

Document# 3900010
Recorded 10/28/2005 1000
County Recorder, Ramsey County, MN
2.4.5 80217

COMMON INTEREST COMMUNITY NUMBER 663

A PLANNED COMMUNITY

OVERVIEW TOWNHOMES

DECLARATION

THIS DECLARATION, made as of this 6 day of October, 2005 by **Masterpiece Homes, Inc**, a Minnesota 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 Overview Townhomes, a planned community.

RECITALS

A. Declarant is the owner in fee simple of the real property situated in the City of Maplewood, in the County of Ramsey, in the State of Minnesota, legally described as:

Lots 1 through 25, inclusive, Block 1,

Subject to public road easements,

OVERVIEW, according to the Plat thereof on file and of record in the Office of the County Recorder in and for Ramsey County, Minnesota,

(the "**Subject Property**") as more fully described in the CIC Plat attached hereto as Exhibit A.

B. Declarant has deemed it desirable for the preservation of the value of the Subject Property to submit the same, together with the buildings, structures, improvements and other permanent fixtures thereon to the provisions of the Act, and to incorporate under Chapter 317A of

the laws of the State of Minnesota "Overview Townhome Association" for the purpose of administering the Subject Property. The Subject Property is not subject to a master association.

C. Declarant is about to sell, dispose of and convey townhome interests or estates in and to the Subject Property, together with the buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and any and all rights and privileges belonging to or in anyway appertaining thereto, and to accomplish this purpose desires to submit the Subject Property to the requirements of the Act.

D. Declarant desires and intends that the owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the Subject Property shall at all times enjoy the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the townhome form of ownership of the Subject Property and are established for the purposes of enhancing and perfecting the value, desirability and attractiveness of the same.

NOW, THEREFORE, Declarant, as the sole owner of the Subject Property and for the purposes above set forth, hereby submits the Subject Property to the Act as a planned community under the name Overview Townhomes and declares as follows:

**ARTICLE I.
DEFINITIONS**

The following words, when used in this Declaration shall have the following meanings:

- (a) "**Association**" shall mean and refer to the OVERVIEW TOWNHOME ASSOCIATION, a Minnesota nonprofit corporation, its successors and assigns.
- (b) "**Common Elements**" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners and such other persons to whom the Owners may delegate this right pursuant to this Declaration and to all improvements located thereon and owned or otherwise held by the Association for the common use and enjoyment of said persons.

The Common Elements owned or to be owned by the Association is legally described as:

Lot 25, Block 1, OVERVIEW.

as more fully described in Exhibit A attached hereto.

- (c) "**Declarant Control Period**" shall mean the period commencing on the date of conveyance of the first Unit to an Owner other than the Declarant and continuing until the earlier of the date three (3) years after said date or the date sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant. In determining the Declarant Control Period, the percentage of the Units

which have been conveyed shall be computed by including all Units in the Planned Community.

- (d) “**Declaration**” shall mean this document and all amendments and supplements hereto.
- (e) “**Dwelling**” shall mean and refer to any portion of a building situated upon the Subject Property designated and intended for use and occupancy as one residential unit.
- (f) “**Governing Documents**” shall mean and refer to this Declaration, and the Articles of Incorporation, By-Laws of the Association, and Rules and Regulations, as amended from time to time, all of which shall govern the use and operation of the Subject Property.
- (g) “**Member**” shall mean and refer to all Owners who are members of the Association as provided in Article III, Section 1, hereof.
- (h) “**Owner**” shall mean and refer to the record Owner or contract vendee, whether one or more persons or entities, of a fee simple title to any Unit situated upon the Subject Property but excluding contract vendors, unless the contract provides otherwise, and others having such interest merely as security for the performance of an obligation.
- (i) “**Planned Community**” shall mean the real estate, portions of which are designated for separate ownership as Units and the remainder of which is designated as Common Elements, which are subject to this Declaration. Specifically, as the term is used herein, it means and refers to Overview Townhomes, Common Interest Community No. 663, the Planned Community established by this Declaration.
- (j) “**Plat**” shall mean the recorded plat depicting the Subject Property pursuant to the requirements of Section 515B.2-110(d) of the Act, and satisfying the requirements of Minnesota Statutes Chapter 505, 508 or 508A, as applicable, including any amended or supplemental Plat recorded from time to time in accordance with the Act.
- (k) “**Special Declarant Rights**” shall mean those rights reserved by the Declarant as defined in Section 515B.1-103(32), and more fully set forth in Article V herein.
- (l) “**Subject Property**” shall mean and refer to all properties that are subject to this Declaration as defined in Article II, Section 1.
- (m) “**Unit**” shall mean and refer to a Dwelling together with the parcel of property or percentage interest in the parcel of property upon which the Dwelling is situated, as legally described in the instrument of conveyance in favor of the current Owner. Unit shall not be construed to include Common Elements as herein defined.

