

Office of the Minnesota Secretary of State Certificate of Incorporation

I, Steve Simon, Secretary of State of Minnesota, do certify that: The following business entity has duly complied with the relevant provisions of Minnesota Statutes listed below, and is formed or authorized to do business in Minnesota on and after this date with all the powers, rights and privileges, and subject to the limitations, duties and restrictions, set forth in that chapter.

The business entity is now legally registered under the laws of Minnesota.

Name: Headwaters Villas Association

File Number: 1008304900023

Minnesota Statutes, Chapter: 317A

This certificate has been issued on: 03/22/2018



A handwritten signature in black ink that reads "Steve Simon".

Steve Simon
Secretary of State
State of Minnesota

Office of the Minnesota Secretary of State
Minnesota Nonprofit Corporation/Articles of Incorporation
Minnesota Statutes, Chapter 317A



The individual(s) listed below who is (are each) 18 years of age or older, hereby adopt(s) the following Articles of Incorporation:

ARTICLE 1 - CORPORATE NAME:

Headwaters Villas Association

ARTICLE 2 - REGISTERED OFFICE AND AGENT(S), IF ANY AT THAT OFFICE:

Name

Address:

1660 Highway 100 South Suite 100 St. Louis Park MN 55426 USA

ARTICLE 3 - INCORPORATOR(S):

Name:

Address:

Mark S. Radke

**220 South Sixth Street Suite 2200 Minneapolis
MN 55402**

DURATION: PERPETUAL

If you submit an attachment, it will be incorporated into this document. If the attachment conflicts with the information specifically set forth in this document, this document supersedes the data referenced in the attachment.

By typing my name, I, the undersigned, certify that I am signing this document as the person whose signature is required, or as agent of the person(s) whose signature would be required who has authorized me to sign this document on his/her behalf, or in both capacities. I further certify that I have completed all required fields, and that the information in this document is true and correct and in compliance with the applicable chapter of Minnesota Statutes. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath.

SIGNED BY: Mark S. Radke

MAILING ADDRESS: None Provided

EMAIL FOR OFFICIAL NOTICES: jjahr@felhaber.com

ARTICLES OF INCORPORATION
OF
HEADWATERS VILLAS ASSOCIATION

The undersigned, for the purpose of forming a corporation pursuant to the provisions of the Minnesota Nonprofit Corporation Act, Minnesota Statutes Chapter 317A, and statutes amendatory thereof, hereby adopts the following Articles of Incorporation:

ARTICLE I

NAME

The name of this corporation shall be "Headwaters Villas Association" (the "Association").

ARTICLE II

PURPOSES AND POWERS

The purposes for which this Association is formed, and its powers, are as follows:

1. To act as the Association which is referred to in the Declaration of Covenants, Conditions, Restrictions and Easements of Headwaters Villas (the "Declaration"), a single-family residential community located in Washington County, Minnesota (the "Community");
2. To act as a homeowners association under Section 528 of the Internal Revenue Code, as amended, to provide for the operation and management of the Community for the health, safety and welfare of the Owners thereof, and to preserve the architectural and physical character, of the Community; and
3. To exercise the powers and duties now or hereafter granted or imposed by law, the Declaration, or the Association's Bylaws (the "Bylaws"); and to do all other lawful acts or things reasonably necessary for carrying out the Association's purposes; provided, that no actions shall be authorized or undertaken which violate any state or federal laws applicable to nonprofit corporations or which would cause the Association to violate its nonprofit status under the laws of the State of Minnesota, or the Internal Revenue Code, as amended, and the Regulations related thereto.

ARTICLE III

REGISTERED OFFICE

The address of the registered office of this Association is 1660 Highway 100 South, Suite 100, St. Louis Park, Minnesota 55426.

ARTICLE IV

INCORPORATOR

The name and address of the incorporator of this Association are as follows: Mark S. Radke, 220 South Sixth Street, Suite 2200, Minneapolis, Minnesota 55402.

ARTICLE V

MEMBERSHIP/VOTING

The members of this Association (the "Members") are those persons described as Members in the Bylaws. Membership in the Association shall be transferable, but only as an appurtenance to and together with the Member's title to the Unit, as defined in the Declaration, to which the membership is allocated. One membership is allocated to each Unit. The Members shall have the voting rights allocated to their respective Units as described in the Declaration. Cumulative voting by Members is not permitted.

ARTICLE VI

BYLAWS

The first Board of Directors of the Association (the "Board") shall, at its first meeting, adopt Bylaws for the regulation of the business of this Association. Thereafter, the Bylaws may be amended or revoked only by the Members, as provided in the Bylaws.

ARTICLE VII

DIRECTORS

The business of this Association shall be managed by the Board consisting of at least three (3) persons, or such greater number as provided in the Bylaws. After the expiration of the terms of office of the members of the Board or their replacements appointed by the Developer, the directors shall be elected as provided in the Bylaws. An action by the Board (other than an action requiring approval of the Owners) may be taken by written action signed, or consented to by "authenticated electronic communication" (as those terms are defined in Minnesota Statutes Chapter 317A), by the number of directors that would be required to take the same action at a meeting of the Board at which all directors were present.

ARTICLE VIII

LIMITED LIABILITY

The Members shall not be subject to any personal liability for corporate obligations. In addition, no person who serves without compensation as a director, officer, Member or agent of this Association shall be held civilly liable for an act or omission by that person if the act or omission was in good faith, was within the scope of the person's responsibilities as director,

officer, Member or agent of this Association, and did not constitute willful or reckless misconduct, except as follows:

- a. an action or proceeding brought by the attorney general for a breach of a fiduciary duty as a director;
- b. a cause of action to the extent it is based on federal law;
- c. a cause of action based on the person's express contractual obligation; or
- d. an act or proceeding based on a breach of public pension plan fiduciary responsibility.

Nothing in this Article limits an individual's liability for physical injury to another person or for wrongful death which is personally and directly caused by that individual.

ARTICLE IX

NO PECUNIARY GAIN

This Association shall not afford pecuniary gain, incidentally or otherwise, to its Members; provided, that (i) Members may be reimbursed for out-of-pocket expenses incurred in carrying out duties on behalf of the Association, and (ii) Members may be reasonably compensated for goods and services furnished to the Association as vendors in arms-length transactions, as provided in the Bylaws.

ARTICLE X

DURATION

The duration of this Association shall be perpetual, subject to dissolution in accordance with Article XII.

ARTICLE XI

AMENDMENTS

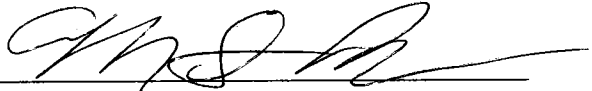
Amendment of these Articles shall require the prior approval of (i) Owners who have authority to cast in excess of fifty percent (50%) of the total votes in the Association; (ii) the Board; and (iii) any other Person whose approval is required by the Declaration; except that the registered office may be changed by the filing of a Certificate of Change of Registered Office in accordance with law.

ARTICLE XII

DISSOLUTION

The Association may be dissolved only in accordance with law. The Association shall be dissolved as provided in the Minnesota Nonprofit Corporation Act, and the dissolution shall be subject to approval by Owners who have authority to cast at least eighty percent (80%) of the total votes in the Association. Upon dissolution of the Association and termination of the Community, and after payment of all costs of dissolution, and the debts and obligations of the Association, all remaining corporate assets shall be distributed to the Members.

IN WITNESS WHEREOF, I have subscribed my name on this 22nd day of March, 2018.



Mark S. Radke



Work Item 1008304900023
Original File Number 1008304900023

STATE OF MINNESOTA
OFFICE OF THE SECRETARY OF STATE
FILED
03/22/2018 11:59 PM

A handwritten signature in black ink that reads "Steve Simon".

Steve Simon
Secretary of State

HEADWATERS VILLAS ASSOCIATION

BYLAWS

The following are the Bylaws of Headwaters Villas Association, a Minnesota nonprofit corporation (the “Association”). The Association is organized pursuant to Minnesota Statutes Chapter 317A, for the purpose of operating and managing Headwaters Villas, a single-family residential community located in Washington County, Minnesota.

SECTION 1

GENERAL

1.1 Terms and Definitions. The capitalized terms used in these Bylaws shall have the same meanings assigned to them in the Declaration of Covenants, Conditions, Restrictions and Easements of Headwaters Villas (the “Declaration”), if not otherwise defined herein. References to Section numbers shall refer to sections of these Bylaws, unless expressly otherwise indicated.

SECTION 2

MEMBERSHIP

2.1 Owners Defined. All Persons described as Owners in Section 4.1 of the Declaration shall be Members of the Association. No Person shall be a Member solely by reason of holding a security interest in a Unit. A Person shall cease to be a Member at such time as that Person is no longer an Owner.

2.2 Registration of Owners and Occupants. Each Owner shall register with the Secretary of the Association, in writing or by authenticated electronic communication, (i) the name and address of the Owners and any Occupants of the Unit; (ii) the nature of such Owner’s interest or estate in each Unit owned; (iii) the address at which the Owner desires to receive notice of any meeting of the Owners, or the consent of the Owner to receive notice by electronic communication and the designation of the email address, facsimile number, or other available form of electronic communication by which the Owner desires to receive notice, in accordance with Minnesota Statutes Section 317A.450; (iv) the name and address of the Mortgagee of the Unit, if any; and (v) the name(s) of the Owner’s representative(s) who shall be entitled to cast the vote allocated to the Owner’s Unit and to otherwise act on behalf of the Owner hereunder where the Owner is other than a natural person. Each Owner shall have a continuing obligation to advise the Association in writing or by authenticated electronic communication of any changes in the foregoing information.

2.3 Transfers. The interests, rights and obligations of an Owner in the Association may be assigned, pledged, encumbered or transferred, but only along with and as a part of the title to the Owner’s Unit or as otherwise specifically authorized by the Governing Documents or by law.

SECTION 3

VOTING

3.1 Entitlement. Each Unit shall be allocated one (1) vote in the affairs of the Association, as provided in the Declaration. However, no vote shall be exercised as to a Unit while the Unit is owned by the Association.

3.2 Authority to Cast Vote. At any meeting of the Owners, an Owner included on the voting register presented by the Secretary in accordance with Section 4.6, such Owner's representative registered with the Association in accordance with Section 2.2(v), or the holder of such Owner's proxy, shall be entitled to cast the vote which is allocated to the Unit owned by the Owner. If there is more than one Owner of a Unit, only one of the Owners may cast the vote. If the Owners of a Unit fail to agree as to who shall cast the vote, or fail to register pursuant to Section 2.2, the vote shall not be cast.

3.3 Voting by Proxy. An Owner may cast the vote which is allocated to the Owner's Unit and be counted as present at any meeting of the Owners by executing a proxy naming another person entitled to act on that Owner's behalf, and delivering the same to the Secretary in writing or by authenticated electronic communication before the commencement of any such meeting. All proxies granted by an Owner shall be effective until the earliest of the following events: (i) revocation by the granting Owner by notice to the Association delivered in writing or by authenticated electronic communication or by personally attending and voting at the meeting for which the proxy is effective; (ii) the date specified in the proxy, if any; or (iii) the time at which the granting Owner is no longer an Owner.

3.4 Voting by Written Ballot. The vote on any issue may be determined by written ballots mailed or delivered to the Owners along with a notice of the vote, subject to the following requirements.

3.4.1 The notice of the vote shall: (i) clearly state the proposed action; (ii) indicate the number of responses needed to meet the quorum requirements; (iii) state the percentage of approvals necessary to approve each matter; and (iv) specify the time by which a ballot must be received by the Association in order to be counted.

3.4.2 The ballot shall: (i) set forth each proposed action, and (ii) provide an opportunity to vote for or against each proposed action.

