

COMMON INTEREST COMMUNITY NUMBER 41
PLANNED COMMUNITY
CEDAR CREEK SOUTH SIXTH ADDITION
DECLARATION

updated
2006

THIS DECLARATION is made this 6th day of December 2000, by Kenco Enterprises, Inc. and Pilot Land Development Company, Minnesota corporations, herein called "**Declarants**," pursuant to the provisions of the Minnesota Common Interest Ownership Act, Minnesota Statutes Sections 515B.1-101 through 515B.4-118 (the "Act"), as amended.

RECITALS

Declarants are the owners of the following described real estate located in Wright County, Minnesota:

Lots 1-21, inclusive, Block 2, Cedar Creek South Sixth Addition

all of which real estate constitutes and is referred to herein as the "**Real Estate**."

Declarants intend to develop the Real Estate as a residential "townhouse" development organized as a planned community under the Act.

NOW, THEREFORE, Declarants declare that the Property is and shall be divided, held, transferred, conveyed, sold, leased, occupied and developed subject to the Act and to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, 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 inure to the benefit of each Unit Owner, and the heirs, successors and assigns of each Unit Owner.

PRELIMINARY MATTERS

Note to Readers

Many provisions of the Act which govern this Common Interest Community ("**CIC**"), and of the Minnesota Non-profit Corporation Act, Minnesota Statutes Chapter 317A under which the Association is formed, are not repeated in this Declaration. This Declaration should be read in conjunction with both statutes.

Index to Provisions Required by the Act

For the convenience of recording officers, title examiners and others reviewing this Declaration for conformance with the Act, the following is an index to the provisions required by section 515B.2-105 and 515B.2-106. No provisions are required for this CIC under sections 515B.2-107 (leasehold CIC).

Section 515B.2-105(a)

- (1) Section 2.01
- (2) Section 2.01
- (3) Section 4.01
- (4) Section 2.01
- (5) Section 5.01 and 6.01
- (6) Section 8.01
- (7) not applicable to this CIC
- (8) Section 9.01
- (9) Section 5.01 and 7.01
- (10) Section 19.01
- (11) principally, Sections 17.01-17.10, 18.01, and 19.01-19.11
- (12) Section 19.10
- (13) Section 2.01, 21.01-.02, 18.01, 8.01, 3.01, 10.01-10.09, and 11.01

Section 515B.2-106

- (1) Section 26
- (2) Section 26.1
- (3) Section 26.11
- (4) Section 26
- (5) Section 26.02
- (6) Section 26.03
- (7) Section 26.04
- (8) Section 26.05
- (9) Sections 26.06 and 26.07

1.00 DEFINITIONS

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

- a. "Association" shall mean Cedar Creek South Sixth Addition Homeowners Association, Inc., a Minnesota non-profit corporation.
- b. "Board" shall mean the Board of Directors of the Association as provided for in the Bylaws.
- c. "Common Elements" shall mean the Common Elements identified in Article 8.
- d. "Common Expenses" shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation allocation to reserves and those items specifically identified as Common Expenses in this Declaration or the Bylaws.

- e. "Dwelling" shall mean a part of a building consisting of one or more floors, designated and intended for occupancy as a single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.
- f. "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- g. "Improved Unit" shall mean any platted Lot as shown on the Plat subject to this Declaration upon which a Dwelling has been constructed and for which a Certificate of Occupancy has been issued.
- h. "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.
- i. "Occupant" shall mean any person or persons, other than an Owner, in possession of or residing in a Unit in the Governing Documents.
- j. "Owner" shall mean a Person who owns a Unit, but excluding contract for deed vendors, mortgagees and other secured parties within the meaning of Section 515B.1-103(29) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate. The terms "Owner" and "Unit Owner" may be used interchangeably.
- k. "Person" shall mean a natural individual, corporation, limited liability company, partnership, trustee or other legal entity capable of holding title to real property.
- l. "Plat" or "CIC Plat" shall mean the recorded plat depicting the Property pursuant to the requirements of Section 515B.2-110(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, specifically identified in Article 3 and including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- m. "Property" shall mean all of the Real Estate submitted to this Declaration, including the Dwellings and all other structures and improvements located thereon now or in the future.
- n. "Unimproved Unit" shall mean any platted Lot as shown on the Plat subject to this Declaration upon which a Dwelling has not yet been constructed and for which a Certificate of Occupancy has not been issued.
- o. "Unit" shall mean any platted lot as shown on the Plat subject to this Declaration upon which a Dwelling is located or intended to be located, including all improvements thereon, but excluding the Common Elements.

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

2.00 IDENTITY OF REAL ESTATE AND CIC

- 2.01 This Declaration establishes Common Interest Community Number 41, Wright County, Minnesota under the name Cedar Creek South Sixth Addition. It is a planned community (and not a condominium or cooperative), and is not subject to a master association. The real estate included within this CIC is located in Wright County, Minnesota, and is legally described as follows:

Lots 1-21, inclusive, Block 2, Cedar Creek South Sixth Addition.

The project name for development and sales purposes shall be: *"Creekside"*

This CIC is not a conversion of existing buildings to a CIC within the meaning of 515B.1-106(c) of the Act and is, therefore, not subject to any ordinance of the type authorized or permitted by said statute.

3.00 CIC PLAT

- 3.01 The plat of Cedar Creek South Sixth Addition, Wright County, Minnesota, recorded with the County Recorder for Wright County, Minnesota, as Document Number 726628, pursuant to Minnesota Statutes Chapter 505, constitutes the CIC Plat for this CIC.

4.00 OWNERS ASSOCIATION

- 4.01 Cedar Creek South Sixth Addition Homeowners Association, Inc. has been incorporated as a Minnesota non-profit corporation under Minnesota Statutes Chapter 317A to act as the association of Unit Owners required by section 515B.3-101 of the Act.

5.00 UNITS AND UNIT IDENTIFIERS

- 5.01 This CIC consists of twenty (20) detached Units. The Unit identifier of each Unit shall be the lot, block numbers and subdivision name of the CIC Plat. Units shall be described in the following format:

Lot 1, Block 2, Cedar Creek South Sixth Addition, Common Interest Community Number 41, Wright County, Minnesota.

6.00 BOUNDARIES

- 6.01 The Unit boundaries shall be the boundary lines as designated on the CIC Plat. The Units shall have no upper or lower boundaries.

7.00 UNITS ARE RESIDENTIAL

- 7.01 All Units are restricted to residential use.

8.00 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

- 8.01 Common Elements. All of the Real Estate and Property not included within the Units constitutes Common Elements. The Common Elements include those parts of the Real Estate legally described as follows:

Lot 21, Block 2, Cedar Creek South Sixth Addition

or designated as Common Elements on the CIC Plat or in the Act. The Common Elements are owned by the Association for the benefit of the Owners.

