

ARTICLES OF INCORPORATION
OF
HERITAGE GLEN TOWNHOME ASSOCIATION

In compliance with the requirements of Minnesota Statutes Annotated, Chapter 317A, the undersigned, all of whom are residents of Minnesota, and all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a corporation not for profit and do hereby certify:

ARTICLE I

The name of the corporation is HERITAGE GLEN TOWNHOME ASSOCIATION, hereinafter called the "Association".

ARTICLE II

The principal office and registered office of the Association is 8421 Wayzata Boulevard, Suite 300, Golden Valley, Minnesota 55426.

ARTICLE III

A. The initial registered agent of this Association is hereby appointed and named as Vincent Burger, whose address is 8421 Wayzata Boulevard, Suite 300, Golden Valley, Minnesota 55426.

B. The names and addresses of the incorporators are:

Vincent Burger	8421 Wayzata Boulevard Suite 300 Golden Valley, MN 55426
William Pritchard	8421 Wayzata Boulevard Suite 300 Golden Valley, MN 55426
Robert J. Swanick	8421 Wayzata Boulevard Suite 300 Golden Valley, MN 55426

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit (incidentally or otherwise) to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the Units and Common Elements (as said terms are defined in that certain

Declaration, hereinafter called the "Declaration", applicable to the property described on Exhibit A hereto and recorded or to be recorded in the Office of the County Recorder, Washington County, Minnesota, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if herein set forth at length) within that certain property described on Exhibit A, and to promote the health, safety and welfare of the residents within the said property and any additions thereto as may hereafter be brought within the jurisdiction of this Association and for said purposes to:

- (a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association set forth in the Declaration;
- (b) fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;
- (c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (d) borrow money, and with the assent of two-thirds (2/3) of the members entitled to vote, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property and Common Elements (as defined in Declaration), provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of the members;
- (f) have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Minnesota by law may now or hereafter have or exercise.

ARTICLE V

MEMBERSHIP

A. Every person or entity who is a record owner of a fee or undivided fee interest in any Unit which is subject to assessment by the Association, including contract purchasers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Unit shall be entitled to one vote; multiple ownership of a Unit shall not increase the number of votes nor authorize the division of voting rights.

B. The members shall not be personally liable for corporate obligations, but each member shall be liable for annual assessments and special assessments. Methods of enforcement and collection of assessments are set forth at length in the Declaration.

C. The corporation does not and shall not afford pecuniary gain, incidentally or otherwise, to its members.

D. The corporation has no capital stock.

ARTICLE VI

BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of five (5) Directors, who need not be members of the Association. The number of directors may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are:

<u>Term</u>	<u>Name</u>	<u>Address</u>
1 year	Lee W. Johnson	8421 Wayzata Boulevard Suite 300 Golden Valley, MN 55426
1 year	Vincent Burger	8421 Wayzata Boulevard Suite 300 Golden Valley, MN 55426
1 year	William Pritchard	8421 Wayzata Boulevard Suite 300 Golden Valley, MN 55426

1 year	Robert J. Swanick	8421 Wayzata Boulevard Suite 300 Golden Valley, MN 55426
1 year	Ray L. Baird	8421 Wayzata Boulevard Suite 300 Golden Valley, MN 55426

ARTICLE VII

DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

No disposition of the assets of the Association shall be effective to divest or diminish any vested right or title of any member in any such assets arising under recorded covenants and deeds applicable to such assets unless made in accordance with the provisions of such covenants and deeds.

ARTICLE VIII

DURATION


The corporation shall exist perpetually subject to the provisions of Article VII.

ARTICLE IX

AMENDMENTS

Amendment of these Articles shall require the assent of seventy-five percent (75%) of the total votes outstanding at the time of the amendment.

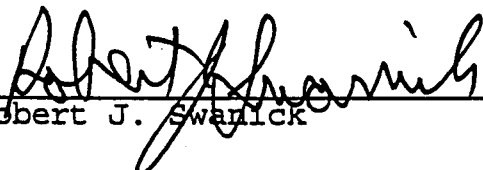
IN WITNESS WHEREOF, for the purpose of forming this Corporation under the laws of the State of Minnesota, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this 14 day of May, 1998.



Vincent Burger



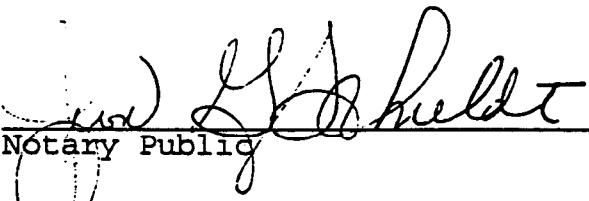
William Pritchard



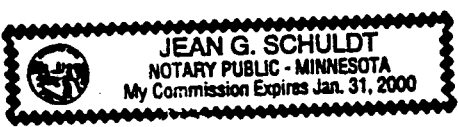
Robert J. Swanick

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 14 day of May, 1998, personally appeared before me Vincent Burger, William Pritchard and Robert J. Swanick, to me personally known, who being by me duly sworn, did say that they are the persons who executed the foregoing instrument and they acknowledged that they executed the same as their free act and deed.



Notary Public



THIS INSTRUMENT WAS DRAFTED BY:
Kaplan, Strangis and Kaplan, P.A.
5500 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 375-1138

EXHIBIT A

Lots 1 through 17, inclusive, Block 1; and
Lots 1 through 12, Block 2; and
Outlots D and F;
all in Club Homes At the Preserve 1st Addition, Washington County,
Minnesota, according to the recorded plat thereof.

STATE OF MINNESOTA
FILED-DUPLICATE COPY

MAY 14 1998


Secretary of State

**BYLAWS OF
HERITAGE GLEN TOWNHOME ASSOCIATION**

**SECTION 1
NAME AND LOCATION**

The name of the corporation is HERITAGE GLEN TOWNHOME ASSOCIATION, hereinafter referred to as the "Association". The principal office of the corporation shall be located at 8421 Wayzata Boulevard, Suite 300, Golden Valley, Minnesota, but meetings of members and directors may be held at such places within the State of Minnesota as may be designated by the Board of Directors.

**SECTION 2
DEFINITIONS**

2.1. Declaration. "Declaration" shall mean and refer to the Declaration applicable to the Property described in Exhibit A to the Articles of Incorporation of the Association recorded in the office of the County Recorder, Washington County, Minnesota.

2.2. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings given to them in Section 1 of the Declaration.

**SECTION 3
MEETING OF MEMBERS**

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

3.2. 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 of Directors. At each annual meeting of the Owners, (i) the Persons who are to constitute the Board of Directors shall be elected pursuant to 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 discussion or decision by the Owners, shall be considered and acted upon at the meeting.

3.3. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to cast at least 25% of all the votes in the Association.

3.4. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least twenty-one (21) days, but no more than thirty (30) days,

before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

3.5. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes in the Association shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

3.6. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his/her Unit.

SECTION 4 ANNUAL REPORT

The Board of Directors shall prepare an annual report on behalf of the Association to be mailed or delivered to each Owner together with the notice of the annual meeting. The report shall contain at a minimum:

- a. A statement of any capital expenditures in excess of two percent of the current budget or \$5,000, whichever is greater, approved by the Association for the current year or succeeding two fiscal years.
- b. A statement of the balance in any reserve or replacement fund and any portion of the fund designated for any specified project by the Board of Directors.
- c. 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.
- d. A statement of the status of any pending litigation or judgments to which the Association is a party.
- e. A statement of the insurance coverage provided by the Association.
- f. A statement of the total past due assessments on all Units, current as of not more than 60 days prior to the date of the meeting.

