

DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS

OF STONE CREEK TOWNHOMES ASSOCIATION, INC.

THIS DECLARATION, made this 9th day of May, 1995, by Calvin Haasken and Sharon A. Haasken, husband and wife,, a Minnesota corporation (hereinafter called "Declarant");

**WITNESSETH:**

**WHEREAS**, Declarant is the Owner of the real property described in Article II, Section 1, of this Declaration and desires to create thereon a residential neighborhood with permanent open spaces and other common amenities for the benefit of said neighborhood; and

**WHEREAS**, Declarant has caused the incorporation of Stone Creek Townhomes Association under the laws of the State of Minnesota, which shall own the Common Area and to which shall be assigned the powers and duties of maintaining the Common Area and certain other portions of the property, administering and enforcing the covenants and restrictions herein, and collecting and disbursing the assessments and charges herein created.

**NOW, THEREFORE**, Declarant hereby declares that the real property described in Article II, Section 1, hereof shall be held, sold, conveyed and occupied subject to the following covenants, restrictions, easements, charges and liens, which are for the purpose of protecting the value and desirability of, and shall run with, the real property, and which shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplementary Declaration shall have the following meanings:

Section 1. "Association" shall mean Stone Creek Townhomes Association.

Section 2. "Common Area" shall mean all of Lot 1, Block 9, Stone Creek Townhomes, according to the recorded plat thereof.

Section 3. "Common Expenses" shall mean expenses of the Association for maintenance, repair, operation, management and enforcement; expenses declared common expenses by the provisions of this Declaration; and all sums lawfully assessed against the Lots by the Board of Directors of the Association.

Section 4. "Declarant" shall mean Calvin Haasken and Sharon A. Haasken, husband and wife, and its successors, heirs and assigns if such successors, heirs or assigns should acquire more than one undeveloped Lot for the purpose of development.

Section 5. "First Mortgagee" shall mean any person owning a mortgage on any Lot, which mortgage is first in priority upon foreclosure to all other mortgages which may affect such Lot.

Section 6. "Unit" shall mean a Lot upon which a dwelling has been constructed.

Section 7. "Member" shall mean a Member of the Association as provided in Article III hereof.

Section 8. "Owner" shall mean the record Owner, whether one or more persons, or entities of title to any Lot subject to this Declaration, including contract for deed vendors and vendees, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Property" shall mean the real property described in Article II, Section 1, hereof.

Section 10. "Lot" shall mean each numbered lot of Stone Creek Townhomes, according to the plat thereof and such additional areas which may be designated as Lot(s), except Lot 1, Block 9.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which is and shall be held, sold, conveyed and occupied subject to this Declaration is located in the City of Chaska, County of Carver and State of Minnesota, and is legally described as follows:

Lots 1, 2 and 3, Block 1  
Lots 1, 2 and 3, Block 2  
Lots 1, 2 and 3, Block 3  
Lots 1, 2 and 3, Block 4  
Lots 1, 2 and 3, Block 5  
Lots 1, 2 and 3, Block 6  
Lots 1 and 2, Block 7  
Lots 1 and 2, Block 8  
Lot 1, Block 9  
STONE CREEK TOWNHOMES

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

##### IN THE ASSOCIATION

Section 1. Members. All Owners of Units shall automatically by virtue of such interest be Members of the Association. When more than one person is an Owner of a Unit, all such persons shall be Members. It shall be the duty of each Owner to register his name and the nature of his interest with the Secretary of the Association. If an Owner fails to register his name or interest, the Association shall be under no duty to recognize his ownership.

Section 2. Voting. The Association shall have two classes of voting membership:

Class A. Class A Member(s) shall be all Owners, with the exception of the Declarant, who shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B Member(s) shall be the Declarant who shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership, or

(b) on the expiration of three (3) years from and after the date of execution of this Declaration.

Section 3. Transfer of Membership. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The share of a Member in the funds and assets of the Association cannot be assigned, pledged, encumbered or transferred in any manner, except as an appurtenance to a Unit.