3.4.3 The Board shall set the time for the return of ballots, which shall not be less than fifteen (15) nor more than thirty (30) days after the date of mailing of the ballots to the Owners. The Board shall provide notice of the results of the vote to the Owners within ten (10) days after the expiration of the voting period.

3.4.4 Approval by written ballot under this Section is valid only if (i) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and (ii) the number of approval votes equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

3.5 Voting by Electronic Means. Voting by ballot may also be conducted by electronic communication alone or in combination with mailed, written ballots in accordance with Section 3.4. Voting by electronic communication may only be used if the applicable Owner has registered such Owner's consent thereto in accordance with Section 2.2(iii), and Minnesota Statutes Section 317A.447. Consent by an Owner to receive notice by electronic communication in the manner designated under Section 2.2(iii), constitutes consent to receive a ballot by electronic communication in the same manner.

3.6 Vote Required. A majority of the votes (i) cast at any properly constituted meeting of the Owners, or (ii) cast by written ballot in accordance with Section 3.4, and/or by electronic communication in accordance with Section 3.5, shall decide all matters properly brought before the Owners, except where a different vote or voting procedure is required by the Governing Documents or Minnesota Statutes Chapter 317A. Unless otherwise expressly indicated, the term "majority" as used herein shall mean in excess of fifty percent (50%) of the votes cast by the Owners voting in accordance with the voting procedures set forth in this Section 3 and the allocation of voting power set forth in the Declaration. Cumulative voting shall not be permitted.

SECTION 4

MEETINGS OF OWNERS

4.1 Place. All meetings of the Owners shall be held at the office of the Association or at such other place in the state of Minnesota reasonably accessible to the Owners as may be designated by the Board in any notice of a meeting of the Owners.

4.2 Annual Meetings. An annual meeting of the Owners shall be held in each fiscal year on a date, and at a reasonable time and place, designated by the Board. At each annual meeting of the Owners, (i) the persons who are to constitute the Board shall be elected subject to and in accordance with Section 6; (ii) a report shall be made to the Owners on the activities and financial condition of the Association; and (iii) any other matter which is included in the notice of the annual meeting, and is a proper subject for decision by the Owners, shall be considered and acted upon at the meeting.

4.3 Special Meetings. Special meetings of the Owners may be called by the President as a matter of discretion. Special meetings of the Owners shall be called by the President or Secretary within thirty (30) days following receipt of a request, delivered in writing or by authenticated electronic communication, by a majority of the members of the Board or by Owners entitled to cast at least twenty-five percent (25%) of all the votes in the Association. The meeting shall be held within sixty (60) days following receipt of the request. The request shall state the purpose of the meeting, and the business transacted at the special meeting shall be confined to the purposes stated in the notice. The purpose for which the meeting is requested and held must be lawful and consistent with the Association's purposes and authority under the Governing Documents.

4.4 Notice of Meetings. Not less than twenty-one (21) nor more than thirty (30) days in advance of any annual meeting of the Owners, and at least seven (7), but no more than thirty (30), days in advance of any special meeting of the Owners, the Secretary shall send, to all Persons who are Owners as of the date of sending the notice, notice of the time, place and agenda

of the meeting. The notice shall be sent (i) by United States mail, or by hand delivery, at the Owner's Unit address or to such other address as the Owner may have designated in writing to the Secretary, or (ii) by electronic communication if the applicable Owner has registered such Owner's consent thereto in accordance with Section 2.2(iii). The notice shall also be sent to the Mortgagees if required by the Declaration. Any Mortgagee shall, upon request, be entitled to designate a representative who shall be entitled to receive notice and to be present at any meeting of the Association.

4.5 Quorum/Adjournment. The presence of Owners in person or by proxy or as otherwise permitted by Minnesota Statutes Chapter 317A, who have the authority to cast in excess of twenty percent (20%) of all the votes in the Association shall be necessary to constitute a quorum at all meetings of the Owners for the transaction of any business, except that of adjourning the meeting to reconvene at a subsequent time. The Association may not be counted in determining a quorum as to any Unit owned by the Association. Any meeting may be adjourned from time to time, but until no longer than fifteen (15) days later, without notice other than announcement at the meeting as initially called. If a quorum is present at the reconvened meeting, any business may be transacted which might have been transacted at the meeting as initially called had a quorum then been present. A quorum, having once been established at a meeting or a reconvened meeting, shall continue to exist for that meeting notwithstanding the departure of any Owner who was present when the quorum was established.

4.6 Voting Register. The Secretary shall have available at the meeting a list of the Unit numbers, the names of the Owners, the vote attributable to each Unit and the name of the person authorized to cast the vote.

4.7 Agenda. The agenda for meetings of the Owners shall be established by the Board, consistent with the Governing Documents, and shall be sent to all Owners along with the notice of the meeting.

4.8 Meetings by Remote Communication; Participation by Remote Communication. The Board may determine to hold a regular or special meeting of the Owners solely by any combination of means of remote communication through which Owners (or their proxies) may participate, if notice of the meeting is given to every Owner entitled to vote as otherwise required for a meeting (except to the extent waived), and if the number of Owners participating in the meeting constitute a quorum. In addition to meetings held solely through means of remote communication, an Owner (or proxy) not physically present in person or by proxy at a regular or special meeting of the Owners may participate in the meeting by means of remote communication authorized by the Board. Participation by an Owner pursuant to either of the preceding sentences constitutes presence at the meeting in person or by proxy (if all other proxy requirements are met). The Board may implement reasonable measures to assure full participation, to verify legitimacy of participants and proceedings, and as the Board otherwise deems appropriate.

SECTION 5

ANNUAL REPORT

The Board shall prepare an annual report, a copy of which shall be provided to each Owner at or prior to the annual meeting. The report shall contain, at a minimum:

5.1 Capital Expenditures. A statement of any capital expenditures in excess of two percent (2%) of the Association's current budget or five thousand dollars (\$5,000.00), whichever is greater, approved by the Association for the current year or succeeding two (2) fiscal years.

5.2 Reserve Funds. A statement of the balance in any reserve or replacement fund.

5.3 Financial Statements. A copy of the statement of revenues and expenses for the Association's last fiscal year, and a balance sheet as of the end of said fiscal year.

5.4 Litigation and Judgments. A statement of the status of any pending litigation or judgments to which the Association is a party.

5.5 Insurance. A description of the insurance coverage provided by the Association.

5.6 Status of Assessments. A statement of the total past due Assessments on all Units, current as of not more than sixty (60) days prior to the date of the meeting.

SECTION 6

BOARD OF DIRECTORS

6.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors.

6.1.1 During the Developer Control Period, the Board of Directors shall consist of three (3) persons initially appointed by the incorporator of the Association and thereafter appointed by the Developer from time to time.

6.1.2 Following the termination of the Developer Control Period, the Board shall be composed of three (3) directors elected by the Owners. No two (2) directors may be Owners of the same Unit.

6.2 Term of Office. The terms of office of the members of the Board shall be as follows:

6.2.1 The terms of the directors appointed by Developer during the Developer Control Period shall terminate upon the earliest of (i) voluntary surrender of control by Developer, or (ii) the first date when Developer no longer owns a Unit for sale and no longer has the right to add Additional Property to the Property; provided, that the directors shall continue in office until a successor is elected in accordance with the terms hereof.

6.2.2 The first terms of office of the directors elected by the Owners upon the termination of the Developer Control Period shall be one (1) year for one (1) of the directors, two (2) years for one (1) of the directors, and three (3) years for one (1) of the directors. Each term of office thereafter shall be three (3) years and shall expire upon the election of a successor at the appropriate annual meeting of the Owners; provided, that a director shall continue in office until a successor is elected. A number of nominees equal to the number of vacancies, and receiving the greatest numbers of votes, shall be elected, notwithstanding that one or more of them does not receive a majority of the votes cast.

The nominee or nominees receiving the greatest numbers of votes shall fill the longer terms. A director appointed or elected to fill an uncompleted term shall serve until the natural termination of that term, unless removed in accordance with these Bylaws. There shall be no cumulative voting for directors.

6.3 Nominations. Except for directors appointed by the Developer, nominations for election to the Board at the annual meetings shall be made by the Board, or by a nominating committee appointed by the Board; provided, that Owners may also make nominations at any time at or before the annual meeting. Nominations shall be made only with the consent of the nominee.

6.4 Powers. The powers of the Association include, without limitation, all powers necessary for the administration of the affairs of the Association, including all powers and authority vested in or delegated to the Association (and not expressly prohibited or reserved to the Owners) by law or by the Governing Documents. The powers of the Association are vested in the Board, unless expressly reserved to the Owners by the Governing Documents or by law. The Association's powers include, without limitation, the power to:

6.4.1 adopt, amend and revoke reasonable Rules consistent with the Governing Documents for the purpose of implementing the Governing Documents, as follows: (i) regulate the use of the Common Property; (ii) regulate the use of the Units, and the conduct of Owners and Occupants, which may jeopardize the health, safety, or welfare of other Owners and Occupants, which involves nuisances or other disturbing activity prohibited or restricted by governmental laws, ordinances or regulations, or which may damage the Common Property or other Units; (iii) regulate animals; (iv) regulate changes in the appearance of the Common Property and conduct which may damage the Property; (v) regulate the exterior appearance of the Property, including, for example, signs and other displays, regardless of whether inside a Dwelling; (vi) implement the Governing Documents, and exercise the powers granted by this Section; and (vii) otherwise facilitate the operation of the Property;

6.4.2 adopt and amend budgets for revenues, expenditures and reserves, levy and collect Assessments, and foreclose Assessment liens incidental to its collection efforts;

6.4.3 hire and discharge managing agents and other employees, agents and independent contractors;

6.4.4 subject to the requirement of Section 13.8 of the Declaration, institute, defend, or intervene in litigation or administrative proceedings (i) in its own name on behalf of itself or two (2) or more Owners on matters affecting the Common Property or other matters affecting the Property or the Association, or (ii) with the consent of the Owners of the affected Units on matters affecting only those Units;

6.4.5 make contracts and incur liabilities;

6.4.6 regulate the use, maintenance, repair, replacement and modification of the Common Property and the Units;

6.4.7 cause improvements to be made as a part of the Common Property;

6.4.8 acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property;

6.4.9 grant and amend easements, leases, and licenses through, over and under the Common Property;

6.4.10 impose and receive reasonable payments, fees or charges for services provided to Owners;

6.4.11 impose charges for late payment of Assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Governing Documents and the Rules;

6.4.12 borrow money, and encumber or pledge the assets of the Association as security therefor;

6.4.13 impose reasonable charges for the review, preparation and/or recording of amendments to the Declaration or Bylaws, statements of unpaid Assessments, documents for subsequent buyers of Units or furnishing copies of Association records;

6.4.14 provide for the indemnification of its officers, directors and committee members, and maintain directors' and officers' liability insurance;

6.4.15 provide for reasonable procedures governing the conduct of meetings and the election of directors;

6.4.16 appoint, regulate and dissolve committees; and

6.4.17 exercise any other powers conferred by law or the Governing Documents, or which are necessary and proper for the governance of the Association.

6.5 Meetings and Notices. An annual meeting of the Board shall be held promptly following each annual meeting of the Owners. At each annual meeting of the Board, the officers of the Association shall be elected.

6.5.1 Regular meetings of the Board shall be held at such times as may be fixed from time to time by a majority of the members of the Board, or, in the absence of such action, by the President. A schedule, or any amended schedule, of the regular meetings shall be provided to the directors, and made available for the information of Owners, as provided in Section 6.5.5.

6.5.2 Special meetings of the Board shall be held when called (i) by the President, or (ii) by the Secretary within ten (10) days following a request, delivered in writing or by authenticated electronic communication, signed or consented to by a majority of the directors. Notice of any special meeting shall be given to each director not less than three (3) days in advance thereof, subject to Section 6.5.3. Notice to a director shall be deemed to be given when deposited in the United States mail postage prepaid to the address of such director, when personally delivered, orally or in writing, by

a representative of the Board, or when sent by electronic communication in the form consented to by the applicable director in accordance with Minnesota Statutes Section 317A.231.

