

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on this 23rd day of December, 1980, by Renden Development, a Minnesota partnership (hereinafter referred to as the "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described on Exhibit A attached hereto and by this reference incorporated herein for all purposes, and desires to create thereon a residential community for the pleasure, recreation and general benefit of the residents of said community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and to this end desires to subject the real property described on Exhibit A, together with such additions as may hereafter be made thereto, as provided in Article II, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said real property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the pleasure and recreation of said community and for the efficient preservation of the values and amenities in said community to create an agency to receive the power to attend to and effectuate policies and programs that will enhance the pleasure and value of said community, and maintain, administer and enforce the covenants and restrictions and collect and disburse the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated, under the laws of the State of Minnesota, the Evergreen Home Owners Association for the purpose of exercising the functions as aforesaid;

NOW, THEREFORE, in consideration of the premises the Declarant hereby declares that the real property described on Exhibit A and such additions thereto as may hereafter be made pursuant to Article II hereof is, and shall be, held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, which covenants and restrictions shall run with the real property described on Exhibit A and any additional property annexed thereto pursuant to the provisions set forth in Article II, and be binding on all parties having any right, title or interest in the hereinafter described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

Definitions

1. Definitions. The following words, when used in this Declaration or any supplemental Declaration, shall have the following meanings:

1.1 "Association" shall mean and refer to Evergreen Home Owners Association, a nonprofit corporation organized and existing under the laws of the State of Minnesota, its successors and assigns.

1.2 "Declarant" shall mean and refer to Renden Development, a Minnesota General Partnership, and its successors or assigns if such successors and assigns should acquire more than one undeveloped Lot from Renden Development for the purpose of development.

1.3 "Developer" shall mean and refer to Laurent Builders, Inc., a Minnesota corporation, and its successors or assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

1.4 "Common Area" shall refer to all real property and facilities (including improvements thereto) owned or acquired by the Association for the common use and enjoyment of the owners. The Common Area is to

be owned by the Association at the time of the conveyance of the first Lot as described on Exhibit B attached hereto and by this reference incorporated herein for all purposes, together with such additions as may hereafter be made thereto, as provided in Article II.

1.5 "Living Unit" shall mean and refer to a residential housing unit consisting of a group of rooms and hallways and attached garage which are designed and intended for use as living quarters for one family and located or to be located upon one Lot.

1.6 "Lot" shall mean and refer to any tract or parcel of land designated as a Lot shown upon any recorded plat or subdivision map of the Property with the exception of any tracts or parcels designated as outlots or Common Areas.

1.7 "Member" shall mean and refer to every person or entity who is a record owner of a fee or undivided fee simple interest in any Lot which is subject by covenants of record to assessment by the Association, including, but not limited, contract vendors.

1.8 "Mortgage" shall mean and refer to any mortgage or other security instrument by which a Lot, or any part thereof, or any structure thereon, is encumbered.

1.9 "Mortgagee" shall mean any person or entity named as the mortgagee under any Mortgage, or any successors or assigns to the interest of such person or entity under a Mortgage.

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

1.11 "Private Yard Area" shall mean and refer to that portion of a Lot not covered by a Living Unit.

1.12 "Property" shall mean and refer to all of the real property subject to this Declaration, all of which is more fully described on Exhibits A and B attached hereto and by this reference incorporated herein for all purposes, and all additional real property made subject to this Declaration in accordance with the provisions of Article II.

ARTICLE II.

Additional Property Subject to this Declaration

2.1 Additions to Existing Property. Additional real property may become subject to this Declaration in the following manner:

(a) Additions in Accordance with General Plan of Development.

The Declarant, its successors and assigns, shall have the right, without the consent of the Members to bring within the scheme of this Declaration the additional real property described on Exhibit C attached hereto and by this reference incorporated herein for all purposes, in future stages of development by December 31, 1984; provided, however, that the Federal Housing Administration and the Veteran's Administration shall have the right to veto any such future additions to the event that either of such agencies determines that any such future addition is not in accordance with the general plan of development heretofore approved by each of them.

(b) Additions Authorized by Members. Additional residential property may become subject to this Declaration upon approval of two-thirds (2/3) of the Members of each class of Association Members.