#### ARTICLE IV

#### PROPERTY RIGHTS IN THE

#### COMMON AREA

Section 1. Members' Easements of Enjoyment. Every Member shall have the following rights and nonexclusive appurtenant easements over and across the Common Area for the following purposes:

- (a) Ingress and egress including the right to use the private streets located within the Common Area.
- (b) Parking in designated areas.
- (c) Utilities, water and sewer.
- (d) Enjoyment for recreational purposes.

Every Member shall also have an exclusive appurtenant easement over the Common Area for the use and enjoyment of the sidewalk, steps and entry way adjacent to his Lot.

Section 2. Title and Improvements to the Common Area. The Declarant shall convey and record marketable title to the Common Area to the Association prior to the conveyance of fee title to any Unit. The Declarant covenants and agrees with the Association that it will make and pay for all improvements on the Common Area as set forth in the plans and specifications on file with the Association, and delivery of the deed to the Common Area shall not constitute a release of Declarant from the obligation to perform such work. Upon the Declarant having fulfilled its obligation to improve the Common Area, the Association shall file in the office of the County Recorder a release of the Declarant. Until the Declarant has completed the work as set forth in said plans and specifications, the Declarant shall have the right to enter and to store materials and equipment upon the Common Area for the purpose of completing such work.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment described herein and the title of the Association to the Common Area shall be subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for capital improvements on the Common Area, and in aid thereof to mortgage the Common Area. The rights of any such mortgagees in the Common Area shall be subordinate to the rights of the Members hereunder. No indebtedness authorized by this paragraph shall exceed twice the sum of the annual assessment levied against all Units. No such mortgage shall be given or other encumbrance of the Common Area permitted unless first approved in writing by the Owners and First Mortgagees representing seventy-five percent (75%) of the Lots.

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.

(c) The right of the Association to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days and to impose a fine not to exceed an amount equal to 20% of the monthly Association dues for each infraction of its published rules and regulations. Nothing contained in this paragraph, however, shall be deemed to deny an Owner easements for access and utility purposes. Furthermore, any such fine may not exceed \$50.00 for all consecutive infractions arising out of the same violation of published rules and regulations of this Declaration.

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Area.

(e) The right of the Owner of each Unit to an exclusive appurtenant easement over the Common Area for areas occupied by bay windows, roof overhangs, air conditioning compressors, flower boxes and other appurtenances which are part of the original construction of any Unit or which are added pursuant to the provisions of Section 1 of Article VI hereof.

(f) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless first approved in writing by the Owners and First Mortgagees of one hundred percent (100%) of the Units. Nothing herein shall preclude the Board of Directors of the Association from granting access to the Common Area on a temporary, non-exclusive basis to any public agency, authority, utility or cable television company for construction, maintenance or repair of any utility delivery system.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to his tenants who reside on the Property and to Members of his family and his guests.

Section 5. Taxes and Special Assessments on the Common Area. The Association shall have the right, power and authority to collect taxes and special assessments levied against the Common Area as part of the annual assessment, if such taxes and special assessments are not collected by the governmental body from the Owners or paid by the Owners to the governmental body when the same are due and payable.

Section 6. Use of the Common Area. The Common Area shall be used strictly in accordance with the easements granted thereon. Except as herein provided, no Owner shall obstruct or interfere with the rights and privileges of other Owners in the Common Area, and nothing shall be planted, altered, constructed upon or removed by an Owner from the Common Area except by prior written consent of the Association. If an Owner shall violate this Section, the Association shall have the right to restore the Common Area to its prior condition and assess the cost thereof against the Owner who violates this Section, and such cost shall become a lien upon the Unit of such Owner which is due and payable upon demand. The Association shall have the same right and powers to collect the cost of such restoration as provided in Article VII hereof for the collection of delinquent annual assessments. If any Owner interferes with the right and privileges of another Owner in the use of the Common Area, except as provided herein, the Association or the Owner may commence an action to enjoin such interference, and the prevailing party shall be entitled to recover such reasonable attorneys' fees as the court may allow, together with all necessary costs and disbursements incurred in connection therewith.