6.5.3 Any director may at any time waive notice of any meeting of the Board orally, in writing, by authenticated electronic communication, or by attendance at the meeting. If all the directors are present at a meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

6.5.4 A conference among directors by a means of communication through which all of the directors may participate in the meeting is a Board meeting, if (i) the same notice is given of the conference as would be required for a meeting, and (ii) the number of directors participating in the conference is a quorum. A director may participate in a Board meeting by means of conference telephone or, if authorized by the Board, by such other means of remote communication, in each case through which that director, other directors so participating, and all directors physically present at the meeting may participate with each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting.

6.5.5 Except as otherwise provided in this Section or by law, meetings of the Board must be open to the Owners. To the extent practicable, the Board shall give reasonable notice to the Owners of the date, time, and place of a Board meeting. Reasonable notice shall be deemed to have been given to the Owners if the date, time and place of meetings are provided for in the Governing Documents, announced at a previous meeting of the Board, distributed to Members in writing, posted in a location accessible to the Owners and designated by the Board from time to time, or distributed or made available by electronic communication if the applicable Owner has registered such Owner's consent thereto in accordance with Section 2.2(iii). If, however, an emergency requires immediate consideration of a matter by the Board, notice is not required. "Notice" has the meaning given in Section 11.1. Notwithstanding the foregoing, meetings may be closed at the discretion of the Board to discuss the following:

6.5.5.1 personnel matters;

6.5.5.2 pending or potential litigation, arbitration or other potentially adversarial proceedings between Owners, or between the Board or the Association and an Owner or Owners, or other matters in which any Owner may have an adversarial interest, or involving consultation between the Board and legal counsel for the Association, if the Board determines prior to or at the meeting that closing the meeting is necessary to discuss strategy, to preserve attorney-client privilege, or to otherwise protect the position of the Board or Association or the privacy of an Owner or Occupant; or

6.5.5.3 criminal activity arising within the Property or involving an Owner or Occupant if the Board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize investigation of the activity.

The minutes of and the documentation discussed or submitted at such closed meeting may be kept confidential and need not be made available for review or copying pursuant to Section 8.6. Nothing in this Section imposes a duty on the Board to provide special facilities for meetings. The failure to give notice as required by this Section shall not invalidate the Board meeting or any action taken at the meeting. Furthermore, this Section shall not limit or otherwise apply to actions of the Board taken without a meeting as authorized by Section 6.7.

6.6 Quorum and Voting. The presence of all members of the Board shall constitute a quorum for the transaction of business at any meeting thereof. A quorum, once established, shall continue to exist, regardless of the subsequent departure of any directors. Each director shall have one (1) vote. The vote of a majority of the directors present at any meeting at which a quorum is present shall be sufficient to adopt any action. Proxies are prohibited for Board meetings.

6.7 Action Taken Without a Meeting. The Board shall have the right to take any action (other than an action requiring approval of the Members) in the absence of a meeting which it could take at a meeting when authorized in a writing signed, or consented to by authenticated electronic communication, by a majority of the directors; provided, that a copy of the proposed action is given to all directors for review prior to its adoption.

6.8 Vacancies. Except with respect to directors appointed by the Developer during the Developer Control Period in accordance with Section 6.1.1, a vacancy on the Board shall be filled by a person elected within thirty (30) days following the occurrence of the vacancy by a majority vote of the remaining directors, regardless of their number. Each person so elected shall serve out the term vacated.

6.9 Removal. Except with respect to directors appointed by the Developer during the Developer Control Period in accordance with Section 6.1.1, a director may be removed from the Board, with or without cause, by a vote of the Owners at any annual or special meeting of the Owners; provided, (i) that the notice of the meeting at which removal is to be considered states such purpose; (ii) that the director to be removed has a right to be heard at the meeting; and (iii) that a new director is elected at the meeting by the Owners to fill the vacant position caused by the removal. A director may also be removed by the Board if such director (i) has more than two (2) unexcused absences from Board meetings and/or Owners meetings during any twelve (12) month period, or (ii) is more than thirty (30) days past due with respect to the payment of Assessments or installments thereof on the director's Unit. Such vacancies shall be filled by the vote of the Owners as previously provided in this Section.

6.10 Compensation. Except as authorized by a vote of the Owners at a meeting thereof, the directors of the Association shall receive no compensation for their services in such capacity. A director or an entity in which the director has an interest may, upon approval by the Board, be reasonably compensated under a contract for goods and services furnished to the Association in a capacity other than as a director; provided (i) that the contract is approved by a majority vote of the Board, excluding the interested director, and (ii) that the director's interest is disclosed to the Board prior to approval. Directors may be reimbursed for out-of-pocket expenses incurred in the performance of their duties.

6.11 Fidelity Bond. Fidelity bonds or insurance coverage for unlawful taking of Association funds shall be obtained and maintained as provided in the Declaration on all directors and officers authorized to handle the Association's funds and other monetary assets.

6.12 Standards of Conduct. Each director shall discharge the duties of the position of director in good faith, in a manner that the director reasonably believes to be in the best interests of the Association as a whole, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

SECTION 7

OFFICERS

7.1 Principal Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the directors. The Board may from time to time elect such other officers and designate their duties as in their judgment may be necessary to manage the affairs of the Association. A person may hold more than one office simultaneously, except those of President and Vice President. Only the President and Vice President must be members of the Board. Owners of the same Unit may not simultaneously serve as officers of the Association, unless unanimously elected by the Board.

7.2 Election. The officers of the Association shall be elected annually by the Board at its annual meeting and shall hold office at the pleasure of the Board.

7.3 Removal. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, with or without cause, and a successor elected, at any regular meeting of the Board, or at any special meeting of the Board called for that purpose.

7.4 President. The President shall be the chief executive officer of the Association, and shall preside at all meetings of the Board and the Association. The President shall have all of the powers and duties which are customarily vested in the office of president of a corporation, including without limitation the duty to supervise all other officers and to execute all contracts and similar obligations on behalf of the Association. The President shall perform such other duties as may from time to time be prescribed by the Board.

7.5 Vice President. The Vice President shall take the place of the President and perform the duties of the office whenever the President shall be absent or unable to act. The Vice President shall also perform such other duties as shall from time to time be prescribed by the Board.

7.6 Secretary. The Secretary shall be responsible for recording the minutes of all meetings of the Board and the Association. The Secretary shall be responsible for keeping the books and records of the Association, and shall give all notices required by the Governing Documents or Minnesota Statutes Chapter 317A unless directed otherwise by the Board. The Board may delegate the Secretary's administrative functions to a managing agent; provided, that such delegation shall not relieve the Secretary of the ultimate responsibility for the Secretary's duties.

7.7 Treasurer. The Treasurer shall be responsible for all financial assets of the Association, and shall be covered by a bond or insurance in such sum and with such companies as the Board may require. The Treasurer shall (i) be responsible for keeping the Association's financial books, Assessment rolls and accounts; (ii) cause an annual financial report to be prepared, subject to review by the Association's accountants; (iii) cause the books of the Association to be kept in accordance with generally accepted accounting practices and shall submit them to the Board for its examination upon request; (iv) cause all moneys and other monetary assets of the Association to be deposited in the name of or to the credit of the Association in depositories designated by the Board; (v) cause the proper obligations of the Association to be paid when due; and (vi) perform all other duties incident to the office of Treasurer. The Board may delegate the Treasurer's administrative functions to a managing agent; provided, that such delegation shall not relieve the Treasurer of the ultimate responsibility for the Treasurer's duties.

7.8 Compensation. Except as authorized by a vote of the Owners, officers of the Association shall receive no compensation for their services in such capacity. Officers may be reimbursed for out-of-pocket expenses incurred in the performance of their duties. Subject to any provisions of the Declaration, an officer or an entity in which the officer has an interest may be reasonably compensated under a contract for goods and services furnished to the Association in a capacity other than as an officer; provided (i) that the contract is approved by a majority vote of the Board, excluding the interested party, and (ii) that the officer's interest is disclosed to the Board prior to approval.

7.9 Standards of Conduct. Each officer shall discharge the duties of the position of such officer in good faith, in a manner that the officer reasonably believes to be in the best interests of the Association as a whole, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

SECTION 8

OPERATIONS

8.1 General. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the covenants, conditions, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules; (ii) maintaining, repairing and replacing those portions of the Property and other property for which it is responsible; and (iii) preserving the architectural character of the Property. All powers of the Association are vested in the Board, unless expressly reserved to the Owners.

8.2 Assessment Procedures. The Board appointed by the Developer shall annually prepare a budget of Common Expenses for the Association, but may elect to defer the levying of the first Assessment, in which case the Developer shall pay all operating expenses of the Association until the first Assessment is levied. Following the termination of the Developer Control Period, the Board shall annually prepare a budget of Common Expenses for the Association, and assess such Common Expenses against the Units according to their respective Common Expense obligations as set forth in the Declaration.

8.2.1 Subject to any limitations contained in Section 6 of the Declaration, the Board shall fix the amount of the annual Assessment against each Unit, levy the

Assessment and advise the Owners in writing, or by electronic communication if the applicable Owner has registered such Owner's consent thereto in accordance with Section 2.2(iii), of the Assessment at least thirty (30) days prior to the beginning of the Association's fiscal year when the first Assessment installment shall be due. The failure of the Board to timely levy an annual Assessment shall not relieve the Owners of their obligation to continue paying Assessment installments in the amount currently levied, as well as any increases subsequently levied.

8.2.2 Subject to any limitations contained in Section 6 of the Declaration, the Board may amend the budget and Assessments, or levy a special Assessment, at any time. The levy shall be deemed to occur upon the date specified in the resolution which fixes the Assessment.

8.2.3 The Board may, or shall in certain instances, levy limited Assessments against only certain Units under Section 6.4 of the Declaration. Such Assessments may be included in the Assessments levied annually against the affected Units or may be levied separately at any time during the year. Such Assessments are not annual or special Assessments within the meaning of the Governing Documents.

8.2.4 The budget may include a general operating reserve, and shall include an adequate reserve fund for maintenance, repair and replacement of the Common Property, if any, and any other Improvements required or permitted to be maintained, repaired or replaced by the Association on a periodic basis.

8.2.5 The Association shall furnish copies of each budget on which the Assessment is based to an Owner or to any Mortgagee upon request.

8.3 Payment of Assessments. Unless otherwise designated by the Board or the Governing Documents, annual Assessments shall be due and payable in monthly installments in advance on the first day of each month of the year or other period for which the Assessments are made, and special or limited Assessments shall be due when designated by the Board. Except as otherwise provided in the Declaration, all Owners shall be absolutely and unconditionally obligated to pay the Assessments, and no Owner or Occupant shall have any right of withholding, offset or deduction against the Association with respect to any Assessments, or late charges or costs of collection, regardless of any claims alleged against the Developer, the Association, or their respective officers or directors. Any rights or claims alleged by an Owner may be pursued only by separate action.

8.4 Default in Payment of Assessments. If any Owner does not make payment on or before the date when any Assessment or installment thereof is due, subject to such grace periods as may be established, the Board may assess, and such Owner shall be obligated to pay, a late charge as provided in the Declaration for each such unpaid Assessment or installment thereof, together with all expenses, including reasonable attorneys' fees and other professional fees and costs, incurred by the Board in collecting any such unpaid Assessment.

8.4.1 If there is a default of more than thirty (30) days in payment of any Assessment, the Board may accelerate any remaining installments of the Assessment upon prior written notice thereof to the Owner, and the entire unpaid balance of the

Assessment and late charges shall become due and payable upon the date stated in the notice unless all past due amounts, including late charges, costs of collection and fines, are paid prior to said date.