Statutory Requirements. In accordance with the requirements of Section 515B.2-105 of the Act, the Declarant hereby states the following:

- a. The number of the Common Interest Community created hereby is the number set forth on the first page of this Declaration.
- b. The name of the Association is **Overview Townhome Association**. The Association has been incorporated pursuant to the provisions of Minnesota Statutes Chapter 317A.
- c. The common interest community created hereby is a Planned Community. It is not subject to a master association.
- d. The legal description of the Property included within the common interest community created hereby (including all appurtenant easements) is set forth on the first page.
- e. The description of the boundaries of each Unit created by this Declaration, including the Unit identifier number for each Unit, is set forth on the Plat, which Plat has been filed for record with the office of the Ramsey County Recorder and is hereby incorporated herein by reference.
- f. The allocated interests are assigned equally to each Unit, subject to the provisions of this Declaration. Each Unit shall have one vote in the affairs of the Association. Each Unit shall share the Common Expenses equally.
- g. The common interest community created hereby shall consist of 24 Units, all of which shall be restricted to residential use.
- h. No additional units may be created by the subdivision or conversion of Units.
- i. The use restrictions to which the Units are subject are located in Articles IX and X hereof. There is no restriction on the sale price of a Unit. The amount to be received upon the condemnation, casualty loss or termination of the Common Interest Community is set forth in Article XV; Article XII, and Article XVI, respectively.
- j. Time shares are not permitted.
- k. Matters relating to Special Declarant Rights are contained in Article V hereof. Matters relating to the use of the Common Elements are contained in Article II hereof. Matters relating to the care and maintenance of the Common Elements are contained in Article VIII hereof. Matters relating to assessments for Common Expenses are contained in Article VI hereof.

ARTICLE II.
PROPERTY SUBJECT TO THIS DECLARATION
AND USE THEREOF

Section 1. EXISTING PROPERTY.

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Maplewood, County of Ramsey and State of Minnesota, and is legally described as shown on Exhibit A, all of which real property shall hereinafter be referred to as the "Subject Property".

Section 2. UNITS.

There are twenty-four (24) Units. Except for any rights reserved to the Declarant under this Declaration, no person may create additional Units by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act.

Each Unit constitutes a separate parcel of real estate. The Units shall each be improved with one Dwelling and all Units and Dwellings will be restricted to residential use. Unless stated otherwise in this Declaration, an Owner shall be responsible for maintenance of the Unit and the Dwelling thereon.

The identifiers and locations of the Units are shown on the Plat, which is incorporated herein by reference. The identifier for a Unit shall be its lot and block numbers and the subdivision name. 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.

Section 3. COMMON ELEMENTS.

The Common Elements shall be owned by the Association and used for open space, private utilities, and related activities. Maintenance, replacement and repair of sanitary sewer, storm sewer, water lines, utility lines, TV cable and retaining walls on the Common Elements are the responsibility of the Association. The Common Elements shall be conveyed to the Association as of the date of conveyance of any Unit to an Owner other than Declarant.

ARTICLE III.
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.
POWERS OF THE ASSOCIATION.

Section 1. VOTING RIGHTS.

(a) Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. 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.

(b) Voting rights and Common Expense obligations are allocated equally among the Units; except that special allocations of Common Expenses shall be permitted as provided in this Declaration and except for the alternative assessment program as provided in this Declaration.

(c) The ownership of a Unit shall include the voting rights and Common Expense obligations described in Article III, Section 1(b). Said rights, obligations and interest, 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 this Declaration, the Bylaws and the Act.

(d) The Owner, or some natural person designated 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 Bylaws may cast such vote. The voting rights of Owners are more specifically described in the Bylaws.

Section 2. SUSPENSION OF VOTING RIGHTS.

The right of any Member to vote and the right of any Member shall be suspended during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for any infraction of any rules or regulations adopted by the Association.

Section 3. POWERS OF THE ASSOCIATION.

Declarant hereby delegates to, and the Association hereby is permitted to exercise all powers described in the Governing Documents, the Act and the statute under which it was incorporated. Neither this Planned Community nor the Association is subject to any Master Association.

ARTICLE IV.

PROPERTY RIGHTS AND OBLIGATIONS IN THE COMMON ELEMENTS

Section 1. MEMBERS' EASEMENT AND ENJOYMENT.

Subject to the provisions of Section 2 below, every Member shall have a non-exclusive easement of ingress and egress over the Common Elements and a non-exclusive easement and right of enjoyment in and to the Common Elements, and such easements shall be appurtenant to and shall pass with the title to every Unit.

Section 2. EXTENT OF MEMBERS' EASEMENTS.