SECTION 5
BOARD OF DIRECTORS, SELECTION, TERM OF OFFICE, MEETING

5.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The first Board of Directors shall consist of the persons designated as directors in the Articles of Incorporation of the Association or appointed to replace them by the Declarant, subject to the rights of Owners to elect directors as set forth in Section 5.2. Upon the expiration of the terms of the Members of the first Board of Directors, the Board of Directors shall be composed of five (5) directors, a majority of whom shall be Owners, or a duly authorized representative of the Owner if the Owner is a corporation, partnership, limited liability company, trust or other entity which has the capacity to hold title to real estate.

5.2 Term of Office. The terms of office of the Members of the Board of Directors shall be as follows:

- a. Subject to Subsection b, the terms of all directors appointed by Declarant as authorized by the Declaration shall terminate upon the earliest of (i) voluntary surrender of control by Declarant, (ii) an Association meeting which shall be held within 60 days after conveyance to Owners other than a declarant of 75% of the total number of Units authorized to be included in the common interest community or (iii) the date three (3) years following the date of the first conveyance of a Unit to an Owner other than a declarant. The term of office of any director elected to the first Board of Directors by Owners other than the Declarant shall terminate at the same time as those appointed by Declarant.
- b. Notwithstanding the provisions of Subsection a, the Owners other than Declarant shall have the right to nominate and elect not less than 33 1/3% of the directors at a meeting of the Owners held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the common interest community.
- c. The first terms of office of the directors elected by the Owners immediately following the termination of the terms provided for in Subsection a shall be two years for three of the directors and three years for two of the directors. The nominee or nominees receiving the greatest numbers of votes shall fill the longer terms. Each term of office thereafter shall be two years and shall expire upon the election of a successor at a subsequent 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. 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 By-Laws. There shall be no cumulative voting for directors.

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

- a. Regular meetings of the Board of Directors shall be held at least on a quarterly basis, at such times as may be fixed from time to time by a majority of the members of the Board of Directors. A schedule, or any amended schedule, of the regular meetings shall be provided to the directors.
- b. Special meetings of the Board of Directors shall be held when called (i) by the President of the Association, or (ii) by the Secretary within ten (10) days following the written request of any two (2) directors. Notice of any special meeting shall be given to each director not less than three (3) days in advance thereof. Notice to a director shall be deemed to be given when deposited in the United States mail postage prepaid to the Unit address of such director, or when personally delivered, orally or in writing, by a representative of the Board of Directors.
- c. Any director may at any time waive notice of any meeting of the Board of Directors orally, in writing, or by attendance at the meeting. If all the directors are present at a meeting of the Board of Directors, no notice shall be required, and any business may be transacted at such meeting.

5.4 Quorum and Voting. A majority of the members of the Board of Directors 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 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 shall not be permitted.

5.5. Removal. Any director may be removed from the Board of Directors, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation, or removal of a director, his/her successor shall be selected by a majority of the remaining Members of the Board of Directors and shall serve for the unexpired term of his/her predecessor. Newly created directorships resulting from an increase in the authorized number of director by amendment to these Bylaws may be filled by a two-thirds (2/3) vote of the directors serving at the time of such increase; and each person so elected shall be a director until his/her successor is elected by the Members of the Association, who may make such election at their next annual meeting or at any meeting duly called for that purpose.

5.6. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

5.7. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of

all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

SECTION 6

NOMINATION AND ELECTION OF DIRECTORS

6.1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members or non-Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

6.2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

SECTION 7

POWER AND DUTIES OF THE BOARD OF DIRECTORS

7.1. Powers. The Board of Directors shall have power to:

- a. exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;
- b. suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- c. declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- d. employ a manager, an independent contractor, or such other employees as them deem necessary, and to prescribe their duties.

- e. adopt and publish rules and regulations governing the use of the Common Elements and recreational facilities thereon and the personal conduct of the Members and their guest thereon, and to establish penalties for the infraction thereof.

7.2. Duties. It shall be the duty of the Board of Directors to:

- a. cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is required in writing by one-fourth (1/4) of the Members who are entitled to vote;
- b. supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- c. as more fully provided in the Declaration, to:
 - (1) fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
 - (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same.
- d. issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- e. procure and maintain adequate liability and hazard insurance on property owned by the Association;
- f. cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- g. perform maintenance as more fully set forth in the Declaration.

SECTION 8
OFFICERS AND THEIR DUTIES

8.1. Enumeration of Offices. The officers of this Association shall be a President and Vice President, who shall at all times be Members of the Board of Directors, a Secretary and Treasurer, and such other officers as the Board of Directors may from time to time by resolution create.

8.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

8.3. Term. The officers of this Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors, from time to time, may determine.

8.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time giving written notice to the Board of the Directors, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officers appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

8.7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.4.

8.8. Duties. The duties of the officers are as follows:

- a. **President:** The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign all leases, mortgages, promissory notes, deeds and other written instruments.
- b. **Vice President:** The vice president shall act in the place and stead of the president in the event of his/her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

- c. Secretary: The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board of Directors.

- d. Treasurer: The treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting; and deliver a copy to each of the Members.

SECTION 9 COMMITTEES

9.1. Appointment of Committees. The Board of Directors of the Association shall appoint an Architectural Control Committee, a Nominating Committee, and a Maintenance Committee. In addition, the Board of Directors shall appoint other committees as it deems appropriate in carrying out its purposes. Unless otherwise provided herein, each committee shall consist of a Chairman and two or more Members and shall include a member of the Board of Directors. The Committee shall be appointed by the Board of Directors prior to each annual meeting to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting.

9.2. Nominating Committee. The Nominating Committee shall have the duties and functions described in Section 6.

9.3. Maintenance Committee. The Maintenance Committee shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvements to be maintained by the Association, and shall periodically review the adequacy of the insurance coverage afforded the Association and advise the Board of Directors; and shall perform such other functions as the Board of Directors, in its discretion, determines.

9.4. Architectural Control Committee. The Architectural Control Committee shall have the duties and functions described in the Declaration.

9.5. Subcommittee. Each committee shall have the power to appoint a subcommittee from among its membership and may delegate to any such subcommittee any of its powers, duties and functions.

SECTION 10
BOOKS AND RECORDS

The books, records and papers of the Association shall at all times during reasonable business hours be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable costs.

SECTION 11
BUDGET AND ASSESSMENTS

11.1 Budget Preparation. Before a Declarant conveys the first Unit to a Purchaser and on and before November 1 of each year, the Board shall prepare a proposed budget for the Association. The first proposed budget shall be for the period commencing on the first day of the month in which the Board anticipate that the Declarant will close on the sale of the first Unit to a Purchaser and ending on December 31 of that year. Subsequent budgets shall be for the upcoming calendar year. Proposed budgets shall set forth the Board's estimate of the Common Expenses for the budget period.

11.2 Assessment Role Preparation. Contemporaneously with the preparation of each budget, the Board shall prepare an assessment role. The assessment role shall allocate to each Unit, as its annual assessment for the upcoming year, an amount determined by multiplying the Association's estimated income requirements for the upcoming year, based on the proposed budget, by that Unit's Fractional Allocation, as defined in the Declaration; provided, however, the Board:

- a. Shall assess any Common Expense associated with the maintenance, repair or replacement of a Limited Element equally against the Units to which Limited Element is assigned;
- b. May assess any Common Expense or portion thereof that benefits fewer than all of the Units exclusively against and equally among the benefitted Units;
- c. May assess the cost of insurance against Units in proportion to the type or amount of coverage provided to that Unit or the type of risk insured;
- d. May assess Common Expenses for utilities against Units in proportion to usage;
- e. May assess against a Unit any Common Expenses, including attorney's fees and court costs, incurred in connection with the collection of assessments due and payable with respect to that Unit or in connection with the enforcement of the provisions of the Declaration, Bylaws or rules or regulations against an Owner or occupant of the Unit;

- f. May assess fees, charges, late charges, fines and interest as provided in Minnesota Statutes 515B.3-116(a);
- g. Shall assess Common Expenses to pay a judgement against the Association only against and equally among the Units that were a part of the Common Interest Community at the time the judgement was entered;
- h. May assess Common Expenses incurred to repair damage to the Common Elements or another Unit which is caused by the act or omission of any Owner, Unit occupant or their invitees, and which is not covered by the Association's insurance against the Owner's or occupant's Unit.