## ARTICLE V

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Common Area Maintenance. The Association shall be responsible for the maintenance and repair and for the exclusive management and control of the Common Area and the Lots and all exterior improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition. The Common Area and lot improvements shall be deemed to include such things as streets, parking areas, driveways, sidewalks, trees, flowers and shrubs, patios and decks, and docks; together with all lines, pipes, wires, conduits, systems, sanitary sewer, storm sewer, water, irrigation lines or other utilities which are installed on or across the Common Area or the Lots. The Association, or its contractor, shall have the right to enter upon the Lots to perform the maintenance and repair outlined herein.

Section 2. Exterior Maintenance. The Association shall be responsible for the maintenance and repair of the exterior surfaces of each Unit, including painting, repair, replacement and care for roofs, gutters and downspouts, exterior building surfaces, overhangs and other exterior improvements. Such responsibility for exterior maintenance shall not extend to glass surfaces or doors, screens or screen doors, or exterior door or window fixtures.

Section 3. Incidental Damage. The Association shall be responsible for the repair of all incidental damage caused to a Unit or Lot by any maintenance, repair, alteration or improvements of the Common Area or the exterior surfaces of the homes performed by or with the authority of the Association.

Section 4. Services. To the extent it deems advisable, the Association may obtain and pay for the services of any person or entity to manage its affairs, to fulfill its obligations hereunder, or to enforce this Declaration or the By-Laws. The Association may arrange with others to furnish water, trash collection, sewer service, and other common services to each Lot.

Section 5. Personal Property for Common Use. The Association may acquire and hold for the use of all of the Members tangible and intangible personal property and may dispose of the same by sale or otherwise. Every Member may use such property in accordance with the purpose for which it is intended and without hindering or encroaching upon the lawful rights of other Members.

Section 6. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Lots and the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

Section 7. Access at Reasonable Hours. For the purpose of performing the Common Area and exterior maintenance authorized by this Article, the Association, acting through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner to enter upon any Lot at reasonable hours of the day.

## ARTICLE VI

### OBLIGATIONS OF THE OWNERS

Section 1. Architectural Control. From and after the completion of construction and sale of any Lot, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any modification to the exterior of any Unit, whether to the structure or appearance, or, the landscaping thereof, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding

structures and topography by the Association or by an architectural committee composed of three or more representatives appointed by the Association. The Association or the architectural committee shall not approve any alterations or structural modifications which would jeopardize or impair the soundness, safety or appearance of the Property. In the event the Association fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article shall be deemed to have been fully complied with. The prevailing party in an action brought by the Association pursuant to this Section shall be entitled to recover from the other party reasonable attorneys' fees together with all necessary costs and disbursements incurred in connection therewith.

Section 2. Use of Lots. Each Lot shall be used for residential Unit purposes only, except that the Declarant shall be entitled to maintain model townhouses on the Property. No structure of a temporary character, trailer, tent, shack, or other building shall be used on any Lot or the Common Area at any time as a residence, either temporarily or permanently. No improvement or structure whatsoever, other than single-family dwellings or garages or other structure appurtenant to a Home and approved as provided in Section 1 of this Article may be erected, placed or maintained. No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

Section 3. Use of the Units. The Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days. Each Owner shall otherwise have the absolute right to lease his Unit, provided that any lease is made subject to this Declaration and the By-Laws of the Association. No Owner shall subdivide any Unit or sell or lease only a part of a Unit.

Section 4. Interior Maintenance. Every Owner shall maintain and keep in repair the interior of his Unit. Every Owner shall perform promptly all maintenance and repair work within a Unit which, if omitted, would adversely affect the Property in its entirety or in part belonging to other Owners or to the Association, being expressly responsible for any damage or liability that Owner's failure to do so may cause. Every Owner shall be deemed to own and shall be responsible for the maintenance and repair of all lines, pipes, wires, conduits, systems or other utilities, together with the fixtures and equipment served or supplied thereby, which are installed within an Owner's Unit or upon Owner's Lot, commencing at the point where such utilities enter upon the Lot.



Section 5. Responsibility for Misuse and Negligence. In the event that the need for maintenance or repair of the Common Area and improvements thereon or the exterior surfaces of any Unit is caused by the misuse or negligence of an Owner, Owner's family, guests, tenants or invitees, the cost of such maintenance or repair shall be assessed against such Owner. Such cost shall become a lien upon the Lot of such Owner which is due and payable on demand, and the Association shall have the same right and powers to collect the amount so assessed as provided in Article VII for the collection of delinquent annual assessments.