8.4.2 The Board shall have the right and duty to attempt to recover all Assessments on behalf of the Association, together with any charges, attorneys' fees or expenses relating to the collection thereof. In addition, the Board shall have the right to recover any collection or contingency fees or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Occupant.

8.4.3 Upon written request of an Owner or a Mortgagee of such Owner's Unit, notice of a default of more than thirty (30) days in payment of any Assessment or installment thereof or any other default in the performance of obligations by the Owner shall be given to such Owner or Mortgagee.

8.4.4 The rights and remedies referred to herein shall in no way limit the remedies available to the Association under the Declaration or by law.

8.5 Foreclosure of Liens for Unpaid Assessments. The Association has the right to foreclose a lien against a Unit for Assessments imposed by the Association, as more fully described in the Declaration.

8.6 Records. The Board shall cause to be kept at the registered office of the Association, and at such other place as the Board may determine, records of the actions of the Board, minutes of the meetings of the Board, minutes of the meetings of the Owners of the Association, names of the Owners, and detailed and accurate records of the receipts and expenditures of the Association. With the exception of records that may be privileged or confidential information, all Association records, including receipts and expenditures and any vouchers authorizing payments, shall be available for examination by the Owners and Mortgagees upon reasonable notice and during normal business hours. Separate accounts shall be maintained for each Unit setting forth the amount of the Assessments against the Unit, the date when due, the amount paid thereon and the balance remaining unpaid.

8.7 Enforcement of Obligations. All Owners and Occupants and their guests are obligated and bound to observe the provisions of the Governing Documents and the Rules. The Association may impose any or all of the charges, sanctions and remedies authorized by the Governing Documents or by law to enforce and implement its rights and to otherwise enable it to manage and operate the Association.

SECTION 9

AMENDMENTS

These Bylaws may be amended, and the amendment shall be effective, upon the satisfaction of the following conditions:

9.1 Approval. The amendment must be approved by:

9.1.1 The Board;

9.1.2 Owners who have authority to cast in excess of fifty percent (50%) of the total votes in the Association;

9.1.3 The Developer, if required by the Declaration; and

9.1.4 Mortgagees, if required by the Declaration.

9.2 Notice. A copy of the proposed amendment and, if a meeting is to be held, notice of such meeting, shall be mailed by U.S. mail, hand delivered, or delivered by electronic communication if the applicable Owner has registered such Owner's consent thereto in accordance with Section 2.2(iii), to all Owners.

9.3 Effective Date; Recording. The amendment shall be effective upon receipt of all required approvals, and need not be recorded.

SECTION 10

INDEMNIFICATION

The Association shall, to the extent the alleged liability is not covered by insurance, indemnify every individual acting in any official capacity on behalf of the Association, pursuant to the provisions of Minnesota Statutes Section 317A.521.

SECTION 11

MISCELLANEOUS

11.1 Notices. Unless specifically provided otherwise in Minnesota Statutes Chapter 317A, the Declaration or these Bylaws, all notices required to be given by or to the Association, the Board, the officers of the Association or the Owners or Occupants shall be (i) in writing and shall be effective upon hand delivery, or upon mailing if properly addressed with postage prepaid and deposited in the United States mail, or (ii) by electronic communication and shall be effective when sent, as and if authorized by the applicable Section of these Bylaws and Minnesota Statutes Chapter 317A; except that registrations pursuant to Section 2.2 shall be effective upon receipt by the Association.

11.2 Severability. The invalidity or unenforceability of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

11.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way limit or proscribe the scope of these Bylaws or the intent of any provision hereof.

11.4 Conflicts in Documents. In the event of any conflict between the provisions of the Declaration, these Bylaws and the Rules, the Declaration shall control. The Bylaws shall control as against the Rules.

11.5 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

11.6 No Corporate Seal. The Association shall have no corporate seal.

11.7 Fiscal Year. The fiscal year of the Association shall be as determined by the Board.

The undersigned certifies that these Bylaws were adopted by the first Board of Directors of Headwaters Villas Association, a Minnesota nonprofit corporation, effective as of the date hereof.

Dated: _____, 2018

Secretary
Headwaters Villas Association

(Above Space Reserved for Recording Data)

**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS
AND EASEMENTS**

HEADWATERS VILLAS

This Declaration of Covenants, Conditions, Restrictions and Easements (the “Declaration”) is made as of the _____ day of March, 2018, by OP3 Headwaters, LLC, a Minnesota limited liability company (the “Developer”), for the purpose of establishing Headwaters Villas, as a single-family residential housing community.

WHEREAS, Developer, as the owner or with consent of the owner(s) attached hereto, desires to submit certain real property located in Washington County, Minnesota, legally described in Exhibit A attached hereto and all improvements thereon (collectively the “Property”) to this Declaration; and

WHEREAS, Developer has the option to add the real property legally described on Exhibit C attached hereto (the “Additional Property”) to the Property; and

WHEREAS, Developer desires to establish on the Property, and any Additional Property added thereto, a plan for a permanent, single-family residential community to be owned, occupied and operated for the use, health, safety and welfare of its resident Owners and Occupants (as defined below), and for the purpose of preserving the quality and character of the Property; and

WHEREAS, the Property is not subject to the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B (“MCIOA”) by reason of the exemption contained in Section 515B.1-102(e)(2) of MCIOA, and is not subject to a master association as defined in MCIOA.

THEREFORE, Developer makes this Declaration and submits the Property to this Declaration as a residential community under the name “Headwaters Villas” consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property, and any Additional Property added thereto, shall be

owned, used, occupied and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens set forth herein, all of which shall run with the land and be binding upon all Persons (as defined below) owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

SECTION 1

DEFINITIONS

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

- 1.1 “Act” means the Minnesota Nonprofit Corporation Act, Minnesota Statutes Chapter 317A, as amended.
- 1.2 “Additional Property” means the real property, including all Improvements located thereon now or in the future, and all easements and rights appurtenant thereto, legally described in Exhibit C attached hereto which may be added to the Property by the Developer pursuant to Section 16.
- 1.3 “Assessments” means all assessments levied by the Association pursuant to Section 6, including annual Assessments, special Assessments and limited Assessments.
- 1.4 “Association” means Headwaters Villas Association, a Minnesota nonprofit corporation created pursuant to the Act, whose members consist of all Owners.
- 1.5 “Board” means the Board of Directors of the Association as provided for in the Bylaws.
- 1.6 “Builder” means a Person who acquires a Unit from the Developer or another Person for the construction and sale of a Dwelling located or to be located thereon.
- 1.7 “Bylaws” means the Bylaws governing the operation of the Association, as amended from time to time.
- 1.8 “City” means the City of Forest Lake, Minnesota.
- 1.9 “Common Expenses” means all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, or otherwise identified as Common Expenses in this Declaration or the Bylaws.
- 1.10 “Common Property” means any parts of the Property, including all Improvements thereon, except the Units. The Common Property, if any, as of the date of this Declaration, is legally described in Exhibit B attached hereto.

- 1.11 “Developer Control Period” means the time period during which Developer has the exclusive right to control the operations of the Association and to appoint the members of the Board, as provided in Section 15.7.
- 1.12 “Developer Rights” means those exclusive rights reserved to Developer, its successors and assigns, as described in Section 15.
- 1.13 “Dwelling” means a building consisting of one (1) or more floors, designed and intended for occupancy as a detached, single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise located within the boundaries of the Unit upon which the Dwelling is located.
- 1.14 “Governing Documents” means this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.15 “Improvement” means any physical improvement of any kind to any part of the Property, temporary or permanent, structural, aesthetic or otherwise including, but not limited to, any Dwelling, structure, enclosure, building, addition, retaining wall or other wall, fence, sign, enclosure, deck, patio, screening, sport court, basketball hoop, fire pit, exterior lighting, gazebo, utilities system, antenna or other type of sending or receiving apparatus or communications system, irrigation or drainage system, pond, roadway, trail, planting, landscaping, or any other type of structure or physical improvement or any alteration, modification or change involving any such physical improvement.
- 1.16 “MCIOA” means the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B, as amended.
- 1.17 “Member” means all Persons who are members of the Association by reason of being Owners as defined in this Declaration. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.
- 1.18 “Mortgagee” means any Person owning a mortgage on a Unit, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit.
- 1.19 “Occupant” means any person or persons, other than an Owner, in possession of, residing in or otherwise occupying a Dwelling on a Unit.
- 1.20 “Owner” means a Person who owns a Unit, but excluding contract for deed vendors, Mortgagees and other Persons holding a security interest in a Unit, and Persons holding a reversionary or remainder interest in a Unit. The term “Owner” includes, without limitation, contract for deed vendees and holders of life estates.
- 1.21 “Person” means a natural individual, corporation, limited liability company, partnership, limited liability partnership, trust, or other legal entity capable of holding title to real property.

- 1.22 “Plat” means the recorded plat or part thereof depicting the Property pursuant to the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended Plat or replat recorded from time to time.
- 1.23 “Property” means all of the real property now or hereafter subjected to this Declaration, including the Units, Dwellings and all other structures and Improvements located thereon now or in the future. The Property, as of the date of this Declaration, is legally described in Exhibit A attached hereto.
- 1.24 “Rules” means the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6, if any.
- 1.25 “Unit” means any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as described in Section 2.1 and shown on the Plat, including all Improvements thereon, but excluding any Common Property.

References to section numbers shall refer to sections of this Declaration, unless otherwise indicated. References to the singular may refer to the plural, and conversely, depending on context.

SECTION 2

DESCRIPTION OF UNITS AND RELATED EASEMENTS

2.1 Units. There are nine (9) Units, subject to the right of the Developer to add Additional Property or other property thereto as described in Sections 3.2 and 3.3 or to deannex portions of the Property as described in Section 3.4 All Units are restricted to single-family residential use. The Units are identified by lot and block numbers and subdivision name, as shown on the Plat, which is incorporated herein by reference. Each Unit constitutes a separate parcel of real estate. The Units are legally described in Exhibit A attached hereto.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit are the boundary lines of the platted lot upon which the Dwelling is located or intended to be located. The Units have no upper or lower boundaries. All Improvements within the boundaries of a Unit are a part of the Unit.

2.3 Appurtenant Easements. The Units shall be subject to and benefited by the easements described in Section 12.

SECTION 3

COMMON PROPERTY AND OTHER PROPERTY

3.1 Common Property. The Common Property, if any, and its characteristics shall be as follows:

3.1.1 Any parts of the Property, including all Improvements thereon, except the Units, owned by the Association for the common benefit of the Owners and Occupants constitute Common Property. The Common Property, if any, is legally described in Exhibit B.

3.1.2 The Common Property is subject to (i) easements as described in this Declaration and the Governing Documents, reflected on the Plat or in other instruments recorded against the Common Property, and (ii) the right of the Association to establish reasonable Rules governing the use thereof.

3.1.3 Except as otherwise expressly provided in the Governing Documents, all maintenance, repair, replacement, management and operation of the Common Property shall be the responsibility of the Association.

3.1.4 Common Expenses for the maintenance, repair, replacement, management and operation of the Common Property shall be assessed and collected from the Owners in accordance with Section 4.2 and Section 6.

3.2 Annexation of Additional Property. The Developer may, but is not obligated to, subject all or any part of the Additional Property described in Exhibit C to this Declaration as part of the Property. This right shall be exercised by the Developer in accordance with the provisions of Section 16. Any property so annexed may be designated as Common Property or Units.