- 8.02 Owner's Easement of Enjoyment. Subject to the provisions of the Section 8.05 and the Act, every Owner shall have the following non-exclusive, appurtenant easements over the Common Elements:

- a. Ingress and egress;
- b. Utilities as located and constructed by the Declarants;
- c. Parking as located and constructed by the Declarants;
- d. Right of overhang and encroachment of improvements on a Lot or the Common Elements which are not inconsistent with the use of the Common Elements by other Owners; and
- e. Right and easement of enjoyment.

These easements are more fully described in Article 13.

- 8.03 Title and Improvements to Common Elements. The Declarants shall convey and record marketable title to the Common Elements to the Association prior to the first conveyance of any Lot.
- 8.04 Allocation of Limited Common Elements. The Declarants shall convey and record marketable title to the Common Elements allocated for the exclusive use of one or more, but fewer than all, of the Units as specified in Section 515B.2-102(d) and (f) of the Act. Limited Common Elements may be reallocated from one Unit to another in the manner described in Section 515B.2-109(c) of the Act.
- 8.05 Extent of Owners' Easements. Except as otherwise provided herein, the rights and easements created hereby and the title of the Association to the Common Elements shall be subject to the following:

- a. The right of the Association, in accordance with the Governing Documents to improve the Property and to borrow money for such purposes, and in aid thereof to mortgage said Common Elements; provided, however, that the rights of such mortgagee in said Common Elements shall be subordinate to the rights of the Owners and the First Mortgagees;
 - b. The right of the Association to take such steps as are reasonably necessary to protect the Property against foreclosure;
 - c. The right of the Association to suspend the enjoyment rights of any Owner for reasonable periods of time and to impose reasonable fines and penalties for violations of the provisions of the Governing Documents; provided, however, that nothing contained in this Section 8.05(c) shall be deemed to deny an Owner easement rights for ingress and egress and utilities;
 - d. The right of Owners to use the parking spaces; and
 - e. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes.
- 8.06 Delegation of Use. Any Owner may delegate in accordance with the Governing Documents, an Owner's right of enjoyment to the Common Elements to its tenants who reside in the Unit and to members of its family and its guests, but the Owner shall remain responsible for the conduct of such persons.
- 8.07 Use of the Common Elements. The Common Elements shall be used strictly in accordance with the provisions of this Declaration. Except as herein provided, no Owner shall obstruct or interfere whatever with the rights and privileges of other Owners in Common Elements, and nothing shall be planted, altered, constructed upon or removed by an Owner from the Common Elements, except as provided in the Governing Documents.
- 8.08 Taxes and Special Assessments on Common Elements. Taxes and special assessments that are levied against the Common Elements by any governmental taxing authority shall be divided and levied against the Units as the Association shall direct, which levies shall be a lien against said Units and shall be collectible by the Association as part of the annual assessment if the same are not required to be paid directly to the governmental authority.
- 8.09 Rights of Developer. Notwithstanding any provisions of the Governing Documents, the Developer may maintain a business and sales office, model townhouses and other development and sales facilities within one or more Townhouses or elsewhere on the Property, and shall have temporary easements for itself and prospective purchasers for ingress, egress, parking and enjoyment in connection therewith, until the earlier of the date upon which all of the Lots are sold or December, 2005, and may display signs offering the same for sale. The Developer may also lease or rent Units owned by it without restriction within the time period specified above, and may sell or lease any additional garages constructed by it to the Owner without restriction.

9.00 ALLOCATED INTERESTS

See
paragraphs
2 & 3 of
1st Amendment

9.01 Each of the Units is hereby allocated an equal one-twentieth (1/20) of the Common Expenses, and ~~one vote in the Association~~. However, certain expenses may be assessed against a certain Unit or Units (under the following circumstances or under 515B-3.115(h) of the Act):

- a. Any Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element undertaken by the Association may be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned, on the basis of (i) equality, (ii) share footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- b. Any Common Expense or portion thereof benefitting fewer than all of the Units may be assessed exclusively against the Units benefitted, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- c. The costs of insurance may be assessed in proportion to value, risk or coverage, and the costs of utilities may be assessed in proportion to usage.
- d. Reasonable attorneys' fees and other costs incurred by the Association in connection with (i) the collection of assessments, and (ii) the enforcement of the Governing Documents, the Act or the Rules and Regulations against an Owner or Occupant or their guests, may be assessed against the Owner's Unit,
- e. Fees, charges, late charges, fines and interest may be assessed as provided in Section 515B.3-116(a) of the Act and this Declaration.
- f. Assessments levied under Section 515B.3-116 of the Act to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities.
- g. If any damage to the Common Elements or another Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage exclusively against the Owner's Unit to the extent not covered by insurance.
- h. If any installment of an assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
- i. Any Common Expense constituting reserve funds required in Section 515B.3-114 of the Act shall be assessed only against Improved Units and not assessed against Unimproved Units.

10.01 General Provisions. Section 515B.3-115 of the Act specifies how assessments are assessed and collected. Section 515B.3-116 specifies how the lien for assessments is created and enforced, and to which interests it is either superior or subordinate. In addition to those provisions:

10.02 Limit on Increases. Until January 31, 2002, the maximum annual assessment shall be a rate fixed by the Board of Directors, but not to exceed the monthly rate of \$65.00 per Unit. Thereafter, the Board of Directors may fix said annual assessment to cover any and all expenses and projected expenses.

- a. From and after February 1, 2002, the maximum annual assessment may be increased each year not more than five percent (5%) (or the rate of increase in the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers for All Items for Minneapolis-St. Paul ("CPI") as published by the U.S. Department of Labor, if greater than five percent (5%)).
- b. From and after February 1, 2003, the maximum annual assessment may be increased above ten percent (10%) or the rate of increase in the CPE, if greater than 10 percent (10%) by a unanimous vote of the Association membership who are voting in person or by proxy at a meeting duly called for this purpose so long as there are at least twelve (12) Units in the CIC. If there are more than twelve (12) Units in the CIC, any such increase must be approved by a vote of sixty-seven percent (67%) of the Association who are voting in person or by proxy, at a meeting called for this purpose.
- c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

10.03 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any unforeseen or unbudgeted Common Expense, including without limitation the unexpected construction, reconstruction, repair or replacement of a capital improvement and including fixtures and personal property related thereto, and the exterior maintenance of Units, provided that any such assessment shall have the unanimous assent of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose so long as there are twelve (12) Units in the CIC. If there are more than twelve (12) Units in the CIC, any such assessment shall be approved by a vote of sixty-seven percent (67%) of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

Duplicate
Section

~~10.04 Maintenance Assessments. In addition to annual and special assessments, the Association may levy in any assessment year a maintenance assessment, without a vote of the Owners, for the purpose of defraying in whole or in part the cost of maintenance, repair or replacement of any exterior part or appurtenance of any one or more Dwelling and any improvements on the Unit or Units on which any Dwelling is situated. The funding for (i) "staged" maintenance programs whereby the Association implements the overall maintenance and repair of the Property in a series of stages from year to year and (ii) maintenance required by a single or limited number of Units. Maintenance assessments shall be levied in equal shares against only the Unit or Units~~

~~EIC, any such assessment shall be approved by a vote of sixty-seven percent (67%) of the Association who are voting in person or by proxy at a meeting duly called for this purpose.~~

10.04 Maintenance Assessments. In addition to annual and special assessments, the Association may levy in any assessment year a maintenance assessment, without a vote of the Owners, for the purpose of defraying in whole or in part the cost of maintenance, repair or replacement of any exterior part or appurtenance of any one or more Dwelling and any improvements on the Unit or Units on which any Dwelling is situated. The funding for (i) "staged" maintenance programs whereby the Association implements the overall maintenance and repair of the Property in a series of stages from year to year and (ii) maintenance required by a single or limited number of Units. Maintenance assessments shall be levied in equal shares against only the Unit or Units benefitted. The assessment shall be a personal obligation of the Owner and a lien against the Unit with the same priority and enforceability as any lien for annual or special assessments.