## ARTICLE VII

### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Use of Assessments. The assessments shall be used exclusively for the benefit of the Owners, to promote the health, safety and welfare of the Owners, to preserve, protect and enhance the value of the Property, and to ensure the enjoyment of rights, privileges and easements with respect to the Common Area.

Section 3. Method of Levying Annual Assessments. Annual assessments against the Lots for Common Expenses shall be levied by a majority vote of the Board of Directors of the Association. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period and send written notice thereof to every Owner. All Units shall be assessed equally. The annual assessments shall be due and payable in monthly installments on such dates as are established by the Board of Directors. If an annual assessment is not timely made, there shall be an assessment in the amount, installments, and on the due dates of the last prior annual assessment. The Board of Directors may require each Owner to deposit and maintain with the Board of Directors an amount equal

to one quarterly estimated annual assessment for use as working capital.

Section 4. Commencement and Maximum Amount of Annual Assessments. The annual assessments herein authorized shall commence, as provided herein as to all Lots on the first day of the third month following conveyance of the Common Area to the Association. Until January 1 of the year following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be \$600.00 or, 450.00 per month per Lot on which there is a Unit which has been issued a certificate of occupancy.

(a) The Declarant shall, after the commencement of the obligation to pay assessments, pay to the Association for each Unit which has not been awarded a certificate of occupancy reduced monthly assessment payments in the amount of 25% of full monthly assessment payments. No assessments are due for vacant Lots.

(b) The Declarant shall pay full monthly assessment payments as to each Unit which has been awarded a certificate of occupancy but has not been conveyed to a purchaser.

(c) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than 5% or a percentage equal to the increase for the immediately preceding year in the Consumer Price Index established by the United States Department of Labor for the Minneapolis area, whichever of said percentages is greater, above the maximum assessment for the previous year without an affirmative vote of a majority of the membership approving such an increase.

Section 5. Reserves and Surplus. Annual assessments for Common Expenses shall include an allocation to maintain an adequate Replacement Reserve Fund for maintenance, repair and replacement of those elements of the Common Area and the exterior surfaces of the Units that must be repaired or replaced on a periodic basis. Such elements include, by way of example and without limitation, roadways and driveways, sidewalks, roofs, common utility lines, decks and outdoor lighting systems. In addition, the Board of Directors may establish and fund as part of the annual assessments a General Operating Reserve to provide a measure of financial stability during periods of special stress and to be used to meet deficiencies as a result of delinquent payments and other contingencies. The Association shall not be obligated to apply any such surplus to the reduction of the annual assessments in the succeeding year, but may carry forward such surplus from year to year as the Board of Directors may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 6. Special Assessments. In addition to annual assessments, the Board of Directors may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements on the Common Area, exterior surfaces of Units, or utility lines serving more than one Lot. Any such assessment, however, shall first be approved by a vote of Owners representing seventy-five percent (75%) of the Units at a meeting duly called for such purpose, written notice of which shall be sent to all Owners at least thirty (30) days in advance.

Section 7. Uniform Rate of Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Units.

Section 8. Record of Assessments. The assessments against all Units shall be set forth on a roll of the Units kept by the Secretary of the Association and available for inspection at reasonable times by any Owner or his authorized representative. Such roll shall indicate for each Unit the name and address of the Owners, the assessments levied for all purposes, and the amounts of all assessments paid and unpaid.

Section 9. Delinquent Assessments: Interest and Liens. Any assessment or installment thereof not paid within ten (10) days after becoming due shall bear interest at the highest rate of interest per annum permitted by Minnesota law in such cases from the date when due until paid. All sums assessed by the Association but unpaid for the share of Common Expenses chargeable to any Unit shall constitute a lien on such Unit commencing on the due date of the assessment and prior to all other liens except only tax liens and liens for special assessments on the Unit in favor of any taxing and assessing unit of government and all sums unpaid on a first mortgage of record. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of any first mortgage shall extinguish the lien of such assessments as to payments which become due prior to the foreclosure sale and transfer. Any such unpaid assessments shall thereupon be spread over and become a lien on all Units in equal shares. No foreclosure sale or transfer shall relieve any Unit from liability for any assessments thereafter becoming due or from the lien thereof. A lien for assessments may be foreclosed by suit by the Board of Directors of the Association in like manner as foreclosure by action of a mortgage on real property. The Board of Directors shall have the power to convey the Unit so acquired. In addition, the Association shall have the right to pursue any other remedy at law or in equity against any Owner who fails to pay any assessment or charges against his Unit.