3.3 Annexation of Other Property. In addition to the Additional Property, other real property may be annexed to the Property and subjected to this Declaration subject to the following requirements: (i) the parcel shall be owned by the Developer; (ii) the annexation shall be approved by the Board; and (iii) an amendment to this Declaration describing the annexation and the parcel being annexed, subjecting said parcel to this Declaration, and reallocating Common Expense obligations, voting rights and memberships, shall be executed by the Developer, consented to by any mortgagee of the annexed parcel, and recorded. Any property so annexed may be designated as Common Property or Units.

3.4 Dedication and Deannexation of Property. Portions of the Property may be deannexed and withdrawn from this Declaration subject to the following requirements: (i) the Property shall be owned by the Developer; (ii) the deannexation shall be approved by the Board; and (iii) an amendment to this Declaration describing the deannexation and the parcel being deannexed shall be executed by the Developer, consented to by any mortgagee of the deannexed parcel, and recorded. The Association shall also have the power to deannex and dedicate or convey reasonable portions of the Property owned by it to any governmental or private Person for private or public purposes, subject to the written consent of the Developer so long as the Developer owns an unsold Unit for sale or has the right to add Additional Property. The portion of the Property which is deannexed shall be automatically released from and no longer subject to this Declaration, and any rights or obligations accruing thereto shall terminate, effective upon the recording of such instrument; provided that such instrument shall reference this Declaration and the authority contained in this Section.

3.5 Interest Subject to Plan of Development. Every Owner and any secured party or other Person holding or acquiring an interest in a Unit, shall take title or hold such interest subject to the Developer's rights pursuant to this Declaration. Notwithstanding anything to the contrary in this Declaration, the Developer's rights or obligations under the Governing Documents may not be changed in whole or in part without the prior written consent of the Developer, which consent may be granted or denied in the Developer's sole and absolute discretion.

SECTION 4

ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

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

4.1 Membership. Each Owner shall be a Member of the Association by reason of Unit ownership, and the membership is automatically transferred with the conveyance of the Owner's title to the Unit. An Owner's membership terminates when the Owner's Unit ownership terminates. When more than one (1) Person is an Owner of a Unit, all such Persons are Members of the Association, but multiple ownership of a Unit does not increase the voting rights allocated to the Unit nor authorize the division of the voting rights.

4.2 Voting and Common Expenses. Each Unit is allocated one (1) vote in the affairs of the Association. Subject to the qualifications set forth in Section 6.4 and Section 6.5, Common Expense obligations, annual Assessments and special Assessments shall be allocated equally among the Units. Said rights and obligations shall be automatically reallocated on the same basis as and if additional Units are added to the Property.

4.3 Appurtenant Rights and Obligations. The ownership of a Unit includes the voting rights and Common Expense obligations described in Section 4.2. Said rights and obligations, and the title to the Units, cannot be separated or conveyed separately, and any conveyance, encumbrance, judicial sale or other transfer of any allocated interest in a Unit, separate from the title to the Unit shall be void. The allocation of the rights and obligations described in this Section may not be changed, except in accordance with the Governing Documents.

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association. However, if there are multiple Owners of a Unit, only the Owner or other person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the Bylaws.

SECTION 5

ADMINISTRATION

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

5.1 General. The operation and administration of the Association and the Property are governed by the Governing Documents and the Rules. The Association is responsible for the operation, management and control of the Property in accordance with the Governing Documents. The Association has all powers described in the Governing Documents and the Act. All power and authority exercisable by the Association shall be vested in the Board, unless action or approval by the Owners is expressly required by the Governing Documents or the Act. All references to the Association means the Association acting through the Board unless specifically stated to the contrary.

5.2 Operational Purposes. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and Rules; (ii) maintaining, repairing and replacing those portions of the Property and other Improvements (if any) for which the Association is responsible pursuant to Section 9; and (iii) preserving the architectural and physical character of the Property.

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with 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.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws shall govern the operation and administration of the Association and are binding upon all Owners, Occupants and other Persons owning or acquiring any interest in the Property.

5.5 Management. The Board has authority to select a manager or managing agent and to delegate the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act. However, such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and the Act.

5.6 Rules. The Board has exclusive authority to approve, amend and implement such reasonable Rules as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property in accordance with the Governing Documents, subject to approval by the Developer in accordance with Section 15.8. The Rules shall be consistent with the Governing Documents and any ordinances, governmental laws, codes, ordinances or regulations of any governmental entity having jurisdiction over the Property. The inclusion in other parts of the Governing Documents of authority to approve Rules is in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules are effective only after reasonable notice thereof has been given to the Owners.

5.7 Association Assets. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents.

SECTION 6 ASSESSMENTS

6.1 General. A budget shall be established and Assessments shall be determined and levied against the Units subject to the requirements and procedures set forth in this Section 6 and the requirements of the Bylaws. Assessments shall include annual Assessments under Section 6.2, and may include special Assessments under Section 6.3 and limited Assessments under Section 6.4. Annual and special Assessments shall be allocated among the Units in accordance with the allocation formula set forth in Section 4.2; provided, that the Board may allocate a reduced share of an annual or special Assessment against those Units which are unimproved or unoccupied to reflect reduced services received from the Association. Limited Assessments under Section 6.4 shall be allocated to Units as set forth in that Section.

6.2 Annual Assessments. Annual Assessments shall be established and levied annually by the Board, subject to the limitations set forth hereafter. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year, which are to be shared by all Units in accordance with the allocation formula set forth in Section 4.2. Annual Assessments shall be payable in equal monthly, quarterly or annual installments, as directed by the Board.

6.3 Special Assessments. In addition to annual Assessments, and subject to the limitations set forth hereafter, the Board may levy in any Assessment year a special Assessment against all Units in accordance with the allocation formula set forth in Section 4.2, and for the purposes described in this Declaration. Among other things, special Assessments shall be used for the purpose of defraying in whole or in part the cost of any unforeseen and unbudgeted Common Expense.

6.4 Limited Assessments. In addition to annual Assessments and special Assessments, the Board may, at its discretion, or shall, as indicated below, levy and allocate limited Assessments among only certain Units in accordance with the following requirements and procedures:

6.4.1 Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Unit or Units benefited.

6.4.2 The costs of insurance shall be assessed equally or by actual cost per Unit, and the costs of utilities may be assessed equally, in proportion to usage or such other reasonable allocation as may be approved by the Board. Fees for the use of common amenities (if any) may be assessed equally or in proportion to use.

6.4.3 Reasonable attorneys' fees and other professional fees and costs incurred by the Association in connection with (i) the collection of Assessments, and (ii) the enforcement of the Governing Documents and the Rules, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit.

6.4.4 Late charges, fines and interest may be assessed as provided in Section 13.

6.4.5 Assessments levied to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to those Units' Common Expense liabilities.

6.4.6 If any damage to the Common Property or another Unit or any portion of the Owner's Unit that the Association is obligated to maintain hereunder is caused by the act or omission of an 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.

6.4.7 If any Assessment or installment of an Assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice to the Owner, declare the entire amount of the Assessment immediately due and payable in full.

6.4.8 If Common Expense liabilities are reallocated for any purpose, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Assessments levied under Sections 6.4.1 through 6.4.4 may, at the Board's discretion, be assessed as a part of, or in addition to, other Assessments levied under this Section 6.

6.5 Liability of Owners for Assessments/Developer Exemption. Subject to Section 6.5.3, the obligation of an Owner to pay Assessments is as follows:

6.5.1 The Owner at the time an Assessment is payable with respect to that Owner's Unit is personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit.

6.5.2 The Owner's liability is absolute and unconditional, unless otherwise modified by law or this Declaration. Except as provided in Section 6.5.3, no Owner is exempt from liability for payment of Assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Developer, the Association or their respective officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act.

6.5.3 The Developer, and any Unit owned by Developer, are exempt from Assessments and Assessment liens until a certificate of occupancy (or similar approval) has been issued by the City with respect to a Dwelling located on such Unit. Builders approved by the Developer may have a similar exemption from liability for Assessments and Assessment liens if granted in writing by the Developer.

6.6 Assessment Lien. Subject to Section 6.5, the Association has a lien on a Unit for any Assessment levied against that Unit from the time the Assessment becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines and interest charges imposed by the Association are liens, and are enforceable as Assessments, under this Section 6. Recording of this Declaration constitutes record notice and perfection of any lien under this Section 6, and no further recordation of any notice of or claim for the lien is required. The release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association. The attorneys' fees and costs incurred by the Association to prepare and record a lien notice or a satisfaction or release of the lien shall be the personal obligation of the Owner of the Unit that is subject to the lien, and shall be part of the amount of the lien.

6.7 Foreclosure of Lien; Remedies. A lien for Assessments may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement in substantially the same manner as a mortgage containing a power of sale; provided, however, that in a foreclosure by advertisement, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys' fees authorized by this Declaration or the Bylaws, notwithstanding the provisions of Minnesota Statutes Section 582.01, subdivisions 1 and 1a., and in a foreclosure by action, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys' fees as the court shall determine. The Association, or its authorized

representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Unit so acquired. The Owner and any other Person claiming an interest in the Unit, by the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition to its other remedies, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any Assessment or charge against the Unit.

6.8 Lien Priority; Foreclosure. A lien under this Section 6 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. A Mortgagee that acquires title to the Unit by foreclosure or a deed in lieu of foreclosure shall take title to the Unit free and clear of all Assessment liens encumbering the Unit and Assessments payable in the period prior to the acquisition of title to the Unit by the mortgage holder. At such time as the Mortgagee takes title to the Unit, it shall be obligated to pay Assessments levied against the Unit and payable during the period when it holds title to the Unit.

6.9 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Unit, the transferee of the Unit shall not be personally liable for any unpaid Assessments or other charges made by the Association against the transferor of that Unit or that Unit prior to the time of conveyance to said transferee, unless expressly assumed by said transferee. However, the lien of such Assessments shall remain against the Unit until released or satisfied. Any such transferor or transferee shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid Assessments against the Unit, including all Assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, such transferor and/or such transferee.

6.10 Real Estate Taxes and Assessments. Real estate taxes, governmental special assessments, and other charges and fees which may be levied against the Common Property by governmental authorities, shall be allocated equally among and levied against the Units, and shall be a lien against each Unit in the same manner as a lien for real estate taxes and special assessments levied against the Unit alone.

6.11 Working Capital Fund. There shall be established a working capital fund to meet unforeseen expenditures or to purchase additional equipment or services for the Association. From and after the date of recording of this Declaration, there shall be contributed to the working capital fund, on a one-time basis for each Unit sold to a purchaser other than the Developer or a Builder, an amount equal to two (2) months installments of the annual Assessment for the Unit. The contribution shall be paid by the purchaser of the Unit at the time of closing of the initial sale of the Unit to the purchaser. The contributions to this fund are in addition to the regular installments of annual Assessments.

SECTION 7 RESTRICTIONS ON USE OF PROPERTY

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

operation, alienation and conveyance of the Property shall be subject to the following restrictions:

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

7.2 Subdivision Prohibited. Except as otherwise provided herein, no Unit nor any part of the Common Property may be subdivided or partitioned without the prior approval by a vote of the Owners, any governmental authorities having jurisdiction over the Property, and any Mortgagees of the affected Units. The dedication or de-annexation of a portion of the Property pursuant to Section 3 shall not be deemed a subdivision or partition.

7.3 Residential Use. Except as provided in Section 7.4, the Units shall be used by Owners and Occupants and their guests exclusively as private, single family residential Units. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Unit to persons living in the Unit pursuant to a legal right of possession; provided, that such persons shall be subject to the Governing Documents and the Rules.

7.4 Permitted Business Activities. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted on any Unit or the Common Property except:

7.4.1 An Owner or Occupant residing in a Dwelling may maintain an office or home occupation in such Owner or Occupant's Dwelling; provided, that such use (i) is incidental to the residential use; (ii) does not involve physical alteration of the Dwelling visible from the exterior; (iii) is permitted by and in compliance with applicable governmental laws, ordinances and regulations; (iv) does not involve observable business activity such as signs, advertising displays, business-related deliveries, or unusual levels of pedestrian or vehicular traffic to and from the Unit; and (v) does not otherwise involve activity which disturbs the quiet enjoyment of the Property by other Owners or Occupants.