10.05 Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to all Units not later than sixty (60) days after the conveyance of the first Unit to an Owner other than Declarants. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

See 2nd Amendment 10.06 ~~Commencement of Annual Assessments. By February 1st of each year the Board shall fix the amount of annual assessments against each Unit for the following fiscal year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following fiscal year and cause a copy of such budget in reasonable detail to be furnished to each Owner.~~

10.07 Interest on Delinquencies. Owners shall pay interest on delinquent installments from the first day of the month in which they are due at the highest rate allowed by law. Installments paid on or before ten (10) days after the first day of each month shall not result in any late charge, but there shall be added to each installment thereof not paid on or before the tenth (10th) day of each month a one time late charge of five percent (5%) of the delinquent installment. All payments upon account shall be applied first to interest and then to late charges and then to the amount of assessment installments then due in the inverse order of their due dates.

10.08 Association Funds. All sums collected by the Association from assessment may be commingled in a single fund, but they shall be held for and allocated to the Units in the respective shares in which they are paid and shall be credited to accounts from which shall be paid the Common Expenses. All assessments, both annual and special, shall become a lien on the Units on the first day of January in the year during which they are payable.

10.09 Lien Priority; Foreclosure. A lien under this Declaration is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration; (ii) any first mortgage on the Unit; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if a first mortgage on a Unit is foreclosed, the first mortgage was recorded on or after the date of this Declaration, and no Owner

redeems during the Owner's period of redemption provided by Minn. Stat. Chapters 580, 581 or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-115(a), (h)(1) to (3), (i), and (1) of the Act which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption.

11.00 ALTERNATIVE ASSESSMENT PROGRAM

- 11.01 Declarants' Alternative Assessment Program. The following alternative assessment program is established pursuant to Section 515B.3-115(b) of the Act. Notwithstanding anything to the contrary in this Section 11, if a Common Expense assessment has been levied, any unsold Unit owned by Declarant shall be assessed at the rate of twenty-five percent (25%) of the Assessments levied on other Units of the same type until a certificate of occupancy has been issued with respect to such Unit by the municipality in which the Unit is located. This reduced Assessment shall apply to each Unit owned by Declarant at the time that the Unit is created, and shall terminate with respect to each such Unit upon the issuance of the certificate of occupancy for the Unit. Although this alternative Assessment program will not affect the allocated share of replacement reserves attributable to Units owned by Declarant, there are no assurances that there will be no effect on the level of services for items set forth in the Association's budget.

12.00 EASEMENTS

- 12.01 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.
- 12.02 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Units and the Association for all such services, including, without limitation, any sewer or water lines servicing other Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utility companies providing service to the Units for the installation and maintenance of utility metering devices.
- 12.03 Use and Enjoyment Easements. Each Unit shall be the beneficiary of appurtenant easements for the use and enjoyment on and across the Common Elements, and for use and enjoyment of any Limited Common Elements allocated to the Unit, subject to any restrictions authorized by this Declaration.
- 12.04 Access and Parking Easements. Each Unit shall be the beneficiary of appurtenant easements on or across the Common Elements for access to a public street or highway and for parking in areas

located and constructed by the Declarants or as shown on the Plat, subject to any restrictions set forth in this Declaration.

- 12.05 Declarants's Easements. Declarants shall be the beneficiary of easements for construction, sales activity and to exercise its Special Declarants' Rights as set forth in this Declaration.
- 12.06 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or tenant be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this section shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction.
- 12.07 Permanent Easements. All easements described in this Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the mortgagee, from time to time, of any representatives or assigns.

13.00 ALLOCATION OF MAINTENANCE RESPONSIBILITY

See 2nd Amendment

~~13.01 The Exteriors. In order to preserve the uniform and high standard of appearance of the Property, the Association shall be responsible for the maintenance and repair of the Common Elements and exterior of all Dwellings Units, which responsibility shall include, but not be limited to, the following: the maintenance and repair of exterior surfaces of all buildings on the Real Estate, including, without limitation, the painting of same as often as necessary, the replacement of trim and caulking, roofs, gutters, downspouts, and overhangs. The painting and decorating of the exterior surface of exterior doors and exterior window sashes shall be the responsibility of the Association. The Association shall not be responsible for washing windows or for maintenance, repair and replacement of patios, decks and air conditioning equipment. All maintenance and repair of the individual Dwellings will be the sole obligation and expense of the individual Owner, except to the extent the exterior maintenance and repairs is provided by the Association pursuant to this Section. In the event that the need for maintenance or repair is caused through the willful or negligent act or omission of an Owner, an Occupant, the Owner's or Occupant's family, guests, tenants or invites, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Unit is subject and such Owner shall be liable therefore in the same manner as assessments.~~

- 13.02 Lawn and Planting, Maintenance. The Association shall mow, trim, water, rake and otherwise maintain, all to the extent that the Board deems necessary or desirable, all lawn and exterior plantings except that the Association may elect not to maintain gardens and plantings established by individual Owners, but to the extent the Association undertakes to do so, it will not be responsible for any damage to such gardens and plantings due to over-watering, under-watering or improper watering. All plantings shall be subject in each instance to the Board of Directors' right to disapprove plantings and locations which would be disharmonious.

- 13.03 Services. The Association may obtain and apply for the services of any persons or entities to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of the Governing Documents. The Association may arrange with others to furnish trash collection and other common services to each Unit.
- 13.04 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Unit, provided that an Owner may delegate his or her right of enjoyment of such personal property to residents of his or her Unit. A transfer of title to a Unit shall transfer to the transferee Ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Unit.
- 13.05 Utilities. The Association shall maintain, replace and repair sewer and water lines on Units from the street to the foundation of each Dwelling. Blockages caused by individual Units will be assessed to that Unit.

