due Assessment or installment thereof and each fine, penalty or other charge, and impose interest at the highest rate permitted by law accruing beginning on the first day of the month after the Assessment or installment was due. Any late fees or interest charges, once adopted by the Board from time to time, cannot be waived by the Board due to any circumstances.
- c. In the event of default of more than thirty (30) days in the payment of any Assessment or installment thereof, all remaining installments of Assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent Assessments or installments thereof, together with all attorneys' fees, costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Not less than ten (10) days' 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 Governing Documents or the Rules and Regulations of the Association.
- e. Restore any portions of the Common Elements or Units damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
- f. Enter any Unit in which, or as to which, a violation or breach of the Governing Documents exists which is likely to materially affect the health or safety of the other Owners or Occupants, or their guests, or the safety or soundness of any Unit or other part of the Property.
- g. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided by the Governing Documents and Minnesota law.

15.3 Rights to Hearing. Before the imposition of any fine or penalty for a violation of the Governing Documents or Rules and Regulations, the Board shall, upon written request of the offender, grant to the offender an opportunity for a fair and equitable hearing. 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 be held within thirty (30) days of receipt of the hearing request by the Board, and with at least ten (10) days' prior written notice to the offender. If the offender fails to timely request a hearing or to appear at the hearing, then the right to a hearing shall be deemed waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten (10) days following the hearing, if not delivered to the offender at the hearing. The Board may delegate the foregoing hearing authority to a committee of three or more disinterested Owners, who shall conduct the hearing and make a recommendation to the Board regarding the disposition of the matter.

15.4 Lien for Charges, Penalties, Etc. Any Assessments, charges, fines, expenses, 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 makes a written decision at or 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 Association's right to pursue any others.

15.5 Costs of Proceeding and Attorneys' Fees. With respect to any collection measures, or any measures or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the 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. Such expenses shall also include any collection or contingency fees or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Occupant. Such collection or contingency fees or costs shall be the personal obligation of such Owner and shall be a lien against such Owner's Unit.

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. Any insurance deductible amount, and/or any 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.

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 or the Rules and Regulations.

## SECTION 16 AMENDMENTS

16.1 Approval Requirements. This Declaration may be amended only by the approval of:

- a. Owners of Units to which are allocated at least sixty-seven percent (67%) of the total votes in the Association.
- b. The percentage of Eligible Mortgagees (based upon one (1) vote per Unit financed) required by Section 17 as to matters prescribed by said Section.

16.2 Procedures. Approval of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees shall be in writing. Any amendment shall be subject to any greater approval requirements imposed by Minnesota law. The amendment shall be effective when recorded. 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 17  
RIGHTS OF ELIGIBLE MORTGAGEES

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

17.1 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 (1) vote per Unit financed) shall be required for any amendment to the Governing Documents which causes any change in provisions including the following: (i) voting rights; (ii) annual increases in Assessments over twenty-five percent (25%), Assessment liens, or priority of Assessment liens; (iii) reductions in reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the 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) hazard or fidelity insurance requirements; (x) imposition of additional restrictions on the leasing of Units; (xi) imposition of any restrictions of an Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association (if the project involves fifty (50) or more Units) 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 common interest community after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit Eligible Mortgagees, or insurers or guarantors of mortgages.

17.2 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 held by Eligible Mortgagees (based upon one (1) one vote per Unit financed) shall be required to (i) abandon or terminate the common interest community; (ii) change the allocations of voting rights, Common Expense obligations or interests 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.

17.3 Consent to Subdivision. No Unit may be partitioned or subdivided without the prior written approval of all Owners and all Eligible Mortgagees.

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

17.5 Priority of Lien. Any holder of a first mortgage on a Unit or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid Assessments or any other charges or liens imposed against the Unit by the

Association which 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 6.1, and (ii) except that any unreimbursed Assessments or charges may be reallocated among all Units in accordance with their interests in the Common Elements.

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

17.7 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 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.

17.8 Requirements for Management Agreements. The term of any agreement for professional management of the Property may not exceed three (3) years.

17.9 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.

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

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

SECTION 18  
MISCELLANEOUS

18.1 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 Declaration or exhibits attached hereto.

18.2 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 any Minnesota law, or any section thereof, shall be deemed to include any statutes amending or replacing the laws, and the comparable sections thereof.

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

18.4 Conflicts among Documents. In the event of any conflict among the provisions of the Declaration, the Bylaws or any Rules or Regulations approved by the Association, 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.

18.5 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in this Declaration shall be perpetual, subject only to termination as provided in this Declaration.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first set forth.

Evergreen Home Owners Association

By: \_\_\_\_\_  
Its: President



## Exhibit A

### AMENDED AND RESTATED DECLARATION OF EVERGREEN HOME OWNERS

#### LEGAL DESCRIPTION

Lots 1 through 4, inclusive, Block 1;  
Lots 1 through 4, inclusive, Block 2;  
Lots 1 through 4, inclusive, Block 3;  
Lots 1 through 4, inclusive, Block 4;  
Lots 1 through 4, inclusive, Block 5;  
Outlot A

all in Minnesota Valley 4<sup>th</sup> Addition, according to the plat thereof on file and of record in the office of the Registrar of Titles in and for Scott County, Minnesota.

and

Lots 1 through 4, inclusive, Block 1;  
Lots 1 through 4, inclusive, Block 2;  
Lots 1 through 4, inclusive, Block 3;  
Lots 1 through 4, inclusive, Block 4;  
Lots 1 through 4, inclusive, Block 5;  
Lots 1 through 4, inclusive, Block 6;  
Outlots A & B

all in Evergreen 1<sup>st</sup> Addition, according to the plat thereof on file and of record in the office of the Registrar of Titles in and for Scott County, Minnesota.

**Exhibit B**

**AMENDED AND RESTATED DECLARATION OF  
EVERGREEN HOME OWNERS**

**ALLOCATION OF COMMON ELEMENT INTEREST,  
COMMON EXPENSE LIABILITIES AND VOTING RIGHTS**

The undivided interests in the Common Element Interests, Common Expense Liability and the Voting Rights to the Units on an equal basis, based upon the number of Units in the Association, provided, however, that a Common Expense assessment may be assessed against fewer than all Units as provided in this Declaration.