7.4.2 The Association may maintain offices and other facilities on the Property, including the Common Property, for management, operations and related purposes.

7.4.3 Developer, or a Builder authorized by the Developer, may maintain offices, sales facilities, model homes and other related facilities on the Property, including the Common Property, in connection with the exercise of their rights under the Governing Documents.

7.5 Leasing. Leasing of Units and Dwellings is allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no Unit or Dwelling shall be leased for transient or hotel purposes; (ii) that no Unit or Dwelling may be subleased; (iii) that a Dwelling must be leased in its entirety, not by room or other part, unless

the Dwelling is simultaneously occupied by the Owner; (iv) the lease shall be in writing; (v) the lease shall provide that it is subject to the Governing Documents and Rules and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease; and (vi) the lease is permitted by and in compliance with all governmental laws, ordinances and regulations. The Association may impose such reasonable Rules as may be necessary to implement non-discriminatory procedures for the leasing of Dwellings.

7.6 Parking/Vehicles/Personal Property. The outside storage or parking of buses, trucks (other than pick-ups, SUVs and similar small trucks used for the Owner's or Occupant's personal vehicle), trailers, unlicensed automobiles, aircraft, tractors, motorcycles, snowmobiles, motorhomes, all-terrain vehicles, or watercraft is prohibited, except for temporary parking as authorized by the Association. Garages shall not be used for storage or other purposes so that they become unavailable for parking vehicles and keeping incidental personal property. No Person shall perform maintenance, repair or restoration work on any vehicle on the Property except for their own vehicles, and then only (i) within the Owner's garage, or (ii) for emergency repairs. Notwithstanding anything to the contrary in this Section, commercial vehicles shall not be parked or stored on the Property, except within a garage or on a temporary basis in connection with construction work on a Unit or deliveries.

7.7 Traffic Regulations. All vehicular traffic on the Property is subject to federal, state and local laws and regulations. All vehicles operated on the Property shall be operated in a careful, prudent, and safe manner; and with due consideration for the rights of all Owners and Occupants. The Association shall have the authority to establish Rules to further regulate the use of and parking on the Private Street located on the Common Property.

7.8 Animals. In addition to all federal, state and local laws, ordinances and regulations, the Board shall have the authority to regulate by Rules, the keeping of animals on the Property, but those animals which are permitted shall be limited to common domestic house pets such as dogs, cats, fish, birds and the like. However, no animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. The word "animal" shall be interpreted in its broadest sense and shall include all living creatures except humans. Notwithstanding the foregoing, no Rule may prohibit the keeping of a qualified service dog or similar animal by a person who is handicapped within the meaning of the Fair Housing Amendments Act of 1988 or comparable state law.

7.9 Signs. In addition to all federal, state and local laws, ordinances and regulations, no sign or comparable device of any kind shall be placed, erected or maintained on the Property except (i) one (1) sign per Unit of a size and style approved by the Association, advertising the Unit for sale or rent; (ii) signs placed by the Developer to advertise the Property, Units or Dwellings or for other business or construction related purposes during the construction, development or sales period; (iii) the permanent entrance signs and monuments erected by the Developer to identify the Property; and (iv) other signs that are expressly authorized by and in compliance with all governmental laws, ordinances and regulations.

7.10 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests have a right of quiet enjoyment in their respective Units. The Property shall be occupied and used in such a manner as will not cause a nuisance, nor unduly restrict, interfere or impede

with the use and quiet enjoyment of the Property by other Owners and Occupants and their invitees.

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

7.12 Improvements. Except for those made by Developer or authorized Builders in connection with the sale of a Unit or construction of the first Dwelling thereon, no Improvement may be made, or caused or allowed to be made, in any part of the Common Property, or in any part of a Unit which is visible from the exterior of a Dwelling, without the prior written authorization of the Board as provided in Section 8.

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

7.14 Access to Units. In case of emergency, the yard areas of all Units are subject to entry, without notice and at any time, by an officer or member of the Board, by the management agent of the Association, or by any public safety personnel. Reasonable access is also authorized for maintenance purposes under Sections 9 and 12 and for enforcement purposes under Section 13.

SECTION 8

ARCHITECTURAL STANDARDS

8.1 Restrictions on Improvements. One of the purposes of this Declaration is to ensure that the exterior portions of the Dwellings and the Units are kept and maintained in an architecturally attractive condition, consistent with the overall architectural character of the Property. Therefore, except as set forth in Section 8.6, the following restrictions and requirements shall apply to Improvements to the Property:

8.1.1 Except as expressly provided in Section 8.6, no Improvements to a Unit, or any design or color change, or other alteration, modification or Improvement of any Dwelling or any other part of a Unit which is visible from the exterior of the Dwelling, shall be commenced, erected or maintained, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the Improvement shall have been approved in writing by the Board or a committee appointed by it. In addition, Developer's written consent shall also be required for Improvements for so long as Developer owns a Unit for sale or has a right to add Additional Property.

8.1.2 The Board may appoint, supervise and disestablish an architectural review committee, and specifically delegate to it part or all of the functions which the Board exercises under this Section 8, in which case the references to the Board shall refer to the architectural review committee where appropriate. The architectural review committee shall be subject to the supervision of the Board.

8.1.3 The Board shall establish criteria for approval of Improvements, which shall include and require, at a minimum: (i) compatibility of color, location, type and design in relation to existing Dwellings and topography, (ii) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed Improvements, and (iii) compliance with governmental laws, codes and regulations. The Board, or the appointed architectural committee if so authorized by the Board, in its sole discretion, may impose Rules or guidelines establishing standards for design, appearance, construction, or development which are greater or more stringent than standards prescribed by the Governing Documents, or by building, zoning, or other governmental laws, codes, or regulations; provided that such standards shall be consistent with the architectural character and use of the Property as planned and developed by the Developer. The Board, or the appointed architectural committee if so authorized by the Board, shall be the sole judge of whether such criteria are satisfied and its determination shall be binding upon the Owners, Occupants and any other Person holding or acquiring an interest in the Unit.

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

8.2.1 Detailed plans, specifications and related information regarding any proposed Improvement, in form and content acceptable to the Board, shall be submitted to the Board and to Developer (if applicable) at least thirty (30) days prior to the projected commencement of construction. No Improvement shall be commenced prior to approval.

8.2.2 The Board and Developer (if applicable) shall give the Owner written notice of approval or disapproval. The Board shall have the right and authority to approve, conditionally approve or deny requests for Improvement in its sole absolute discretion. If the Board and Developer (if applicable) fail to approve or disapprove within thirty (30) days after receipt of said plans and specifications and all other information requested by the Board and Developer (if applicable), then approval shall be deemed to be granted; provided, that the Improvement is done in accordance with the plans, specifications and related information which were submitted.

8.2.3 If no request for approval is submitted, approval shall be deemed to be denied.

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

8.4 Owner Responsibility/Indemnity. The Owner who causes an Improvement to be made, regardless of whether the Improvement is approved by the Board, shall be responsible for the construction work and any claims, damages, losses or liabilities arising out of the Improvement, and to ensure that the work approved by it satisfies all applicable municipal requirements. The Owner shall hold harmless, indemnify and defend the Association and the Developer, and their respective officers, directors and committee members, from and against any expenses, claims, damages, losses or other liabilities, including without limitation attorneys' fees and other professional fees and costs, arising out of (i) any Improvement which violates any governmental laws, codes, ordinances or regulations; (ii) the adequacy of the specifications or standards for construction of the Improvement; and (iii) the construction of the Improvement.

8.5 Additional Restrictions. The Board may adopt reasonable Rules further restricting Improvements or other material alterations to the Units or Dwellings.

8.6 Exemptions. The requirements set forth in this Section 8 (except Section 8.4) shall not apply to the following:

8.6.1 Original construction of the Dwellings and other Improvements approved or undertaken by the Developer or by Builders authorized by Developer, or approved by the City, in connection with the sale of the Units and the Improvement thereof.

8.6.2 The installation of certain satellite dishes and antennas, which shall be governed by federal law and rules consistent therewith.

8.6.3 Other Improvements expressly permitted by federal, state or local law.

SECTION 9 MAINTENANCE

9.1 Maintenance by Association. The Association shall not, and has no obligation to, maintain any portion of the Dwellings. The maintenance obligations of the Association are as follows:

9.1.1 The Association shall maintain, repair and replace the Common Property, including without limitation, any landscaping, the monuments, and related Improvements located thereon, and any irrigation systems and related components serving the Common Property.

9.1.2 The Association shall provide for routine lawn maintenance of the yard areas of the Units (excluding trees, shrubs and similar plantings), for the watering of lawns, and for snow removal on the driveways and walkways.

9.1.3 The Association shall perform any maintenance obligation it may have under any agreement, now or hereafter entered into, with the City.

9.1.4 The Association may, at the discretion of the Board, provide for (a) removal of trash and recyclables from the Units; and/or (b) the maintenance, repair and/or replacement of other Improvements within the yard areas of the Units, but in no case

shall the Association maintain the exterior or interior of any Dwelling or other structure on a Unit.

9.2 Maintenance by Owner. The maintenance obligations of the Owners are as follows:

9.2.1 Subject to Section 9.1, all maintenance of the Dwellings, Units and all Improvements located within the Units shall be the sole obligation and expense of the Owners thereof. Exterior maintenance for which the Owners are obligated must be performed in accordance with any standards established by the Association.

9.2.2 The Owners or Occupants shall maintain, trim and replace trees, shrubs and similar plantings located in such Owner's Unit.

9.2.3 All drainage easement areas within a Unit as shown on the recorded Plat for the Property or as described in other recorded instruments shall be maintained by the Owner or Occupant of the Unit in a condition that will continuously permit the free flow of water over the drainage easement without change of direction or impediment.

9.2.4 Notwithstanding anything to the contrary in the Governing Documents, the expense of any maintenance, repair or reconstruction of the Property or other areas maintained by the Association necessitated by the acts or omissions of an Owner or Occupant shall be paid by the responsible Owner.

SECTION 10 INSURANCE

10.1 Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of Minnesota, as follows:

10.1.1 Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of insurable Improvements (if any) to the Common Property, less deductibles, exclusive of land and other items normally excluded from coverage. The policy or policies shall also cover personal property owned by the Association.

10.1.2 Commercial general liability insurance covering the use, operation and maintenance of the Common Property, and the use, operation and maintenance of other lands or Improvements which the Association is obligated to maintain against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in type, location and use to the Property. The policy shall have minimum limits of One Million Dollars (\$1,000,000.00) per occurrence. The policy shall, if reasonably available, contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants.

10.1.3 Insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or other persons responsible for handling funds belonging to or administered by the Association, if deemed to be advisable by the Board or required as a precondition to the purchase, insuring or financing of a mortgage on a Unit. The insurance shall name the Association as insureds, as their interests may appear.

10.1.4 Directors and officers liability insurance if deemed to be advisable by the Board with such reasonable limits and coverages as the Board shall determine from time to time.

10.1.5 Workers' compensation insurance as required by law.

10.1.6 Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

10.2 Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as annual Assessments, and allocated among the Units as determined by the Board consistent with the Governing Documents. The Association may, in the case of a claim for damage or personal injury with respect to Improvements (if any) which the Association maintains (i) pay the deductible amount as a Common Expense; (ii) assess the deductible amount against the Units affected in any reasonable manner; or (iii) require the Owners of the Units affected to pay the deductible amount directly.

10.3 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and Mortgagees which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association. Subject to Section 11.1.4, the Association, or any insurance trustee selected by it, shall use the proceeds from property insurance on a damaged Improvement solely to repair and reconstruct the damaged Improvement, and not for any other purpose.