Section 10. Ineffectiveness of Waiver or Abandonment. No Owner may exempt himself from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area, by waiver or protest of the need for maintenance or

repair of exterior surfaces of any Home, or by abandonment of his Unit.

## ARTICLE VIII

### INSURANCE

Section 1. Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the assessments made by the Association.

In addition to casualty insurance on the Common Area, the Association, through the Board of Directors, may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board of Directors deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Dwelling Units, including the structural portions and fixtures thereof, owned by such Owners. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a Common Expense of the Association to be included in the regular assessments of the Owners, as levied by the Association, but such assessments for insurance premiums shall not be subject to the limits on percentage increases recited in Article VII hereof. The insurance coverage with respect to the Dwelling Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as Trustee for the Homeowners.

### Section 2. Public Liability and Other Insurance.

(a) The Association shall carry public liability insurance with one or more reputable insurance companies in minimum amounts of \$1,000,000.00 for any one occurrence in connection with the Property and in aggregate of \$1,000,000.00 in connection with the Property.

(b) The Association shall carry fidelity insurance with a reputable insurance company covering the acts of its Officers, Directors and Employees with a limit of \$50,000.00 for any one occurrence.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repairs or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Unit Owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Units on the Lots in the Properties, the Association shall repair or replace the same from the insurance proceeds available.

Section 4. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 5. Waivers of Subrogation. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of the pro-rata liability of the insurer as a result of any insurance carried by Owners or of invalidity arising from any acts of the insured or any Owner. Provisions shall be made for issuance of certificates of physical damage insurance to mortgagees.

Section 6. Notices to FNMA and FHLMC. All policies of physical damage, fidelity and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), all of the insureds and all First Mortgagees of record. The Association agrees to notify FNMA and FHLMC in writing whenever damage to the Common Area exceeds Ten Thousand Dollars (\$10,000.00) from a single occurrence, or whenever damage with respect to any Unit covered by a mortgage purchased in whole or in part by FNMA or FHLMC exceeds One Thousand Dollars (\$1,000.00).

Section 7. Individual Owner's Insurance. Insurance coverage on the furnishings and other personal property belonging to an Owner and casualty and public liability insurance coverage within each Unit shall be the responsibility of the Owner thereof. Each

Owner may obtain insurance at Owner's own expense providing coverage on Owner's personal property and for Owner's personal liability, provided that any such policy shall contain a waiver of subrogation comparable to that referred to in Section 5 of this Article. Each Owner may obtain additional fire and extended coverage insurance at Owner's own expense on Owner's Unit, provided that any such policy shall provide that it shall be without contribution as against the fire and extended coverage insurance maintained by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance maintained by the Association due to proration of insurance purchased by any Owner, such Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as hereinafter provided, and such Owner shall be liable to the Association to the extent of any such diminution or loss of proceeds.

#### ARTICLE IX

##### RECONSTRUCTION AND REPAIR

Section 1. Casualty. In the event of damage or destruction by casualty to any part of the property subject to this Declaration, the determination of whether or not to reconstruct or repair the same shall be made as follows:

(a) Any portion of the Common Area which is damaged or destroyed by a casualty otherwise not affecting the Units shall be restored to substantially the same condition which existed prior to such casualty. If insurance proceeds are insufficient to pay the costs of such restoration, the Board of Directors shall levy a special assessment as provided in Section 6 of Article VII hereof to meet the costs thereof which assessment shall be fixed at a uniform rate for all Lots.

(b) If a Unit is damaged or destroyed by a casualty it shall be restored by the Owner to substantially the same condition which existed prior to such casualty. If insurance proceeds are insufficient to pay the costs of such restoration or reconstruction, then the Owner shall be responsible for the difference needed to complete such restoration or reconstruction, except that in the event such loss is covered by blanket casualty insurance carried by the Association as provided in Section 1 and 2 of Article VIII, then the Board of Directors shall levy a special assessment to meet such deficiency in costs, which assessment shall be fixed at a uniform rate for all Lots.