The assessment role shall also calculate the amount of the monthly installment of the annual assessment for each Unit.

11.3 Budget Adoption and Assessment Levy. The Board shall provide each Owner with a copy of the proposed budget and assessment role for the upcoming year on or before November 1 of each year. Before the Declarant conveys the first Unit to a Purchaser and between December 1 and December 31 of each year thereafter, the Board shall, by resolution, adopt an annual budget and levy annual assessments. The Board shall base the annual budget and the annual assessments on the proposed budget and the assessment role, subject to any modifications specifically set forth in the resolution adopting the annual budget and levying the annual assessments.

11.4 Budget and Assessment Modifications. If a Declarant adds Additional Real Estate to the Common Interest Community and the inclusion of the Additional Real Estate will cause the Association to incur Common Expenses in excess of the amount set forth in the Association's budget or will add additional Units to the Common Interest Community, the Board shall adopt, by resolution, an amended budget and amended assessment role reallocating the estimated Common Expenses for the balance of the year, as set forth in the revised annual budget, against the Units. If, at any time, the Board determines that the assessments levied against the Units are inadequate to pay the actual Common Expenses of the Association, the Board may, by resolution, amend the annual budget and assess any increased amounts provided for in the amended annual budget against the Units.

11.5 Special Assessments. In addition to the annual assessments levied on or before January 1 of each year and amendments to the annual assessments, the Board may levy special assessments at such other and additional times as the Board, in its sole judgment, determines are appropriate to meet the financial needs of the Association and for the purposes set forth in Section 11.2.a through h. Such special assessments shall be levied in the same manner as annual assessments and shall be due and payable as the Board determines.

11.6 Failure to Prepare Budget. The failure of the Board to prepare a proposed budget or to adopt an annual budget or levy annual assessments as provided herein shall not constitute a

waiver or release in any manner of an Owner's obligation to pay the amounts assessed against the Owner's Unit and in the absence of any proposed or annual budget, the Owner shall continue to pay the monthly assessment established for the previous period until a new annual budget is mailed or delivered to the Owner and a new assessment is levied.

11.7 Payment of Assessments. Unless otherwise provided in the Board's resolution levying the assessment, annual assessments shall be payable to the Board or as the Board directs in equal monthly installments on the first day of each month of each year. Each Owner is personally liable for the annual and special assessments levied against Owner's Unit. If more than one Person owns a Unit, all Owners of the Unit shall be jointly and severally liable for all assessments. Owners may not withhold payment of annual or special assessments or reduce the amount of the Owners payments as a set-off against claims which the Owner asserts against the Association. If an Owner fails to pay any installment of any assessment, in full, within 10 days of the date due, the payment shall immediately become delinquent and shall begin to accrue interest. Interest shall accrue as of the date of such delinquency at the judgment rate of interest as determined by Minnesota Statutes 549.09. In addition, the Board may adopt a resolution establishing a late fee to be assessed against a Unit if assessment payments are not made when due. If the Owner is more than 60 days delinquent in the payment of any monthly installment of an annual assessment or any installment of a special assessment, the Board may, upon 10 days written notice to the Owner, declare the entire amount of the assessment immediately due and payable in full. The Association shall have a lien against the Unit for the amount of any unpaid assessments, fines, late fees, or interest and may foreclose the lien to the extent set forth in the Declaration and the Act. In any foreclosure of a lien or a suit to recover a money judgment for unpaid assessments, the amount due and owing shall include the amount of all unpaid regular or special assessments, interest and any late charges as described above, and all costs of collection, including actual attorneys fees.

SECTION 12 **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 317A.521.

SECTION 13 **AMENDMENTS**

These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

SECTION 14 **MISCELLANEOUS**

14.1 Conflicts in Documents. In the event of any conflict among the provisions of the Act, the Declaration, the By-Laws or the Rules and Regulations, the Act shall control unless it permits

the documents to control. As among the Declaration, By-Laws and Rules and Regulations, the Declaration shall control, and as between the By-Laws and the Rules and Regulations, the By-Laws shall control.

14.2 Severability. The invalidity or unenforceability of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

14.3 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 By-Laws or the intent of any provision hereof.

COUNTY OF ...
RECORDED BY

MAY 18 1 00 PM '90

DOC # **981266**
BY/s/ Cindy Koosmann
COUNTY RECORDER
DOC FEE \$ _____
ATTEST _____

A/C

COMMON INTEREST COMMUNITY NUMBER 117
(Planned Community)

HERITAGE GLEN TOWNHOME

DECLARATION

COMMON INTEREST COMMUNITY NUMBER 117
(Planned Community)

HERITAGE GLEN TOWNHOME

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COMMON INTEREST COMMUNITY NUMBER 117
(Planned Community)

HERITAGE GLEN TOWNHOME

DECLARATION

This Declaration is made in the County of Washington, State of Minnesota, on this 17 day of May, 1998, by U. S. Home Corporation, a Delaware corporation (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), for the purpose of creating Heritage Glen Townhome, a planned community.

WHEREAS, Declarant is the owner of certain real property located in Washington County, Minnesota, legally described in **Exhibit A and Exhibit C** attached hereto and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act, and

WHEREAS, Declarant also owns the real property legally described in **Exhibit B** attached hereto (the "Additional Real Estate"), and has the option to add all or a part of the Additional Real Estate to the Property, and

WHEREAS, Declarant desires to establish on the Property a plan for a permanent residential community to be owned, occupied and operated for the use, health, safety and welfare of its resident Owners and Occupants, and for the purpose of preserving the value, the structural quality, and the original architectural and aesthetic character, of the Property, and

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B.1-106 of the Act, governing common interest ownership, and is not subject to a master association as defined in the Act.

THEREFORE, Declarant makes this Declaration and submits the Property to the Act as a planned community under the name "Heritage Glen Townhome", initially consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and all Additional Real Estate added thereto, and that the Property, shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all Persons 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 "Additional Real Estate" shall mean the real property legally described in Exhibit B, including all improvements located thereon now or in the future, and all easements and rights appurtenant thereto, which property Declarant has the right to add to the common interest community.
- 1.2 "Association" shall mean the Heritage Glen Townhome Association, a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, the Members of which consist of all Owners as defined herein.
- 1.3 "Board" shall mean the Board of Directors of the Association as provided for in the By-Laws.
- 1.4 "By-Laws" shall mean the By-Laws governing the operation of the Association, as amended from time to time.
- 1.5 "Common Elements" shall mean all parts of the Property except the Units and all improvements on the Units. The initial Common Elements are legally described on Exhibit C attached hereto; portions of the Additional Real Estate may be designated as Common Elements in any amendment to this Declaration recorded pursuant to Section 515B.2-111 of the Act.
- 1.6 "Common Expenses" shall mean all expenditures made or liabilities incurred by or on behalf of the Association that are incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration or By-Laws.
- 1.7 " Dwelling " shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.