10.4 Required Policy Provisions. All policies of property insurance carried by the Association shall, if such provisions are reasonably available, provide that:

10.4.1 Each Owner and Mortgagee is an insured Person under the policy with respect to liability arising out of the Owner's interest or membership in the Association.

10.4.2 The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household and against the Association and members of the Board.

10.4.3 No act or omission by any Owner or Mortgagee of a Unit, unless acting within the scope of authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy.

10.4.4 If at the time of a loss under the policy there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy is primary insurance.

10.5 Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least thirty (30) days' prior written notice to the Association, and all of the insureds.

10.6 Restoration in Lieu of Cash Settlement. All policies of property insurance maintained by the Association shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable (i) without the prior written approval of the Association (or any insurance trustee), or (ii) when in conflict with provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law.

10.7 Owner's Personal Insurance. It is the obligation of each Owner to obtain personal insurance coverage at his or her own expense covering fire and other casualty to the Owner's Dwelling and other insurable Improvements located within the Owner's Unit, and public liability insurance covering the Owner's Unit. All insurance policies maintained by Owners shall, if possible, provide that they are without contribution as against any insurance purchased by the Association, except as to deductibles under Section 10.2.

10.8 Notice to Developer. The Association shall give Developer at least thirty (30) days prior written notice of any change in the Association's insurance policies until Developer no longer owns any Unit for initial sale or has a right to add Additional Property.

SECTION 11 RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

11.1 Reconstruction. In the event of a casualty on or to any portion of the Property, the obligations and procedures for the repair, reconstruction or disposition of the damaged Improvements shall be governed by the following provisions:

11.1.1 All repair and reconstruction of the damaged Improvements shall be commenced promptly following the casualty and shall be carried through diligently to conclusion. The Association shall be responsible for the repair and reconstruction of Common Property Improvements (if any) and the Owners shall be responsible for the repair and reconstruction of Improvements to their respective Units.

11.1.2 All repair and reconstruction shall be approved pursuant to Section 8. The repair and reconstruction shall be in accordance with the requirements of all applicable zoning, subdivision, building, and other governmental regulations.

11.1.3 Notice of substantial damage or destruction to any portion of the Property shall be promptly given to the Association by the Owner of the damaged Improvements.

11.1.4 Notwithstanding the foregoing, repair and reconstruction of a Dwelling need not be undertaken if the Association, the Owner and the Owner's Mortgagee agree

in writing that the damaged Improvements need not be repaired and reconstructed. If such an agreement is made, the ruins and debris of any damaged Improvements shall promptly be cleared away and the Property shall be left in an orderly, safe and sightly condition.

11.2 Condemnation and Eminent Domain. In the event of a taking of any part of the Common Property by condemnation or eminent domain, the Association shall have authority to act on behalf of the Owners in all proceedings, negotiations and settlement of claims. All proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and their Mortgagees, as their interests may appear. With respect to the taking of all or part of a Unit, the Owner of the Unit shall negotiate and settle all claims, subject to the rights of any Mortgagee of the Unit.

SECTION 12 EASEMENTS

Each Unit and the Common Property, and the rights of the Owners and Occupants therein, shall be subject to or beneficiary of (i) the appurtenant easements and rights granted and reserved in this Section 12; and (ii) other appurtenant easements and rights of record as referenced herein.

12.1 Drainage. The Common Property and the yard areas of the Units and the Additional Property (regardless of whether it is added to the Property) shall be subject to nonexclusive easements for storm water drainage over those parts of the Property and Additional Property which are designed, improved or graded for such purposes.

12.2 Access. Each Unit is the beneficiary of a non-exclusive easement for access to a public street or highway on or across the Private Street and any other portions of the Common Property designed and intended for use as streets or trails, or otherwise designated for such uses by the Association, subject to any restrictions imposed pursuant to the Governing Documents.

12.3 Use and Enjoyment. Each Unit is the beneficiary of a nonexclusive easement for use and enjoyment on and across the Common Property, subject to any restrictions authorized or imposed pursuant to the Governing Documents.

12.4 Encroachments. If there is a minor encroachment by a Dwelling, or other Improvement onto another Unit or the Common Property as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of the encroaching Dwelling or other Improvement, and for the maintenance thereof, shall exist; provided, that with respect to Improvements added pursuant to Section 8, no easement shall exist unless the same have been approved, and the proposed Improvements constructed, as required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

12.5 Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, are subject to the rights of the Association to a non-exclusive, appurtenant easement on and over the yard areas of Units for the purposes of access to and maintenance, repair, replacement and reconstruction of utilities and other common

Improvements serving more than one Unit, to the extent necessary to fulfill the Association's maintenance and other obligations hereunder.

12.6 Utilities. The Property is subject to non-exclusive, appurtenant easements in favor of all public utility companies, other utility providers and the Association for the installation, use, maintenance, repair and replacement of all utilities, such as natural gas, electricity, cable TV, telephone, data and other electronic communications, water, sewer, irrigation, wells, and similar services, and metering and control devices, which exist or are constructed as part of the development of the Property, or which are referred to in the Plat, this Declaration or otherwise described in any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall also be subject to a non-exclusive, appurtenant easement in favor of the other Units for all such utilities and services; provided, that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the reasonable use and quiet enjoyment of the Units by the Owners and Occupants, nor affect the structural or architectural integrity of the Units or Dwellings.

12.7 Developer Rights. Developer shall have and be the beneficiary of exclusive easements for the exercise of its Developer Rights.

12.8 Association Access. There is a non-exclusive easement in favor of the Association, including without limitation any management agent or service vendor retained by the Association, for access on and across the Common Property and the yard areas of Units, for the purpose of performing the Association's obligations under the Governing Documents. Except in the event of emergencies, this easement shall be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant directly affected.

12.9 Emergency Access to Units. In case of emergency, the yard areas of all Units are subject to an easement for access, without notice and at any time, by officers or members of the Board, by the Association's management agents, or by any public safety personnel.

12.10 Project Signs. Developer shall have the right to erect and maintain monument signs and related Improvements identifying the community on the Common Property or on Units subject to sign easements. Those parts of the Property on which monument signs or related decorative Improvements are located are subject to appurtenant, exclusive easements in favor of the Association for the continuing use, maintenance, repair and replacement of said signs and related Improvements. Any Person exercising the rights granted under said easements shall take reasonable care to avoid damaging the Improvements to the Property and shall repair any damage caused by it.

12.11 Other Easements. Portions of the Property are subject to such other easements as may be recorded against such portion of the Property or otherwise shown on the Plat.

12.12 Continuation, Scope and Conflict of Easements. Notwithstanding anything in this Declaration to the contrary, no Owner or Occupant shall 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 otherwise recorded, and shall include reasonable access to the easement areas through the yard areas of

Units and the Common Property for purposes of maintenance, repair, replacement and reconstruction.

12.13 Easements Are Appurtenant. All easements and similar rights burdening or benefiting a Unit or any other part of the Property shall run with the land, and shall be permanent, subject only to termination in accordance with law or the terms of the easement. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.

12.14 Impairment Prohibited. No person shall materially restrict or impair any easement benefiting or burdening the Property, subject to the Declaration and the right of the Association to establish and enforce reasonable Rules governing the use of the Property.

12.15 Benefit of Easements. All easements benefitting a Unit shall benefit the Owners and Occupants of the Unit, and their families and guests. However, an Owner who has delegated the right to occupy the Unit to an Occupant or Occupants, whether by a lease or otherwise, does not have the use and other easements rights in the Property during such delegated occupancy, except as a guest of an Owner or Occupant or in connection with the inspection of the Unit or recovery of possession of the Unit from the Occupant pursuant to law.

SECTION 13 COMPLIANCE AND REMEDIES

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Governing Documents, and the Rules, and such amendments thereto as may be made from time to time, and the decisions of the Association with respect to matters over which each has authority.

13.1 Entitlement to Relief. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules, the Act or the decisions of the Association. However, no Owner may withhold any Assessments payable to the Association, nor take or omit other action in violation of the Governing Documents, the Rules, or the Act, as a measure to enforce such Owner's position, or for any other reason.

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

13.2.1 Commence legal action for damages or equitable relief in any court of competent jurisdiction.

13.2.2 Impose late fees or charges as determined by the Board from time to time for each past due Assessment or installment thereof, and impose interest at the highest rate permitted by law accruing beginning on the first day of the first month after the Assessment or installment was due.

13.2.3 In the event of default of more than thirty (30) days in the payment of any Assessment or installment thereof, all remaining installments of Assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent Assessments or installments thereof, together with all attorneys' fees and other professional fees, costs, interest and late charges, are not paid in full prior to the effective date of the acceleration. Not less than ten (10) days' advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.

13.2.4 Impose reasonable fines, penalties or charges for each violation of the Governing Documents or the Rules.

13.2.5 Suspend the rights of any Owner to vote when the Assessments due with respect to the Owner's Unit are past due, and suspend the rights of any Owner or Occupant and their guests to use any Common Property amenities; provided, that the suspension of use rights shall not apply to those portions of the Common Property providing utilities service and access to the Unit. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents, and for up to thirty (30) days thereafter, for each violation.

13.2.6 Restore any portions of the Common Property used, damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.

13.2.7 Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided by the Governing Documents.

13.3 Rights to Hearing. Before the imposition of any of the remedies authorized by Sections 13.2.4 or 13.2.5, the Board shall, upon written request of the offender, grant to the offender an opportunity for a fair and equitable hearing. The Association shall give to the offender notice of the nature of the violation and the right to a hearing, and the offender shall be given at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty (30) days of receipt of the hearing request by the Board, and with at least ten (10) days' prior written notice to the offender. If the offender fails to timely request a hearing or to appear at the hearing, then the right to a hearing shall be deemed waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within ten (10) days following the hearing, if not delivered to the offender at the hearing.

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

13.5 Costs and Fees. With respect to any collection measures, or any other measure or action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Governing Documents or the Rules, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees and other professional fees and costs, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association. Such expenses shall also include any collection or contingency fees or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Occupant. The foregoing fees and costs shall be the personal obligation of such Owner and shall be a lien against such Owner's Unit.

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

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

13.8 Pre-Litigation Requirement. Notwithstanding anything to the contrary contained herein, any litigation, administrative proceeding or other legal action instituted or intervened in by or in the name of the Association, exclusive of (i) any action to collect Assessments or foreclose Assessment liens, or (ii) to enforce the Governing Documents or the Rules, is subject to prior approval by the Owners of Units to which are allocated in excess of fifty percent (50%) of the total votes in the Association.

SECTION 14 AMENDMENTS

14.1 Approval Requirements. Except for amendments by Developer authorized by this Declaration, this Declaration may be amended only with the approval of:

14.1.1 The Board'

14.1.2 Owners who have the authority to cast in excess of fifty percent (50%) of the total votes in the Association;

14.1.3 Developer as to certain amendments as provided in Section 15; and

14.1.4 Mortgagees as to certain amendments as provided in Section 17.

14.2 Procedures. Approval of the Owners shall be obtained in accordance with the procedures set forth in the Bylaws. Other required approvals shall be in writing. Any

amendment shall be subject to any greater requirements imposed by this Declaration. The amendment shall be effective when recorded in the office of the appropriate recording office in the county in which the Property is located. An affidavit by the President or Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

SECTION 15 DEVELOPER RIGHTS

Developer hereby reserves the exclusive and unconditional authority to exercise the following rights for as long as it owns a Unit or has an unexpired right to add Additional Property, or for any shorter period indicated:

15.1 Complete Improvements. To complete the Dwellings and other Improvements included in Developer's development plans or allowed by this Declaration, and to make Improvements in the Units and Common Property, to accommodate the exercise of any Developer Rights, exempt from the requirements of Section 8.