2.2 Manner of Annexation. Additions authorized under this Article shall be made by filing a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property and, after such filing, such additional property shall be subject to the covenants and restrictions of this Declaration. Such Supplementary Declaration shall contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and shall not be inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing property.

ARTICLE III.

Membership and Voting Rights in the Association

3.1 Membership. Every person or entity who is a record owner of a fee or undivided fee simple interest in any Lot which is subject by covenants or record to assessment by the Association, including, but not limited to contract vendors, shall be a member of the Association. The foregoing is intended to exclude persons or entities who hold an interest merely as a security for the performance of an obligation until such time such person acquires a fee simple interest in such Lot by foreclosure or by any proceeding in lieu thereof. Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

3.2 Voting Rights. The Association shall not have nor shall it issue any capital stock and may only have two (2) classes of voting membership:

(a) Class A. Class A members shall be all those Owners as defined in Section 1.10, with the exception of the Declarant. Each Class A member shall be entitled to one (1) vote for each Lot in which he holds

the interest required for membership by Section 3.1. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Declarant shall be the sole Class B member and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the occurrence of the first of the following events:

(i) when the total number of votes outstanding in the Class A membership equals or exceeds the total number of votes outstanding in the Class B membership; or

(ii) on December 31, 1984.

3.3 Suspension of Voting Rights. The right of any Member to vote and the right of any Member, his family or guests to use any recreational facilities that may be acquired by the Association shall be suspended during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for any infraction of any rules or regulations published by the Association.

ARTICLE IV.

Covenants for Maintenance Assessments

4.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be and hereby is deemed to covenant and agree to pay to the Association:

(a) General annual assessments or charges; and

(b) Special assessments for capital improvements, such assessments to be established and collected from time to time as hereinafter provided. The general annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on each such Lot and shall be a continuing lien of each such Lot against which each such assessment is made. Each such assessment, together with such interest thereon and all costs of collection thereof, as hereinafter provided, shall also be the personal obligation of each person who was the Owner of each such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. All such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the pleasure, health, safety and welfare of the residents of the Property and, in particular, for the maintenance of the Property, the Common Areas, services and facilities devoted to this purpose and related to the use and enjoyment of the improvements erected upon each Lot.

4.3 Maximum Annual Assessments. The amount of the maximum annual assessments shall be determined by the Board of Directors as hereinafter provided but subject, however, to the following restrictions:

(a) Until January 1st of the year immediately following the conveyance of the first Lot by the Declarant to an Owner, the maximum annual general assessment shall be \$ 420.00 per Lot.

(b) From and after January 1st of the year immediately following the year of the conveyance of the first Lot by the Declarant to an

Owner, the maximum annual general assessment may not be increased each year more than five (5%) percent above the maximum annual general assessment for the previous year without a vote of the membership.

(c) The maximum annual general assessment may be increased above such five (5%) percent amount by vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for such purpose.

(d) The Board of Directors of the Association may, after consideration of the current assessment costs and future needs of the Association, fix the actual assessment for any year at any lesser amount.

4.4 Special Assessments for Capital Improvements. In addition to the general annual assessments authorized by Section 4.3, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement; provided, however, that any such assessment shall require the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

4.5 Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all Members, and to any mortgagee who shall request such notice in writing, no less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent

meeting shall be held later than sixty (60) days following the preceding meeting.

4.6 Uniform Rate of Assessment. Both general annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis; provided, however, that any Lots owned by the Declarant shall be assessed an amount equal to one-fourth (1/4) of the amount assessed against Lots owned by persons other than the Declarant; provided, further, that notwithstanding anything set forth in the preceding clause to the contrary, a Lot owned by the Declarant shall be assessed on the same basis as a Lot owned by any person other than the Declarant from and after the time that a building constructed upon such Lot is (a) used by the Declarant as a model for regular public inspection, (b) finally inspected by the United States Department of Housing and Urban Development or Federal Housing Administration, or (c) occupied by a tenant of the Declarant as a residential dwelling.