- 1.8 "Entrance Monument" shall mean a structure identifying the Property constructed and maintained on such portion of the Property over which Declarant has granted an easement for such purposes to the Association.
- 1.9 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.10 "Limited Common Elements" shall have the meaning set forth in Section 3.2.
- 1.11 "Member" shall mean all persons who are Owners as defined in this Declaration. The words "Owner" and "Member" may be used interchangeably in the Governing Documents.
- 1.12 "Occupant" shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.
- 1.13 "Owner" shall mean a Person who owns a Unit, but excluding secured parties within the meaning of Section 515B.1-103(29) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.
- 1.14 "Person" shall mean a natural individual, corporation, limited liability company, partnership, trustee, other or legal entity capable of holding title to real property.
- 1.15 "Plat" shall mean the recorded plat depicting the Property pursuant to the requirements of Section 515A.2-110(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapters 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- 1.16 "Private Driveway" shall mean that part of a Unit and Limited Common Elements paved to connect the Dwelling situated on such Unit to the public street.
- 1.17 "Private Yard Area" shall mean that part of a Unit not covered by a Dwelling or a Private Driveway.
- 1.18 "Property" shall mean all of the real property submitted to this Declaration, including the 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 and Exhibit C** attached hereto.

- 1.19 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.
- 1.20 "Special Declarant Rights" shall mean the rights reserved in Section 15 for the benefit of Declarant.
- 1.21 "Unit" shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as shown on the Plat, including all improvements thereon, but excluding the Common Elements.

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

SECTION 2.

DESCRIPTION OF UNITS AND APPURTENANCES

2.1 Units. There are 27 Units, all of which are restricted exclusively to residential use. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act except in accordance with Section 7.2. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference, and a schedule of Units is set forth on **Exhibit A**. The Unit identifier for a Unit shall be its lot and block number and the subdivision name.

2.2 Unit Boundaries. The front, rear and side boundaries of each Unit shall be the boundary lines of the platted lot upon which the Dwelling is located or intended to be located as shown on the Plat. The Units shall have no upper or lower boundaries. Subject to this Section 2, all spaces, walls, and other improvements within the boundaries of a Unit are a part of the Unit.

2.3 Common Elements. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements, and for use and enjoyment of any Limited Common Elements allocated to the Unit, subject to any restrictions authorized by the Declaration.

2.4 Other Easements. Each Unit shall be subject to and shall be the beneficiary of appurtenant easements described in Section 12.

2.5 Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 14.4.

2.6 Easements are Appurtenant. All easements and similar rights burdening or benefiting a Unit or any other part of the Property shall be appurtenant thereto, and shall be permanent, subject only to termination in accordance with the Act 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.

2.7 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 impose reasonable Rules and Regulations governing the use of the Property.

SECTION 3.

COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

3.1 Common Elements. The Common Elements and their characteristics are as follows:

- a. All of the Property not included within the Units constitutes Common Elements. The Common Elements include those parts of the Property described in Exhibit C or designated as Common Elements in the Act.
- b. The Common Elements shall be subject to appurtenant easements for services, public and private utilities, access, use and enjoyment in favor of each Unit and its Owners and Occupants; subject to (i) the rights of Owners and Occupants in Limited Common Elements appurtenant to their Units and (ii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.
- c. Subject to Sections 5, 6 and 9, all maintenance, repair, replacement, management and operation of the Common Elements, and Entrance Monuments, if any, shall be the responsibility of the Association.
- d. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements, Entrance Monuments, if any, and those parts of the Limited Common Elements and Units for which the Association is responsible shall be assessed and collected from the Owners in accordance with Section 6.

3.2 Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved by this Declaration or Section 515B.2-102(d) or (f) of the Act for the exclusive use of the Owners and Occupants of the Units to which they are allocated, and the rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Units including but not limited to encroaching fireplaces, window wells, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors, windows, walls, roof overhangs, air conditioning systems, decks, balconies, patios, sidewalks, utility installations and other appurtenances (i) which are part of the original construction on the encroaching Unit or the Property or (ii) which are added pursuant to Section 8. Portions of the Common Elements designated as Private Driveways shall be Limited Common Elements allocated to the Unit adjacent to such portion of the Common Elements.

SECTION 4.

ASSOCIATION MEMBERSHIP; RIGHTS AND OBLIGATIONS

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

4.1 Membership. Each Owner shall be a member of the Association by virtue of Unit ownership, and the membership shall be transferred with the conveyance of the Owner's interest in the Unit. An Owner's membership shall terminate when the Owner's ownership terminates. When more than one Person is an Owner of a Unit, all such Persons shall be members of the Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Unit nor authorize the division of the voting rights.

4.2 Voting. Voting rights are allocated equally among the Units except that Declarant may appoint and remove the officers and directors of the Association between the date of the first conveyance of a Unit to an Owner other than Declarant and the fifth anniversary of said date.

4.3 Common Expenses. Common Expense obligations are allocated equally among the Units except that special allocations of Common Expenses shall be permitted as provided in Section 6.1 and except, further, that assessments against Units owned by Declarant shall be in accordance with Section 6.5.

4.4 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations described in Sections 4.2 and 4.3. Said rights,

obligations and interests, and the title to the Units, shall not be separated or conveyed separately. The allocation of the rights, obligations and interests described in this Section may not be changed, except in accordance with the Governing Documents and the Act.

4.5 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; provided, that if there are multiple Owners of a Unit, only the Owner or other Person designated pursuant to the provisions of the By-Laws may cast such vote.

4.6 Allocation After Addition of Units. After each addition of Units pursuant to Section 15, voting rights and common expense obligations shall be reallocated in accordance with Sections 4.2 and 4.3.

SECTION 5.

ADMINISTRATION

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

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

5.2 Operational Purposes. The Association shall operate and manage the Property for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations, (ii) maintaining, repairing and replacing those portions of the Property for which it is responsible and (iii) preserving the architectural uniformity and character of the Property.

5.3 Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents or

the Act shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined in the Act.

5.4 By-Laws. The Association shall have By-Laws. The By-Laws and any amendments thereto shall govern the operation and administration of the Association.

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

5.6 Rules and Regulations. The Board shall have the exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs of the Association and regulating the use of the Property; provided that the Rules and Regulations shall not be inconsistent with the Governing Documents or the Act. The inclusion in other parts of the Governing Documents of authority to approve Rules and Regulations shall be deemed to be in furtherance, and not in limitation, of the authority granted by this Section. New or amended Rules and Regulations shall be effective only after reasonable notice thereof has been given to the Owners.

5.7 Association Assets; Surplus Funds. All funds and real or personal property acquired by the Association shall be held and used for the benefit of the Owners for the purposes stated in the Governing Documents. Surplus funds remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

SECTION 6.

ASSESSMENTS FOR COMMON EXPENSES

6.1 General. Assessments for Common Expenses shall be determined and assessed against the Units by the Board, in its discretion; subject to the limitations set forth in Sections 6.2 and 6.3, and the requirements of the By-Laws. Assessments for Common Expenses shall include annual assessments and may include special assessments. Assessments shall be allocated among the Units according to the Common Expense allocations set forth in Section 4.3, subject to the following qualifications:

- a. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element

undertaken by the Association may be assessed exclusively against the Unit or Units to which that Limited Common Expense is assigned, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.

- b. Any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited, on the basis of (i) equality, (ii) square footage of the area being maintained, repaired or replaced, or (iii) the actual cost incurred with respect to each Unit.
- c. The costs of insurance may be assessed in proportion to value, risk or coverage, and the costs of utilities may be assessed in proportion to usage.
- d. If any installment of an assessment becomes more than 30 days past due, then the Association may, upon 10 days written notice of the Owner, declare the entire amount of the assessment immediately due and payable in full.
- e. Assessments under Section 6.1 shall not be considered special assessments as described in Section 6.3.

6.2 Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in this Section. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for that year. Annual assessments shall provide, among other things, for contributions to a separate reserve fund sufficient to cover the periodic cost of maintenance, repair and replacement of the Common Elements, Entrance Monuments, if any, and those parts of the Limited Common Elements and Units for which the Association is responsible. After a Common Expense assessment is levied, the annual assessment may be subsequently increased by the Board, subject to the limitation in the next sentence. The increase in the annual assessment for any fiscal year shall not exceed 15% of the total annual assessment for the Association's previous fiscal year, unless such increase is approved by the vote of a majority of those Owners voting, in person or by proxy, at a meeting called for that purpose.