(c) Partial destruction, which shall mean damage or destruction which renders less than sixty percent (60%) of the Units, collectively, unfit for occupancy, shall be reconstructed or repaired unless this Declaration is revoked within ninety (90) days after the date of such casualty.

(d) Total destruction, which shall mean destruction which renders sixty percent (60%) or more of the Homes and Garages, collectively, unfit for occupancy, shall not be reconstructed or repaired unless at a special meeting of the Members which shall be called within ninety (90) days after the date of such casualty or if by such date the insurance loss has not been fully adjusted, then within thirty (30) days thereafter, Owners representing eighty percent (80%) or more of the Units vote in favor of such reconstruction or repair.

Immediately after a casualty causing damage to the Property, the Board of Directors shall obtain reliable and detailed estimates of the cost to restore the damaged property to substantially the same condition which existed prior to such casualty. If the proceeds of insurance are insufficient to pay the estimated cost of restoration of the Property, or, if at any time during reconstruction or repair or upon the completion thereof, the funds for payment of the cost of restoration are insufficient, the Board of Directors shall levy a special assessment against all Lots for that portion of the deficiency related to damage to the Common Area and against individual Lots for that portion of the deficiency related to damage to the particular Unit constructed thereon. If the cost of the restoration of the Property is less than the insurance proceeds received by the Association, the Board of Directors shall pay the balance remaining to the Owners and their First Mortgagees, as their interest may appear. The Association and any contractors or other persons engaged on its behalf in reconstruction or repair shall have temporary easements in and over the Lots, Units and Common Area to allow such work to be completed. In the event of reconstruction or repair of damage to any part of the Property, all Owners agree that minor encroachments on parts of the Common Area or on adjacent Lots shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Condemnation. In the event of taking by the exercise of the power of eminent domain, or by an action or deed in lieu thereof, of all or part of the Property, the monies awarded shall be used and the obligation to rebuild shall be determined in a manner substantially similar to a case involving damage or destruction by casualty.

## ARTICLE X

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, either Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, such Owner shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by Owner's negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all arbitrators shall be final and conclusive on the question involved.

## ARTICLE XI

### MUTUAL EASEMENTS

The title to each Lot shall include an exclusive appurtenant easement over and across the adjoining Lot or Common Area for encroachments created by construction, settling and overhangs for all Units originally constructed by the Declarant or improvements which are added pursuant to Section 1 of Article VI hereof. A



valid easement for said encroachments and for the maintenance thereof, so long as such encroachments stand, shall and does exist upon each Lot in favor of the adjoining Lot or Lots.

## ARTICLE XII

### RIGHTS OF FIRST MORTGAGEES

For the protection of First Mortgagees and their assigns, the following provisions shall take precedence over any other conflicting provisions of this Declaration:

Section 1. Notification of Default. A First Mortgagee, upon request, shall be entitled to written notification from the Association of any default in the performance by an Owner of any obligation under the Declaration or the By-Laws which is not cured within sixty (60) days.

Section 2. Exemption from Right of First Refusal. Any First Mortgagee that obtains title to a Unit by foreclosure of the mortgage, by deed or assignment in lieu of foreclosure, or pursuant to the remedies provided in the mortgage, shall be exempt from any right of first refusal contained in the Declaration or By-Laws.

Section 3. Liability for Assessments. Any First Mortgagee that obtains title to a Unit pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage will not be liable for such Unit's unpaid assessments or charges which accrue prior to the acquisition of title to such Lot by the First Mortgagee.

Section 4. Books and Records. First Mortgagees shall have the right to examine the books and records of the Association.

Section 5. Approval of Certain Acts. Unless at least seventy-five percent (75%) of the First Mortgagees of Units, based upon one vote for each first mortgage owned, or 75% of Owners other than the Declarant have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Owners shall not be deemed a transfer within the meaning of this clause.)

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Units, the exterior maintenance of Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings on the Property.

(d) Fail to maintain fire and extended coverage insurance on insurable Common Areas and property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

(e) use hazard insurance proceeds for losses to the Property for other than repair, replacement or reconstruction of such Property.