14.00 OWNERS' MAINTENANCE

- 14.01 Upkeep and Maintenance. Each Owner shall be responsible for the upkeep and maintenance of the Owner's Unit including, but not limited to, the garage (including interior garage door), patio and all other areas, features or parts of the Owner's Unit to the extent not otherwise maintained by the Association, and each Owner shall maintain the same free of hazardous substances, vermin, cockroaches, pests and debris which may pose a threat to the health or safety of occupants of other Units. Every Owner must perform promptly all cleaning maintenance and repair work within his or her Dwelling, which, if omitted, would affect another Unit or Units, being expressly responsible for the damages and liabilities that the Owner's failure to do so may engender. Without limiting the generality of the foregoing, the Association may require an Owner to remove offending items, or to use a professional exterminator, and upon failure of the Owner so to do, the Association after reasonable notice may enter the Unit with a professional exterminator or other appropriate contractor and take corrective action, charging the Owner of such Unit for the reasonable cost thereof.

- See 2nd
Amendment
- ~~14.02 Heating of Dwellings. For the purpose of preventing damage to and breakage of water, sewer and other utility lines and pipes in a Dwelling which might result in damage to the adjoining Dwelling, all Owners or Occupants shall maintain the temperature in their Dwellings, at all times, at least at 55 degrees Fahrenheit (or such other reasonable temperature or standard as the Board of Directors may from time to time specify by written rule), subject, however, to the inability to maintain such temperature due to causes beyond the Owner's or Occupant's reasonable control. Any damage~~

See 2nd
Amendment

~~resulting from the refusal or failure of an Owner or Occupant so to maintain such minimum temperature may be repaired by the Association and (unless due to causes beyond the Owner's or Occupant's reasonable control) the cost thereof assessed against the Unit of the refusing or failing Owner. However, if the failure to maintain such minimum temperature is due to causes beyond the Owner's reasonable control, the cost of such repair shall be a common expense. Nothing contained herein shall be construed to impose an obligation on the Association to undertake any such repairs (unless it is so obligated pursuant to another section of the Declaration). The Association may by rule require Dwellings which are unoccupied for substantial periods of time during winter to use alarms which will detect abnormally low temperatures.~~

- 14.03 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of any 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 (an enter upon any Unit to do so), and the cost thereof may be assessed against the Unit of the Owner responsible for the damage.

15.00 INSURANCE, CASUALTY AND REBUILDING

See 2nd
Amendment

- 15.01 Association's Policies. Section 515B.3-113 of the Act requires the Association to maintain casualty insurance coverage on the Common Elements and, because Units in this CIC share contiguous walls, siding and roofs, also on the Units. The same section also requires general liability coverage, authorizes the Association to carry any other insurance it considers appropriate, specifies minimum notice from an insurer prior to cancellation, specifies other provisions for such insurance, requires the Association or an insurance trustee to adjust all losses, and describes the Association's duty with respect to repair or rebuilding after casualty to Common Elements or Units. The provisions of the Act described in this paragraph may not be varied or waived, but are hereby supplemented as follows:

- a. ~~The Association shall carry worker's compensation insurance whenever it has eligible employees.~~
- b. ~~The Association may carry fidelity insurance and shall do so whenever required by a holder, insurer or guarantor of a mortgage~~
- c. ~~The Association may enter into binding agreements with one or more holders, insurers or guarantors of mortgage obligating the Association to keep specified coverage in effect for specified periods and to notify a holder, insurer or guarantor of any changes to coverage.~~

See 2nd
Amendment

- 15.02 Owners' Individual Policies. Each Owner should carry insurance for his or her own benefit insuring the Owner's personal liability and floor covering, wallcovering, fixtures, furniture, furnishings, and other personal real estate, and fixtures and other real estate supplied or installed by the Owner or a previous Owner or Occupant, provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance

~~obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner.~~

- 15.03 Betterments. In all events, betterments or improvements made subsequent to the original construction by any Owner to his or her Unit shall be the responsibility of the Owner to insure separately (or by rider to the blanket policy with the consent of the Association) if he or she desires the same insured. If the Trustee or mortgagee undertakes the reconstruction or remodeling of a Unit as above provided, the same need be restored only to substantially the same condition as the Dwelling was as of the completion of original construction.
- 15.04 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern. Notice shall be given to first Mortgagees as provided in this Declaration. Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act or Governing Documents, as their interests may appear.

16.00 ARCHITECTURAL RESTRICTIONS

- 16.01 Architectural Control Committee Authority. No residential or other building, and no fence, wall, patio, garage, outbuilding or other structure, nor any wire, pipe, cesspool, septic tank, well, path, walkway, tree, hedge, driveway, aerial, antenna, or exterior ornament of any kind, nor any addition, removal, alteration, raising, lowering, or remodeling thereof, including change of color, repainting or redecorating of the exterior, shall be made, erected, altered, placed or permitted to remain on any portion of the Property unless and until detailed plans and specifications and proposals, including plans which show the external design, the colors and color scheme, the decoration, the construction, and the materials to be used in construction, the dimensions, and the location and approximate cost of the same shall have been submitted to and approved in writing by an Architectural Control Committee (hereinafter described) as to harmony of the external design and location in relation to surrounding buildings in the subdivision and as to general appearance and quality. In the event said Committee fails to approve or disapprove such design and location within fifteen (15) days after said plans and specifications have been submitted to it (in such reasonable detail as the committee may require), or if no suit to enjoin the making of such construction, removal, additions, alteration, or changes has been commenced within thirty (30) days of such submission, such approval will be deemed to have been given. If no such submission has been made to the Architectural Control Committee alterations or changes may be instituted at any time by the Association or any Owner. The Board of Directors, on request, will issue a certificate as to the state of compliance or noncompliance of a particular Unit, and any such certificate will be binding as to third parties. Any deviation from said plans and specifications, as approved, which, in the judgment of the said committee is a substantial change or detriment to the appearance of the structure or of the surrounding area shall be corrected to conform to the plans and specifications as submitted.
- 16.02 Prompt Completion. Every structure must be erected and completed within eighteen (18) months of approval, or new approval obtained. If any structure is begun, and is not completed within eighteen (18) months after the commencement of construction, and in the judgment of the

Architectural Control Committee is by reason of its incomplete state or offensive or unsightly appearance, the Committee, at its discretion after ten (10) days written notice to the Owner of the Unit, may take such steps as may be necessary, in its judgment, to improve the appearance so as to make the Unit harmonious with neighboring properties, including entering upon the Unit, completion of the exterior of the structure, screening or covering of the structure, or any combination thereof or similar operation, and the amount of any expenditure made in so doing shall be a lien on the Unit enforceable in like manner as assessments hereunder.