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 for the purpose of defraying in whole or in part (i) the cost of any foreseen or unbudgeted Common Expense, (ii) general or specific reserves for maintenance, repair or replacement, and (iii) the maintenance, repair or replacement of

any part of the Property for which the Association is responsible pursuant to Section 9, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special assessment shall be subject to approval by the vote of two-thirds (2/3) of those Owners voting, in person or by proxy, at a meeting called for that purpose.

6.4 Liability of Owners for Assessments. The obligation of an Owner to pay assessments shall commence at the later of (i) the recording of the Declaration or amendment thereto which creates the Owner's Unit, or (ii) the time at which the Owner acquires title to the Unit, subject to the alternative assessment program described in Section 6.5. The Owner at the time an assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. The liability is absolute and unconditional.

No Owner is exempt from liability for payment of his or her share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions and remedies set forth in Section 13, in addition to any remedies provided elsewhere in the Governing Documents or by law, for the purpose of enforcing its rights hereunder.

6.5 Declarant's Alternative Assessment Program. Notwithstanding anything to the contrary in this Section 6, if a Common Expense assessment has been levied, any Unit owned by Declarant for initial sale shall be assessed at the rate of 25% of the assessment levied on other Units of the same type until a certificate of occupancy has been issued with respect to such Unit by the municipality in which the Unit is located. This reduced assessment shall apply to each Unit owned by Declarant at the time that the Unit is created, and shall continue until the issuance of the certificate of occupancy as previously described. There are no assurances that this alternative assessment program will have no effect on the level of services for items set forth in the Association's budget.

6.6 Assessment Lien. The Association has a lien, as provided for in Section 515B.3-116 of the Act, on a Unit for any assessment levied against that Unit as well as for fees, charges, late charges, fines and interest charges imposed by the Association pursuant to Section 515B.3-102(a)(10), (11) and (12) of the Act. Recording of the Declaration constitutes record notice and perfection of any lien under this Section, and no further recordation of any notice of or claim for the lien is required.

6.7 Foreclosure of Lien: Remedies. A lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota (i) by action, or (ii) by advertisement as a lien under a mortgage containing a power of sale. 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 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, 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 Voluntary Conveyances: Statement of Assessments. In a voluntary conveyance of a Unit the buyer shall not be personally liable for any unpaid assessments and other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance to the buyer, unless expressly assumed by the buyer. However, the lien of such assessments shall remain against the Unit until satisfied.

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 Act or 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 Act, as amended from time to time. All covenants, restrictions and obligations set forth in the Governing Documents are in furtherance of a plan for the Property, and shall run with the Property and be a burden and benefit to all Owners and Occupants and to any other Person acquiring or owning an interest in the Property, their heirs, personal representatives, successors and assigns.

7.2 Subdivision Prohibited. Except as permitted by the Act, no Unit nor any part of the Common Elements may be subdivided or partitioned without the prior written approval of at least 75% of the Owners and at least 75% of any secured parties holding first mortgages on the Units of the approving Owners.

7.3 Residential Use. The Units shall be used by Owners and

Occupants and their guests exclusively as private, single family residential dwellings, and not for transient, hotel, commercial, business or other non-residential purposes, except as provided in Section 7.5. Any lease of a Unit (except for occupancy by guests with the consent of the Owner) for a period of less than 7 days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes.

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

7.5 Business Use Restricted. An Owner or Occupant residing in a Unit may keep and maintain his or her business or professional records in such Unit and handle matters relating to such business by telephone or correspondence therefrom, providing that such uses are incidental to the residential use, do not involve physical alteration of the Unit and do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries, or visitation but may include limited use of the Unit by clients, customers, employees or independent contractors which interfere with the harmony of the community. The Association may maintain offices on the Property for management and related purposes.

7.6 Signs. No signs of any kind shall be displayed to the public view on any Unit except for one sign of not more than five (5) square feet advertising the property for sale, except that Declarant shall be permitted to erect and maintain upon the Property such signs as Declarant deems appropriate to advertise the Property until the first anniversary of the date on which Declarant owns no Unit.

7.7 Antennas/Satellite Dish. No television or satellite dish or other antennas visible from the exterior of any Dwelling shall be erected or maintained within a Unit, except a satellite dish smaller than 18 inches and approved by the Board, or the appointed committee if so authorized by the Board.

7.8 Fences. No fence, whether temporary or permanent, shall be erected or placed on any Unit except as approved by the Board, or the appointed committee if so authorized by the Board, and, if so approved, shall not be altered, modified or removed except if approved by the Board or such committee. The foregoing shall not apply to any Unit owned by Declarant. All fence approvals by the Board or the appointed committee are conditional upon proper future maintenance by the Owner. All picket and board rail wood fences must be painted or stained to complement the Dwelling on the Unit. All fences must be installed within the boundary of the Unit. Fences are subject to removal at the expense of the Owner if any drainage or utility easement is interfered

with. This provision shall not apply to any Unit owned by Declarant.

7.9 Exterior Facilities. No playground equipment, furnishings or furniture (including basketball hoops and swing sets), whether temporary or permanent, shall be erected or placed on any Unit except as approved by the Board, or the appointed committee if so authorized by the Board, and, if so approved, shall not be altered, modified or removed except if approved by the Board or such committee. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other building shall be used on any Unit at any time as a residence, either temporarily or permanently.

7.10 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) no Unit shall be leased for transient or hotel purposes, (ii) no Unit may be subleased, (iii) all leases shall be in writing, and (iv) all leases shall provide that they are subordinate and subject to the provisions of the Governing Documents, the Rules and Regulations and the Act, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the leasing of Units, consistent with this Section.

7.11 Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. The use of garages, driveways and other parking areas on the Property, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Association, including without limitation the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property. No boats, trailers, automobiles or other motor equipment, licensed or unlicensed, shall be stored or parked anywhere on the Property except for short-term parking of less than 48 hours and then only on the Private Driveway of the Owner of said vehicles and equipment. Temporary guest parking and overnight parking are subject to City of Woodbury's parking ordinance.

7.12 Animals. No animal may be bred, kept or maintained anywhere on the Property except that dogs, cats or other household pets may be kept on the condition that they are not kept, bred or maintained for any commercial purpose and upon the further condition that they comply with the City of Woodbury ordinance for domestic pets. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans.

7.13 Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Units, and shall use the Property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use of the Property by other Owners and Occupants and their guests. Nothing shall be done or kept on any Unit or part thereof which would (i) increase the rate of insurance on any other Unit over what the Owner of such other Unit, but for such activity, would pay without the prior written consent of the Board, or the appointed committee if so authorized by the Board, or (ii) which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Property or the buildings situated thereon shall be committed by any Owner or any invitee of any Owner and each Owner agrees to indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or such Owner's invitees. No noxious, destructive or offensive activity shall be allowed on any Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner or any other Person at any time lawfully residing on the Property.

7.14 Trash. No Unit shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. No part of any Unit may be used at any time for the storage or abandonment of junked automobiles or other motor equipment. Garbage, rubbish and trash shall not be kept on any Unit except in sanitary containers. All equipment used or kept for the storage or disposal of such materials shall be kept in a clean and sanitary condition inside a garage.

7.15 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.

7.16 Alterations. Except for those made by Declarant in consideration of its initial sale of a Unit, no alterations, changes, improvements, repairs or replacements of any type, temporary or permanent, structural, aesthetic or otherwise (collectively referred to as "alterations") shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests, in any part of the Common Elements, or in any part of the Unit which affects the Common Elements or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8. The Board, or the appointed committee if so authorized by the Board, shall have authority to establish reasonable criteria and requirements for alterations, and shall be the sole judges, respectively, of whether the criteria are satisfied.