Section 6. Liens. All taxes, assessments and charges which may become liens prior to the first mortgage under Minnesota law shall relate only to the individual Units and not to the Property as a whole.

Section 7. Reserves. Assessments for Common Expenses shall include an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. Such routine and foreseeable assessments shall be payable in regular installments rather than by special assessment.

Section 8. No Priority Over First Mortgagees. No provision of the Declaration or By-Laws shall be construed as giving to any Owner or to any other party priority over any rights of First Mortgagees of Units pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or the Common Area, or both.

Section 9. Contract Terms. The term of any agreement for professional management of the Property, or any other contract providing for services of the Declarant, may not exceed two (2) years. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee upon ninety (90) days' prior written notice.

#### ARTICLE XIII

##### ADDITIONAL RESTRICTIONS

Section 1. Declarant Rights. Notwithstanding any provision of the Declaration or By-Laws to the contrary, the Declarant may operate and maintain upon the property during the period of construction and sale of the Units such facilities as may be reasonably required or convenient to the construction and sale of the Units, including without limitation a business office, storage

area, construction yards, signs, model units and sales office, and shall have easements for access to and enjoyment and use of such facilities for itself, its employees, agent and prospective purchasers.

Section 2. Keeping of Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or in any Unit, except that no more than two (2) dogs, two (2) cats or other common household pets such as gerbils or hamsters may be kept, provided they are not kept, bred or maintained for any commercial purpose. Notwithstanding the above, no pet in excess of thirty (30) pounds may be kept on any Lot or in any Unit without first having obtained written approval therefor from the Association. The Association may adopt reasonable rules and regulations governing the keeping of pets.

Section 3. Signs. No sign of any kind shall be displayed to the public view on any Lot or in the Common Area, except that the Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the development until the Declarant conveys the last Unit.

Section 5. Miscellaneous. All sporting equipment, toys, and other equipment and supplies necessary or convenient to residential living shall be enclosed or shall be screened from view. No boats or recreational vehicles shall be stored by an Owner unless stored inside a garage. In addition, no television or radio antenna shall be erected or placed on the exterior of any Unit.

#### ARTICLE XIV

##### GENERAL PROVISIONS

Section 1. Duration and Binding Effect. The easements created hereby shall be permanent and the covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically renewed for successive periods of ten (10) years.

Section 2. Amendment. This Declaration shall not be amended or revoked unless at least seventy-five percent (75%) of the Owners agree to such amendment or revocation.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain such violation or to recover damages, and against the land to enforce any lien created

by these covenants. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Notices. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly given when personally delivered or when mailed postpaid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such notice.

Section 5. Severability. In the event that any provision of this Declaration shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6. Singular and Plural; Gender; Joint and Several Obligations. When required by the context of this Declaration, the singular shall include the plural, or vice versa, and the masculine gender shall include the feminine or neutral gender. Any obligations of the Owners or Members shall be joint and several except where the context clearly requires otherwise.

Section 7. Governing Law. This Declaration shall be interpreted in accordance with and governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the Declarant has executed this Declaration the day and year first above written.

Calvin Haasken  
Calvin Haasken, Declarant

Sharon A. Haasken  
Sharon A. Haasken, Declarant

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF CARVER )

The foregoing instrument was acknowledged before me this 9 day of May, 1995 by Calvin Haasken and Sharon A. Haasken, husband and wife, Declarants.

Christy Helen Haasken  
Notary Public

THIS INSTRUMENT DRAFTED BY:  
Luke Melchert, Attorney at Law  
MELCHERT, HUBERT, SJODIN & WILLEMSSEN  
112 Second Street West, P.O. Box 67  
Chaska, Minnesota 55318  
Phone: 612-448-3121



cs:haasken/np/stone.covenants

Doc # T 88345

Certificate Number

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STATE OF MINNESOTA,

County of Carver

as

OFFICE OF THE REGISTRAR OF TITLES

This is to certify that this document was filed in  
this office on the 17 day of July

A.D. 1995 at 1 o'clock p.m.

Carol Honora  
REGISTRAR OF TITLES

By Judy Little

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