15.2 Add Additional Property. To add Additional Property to the Property as described in Section 16.

15.3 Relocate Boundaries and Alter Units. To relocate boundaries between Units and to otherwise alter Units owned by it, to the extent permitted by the City.

15.4 Leasing, Sales and Rental Facilities. To engage in the sale and leasing of Units, and to construct, operate and maintain a sales office, management office, model Dwellings, and other development, sales and rental facilities within the Common Property, and within any Units owned or leased by Developer or authorized Builders from time to time, located anywhere on the Property or the Additional Property.

15.5 Signs. To erect and maintain signs and other sales displays offering the Units for sale or lease and/or for other business and construction related purposes, in or on any Unit owned by Developer or authorized Builders and on the Common Property.

15.6 Easements. To have and use easements, for itself, its employees, contractors, Builders, representatives, agents, prospective purchasers and other invitees through and over the Common Property and the yard areas of the Units for the purpose of exercising its rights under this Section.

15.7 Control of Association. To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board, until the earliest of: (i) voluntary surrender of control by the Developer, or (ii) the date when Developer no longer owns a Unit for sale and no longer has the right to add Additional Property to the Property.

15.8 Consent to Certain Amendments. To approve or withhold approval of any amendment to the Governing Documents or Rules which affect Developer's rights or the rights of authorized Builders under the Governing Documents.

15.9 Developer's Liability for Assessments. To have the benefit of the exemption from Assessments as provided in Section 6.5.3.

15.10 Other Rights. To have the exclusive right and authority to have and exercise such other rights as are afforded Developer under the terms of this Declaration.

15.11 Transfer of Developer Rights. To transfer some or all of the Developer Rights, temporarily or permanently, by a separate instrument signed by the Developer and the transferee, and recorded against the portions of the Property and the Additional Property owned by the Developer or the transferee and affected by the transfer, subject to the following qualifications.

15.11.1 Upon transfer of any of the Developer Rights, the liability of the Developer shall be as follows: (i) the Developer shall be liable for any obligation or liability arising out of its acts or omissions occurring before the transfer; (ii) the Developer shall be liable for any obligation or liability relating to any Developer Rights retained by the Developer; and (iii) the Developer shall not be liable for any act or omission arising from the exercise of Developer Rights by the transferee of the Developer Rights.

15.11.2 Any transferee of the Developer Rights shall be entitled to exercise such Developer Rights from and after the date of recording of the instrument transferring the rights. The transferee shall thereafter be subject to all of the obligations with respect to the rights transferred; except (i) misrepresentations of the Developer; (ii) warranty obligations of the Developer; (iii) breach of fiduciary obligations by the Developer or by any officers or members of the Board appointed by the Developer; (iv) any liability or obligation imposed on the Developer as a result of the Developer's acts or omissions after the transfer; and (v) any liability arising out of any Developer Rights retained by the Developer.

SECTION 16

RIGHTS TO ADD ADDITIONAL PROPERTY, RELOCATE BOUNDARIES AND SUBDIVIDE UNITS

16.1 Developer's Rights to Add Additional Property. Developer reserves the exclusive authority to add the Additional Property to the Property, by executing (together with any other owner of the parcel) and unilaterally recording an amendment to this Declaration adding such Additional Property, subject to the following conditions:

16.1.1 The right of Developer to add the Additional Property to the Property shall terminate ten (10) years after the date of recording of this Declaration or upon earlier express written withdrawal of such right by Developer or a successor Developer, unless extended by a vote of the Owners. There are no other limitations on Developer's rights hereunder, except as may be imposed by law.

16.1.2 The Additional Property is described in Exhibit C. The Additional Property may be added to the Property in parcels consisting of one or more platted lots, or portions thereof, with or without Common Property. The Developer shall have the right and authority to unilaterally execute and record an amendment to this Declaration for the purpose of adding the Additional Property.

16.1.3 There are no assurances as to the times at which any part of the Additional Property will be added to the Property, the order in which it will be added, the number of parcels per phase, the size of the parcels or the total number of Units added or created in the Additional Property. Developer has no obligation to add the Additional Property to the Property. The Additional Property may be developed by Developer or its affiliates or successors in interest for other purposes, subject only to approval by the appropriate governmental authorities.

16.1.4 All Units created on the Additional Property shall be restricted exclusively to residential use.

16.1.5 The provisions of this Declaration affecting the use, occupancy and alienation of Units shall apply to all Units created on the Additional Property.

16.2 Rights to Relocate Boundaries and Subdivide Units. Unit boundaries may be relocated and additional Units may be created by the subdivision of a Unit into two or more Units, by Developer, subject to approval required by the City. The Developer shall have the right and authority to unilaterally execute and record an amendment to this Declaration for the purpose of relocating the boundaries between Units and/or subdividing Units.

SECTION 17

RIGHTS OF MORTGAGEES

It is important that individual mortgage loans on the Units be available to Owners and prospective Owners, and that, in order to enhance the availability of such financing, the Governing Documents contain qualification provisions that are acceptable to lenders, guarantors and insurers of Unit mortgage loans, such as FNMA, FHLMC and FHA. Accordingly, Mortgagees shall have the rights and protections set forth in this Section 17, which rights and protections shall control as against any other provisions of the Governing Documents.

17.1 Consent to Certain Amendments and Actions. In addition to any additional requirements imposed by this Declaration or by law, the consent of Mortgagees representing at least fifty-one percent (51%) of the votes allocated to Units that are subject to first mortgages held by Mortgagees (based upon one vote per Unit financed) shall be required for (i) any amendment to this Declaration or other Governing Documents of a material adverse nature to Mortgagees; and (ii) any action to terminate the common interest community after substantial destruction or condemnation occurs or other reasons agreed to by the foregoing percentage of Mortgagees. A Mortgagee shall be deemed to consent to and approve of any such amendment or action in the event the Mortgagee fails to submit a written objection to the Association within sixty (60) days after the Mortgagee receives notice of the same from the Association, by registered or certified mail, with a return receipt requested.

17.2 No Limitations on Sale/Right of First Refusal. The right of a Mortgagee to foreclose or accept a deed in lieu of foreclosure on a Unit, or to sell, lease, transfer, or otherwise convey a Unit which it acquires by foreclosure or deed in lieu of foreclosure, shall not be subject to any right of first refusal or similar restrictions.

17.3 Priority of Lien. Any Mortgagee that comes into possession of a Unit by foreclosure of its first mortgage on a Unit, or by deed or assignment in lieu of foreclosure of the first mortgage on the Unit, takes the Unit free of any claims for unpaid Assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said Mortgagee, (i) except that the Mortgagee will be liable for any fees or costs of collection of the unpaid Assessments if the Association's lien priority includes such fees and costs, and (ii) except that any unreimbursed Assessments or charges may be reallocated among all Units in accordance with their interests in the common interest community.

17.4 Priority of Taxes and Other Charges. All governmental taxes, assessments, and charges which may become liens against Units prior to the first mortgage under state law shall relate only to the individual Units and not to the common interest community as a whole.

17.5 Priority for Insurance/Condemnation Proceeds. No provision of this Declaration or any other Governing Documents shall give an Owner, or any other Person, priority over any rights of the Mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and/or the Common Property. The Association shall give written notice to all Mortgagees of any condemnation or eminent domain proceeding affecting the common interest community, promptly upon receipt of notice from the condemning authority, in accordance with Section 17.6.

17.6 Notice Requirements. Mortgagees shall be entitled to timely written notice of:

17.6.1 a condemnation loss or any casualty loss which affects a material portion of the common interest community or the Unit securing the mortgage;

17.6.2 a sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of a Unit on which it holds a mortgage;

17.6.3 a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

17.6.4 a proposed action which requires the consent of a specified percentage of Mortgagees pursuant to Section 17.1.

Any institutional insurer or guarantor of a mortgage on a Unit shall also be entitled to notice of the foregoing events or actions.

SECTION 18 MISCELLANEOUS

18.1 Severability. If any term, covenant, or provision of this instrument or any exhibit attached hereto is held to be invalid or unenforceable for any reason whatsoever, such determination shall not be deemed to alter, affect or impair in any manner whatsoever any other portion of this Declaration or exhibits attached hereto.

18.2 Construction. Where applicable the masculine gender of any word used herein shall mean the feminine or neutral gender, or vice versa, and the singular of any word used

herein shall mean the plural, or vice versa. References to the Act, or any section thereof, shall be deemed to include any statutes amending or replacing the Act, and the comparable sections thereof.

18.3 Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board, the Association officers, or the Owners or Occupants shall be (i) in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail, or (ii) by electronic communication and shall be effective when sent, as and if authorized by the Bylaws and the Act; except that registrations pursuant to Section 2.2 of the Bylaws shall be effective upon receipt by the Association.

18.4 Conflicts Among Documents. In the event of any conflict among the provisions this Declaration, the Bylaws or the Rules, this Declaration shall control. As between the Bylaws and the Rules, the Bylaws shall control.

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

18.6 Agreement with the City. The Developer and/or Association may enter into certain agreements with the City with respect to the Property. Notwithstanding anything to the contrary herein, the Association and Developer shall perform all of their respective obligations under any agreement either or both may have (at any time) entered into with the City, and to the extent there are any inconsistencies between any such agreement with the City and this Declaration, such agreement with the City shall control. The Developer's and/or the Association's obligations under agreements with the City may include obligations that involve Common Expenses.

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

OP3 HEADWATERS, LLC,
a Minnesota limited liability company

By: _____
Theodore G. Glasrud, Jr.
Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of March, 2018, by Theodore G. Glasrud, Jr., the Chief Manager of OP3 Headwaters, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Felhaber Larson (MSR)
220 South Sixth Street, Suite 2200
Minneapolis, Minnesota 55402
(612) 373-8409

HEADWATERS VILLAS

**EXHIBIT A TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS**

DESCRIPTION OF PROPERTY

Lots 1 and 2, Block 4; and Lots 1 through 7, inclusive, Block 5; Headwaters 10th Addition, according to the recorded plat thereof, Washington County, Minnesota.

HEADWATERS VILLAS

**EXHIBIT B TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS**

DESCRIPTION OF COMMON PROPERTY

None.

HEADWATERS VILLAS

**EXHIBIT C TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS**

DESCRIPTION OF ADDITIONAL PROPERTY

Outlots A and B; Headwaters 10th Addition, according to the recorded plat thereof, Washington County, Minnesota.

CONSENT AND JOINDER BY MORTGAGEE

IN WITNESS WHEREOF, the Mortgagee has caused this Consent and Joinder to be executed on the day of March, 2018.

By: _____
Name: Ryan S. Giesmann
Its: Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of March, 2018, by Ryan S. Giesmann, Vice President of Highland Bank, a Minnesota banking corporation, on behalf of said entity.

Notary Public

2357904.v1

HEADWATERS VILLAS

CONSENT AND JOINDER BY OWNER

The undersigned (the "Owner") is a mortgagee of portions of real property described in the Declaration of Covenants, Conditions, Restrictions and Easements of Headwaters Villas (the "Declaration") to which the Consent and Joinder is attached. Owner hereby consents to and joins in this Declaration; provided, that by consenting to and joining in this Declaration, Owner does not in any manner constitute itself or obligate itself as a Developer as defined in the Declaration.

IN WITNESS WHEREOF, Owner has caused this Consent and Joinder to be executed on the ____ day of March, 2018.

GUIDANCE HOMES, INC.
a Minnesota corporation

By: _____
Name: Jaren Johnson
Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of March, 2018, by Jaren Johnson, President of Guidance Homes, Inc., a Minnesota corporation, on behalf of said entity.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
FELHABER LARSON (MSR)
220 South Sixth Street, Suite 2200
Minneapolis, Minnesota 55402-4504
(612) 339-6321