7.17 Soil Removal. Except as approved by the Board, or the

appointed committee if so authorized by the Board, no sod, soil or gravel shall be sold or removed from any Unit. All soil or gravel available from any excavation for the construction or alteration of any Dwelling or any appurtenance on any Unit and by whomsoever owned shall be hauled and disposed of to other points within the boundaries of the Property at the discretion of the Board or such committee. Except as approved by the Board, or committee thereof, the finished landscaping, sod and shrubbery shall not be removed, added to or altered in any manner.

7.18 Trees. No live trees or shrubs shall be removed, damaged or altered in appearance except in connection with the initial construction by Declarant. Nothing in this provision, however, shall prevent careful removal of dead trees, diseased limbs of trees, pruning of shrubs or removal of dead shrubs by the Association.

Nothing contained in the foregoing provisions of this Section 7 or in the following provisions of Section 8 shall be construed to limit the rights of Declarant to alter the Property or to construct or modify improvements thereon, or to limit the manner in which such improvements, alterations, or modifications may be made as to Units owned by Declarant.

SECTION 8.

ARCHITECTURAL CONTROL

8.1 Restrictions on Alterations. The following restrictions and requirements shall apply to alterations on the Property:

- a. Except as expressly provided in this Section 8, and except for alterations made by Declarant in connection with its initial sale of a Unit, no structure, building, addition, deck, patio, fence (whether of vegetation or otherwise), wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other exterior improvements to or alteration of any Dwelling or any other part of a Unit which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board or a committee appointed by it. Notwithstanding the foregoing, Declarant's written consent shall also be required for alterations until Declarant no longer owns any unsold Unit and has no further rights to add Additional Real Estate to the Property.
- b. The criteria for approval shall include and require, at a minimum, (i) substantial uniformity of color, size,

location, type and design in relation to existing improvements and topography, (ii) comparable or better quality of materials as used in existing improvements, (iii) ease of maintenance and repair, (iv) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed alterations, and (v) compliance with governmental laws, codes and regulations.

- c. Approval of alterations which encroach upon the Common Elements shall create an appurtenant easement for such encroachment in favor of the Unit with respect to which the alterations are approved; provided, that any easement for a deck or patio other than as originally constructed shall be approved by resolution of the Board and a file of such resolutions shall be maintained permanently as a part of the Association's records.
- d. Alterations described in Section 15 shall be governed by that Section.

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

- a. Detailed plans, specifications and related information regarding any proposed alteration (the "Plans"), in form and content acceptable to the Board, shall be submitted to the Board at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.
- b. In the event the Board has not delivered written approval of the Plans within sixty (60) days after the Plans have been submitted to it, the Plans will be deemed to be disapproved.
- c. The Plans are required to be submitted by first class mail, registered or certified, postage prepaid and return receipt requested or delivered personally to the Board.

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

SECTION 9.

MAINTENANCE

9.1 Common Area. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements and Entrance Monuments, if any.

9.2 Maintenance by Association. The Association shall provide for (a) maintenance of any painted surfaces of a Unit facing a public street which shall be limited to the garage door, front door and window trim, (b) mowing, trimming, watering and other care of grass, trees, and other plants upon the Private Yard Areas and (c) snow removal of the Private Driveway. An Owner shall be responsible for any other maintenance of the Owner's Unit and Limited Common Elements including but not limited to maintenance of that portion of all private service water and sewer pipelines from the exterior walls of each Dwelling to the point at which such service pipelines connect to the lateral water and sewer pipelines located within the street right-of-way, Dwelling's exterior and roof, driveway, walkway, deck, porch, any shrubbery or plantings around the perimeter of an Owner's Unit. Any cause of action against third parties relating to portions of the Property which are maintained by the Association shall belong solely to the Association. Any cause of action for the benefit of all Owners even though such cause of action relates to property owned by one or more Owner.

9.3 Optional Maintenance by Association. In addition to the maintenance described in this Section, the Association may, with the approval of at least 60% of all Owners undertake to provide additional exterior maintenance which may result in a special assessment or an increase in the Association budget. There may be a special meeting called for such purposes.

9.4 Maintenance by Owner. Except for the maintenance to be provided by the Association under Section 9.1, 9.2 or 9.3, all maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. However, the Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any exterior maintenance which the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof.

9.5 Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, or by a condition in a Unit which the Owner or Occupant has willfully or negligently allowed to

exist, the Association may cause such damage or condition to be repaired or corrected (and enter upon any Unit to do so), and the cost thereof may be assessed against the Unit of the Owner responsible for the damage.

SECTION 10.

INSURANCE

10.1 Insurance by Association. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act. The Association may also obtain and maintain the following types of insurance:

- a. Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, manager, trustee, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board.
- b. Workers' Compensation insurance as required by law.
- c. Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- d. 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 a Common Expense. The Association may, in the case of a claim for damage to a Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Unit affected in any reasonable manner, or (iii) require the Owner of the Unit 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 secured parties 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. All insurance coverage maintained by an Owner shall be written in the name of the Owner, 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 Owner and the Owner's secured parties or any insurance trustee selected by it.

10.4 Insurance by Owner. Each Owner shall obtain and maintain, at a minimum a policy of insurance at his or her own expense covering fire and other casualty to the Unit, personal

property and personal liability. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance that may be purchased by the Association.

SECTION 11.

RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

11.1 Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage to or destruction thereof shall be governed by the Act.

11.2 Approval of Board. If a Unit is partially or totally damaged or destroyed by fire or other casualty, no such reconstruction shall be commenced without the written approval of the plans and specifications therefor by the Board.

11.3 Association as Insurance Trustee. In the event that any Unit or garage is destroyed or damaged by causes covered by the insurance referred to above, all proceeds of said insurance coverage shall be payable to the Association as trustee for the Owner(s) of said Unit or Units, garage or garages. Said insurance proceeds shall be applied and administered as follows:

- a. All insurance proceeds paid to the Association (hereinafter sometimes referred to merely as "trustee") shall be deposited in escrow with a title insurance company or other depository acceptable to the trustee and mortgagees of record.
- b. The Owner of the Unit or garage with respect to which the insured loss occurred shall, within thirty (30) days after insurance proceeds are deposited in accordance with subparagraph a above, and after receiving the written approval of the plans and specifications of the proposed repairs or reconstruction by the Board, enter into a firm contract with a qualified builder providing for the reconstruction or remodeling of the Unit or garage, to substantially the same condition as existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by the Owner for an amount in excess of the insurance proceeds then held by the trustee for said Unit or garage, until additional funds are deposited by the Owner sufficient to cover all construction costs as determined by the trustee and mortgagee. Said reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall said work be completed later than 180 days after said insurance proceeds are deposited in escrow as aforesaid. The Association and mortgagees of record of the Units or garages affected and the Units underlying

the same shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit construction as herein provided and any such advances shall be a lien upon the Unit or Units subordinated, however, to the interests of mortgagees of record.

- c. In the event the Owner fails to enter into a contract as provided in subparagraph b above, or in the event that reconstruction or remodeling is not commenced or completed as provided above, then the trustee, or the mortgagee of record, with the consent of the trustee, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said reconstruction or remodeling of the Unit or garage, and the trustee or mortgagee shall have the right to have said insurance proceeds applied in satisfaction of any obligation incurred pursuant to said contracts, without liability of any kind to the Owner, including, but not limited to, interest on said insurance proceeds. The trustee may employ any party or parties as its agents in exercising those functions given to it in this Section. The trustee shall be empowered to pay said agent a reasonable fee for the services rendered by said agent and to collect said charge from the Owner, and in the same manner as that which is provided in subparagraph a hereinabove, for the collection of an insurance premium paid by the Association.