- 16.03 Declarants' Rights. Nothing herein contained shall be deemed to prohibit Declarants from making changes to the plans, specifications, and appearance of buildings construed from time to time on vacant Units, but all buildings shall be consistent in terms of quality and harmonious in general appearance with previously constructed buildings. During the period of Declarants' control, the decisions of the Architectural Control Committee must have the written approval of the Declarants.
- 16.04 Composition of Committee. The Architectural Control Committee shall be the Board of Directors of the Association, or a committee of three or more persons so designated by the Board.
- 16.05 Restoration in Accordance with Original Plans. Any restoration or repair of the exterior of Dwellings and garages, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless other action is approved by the Architectural Control Committee.
- 16.06 Removal and Abatement. The Architectural Control Committee or the Board shall have the right to order an Owner to remove or alter any structure on any Unit erected in violation of the terms of this Declaration, and to employ appropriate judicial proceedings to compel the alteration or demolition of any nonconforming construction or other violation; or take whatever steps are deemed necessary to cure such violation. Any cost incurred by the Architectural Control Committee shall be levied as a Maintenance Assessment as provided in Section 10.04 above.
- 16.07 Exterior Lighting. All exterior lighting fixtures and standards shall be shown on submitted plans and shall comply with the overall lighting plan of the Declarants. All forms of exterior lighting shall be subject to approval of the Architectural Control Committee.
- 16.08 Exterior Ornaments. Exterior ornaments, including, but not limited to, pre-cast concrete, plastic or wood figurines, wishing wells and windmills shall be prohibited unless approved by the Architectural Control Committee prior to installation or construction.
- 16.09 Awnings. No awnings or shades shall be erected over and outside of the windows, nor shall any articles or structures be hung or placed on any outside window sills without the prior written consent of the Architectural Control Committee.
- 16.10 Antennae. Except with prior written approval of the Architectural Control Committee, no exterior television, radio, satellite, or microwave antenna or any sort shall be erected or maintained upon any Unit. The Architectural Control Committee may choose to prohibit all such antennae, or to prohibit only certain kinds and locations of antennae, and to change its regulations from time to

time, all in its discretion. Without limiting the generality of the foregoing, it shall not be deemed arbitrary or an abuse of such discretion of the Committee were to:

- a. permit existing antennae to continue to be maintained, while at the same time banning new antennae of the same type or location;
- b. prohibit antennae to be placed so as to be visible from the street side of a Unit, but permit the same antennae if not so visible; or
- c. place height or size restrictions on antennae.

17.00 RENTAL RESTRICTIONS

- 17.01 Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. A lease must be for an entire Dwelling, not a portion thereof. All leases shall be in writing. No lease may be for a period of less than seven (7) days. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his or her Unit.

18.00 GENERAL RESTRICTIONS

- 18.01 Dwelling and Unit Restriction. No more than one Dwelling shall be erected or maintained on each Unit, and no Unit as originally platted shall be further subdivided or partitioned. No Dwelling shall be used for purposes other than as a single family residential Unit, nor shall any trade or business of any kind be carried on within a Dwelling or upon a Unit, nor shall any Unit or any part thereof be leased, sublet, assigned or suffered to be used for hotel or transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:
- a. The maintenance of a business and sales office and model Units by Declarants on Units during the construction and sales periods.
 - b. The maintenance of an office by the Association or its designated manager for purposes of management of the Property.
 - c. Lease or rental of a Dwelling for purposes consistent with this Declaration.
 - d. The use of a Unit by an Owner for home office or studio uses which are incidental to the principal residential use of the Unit, which do not invite or generate regular or frequent visits by clients, customers, employees, co-workers, delivery persons or the public, and which do not alter the residential character of the Property.
- 18.02 Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Unit or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the

Board. Nothing shall be done or kept on any Unit or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the exterior the Property shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused to the Association or other Owners by such Owner or the Owner's allowed on any Units or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property. No heating devices, refrigeration equipment, or other machinery which causes vibrations detectable from outside the Unit, is fuel-fired, or is otherwise inherently dangerous, noxious, or noisy, shall be installed or operated within any Unit.

- 18.03 No Unsightly Uses. No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out on any portion of a Unit so as to be visible from outside the Unit. All parties of a Unit visible from outside the Unit shall be kept free and clear of all rubbish, debris and other unsightly materials.
- 18.04 Animals. No pets shall be permitted to be kept on the Property by any Owner or Occupant except conventional domesticated animals. No kennel, dog house or outside run shall be construed or maintained on the Property except as permitted by the Architectural Control Committee in accordance with the procedures set forth in Article 17. No pet shall be kept for any commercial purpose nor shall pets be bred for a commercial purpose upon the Property. Any cat or dog, whenever outside of a Dwelling, must be kept under control of the pet owner or another person able to control the pet or within the confines of a kennel, dog house or outside run permitted herein. The owner must maintain any kennel, dog house or outside run permitted herein in good, neat and orderly condition. The person in charge of the pet must clean up after it. The Board may adopt more specific rules and penalties not inconsistent with the foregoing or to enforce the foregoing. Upon the petition of seventy-five percent (75%) of the Owners of Units located within seventy-five (75) feet of the Unit in which resides a specified pet, the Board may order the removal of a particular dog for constant and uncontrolled barking, or of any particular animal for repeated instances of wandering unleashed or unconfined or other repeated behavior reasonably offensive to others, provided that the Owner of the Unit harboring the animal shall first have thirty (30) days written notice in which to correct the offensive behavior.
- 18.05 Prohibited Structures. No structures of a temporary character, trailer, boat, camper- bus, basement, tent, or shack shall be maintained on any Unit nor shall any garage or other building, except a permanent residence, be used at any time as a residence or sleeping quarters, either temporarily or permanently. Exterior basketball hoops may only be maintained with the prior written approval of the Board, and may be prohibited by the Board in its discretion.
- 18.06 General Storage. Outside storage of any items (other than patio-type furniture and not more than one cooking grill per Unit), including but without limiting the generality of the foregoing, sporting equipment, toys, yard and garden tools and equipment, and trash and garbage containers, shall not be allowed unless effectively screened from view from outside the Unit by enclosures. The design of such screened enclosure must be approved by the Architectural Control Committee in

accordance with the architectural control provisions hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or plant, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in any combustible, flammable, hazardous or offensive goods, provisions or materials shall be kept on any part of the Property except for reasonable quantities and kinds of usual household materials and reasonable quantities of fireplace wood.

18.07 Vehicle Storage. Notwithstanding the foregoing, no boats, snowmobile, trailers, camping vehicles, buses, camper tops, "all-terrain vehicles," tractor/trailers, trucks in excess of 9,000 pounds gross weight, or unlicensed or inoperable vehicles shall at any time be stored or parked on any Unit outside of a Dwelling without the express written approval of the Board of Directors, which may be withheld without stated reason.

18.08 Signs. No sign of any kind shall be displayed to the public view on any Unit, except:

- a. Designations, in such styles and materials as the Board shall by regulation approve, of street addresses and names of occupants,
- b. A "For Sale" sign may be displayed provided that is in such styles and materials as the Board shall by regulation approved, and
- c. Declarants shall be permitted to erect and maintain upon the Property such signs as it deems necessary to advertise the development during the construction and sale periods.

Without limiting the generality of the foregoing, the Board of Directors may by resolution prohibit the distinctive and particular "For Sale" signs used by real estate brokers and agents.