4.7 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the calendar month following the conveyance of a Lot to an Owner. In addition, in the event that additional properties are subsequently brought within the scope of this Declaration pursuant to Article II, annual assessments shall commence as to all Lots within such additional properties on the first day of the calendar month following the conveyance of the first Lot therein by the Declarant to an Owner. In the event that the annual assessments, with respect to any Lot, shall commence during any calendar year on any day other than January 1st, the amount of such assessments payable for such year shall be that proportion of the full amount applicable to the entire calendar year which the number of remaining full calendar months in such year bears to the number twelve. All assessments, both general and special may be collected on a monthly, or other periodic basis, and with such due dates as the Board of Directors may determine and establish.

4.8 Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement, and the amount of the assessment

against each Lot for each annual assessment period at least thirty (30) days in advance of such date of commencement of such period and shall at that time prepare a roll of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. The due dates shall be established by the Board of Directors. Written notice of every assessment shall thereafter be sent to each Owner subject to such assessments. The Association shall, upon demand and upon the payment of a reasonable charge, furnish a written certificate signed by an officer of the Association setting forth whether or not assessments upon particular Lots have been paid. Such certificate shall be conclusive evidence of payment of any assessments therein stated to have been paid.

4.9 Effect of Nonpayment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If any assessment is not paid on the date when due then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on such Lot or Lots which shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Such lien shall run in favor of the Association and shall be superior to all other liens and encumbrances on such Lot except for the following:

- (i) liens for general real estate taxes and special assessments levied by any governmental authority; and
- (ii) the lien of any first mortgage as provided in Section 4.11 hereof.

(b) All other lienors acquiring liens on any Lot after this Declaration shall have been recorded and whose liens shall also have been recorded, shall be deemed to consent that their liens shall be and remain inferior to future liens provided for herein whether or not such consent has been expressed in the instruments creating their liens.

(c) To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot and file or record the same, but such notice of lien shall not be recorded until such assessment has been wholly or partially unpaid for at least thirty (30) days from the due date. Such lien may be enforced and foreclosed either by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Minnesota or by foreclosing the lien in the manner prescribed by Minnesota Statutes for the foreclosure of a mechanic's lien. Each Owner, by acceptance of a deed for any Lot, does further hereby give full and complete power of sale to the Association and does consent to a foreclosure of the assessment lien by advertisement. In the event of any such foreclosure, and in the further event that the Association shall prevail in such foreclosure the person personally obligated to pay the same shall be required to pay all costs of foreclosure including, but not limited to, reasonable attorneys' fees. All such costs and expenses shall be further secured by the lien being foreclosed. The person personally obligated to pay such lien, shall also be required to pay the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other

legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Lot as the Owner thereof. A release of the notice of lien shall be executed by an officer of the Association and recorded upon payment of all sums secured by such lien.

(d) Any encumbrancer holding a lien on any Lot may pay, but shall not be required to pay, any amounts secured by the lien created and authorized by this Section and, upon payment of such sums, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including, but not limited to, priority as to any other lien or interest in such Lot.

(e) The Association shall, upon written request, report to any first Mortgagee or other encumbrancer of a Lot the amount of any assessments remaining unpaid for a period longer than thirty (30) days after the same shall become due.

(f) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the rate of six (6%) percent per annum. No Owner may waive or otherwise escape personal liability for the assessments provided for herein by abandonment of his Lot. A suit to recover a money judgment for such expenses, with costs of collection and interest as provided for herein, shall be maintainable by the Association without foreclosing or waiving the lien securing the same.

4.10 Subordination of Lien to First Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any first Mortgage, and the sale or transfer of any Lot shall not effect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a first Mortgage, or pursuant to the foreclosure of a first Mortgage, or pursuant to any other proceeding or arrangement in lieu of such foreclosure, shall extinguish the lien of

such assessments as to installments which became due prior to the effective date of such sale, transfer or acquisition by the Mortgagee to the end that no assessment liability shall accrue to an acquiring Mortgagee except with respect to installments of assessments becoming due after possession has passed to such acquiring Mortgagee, whether such possession has passed at the termination of any period of redemption or otherwise, and in the event of the extinguishment of such assessment lien as aforesaid, the entire amount of such unpaid assessment shall be reallocated and assessed against, and payable by the Owners of, all other Lots in the Association, exclusive of such mortgage Lot. No such sale, transfer or acquisition of possession shall relieve an Owner or a Lot from liability for any assessments thereafter becoming due or from the lien thereof or shall relieve the person personally obligated to pay the assessments which were levied prior to the transfer of such property from the personal obligation to pay the same.