- d. Disbursement of funds on deposit pursuant to subparagraph a above, for contracts for reconstruction or remodeling entered into under subparagraphs b and c above, shall be made by a title insurance company or other agent ("Agent") selected by trustee and the affected mortgagees of record, subject to the following:
 - i) Section 8 shall apply to all said reconstruction or remodeling.

 - ii) Receipt by Agent of such sworn construction statements, lists of subcontractors, lien waivers and receipts as it shall reasonably determine to be appropriate. Disbursements may be by periodic or progress payments, and Agent may make such inspections and withhold such payments as it deems necessary to insure completion in compliance with plans and specifications. Agent shall be entitled to a reasonable fee for the services rendered by it, and the trustee may collect such fee from the Owner(s), as the case may be, and in the

same manner as that which is provided for in Section 10.2, for the collection of insurance premiums paid by the Association.

- iii) In the event a contract is entered into pursuant to subparagraph b hereinabove, the written consent of the Owner to said payment or payments.
- e. Nothing contained in this section shall be construed to make the Association or its Board, or the Owner, or the mortgagee or mortgagees of record, if any, responsible for collection or non-collection of any insurance proceeds; said Association or Board, or mortgagees, being responsible solely for the insurance proceeds which come into their hand. The Owner of each Unit or garage damaged or destroyed by causes referred to above shall collect or cause to be collected from the insurance carrier involved the proceeds of the policy covering his/her Unit or garage, for the use of the trustee as hereinabove provided.
- f. In the event that a remodeling or reconstruction contract is, for any reason, not entered into pursuant to the provisions of subparagraphs b and c hereinabove, within 180 days after deposit of insurance proceeds in escrow for a damaged or destroyed Unit or garage, as herein provided, or in the event there are excess funds after reconstruction or remodeling, the proceeds or excess, as the case may be, shall be disbursed to each Owner and mortgagee of record of the affected Unit as their interests appear.

11.4 Waiver of Subrogation. To the extent permitted by the standard Minnesota Form of Fire and Extended Coverage Insurance and to the extent benefits are paid under such a policy, each Owner and the Association does hereby mutually release each from the other and each other Owner, and their respective officers, agents, employees and invitees, from all claims for damage or destruction of their respective physical properties if such damage or destruction results from one or more of the perils covered by the standard Minnesota Form of Fire and Extended Coverage Insurance.

11.5 Condemnation and Eminent Domain. In the event of a taking of any part of the Property by condemnation or eminent domain, the provisions of the Act shall govern.

SECTION 12.

EASEMENTS

12.1 Easement for Encroachments. The Common Elements, and the right of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the encroaching Units for fireplaces, window wells, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors, windows, walls, roof overhangs, air conditioning systems, decks, balconies, patios, sidewalks, utility installations and other appurtenances (i) which are part of the original construction on the encroaching Unit or the Property or (ii) which are added pursuant to Section 8. If there is an encroachment by a Dwelling, or other building or improvement located in a Unit, upon the Common Elements as a result of the construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, an appurtenant easement for the encroachment, for the use, enjoyment and habitation of any encroaching Dwelling, building or improvement, and for the maintenance thereof, shall exist; provided that with respect to improvements or alterations added pursuant to Section 8, no easement shall exist unless the same shall have been approved and 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.

12.2 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.

12.3 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to a non-exclusive easement in favor of the other Units for all such services, including without limitation any sewer or water lines servicing other Units. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utilities companies providing service to the Units for the installation and maintenance of utilities metering devices.

12.4 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this Section shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of maintenance, repair,

replacement and reconstruction.

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

13.1 Entitlement to Relief. The Association may commence legal action to recover sums due, for damages, for injunctive relief or to foreclose a lien owned by it, or any combination thereof, or an action for any other relief authorized by the Governing Documents or available at law or in equity. Legal relief may be sought by the Association against any Owner, or by an Owner against the Association or another Owner, to enforce compliance with the Governing Documents, the Rules and Regulations, the Act or the decisions of the Association. However, no Owner may withhold any assessments payable to the Association, or take (or omit) other action in violation of the Governing Documents, the Rules and Regulations or the Act, as a measure to enforce such Owner's position, or for any other reason.

13.2 Sanctions and 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 actions against Owners and Occupants and/or their guests, who violate the provisions of the Governing Documents, the Rules and Regulations or the Act:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges of up to 15% of each late payment of an assessment or installment thereof.
- c. In the event of default of more than 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, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Reasonable advance written notice of the effective date of the acceleration shall be given to the defaulting Owner.
- d. Impose reasonable fines, penalties or charges for each violation of the Act, the Governing Documents or the

Rules and Regulations of the Association.

- e. Suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities; provided, that this limitation shall not apply to Limited Common Elements or deck, balcony or patio easements, appurtenant to the Unit, and those portions of the Common Elements 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 30 days thereafter, for each violation.
- f. Restore any portions of the Common Elements or Limited Common Elements 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.
- g. Enter any Unit or Limited Common Element in which, or as to which, a violation or breach of the Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of the owner Owners or Occupants, or their guests, or the safety or soundness of any dwelling or other part of the Property or the property of the Owners or Occupants, and to summarily abate and remove, at the expense of the offending Owner or Occupant, any structure, thing or condition in the Unit or Limited Common Elements which is causing the violation; provided, that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner.
- h. Foreclose any lien arising under the provisions of the Governing Documents or under law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the state where the Property is located.

13.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by Subsections d, e, or f of Section 13.2, the Board shall, upon written request of the offender, grant to the offender a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within thirty days of receipt of the hearing request by the Board, and with at least 10 days prior written notice to the offender. If the offending Owner fails to appear at the hearing then the right to a hearing shall be 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 days following the hearing, if not delivered to the offender at the hearing.

13.4 Lien for Charges, Penalties, Etc. Any assessments, charges, fines, 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 gives written notice 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 right to pursue any others.

13.5 Costs of Proceeding and Attorneys' Fees. With respect to any collection measures, or any measures of action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, Governing Documents or Rules and Regulations, whether or not finally determined by a court or arbitrator, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association.

13.6 Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. 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 and Regulations, and the Act as provided therein.

SECTION 14.

SPECIAL DECLARANT RIGHTS

Declarant hereby reserves exclusive and unconditional authority to exercise the following special declarant rights within the meaning of Section 515B.1-103(31) of the Act for as long as it owns a Unit, or for such shorter period as may be specifically indicated:

14.1 Complete Improvements. To complete all the Units and other improvements indicated on the Plan, or otherwise included in

Declarant's development plans or allowed by the Declaration, and to make alterations in the Units and Common Elements to accommodate its sales facilities.

14.2 Add Additional Real Estate. To add Additional Real Estate to the Property as described in Section 16.

14.3 Relocate Boundaries and Alter Units. To relocate boundaries between Units and to otherwise alter Units owned by it, to the extent permitted by Section 15.

14.4 Sales Facilities. To construct, operate and maintain a sales office, management office, model Units and other development, sales and rental facilities within the Common Elements and any Units owned by Declarant from time to time, located anywhere on the Property.

14.5 Signs. To erect and maintain signs and other sales displays offering the Units for sale or lease, in or on any Unit owned by Declarant and on the Common Elements.

14.6 Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements for the purpose of exercising its Special Declarant Rights.

14.7 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 pursuant to Section 515B.3-103 of the Act, until the earliest of: (i) voluntary surrender of control by Declarant, (ii) an Association meeting which shall be held within 60 days after conveyance to Owners other than a Declarant of 75% of the total number of Units authorized to be included in the Property or (iii) the date five (5) years following the date of the first conveyance of a Unit to an Owner other than a Declarant. Notwithstanding the foregoing, the Owners other than a Declarant shall have the right to nominate and elect not less than 33 1/3% of the directors at a meeting of the Owners which shall be held within 60 days following the conveyance by Declarant of 50% of the total number of Units authorized to be included in the Property.