18.09 No Additional Units. Neither the Declarants nor any other Unit Owner are permitted to create any additional Units by subdivision or conversion under Section 515B.2-112 of the Act.

18.10 No Time Shares. Time shares, as defined in the Act are not permitted in this CIC.

18.11 Rules and Regulations. The Board from time to time shall adopt such other rules and regulations governing the use, maintenance and enjoyment of the Property, and the conduct of persons using the Property, as the Board in its reasonable discretion deems desirable or necessary to implement the intent of the Governing Documents.

19.00 FIRST MORTGAGEES

19.01 Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

- 19.02 Notice of Action. Any mortgagee and any insurer or guarantor of a first mortgage on a Unit who had advised the Association in writing of its name and address and the address of the Unit covered by such mortgage, and in said writing has requested the Association to notify it of any of the following (a "**First Mortgagee**"), will be entitled to timely written notice of:
- a. Any condemnation loss or any casualty loss which affects a material portion of the project or any Unit or Dwelling on which there is a first mortgage held, insured, or guaranteed by such mortgage holder or insurer or guarantor, as applicable;
 - b. Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Governing Documents by an Owner or a Unit subject to a first mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of sixty (60) days;
 - c. Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and
 - d. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in Section 22.02 and 22.03 below.
- 19.03 Examination of Books and Records. First mortgagees and holders, insurers and guarantors of first mortgages shall have the right to examine the books and records of the Association, upon reasonable notice during normal business hours, and to receive upon written request, copies of the Association's annual reports and other financial statements as set forth more fully in the Bylaws.
- 19.04 Designation of Representation. Any holder of a first mortgage on a Unit may designate a representative to attend meetings of members.

20.00 SPECIAL DECLARANTS' RIGHTS

- 20.01 Special Declarants' Rights. Declarants hereby reserve the following rights (referred in the Act as Special Declarants' Rights) for its benefits:
- a. the right to create Units and add Additional Real Estate, if any, granted by these Declarants;
 - b. the right to maintain sales offices, management offices, signs advertising the common interest community, and models;
 - c. the right to appoint or remove any officer or director of the Association during the period of Declarants' control, which shall expire on the earliest of the following events:
 - 1. surrender of the right of control by the Declarants;
 - 2. sixty (60) days after the conveyance of seventy-five percent (75%) of the Units to Owners other than Declarants; and

3. five (5) years from the first conveyance of a Unit to an Owner other than Declarants.
 - d. the right to lease or rent Units owned by it and may lease or sell additional garages owned by it to Owners without restriction; and
 - e. Declarants have an easement through the Common Elements for the purpose of discharging Declarants' special Declarants' rights. Declarants further reserve the right to complete all the Units and other improvements indicated on the CIC Plat, to add the Additional Real Estate, or otherwise included in Declarants' development plans or allowed by the Declaration and to make alterations in the Units or Common Elements.
- 20.02 Sales Offices, Etc. The Declarants may maintain a business and sales office, model townhouses and other development and sales facilities within one or more Units owned by Declarants from time to time or elsewhere on the Property, and shall have temporary easements for themselves and prospective purchasers for ingress, egress, parking and enjoyment in connection therewith, until the earlier of the date upon which all of the Units are sold by the Declarants' control, and may also lease or rent Units owned by it without restriction within the time period specified above, and may sell or lease any additional garages constructed by it to the Owners or tenants without restriction.

21.00 AMENDMENTS

The Act specifies the requirements for amending the Declaration. In addition to those requirements:

- 21.01 Declarants' Joinder. In addition to the other requirements for amendment of this Declaration and the Bylaws, the written joinder and consent of the Declarants shall be required for any amendment of either the Declaration or Bylaws which shall abolish, diminish or restrict Declarants' rights hereunder to complete improvements, to maintain signs and management offices and models or to maintain signs and management offices and models or to maintain signs and advertise the project, until the last conveyance of a Unit to an Owner other than Declarants. This right may be waived in whole or parties at any time by recording a written waiver executed and acknowledged by Declarants.
- 21.02 Mortgagee Approval. In addition to all other requirements set forth herein, and except when a higher percentage is required by law or this Declaration, amendments to this Declaration of a material nature must be agreed to by (i) Unit Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and (ii) First Mortgagees who represent at least fifty-one percent (51%) of the votes ascribed to Units that are subject to mortgages held by such mortgage holders. However, clerical errors in the Declaration may be corrected by a recordable instrument executed by the Declarants along within two (2) years of the date hereof. A change to any of the provisions governing the following matters would be considered material:
- a. voting rights;

- b. increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%) assessment liens, or the priority of assessment liens;
- c. reductions in reserves for maintenance, repair, and replacement of common elements;
- d. responsibility for maintenance and repairs;
- e. reallocation of interests in the general or limited common elements, if any, or rights to their use;
- f. convertibility of Units into common elements or vice versa;
- g. expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;
- h. hazard or fidelity insurance requirements;
- i. imposition of any restriction on the leasing of Units;
- j. imposition of any restriction on a Unit Owner's right to sell or transfer his or her Unit;
- k. restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- l. any provisions that expressly, benefit mortgage holder, insurers, or guarantors.

21.03 Consent to Certain Actions. The written consent of said mortgage holders representing at least sixty-seven percent (67%) of the Units that are subject to said mortgage shall be required to:

- a. abandon or terminate the common interest community;
- b. change the allocations of voting rights, Common Expense obligations or interest in the Common Elements;
- c. partition or subdivide a Unit, except as permitted by statute;
- d. abandon, partition, subdivide, encumber, sell, dedicate or transfer the Common Elements; or
- e. use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property.

22.00 ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

- 22.01 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 nor authorize the division of the voting rights.

23.00 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:

- 23.01 General. The operation and administration of the Association and the Property shall be governed by the Governing Documents and the Act. The Association shall, subject to the Act, be responsible for the operation, management and control of the Property. The Association shall have all powers described in the Governing Documents, the Act and the statute under which it is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by the individual Owners is specifically required by the Governing Documents or the Act. All referenced to the Association shall mean the Association acting through the Board unless specifically stated to the contrary.

Each Owner and Occupant and any other person owning or acquiring any interest in the Property shall be governed by and comply with the provisions of the Act, the Governing Documents, the Rules and Regulations, the decisions of the Association and such amendments thereto as may be made from time to time.

- 23.02 Operational Purposes. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations; (ii) maintaining, repairing and replacing those portions of the Property for which it is responsible; and (iii) preserving the value and architectural uniformity and character of the Property.
- 23.03 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents or the Act shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined in the Act.
- 23.04 Bylaws. The Association shall have Bylaws. The Bylaws and any amendments thereto shall govern the operation and administration of the Association.
- 23.05 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act;

provided, however, that such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents.

Any agreement for professional management of the Property, or any other contract providing for services by Declarants or an entity owned or controlled by the same persons as Declarants must provide for termination by either party without payment of a termination fee on ninety (90) days or less written notice and shall have a maximum contract term of two (2) years, but may be renewable by agreement of the parties for successive terms.