ARTICLE V.

Easements

5.1 Easements. In addition to the easements, covenants, restrictions and conditions of Article VI concerning party walls and of Article VII concerning architectural and exterior controls, all Living Units and Lots shall be subject to easements and covenants hereinafter specifically described for the benefit of the Property or for the limited benefit of specified adjoining Lots, all as more fully set forth hereinafter in this Article.

5.2 Walkway Easement. The Declarant, for the East 6.5 feet of the South 23.5 feet of Lot 1 in Blocks 1, 3, and 5, and for the East 6.5 feet of the North 23.5 feet of Lot 1 in Blocks 2 and 4, hereby grants perpetual walkway easements over and across that portion of each and every Lot 1 on the Property to and for the benefit of that certain Lot 2 within the Property that abuts and adjoins any given Lot 1. This walkway easement shall be for the sole benefit of the

Owners, occupants, guests, invitees, and licensees of each and every respective Lot 2 within the Property. The walkway easement over and across any given Lot 1 within the Property shall extend to and be in favor of only the Owners, occupants, guests, invitees, and licensees of that particular Lot 2 within the Property that abuts and adjoins any given Lot 1. These walkway easements shall be for the sole purpose of ingress and egress to and from the respective Lot 2 and the Common Area. The Owners, occupants, guests, invitees, and licensees of each respective Lot 1 shall use the same walkway area constructed upon the Lot 1 for their ingress and egress to and from the Common Area.

The Declarant, for the West 6.5 feet of the South 23.5 feet of Lot 4 in Blocks 1, 3, and 5, and for the West 6.5 feet of the North 23.5 feet of Lot 4 in Blocks 2 and 4, hereby grants perpetual walkway easements over and across that portion of each and every Lot 4 on the Property to and for the benefit of that certain Lot 3 within the Property that abuts and adjoins any given Lot 4. This walkway easement shall be for the sole benefit of the Owners, occupants, guests, invitees, and licensees of each and every respective Lot 3 within the Property. The walkway easement over and across any given Lot 4 within the Property shall extend to and be in favor of only the Owners, occupants, guests, invitees, and licensees of that particular Lot 3 within the Property that abuts and adjoins any given Lot 4. These walkway easements shall be for the sole purpose of ingress and egress to and from the respective Lot 3 and the Common Area. The Owners, occupants, guests, invitees, and licensees of each respective Lot 4 shall use the same walkway area constructed upon the Lot 4 for their ingress and egress to and from the Common Area.

Maintenance, including but not limited to, repairs, cleaning and snow removal, of the walkway areas described in this Section 5.4 shall be performed by the Association and assessable against all Lots in the Association as a part of exterior maintenance.

The terms and provisions of the walkway easements described herein shall run with the premises and the land appurtenant thereto and shall extend to and be binding upon the Owners, the Association and their heirs, successors and assigns.

5.3 Private Yard Easements. Except as hereinafter provided, each Owner shall be fully entitled to the exclusive use and occupancy of the Private Yard Area in his Lot to the exclusion of all others; provided, however, the Property generally and all other Owners shall be entitled to a visual easement over all Private Yard Areas, subject to and limited by the original structures erected thereon by the Developer. No Owner shall erect or cause to be erected any structure of any sort upon his Lot, or plant any trees or shrubs prior to obtaining the written approval of the Association. Except as permitted under the limited circumstances described in the preceding sentence, all planting, landscaping and private yard maintenance shall be performed by the Association and the costs thereof shall be and constitute a portion of the general annual assessment by the Association upon all Lots in the Property.

5.4 Utility Easements. The Declarant has, or will be separate Declaration, provide easements for utility purposes to and from all Lots in the Property. The Association or its proper representatives and the City of Shakopee, shall have the right of free access to any Lot or Living Unit for the purpose of maintaining any utility service to any Lot on the Property. The Association and the City of Shakopee shall have the further right to maintain on the exterior of any Living Unit a separately metered water line or lines for yard maintenance purposes.

ARTICLE VI

Party Walls

6.1 General Rules of Law to Apply. Each wall which is built as part of the original construction of the Living Unites upon the Property and placed upon the dividing line between the Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law