14.8 Consent to Certain Amendments. As long as Declarant owns any unsold Unit, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects or may affect Declarant's rights under the Governing Documents.

SECTION 15.

RIGHTS TO ADD ADDITIONAL REAL ESTATE AND ALTER UNITS

15.1 Declarant's Rights to Add Additional Real Estate.

Declarant hereby expressly reserves the right to add the Additional Real Estate to the Property, by unilateral action under Section 515B.2-111 of the Act, subject to the following conditions:

- a. The right of Declarant to add the Additional Real Estate 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 Declarant or a successor Declarant, unless extended by a vote of the Owners pursuant to Section 515B.2-106(2) of the Act. There are no other limitations on Declarant's rights hereunder, except as may be imposed by law.
- b. The Additional Real Estate is described in **Exhibit B**. The Additional Real Estate may be added to the Property in parcels consisting of one or more platted lots, or portions thereof.
- c. There are no assurances as to the times at which all or any part of the Additional Real Estate will be added to the Property, the order in which it will be added, the number of parcels per phase nor the size of the parcels. Declarant is under no obligation to add the Additional Real Estate to the Property, and the Additional Real Estate may be developed by Declarant or its successors in interest for other purposes, subject only to approval by the appropriate governmental authorities.
- d. The maximum number of Units that may be created within the Additional Real Estate described as such on the date of this Declaration is 125. All Units created on the Additional Real Estate shall be restricted exclusively to residential use.
- e. No assurance can be made that any Units, including Dwellings and other structures, created upon the Additional Real Estate, when and if added, will be compatible with the other Dwellings, Structures and Units which are part of the Property in terms of architectural style, quality of construction, principal materials employed in construction and size.
- f. All covenants and restrictions contained in this Declaration affecting the use, occupancy and alienation of Units shall apply to all Units created on the Additional Real Estate.
- g. The statements made in Subsections c through f above

shall not apply to any Additional Real Estate which is not added to the Property.

15.2 Rights to Alter Units. Existing or future Units may be altered in accordance with the following conditions:

- a. Subdivision or Conversion. No additional Units may be created by the subdivision or conversion of a Unit (within the meaning of the Act) into two or more Units, nor into other Units, Common Elements or Limited Common Elements except in accordance with Section 7.2.
- b. Requirements. The alteration, relocation of boundaries or other modification of Units or the Dwellings or other structures located therein (collectively referred to herein as "alteration" or "alterations") pursuant to this Section, Section 8, and the Act may be accomplished only in accordance with the following conditions:

(1) No Unit may be altered if, thereafter, the Dwelling located therein, or any other Dwelling affected by the alteration, would no longer be habitable or practicably usable for its intended purpose or would violate any law, code or ordinance of any governmental authority having jurisdiction over the Property.

(2) No alteration may be made which adversely affects the structural or functional integrity of any building system or the structural support or weather-tight integrity of any portion of any building or other structure.

(3) The prior written consent of the Association shall be required for any alteration, except alterations by Declarant. Where required, such consent shall be requested in writing by each Owner whose Unit is proposed to be altered, accompanied by such explanation, drawings and specifications relating to the proposed alterations as may be reasonably required by the Association or the first mortgagee of the Unit. The Association shall give such Owner(s) notice in an expeditious manner, granting, denying or qualifying its consent.

(4) As a precondition to consenting to alterations the Association may require, among other things, the following: (i) that all alterations will be done in a workmanlike manner and without impairing the structural, mechanical or weather-tight integrity of the Building; (ii) that the Common Elements and altered Units will be repaired and/or restored in the future as required by the Association; (iii) that the construction of the alterations will not create

dangerous conditions for any Owners or Occupants; (iv) that the Property, the first mortgagees and the Owners and Occupants will be protected from liens and other liability arising from the alterations; and (v) that the alterations will be done in compliance with the applicable laws, regulations and ordinances of the governmental authorities having jurisdiction over the Property.

(5) The Association may require that the Owners of the Units to be altered pay all costs of processing and documentation for the request and the preparation and recording of any necessary amendment to the Governing Documents, including without limitation such costs as filing, architects' and attorneys' fees incurred by the Association in connection with the alterations.

SECTION 16.

AMENDMENTS

This Declaration may be amended by the consent of (i) Owners of Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association and (ii) the consent of Declarant to certain amendments as provided in Section 14.8. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consent of Declarant shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The Amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including, without limitation, the recording of the amendment.

SECTION 17.

MISCELLANEOUS

17.1 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 instrument or exhibits.

17.2 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.

17.3 Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the

Association against Declarant for indemnification pursuant to the Act, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

17.4 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 in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail.

17.5 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the By-Laws or any Rules or Regulations approved by the Association, the Act shall control. As among the Declaration, By-Laws and Rules and Regulations, the Declaration shall control, and as between the By-Laws and the Rules and Regulations, the By-Laws shall control.

17.6 FHA/VA Approval. During the period of Declarant's control of the Association, the following actions will require the prior approval of the Federal Housing Administration or the Secretary of the U.S. Department of Veterans Affairs: adding all or any part of the Additional Real Estate and amendment of this Declaration.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first set forth in accordance with the requirements of the Act.

U. S. HOME CORPORATION

By William Pritchard
Its Pres. S.A. U.P., Proj. mgr.

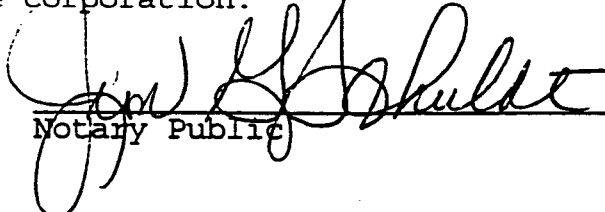
ENTERED IN TRANSFER RECORD
WASHINGTON COUNTY, MINNESOTA

May 18 1998
R F STAFFORD, AUDITOR-TREASURER

BY C.H. Bydau
DEPUTY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

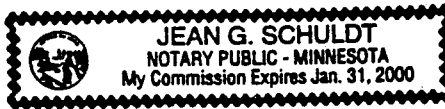
The foregoing instrument was acknowledged before me this 14
day of May, 1998, by
William Patchard the Division
Sr. V.P. Proj. mgr. of U. S. Home Corporation, a Delaware
corporation, on behalf of the corporation.



Notary Public

This instrument was drafted by:

Kaplan, Strangis and Kaplan, P.A.
5500 Norwest Center
90 South 7th Street
Minneapolis, MN 55402
612/375-1138



**NOTICE OF DECLARANT'S INTENTION
TO ADD ADDITIONAL REAL ESTATE TO
COMMON INTEREST COMMUNITY NUMBER 117
(Planned Community)
HERITAGE GLEN TOWNHOME**

TO: UNIT OWNER ENTITLED TO LEGAL NOTICE

U.S. Home Corporation intends to file an amendment to the Declaration for the Heritage Glen Townhome which will have the effect of adding Lots 1 through 20, inclusive, and Lot 28, Block 1; and Lots 1 through 7, and Lot 11, Block 2; all in Heritage Glen 2nd Addition, Washington County, Minnesota Washington County, Minnesota, to the Common Interest Community. Twenty-seven (27) additional townhome units will be created. U.S. Home Corporation will provide you a copy of the amendment at no cost within five (5) business days after your request. You may contact either Personal Touch Management at 612-238-1121 or Jane Theis at 651-578-2878 to obtain a copy or pick up a copy at our model home office at 474 Bluebird Lane, Woodbury, Minnesota which is normally open from 11:00 A.M. to 7:00 P.M. weekdays and 1:00 P.M. to 5:00 P.M. weekends.

U.S. HOME CORPORATION

By: William P. Strangis
Address: 8421 Wayzata Boulevard, Suite 300
Golden Valley, Minnesota 55426