- 23.06 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 to the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents or the Act. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Article. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.
- 23.07 Association Assets, Surplus Funds. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.
- 23.08 Abatement and Enjoyment of Violation by Owners. The violation of any rule or regulation adopted by the Board or the breach of any provision of the Act or this Declaration shall give the Association the right, in addition to any other rights set forth in the Declaration or by law provided:
- a. To enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Association shall not thereby be deemed guilty in any manner of trespass provided that legal proceedings must be instituted before any items of construction can be altered or demolished.

The cost of any such abatement or removal shall become a lien upon the Unit due and payable on demand. The Association shall have the same rights and powers to collect said costs as provided for the collection of delinquent assessments;
 - b. To enjoin, abate or remedy by appropriate legal proceedings the continuance of any such breach, or
 - c. To impose reasonable fines on the Owner or Occupant of a Unit after notice and an opportunity to be heard.

In addition to all other remedies and rights set forth in the Act, the Association, and any one or more aggrieved Owners, shall have the right of action against Owners who fail to comply with the provisions of this Declaration or the decisions of the Association, and one or more Owners shall also have such rights of action against the Association for any failure to comply with or enforce such provisions.

24.00 MISCELLANEOUS

- 24.01 Right to Cure. In the event that any Owner violates any covenant or fails to perform any condition contained in this Declaration, the Association may perform the act, remove the defect or correct the violation thirty (30) days after written notice of such violation to the Owner. If the Association so acts on behalf of an Owner, the Association may levy an assessment against the Owner's Unit for the cost of the performance or correction of a Maintenance Assessment as provided in Section 10.04.
- 24.02 Association Acts Through Board. The power of authority of the Association as provided in the applicable statutes, the Declaration, Bylaws, and Rules and Regulations shall be vested in a Board of Directors elected by the owners in accordance with the Bylaws of the Association. The Association shall act through the Board of Directors and the officers elected by the Board; accordingly, all references in the Declaration and Bylaws to the Association shall mean the Board of Directors acting for the Association, unless action by the vote of the owners, members or mortgagees is expressly required by the Declaration or Bylaws.
- 24.03 Notices. Any notice required to be sent to any Member of the Association (or Owner) under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Association at the time of such mailing. In the case of multiple Owners of a Unit, notice to any one of such Owners shall be deemed notice to all.
- 24.04 Captions. The Article and Section headings are intended for convenience only and shall not be give any substantive effect.
- 24.05 Construction. If any term or provision of this Declaration is determined to be unenforceable or invalid by a court or competent jurisdiction, no other terms or provisions of this Declaration shall be affected thereby and shall continue in full force and effect.

In the event of any conflict or apparent conflict among the provisions of the Act, this Declaration, the Bylaws or any Rules or Regulations approved by the Association, the Act shall control. As among this Declaration, the Bylaws and Rules and Regulations, this Declaration shall control; and as between the Bylaws and Rules and Regulations, the Bylaws shall control. The use of pronouns such as "his," "he" and "him" are for literary purposes and mean whenever applicable the plural and female forms.

25.00 THE OPTION TO ADD ADDITIONAL REAL ESTATE

Declarants shall have the option without the consent or joinder of the Unit Owners, the Association, any holder of an interest as security for an obligation for any other person or entity, to add to Common Interest Community Number 41, Cedar Creek South ~~Sixth Addition~~, any one or more of the following described parcels of land located in the City of Albertville, County of Wright, State of Minnesota:

Outlot C, Cedar Creek South Sixth Addition.

Declarants reserve the right to add all or a portion of the above described Additional Real Estate (the "**Additional Real Estate**"). The description of said parcels shall be determined by Declarants. Declarants make no assurances as to the order in which such parcels will be added nor assurances as to the boundary lines of such parcels.

Such Option shall be subject to the terms and conditions hereinafter set forth.

- 25.01 Duration of Option. The Option will expire on that date which is ten (10) years after the date upon which this Declaration is recorded, provided that the time limit may be extended by an amendment to this Declaration and approved in writing by the Declarants, its successors, or anyone to whom Declarants has assigned said Option as hereinafter set forth, and by the vote or written agreement of Owners other than Declarants or Declarants' successor or assignee or an affiliate of the Declarants, to whose Units are allocated at least sixty-seven percent (67%) of the votes in the Association. There are no circumstances which will terminate the Option before the expiration of said ten (10) year period. However, the Declarants or anyone to whom Declarants have assigned said Option as hereinafter set forth, may terminate said Option as to any one or more parcels of the Additional Real Estate above described by executing a writing to such effect and recording the same in the same manner as a deed to any one or more of the parcels of the Additional Real Estate so affected.
- 25.02 Timing. Portions of the parcels of the Additional Real Estate may be added, at different times and in any order, subject to the terms hereof.
- 25.03 Maximum Number of Units. The maximum number of Units that may be created upon the Additional Real Estate is Thirty (30). All of such units will be restricted exclusively to residential use.
- 25.04 Buildings. Any buildings and units that may be erected upon any parcel of the Additional Real Estate which is added to this Common Interest Community will be compatible with the buildings and units originally constituting a part of this common Interest Community in terms of architectural style, quality of construction, and principal materials employed in construction. Declarant may also create two-unit buildings (or doubles) as long as said doubles are constructed with the same architectural style, quality of construction and principal materials.
- 25.05 Applicability or Restrictions. All restrictions in this Declaration affecting the use, occupancy and alienation of units will apply to units created in the Additional Real Estate.

- 25.06 Improvements in Common Elements. No improvements are presently contemplated as a part of the Common Elements on the various parcels of the Additional Real Estate and it is presently contemplated that the Common Elements will be substantially comparable to those originally constituting a part of this Common Interest Community. Declarants reserve the right to construct such other, additional improvements as a part of the Common Elements on one or more parcels of the Additional Real Estate as Declarants may hereafter determine, but in no event shall Declarants have any obligation to construct any improvements to the Common Elements on any parcel of the Additional Real Estate except as are specifically described in this Section 26.06.
- 25.07 No Assurances. Nothing herein contained shall bind the Declarants to add any of the Additional Real Estate to this Common Interest Community or to adhere to any particular plan of development or improvement for any portion of the Additional Real Estate not added to this Common Interest Community. None of the assurances set forth in Sections 26.03, 26.04, 26.05 or 26.06 above will apply to any part of Additional Real Estate which is not added to this Common Interest Community.
- 25.08 Exercise of Option. Declarants may exercise their option to add one or more parcels of the Additional Real Estate by securing the execution, giving notice and recording of one or more amendments to this Declaration in the manner specified in Section 515B.2-111 of the Act. Such Amendment shall allocate one vote in the Association to each Unit formed in the part of the Additional Real Estate being added and shall reallocate the fraction of the Common Expenses of the Association among the Units according to the proportion of one divided by the number of Units created in the Declaration and any Additional Real Estate as has been added to the Common Interest Community. Common Elements formed out of the Additional Real Estate shall be owned by the Association for the benefit of the Owners. Limited Common Elements may be allocated for the exclusive use of one or more, but fewer than all, of the Units as specified in the Act and in this Declaration.
- 25.09 Assignment of Option. The Option described in this Section may be assigned by Declarants insofar as it affects any Additional Real Estate herein described to the owner of any such real estate, if other than the Declarants. Any such assignment shall be in writing, executed by the transferor and transferee, shall be recorded among the real estate records in the same manner as conveyance of the Additional Real Estate and shall be subject to all of the terms and conditions of this Section.
- 25.10 Reservation of Easements. Declarants hereby reserve the rights, in the event that one or more parcels of the Additional Real Estate are not added to the Common Interest Community (whether due to lapse of time or termination pursuant to Section 26.01 above) to create the following perpetual, non-exclusive easements appurtenant to the Additional Real Estate which are not added to the Common Interest Community in, over, upon and under portions of the Common Elements within the Common Interest Community and within such Additional Real Estate as have or may be added to the Common Interest Community pursuant to this Section:
- a. Non-exclusive easements for the following purposes:

1. to connect any improvements constructed on the Additional Real Estate which are not added to the Common Interest Community (hereinafter referred to as the "Excluded Parcels," whether one or more) to any natural gas, storm sewer, water, sanitary sewer, electrical, telephone or other utility lines, pipe, wire or other facilities, including the right to connect any improvements constructed on the Excluded Parcels into, and the right to utilize such utility lines, pipes, wire or other facilities which are or may be located within and/or which may serve the Common Interest Community and/or any such Additional Real Estate as have or may be added to the Common Interest Community;
2. to obtain natural gas, water, electricity, telephone and other utility services from, and to discharge storm and sanitary waste into, all such lines, pipes, wires or other facilities; and
3. to install, repair, maintain, operate and replace all such natural gas, storm sewer, water, sanitary sewer, electrical, telephone or other utility facilities to serve any improvement constructed or to be constructed on the Excluded Parcels.

Provided, however, that Declarants, their successors or assigns, as the owner or owners of the Excluded Parcels benefitted by the easements hereby reserved shall be responsible for the restoration of any damage done or sustained in connection with the use of such easements:

b. Non-exclusive easements for the purpose of:

1. affording the Excluded Parcels and any improvements constructed or to be constructed thereon with access to and from a public road;
2. installing, repairing, maintaining, surfacing, resurfacing, grading, replacing and extending any private drives, lanes, streets, roads, or rights-of-way over which the easements hereby reserved are or may be located; and
3. to do such other acts or things as are necessary in order to afford any improvement constructed or to be constructed on the Excluded Parcels with access to a public road, provided, however, that Declarants, their Successors or assigns, as the owner or owners of the Excluded Parcels benefitted by the easement hereby reserved, shall be responsible for the restoration of any damage done or sustained in connection with the use of such easements, and

provided further, however, that the location of the easements hereby reserved shall, to the extent practicable, be limited to the location of the private drives, lanes, streets, roads, and rights-of-way existing within the Common Elements at the time or times that the easements hereby reserved are created.


The easements herein reserved may be created in the event that, and from time to time as, one or more Excluded Parcels are created due to lapse of time or termination pursuant to Section 26.01.

As evidence of the creation of one or more of the easements reserved in this Section 26.10, the then owner or owners of the Excluded Parcels for whose benefit the easement is created shall execute and cause to be filed for record a Declaration of Easement setting forth a description of the easements thereby created and a description of the Excluded Parcels so benefitted by the easement thereby created. No consent or joinder of the Association or any Unit Owner or any mortgagee or other holder of an interest in any Unit or Excluded Parcel as security for the performance of an obligation, nor any release therefrom, shall be required to effect or to evidence the creation of the easements hereby reserved. In addition, the owner of an Excluded Parcel or of a platted lot within an Excluded Parcel may at any time waive or terminate any easement hereby reserved or hereafter created for the benefit of such owner's Excluded Parcel or platted lot within an Excluded Parcel, as the case may be, by the execution and recording of an instrument specifying such waiver or termination, and without the necessity of any consent or joinder by the Association, any Unit Owner, or any mortgagee or other holder of an interest in any Unit or Excluded Parcel or platted lot within an Excluded Parcel as security for the performance of an obligation, nor any release therefrom. In the event that easements reserved in this Section 26.10 are created, the Unit Owner and the owner or owners of the Excluded Parcels benefitted by such easements shall so long as the easements reserved herein are in existence, share all expenses of maintaining, repairing and replacing the private drives, lanes, streets, roads, or rights-of-way, and the utility lines, pipes, wires and other facilities, which may be commonly used pursuant to the easements herein reserved in the following manner. A portion of any such costs and expenses equal to a fraction, the numerator of which is the number of Units in the Common Interest Community and the denominator of which is the total number of units, lots or other individual parcels within the Excluded Parcels benefitted by such easements. Any portion of the costs and expenses to be paid by the Unit Owners of the Common Expense. Notwithstanding the foregoing, if one or more Excluded Parcels benefitted by such easements are used for other than residential purposes, then such costs and expenses shall be apportioned to, and shared by, the Unit Owners and the owner or owners of such Excluded Parcel or Parcels on a fair and equitable basis.

- 25.11 Limitations. There are no limitations on Declarants' rights to add the Additional Real Estate pursuant to this Section other than as set forth in this Declaration or created by or imposed pursuant to law.

IN WITNESS WHEREOF, Declarants has caused this Declaration to be executed as of the day and year recited on the first page hereof.

KENCO ENTERPRISES, INC.

By: 
Its: President

PILOT LAND DEVELOPMENT COMPANY

By: [Signature]

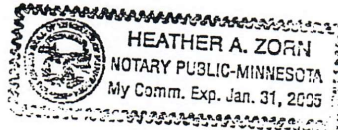
Its: [Signature]

STATE OF MINNESOTA)
)ss.
COUNTY OF Anoka)

The foregoing instrument was acknowledged before me this 20th day of April, 2000, by Patricia Rott, the President of KENCO ENTERPRISES, INC., a Minnesota corporation, on behalf of the corporation.

[Signature]
Notary Public

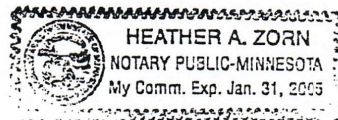
STATE OF MINNESOTA)
)ss.
COUNTY OF Anoka)



The foregoing instrument was acknowledged before me this 20th day of April, 2000, by Heather Zorn, the President of PILOT LAND DEVELOPMENT COMPANY, a Minnesota corporation, on behalf of the corporation.

[Signature]
Notary Public

This instrument drafted by:
Leonard, O'Brien, Wilford,
Spencer & Gale, Ltd.
100 South Fifth Street
Suite 1200
Minneapolis, MN 55402



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