The rights and easements in favor of the Members created hereby and the title of the Association to the Common Elements shall be subject to the following and as further provided herein:

- (a) The right of the Association, as provided in the Governing Documents, to borrow money for the purpose of improving, repairing and maintaining the Common Elements or any improvements thereon, and in aid thereof to mortgage said properties, which rights of such mortgagee in said properties shall be subordinate to the rights of the Members hereunder;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure;
- (c) The right of the Association, as provided in the Governing Documents, to suspend the voting and enjoyment rights of any Member for any period during which any assessments remain unpaid, and to suspend the said enjoyment rights for any period not to exceed sixty (60) days and to impose a fine not to exceed Ten Dollars (\$10.00) for each infraction of its published rules and regulations, each day during which infractions exist being deemed a separate and distinct infraction; provided, however, that nothing contained in this Section 2(c) shall be deemed to deny an Owner access to and from his or her Unit or Dwelling located on the Subject Property;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members. Except for the installation of utilities pursuant to the easements created by Article XI hereof, no such dedication or transfer shall be effective unless an instrument signed by all Members has been recorded agreeing to such dedication or transfer, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken;
- (e) Rights, if any, of the City of Maplewood to maintain the Common Elements in the event of failure by the Association to do so;
- (f) Utility and drainage easements to install sewer, water, gas, electric and telephone lines, transformers, towers, poles, lighting fixtures, pipes, conduits, cables, wires, drainage channels and other utility facilities, including the right of access thereto for the purpose of constructing, installing, repairing, maintaining, altering and modifying any such facilities;
- (g) Encroachments, if any, created pursuant to Section 5 of this Article.

Section 3. DELEGATION OF USE.

Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Elements and facilities to the members of his or her family who reside on the Subject Property, subject to the limitation contained in Article X, Section 9 regarding rental of Dwellings.

Section 4. TAXES AND MUNICIPAL SPECIAL ASSESSMENTS ON COMMON ELEMENTS.

Taxes and special assessments that would normally be levied against the Common Elements shall be divided and levied against the individual Units in the Subject Property in equal

proportion, or as the governmental taxing authorities shall determine, which levies shall be a lien against said individual Units.

Section 5. ENCROACHMENTS.

Notwithstanding any other provisions contained herein, in the event any Dwelling or garage or any fireplace, roof, air conditioner, flower box, deck, patio, balcony, eaves, or other appurtenance on any Unit as originally constructed encroaches upon or overhangs upon any part of the Common Elements, then a perpetual easement appurtenant to such encroaching or overhanging Unit shall exist for the continuance of such encroachment or overhang upon the Common Elements.

Section 6. PARKING RIGHTS.

Ownership of each Unit shall entitle the Owner to the right of ingress and egress in and to the Owner's garage and the right to exclusive use of the driveway/parking pad located adjacent to the Owner's Unit.

Section 7. ASSOCIATION'S EASEMENTS.

The Association or its agents or employees shall have the right to go upon any Unit in connection with the maintenance or repair of the Common Elements or any improvements thereon or in connection with its maintenance responsibilities set forth in Article VIII.

**ARTICLE V.
SPECIAL DECLARANT RIGHTS**

Section 1. RESERVATION OF RIGHTS.

The Declarant shall have and hereby reserves for its benefit the exclusive and unconditional right to:

- (a) complete improvements indicated on the Plat;
- (b) create Units and/or Common Elements on the Subject Property or relocate boundaries between Units or to otherwise alter Units owned by it;
- (c) maintain a sales office, a management offices, model Units and Dwellings, sales and rental facilities and signs advertising the Subject Property within the Common Elements and/or any Units owned by the Declarant from time to time, located anywhere on the Property; and,
- (d) control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board of Directors of the Association pursuant to Section 515B.3-103 of the Act, until the earlier of the voluntary surrender of control by Declarant or the end of the Declarant Control Period. Notwithstanding the foregoing, the Members other than Declarant shall

have the right to nominate and elect not less than 33 1/3% of the directors of the Association at a meeting of the Members 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 Subject Property.

Section 2. DECLARANT'S EASEMENT.

The Declarant shall convey fee simple title to the Common Elements to the Association as of the date of conveyance of any Unit to an Owner other than Declarant; provided, however, that Declarant shall have and does hereby reserve the right and easement to enter upon and pass through, on and over such Common Elements for the purpose of maintaining, developing and improving the Common Elements or Units and marketing and selling Units, and provided further that Declarant may place a mortgage or other lien upon the Common Elements in connection with the development and improvement thereof, but any and all such mortgages and liens shall be released as to the Common Elements prior to conveyance thereof to the Association. The Declarant shall improve the Common Elements, in locations selected by it and pursuant to its plans and specifications, with paths, landscaping and such other improvements and amenities as the Declarant shall determine. The Association shall at all times have responsibility for management and maintenance of the Common Elements and shall govern and control the same to the same extent as if the Common Elements were owned by the Association, except for the rights and easements of Declarant provided in this Section 2. The cost of such maintenance shall be assessed against the various Units as set forth in Article VI herein.

**ARTICLE VI.
COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATIONS OF ASSESSMENTS.

The Declarant, for each Unit owned by it within the Subject Property, hereby covenant, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments. Such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them, but may continue to be a lien on the Unit. No Owner may avoid the lien of, or personal liability for, such assessment by nonuse of the Common Elements or abandonment of the Owner's Unit. All assessments shall be fixed, established and collected in the manner provided in this Article. A lien created under this Article is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Declaration, (ii) any first mortgage encumbering the fee simple interest in the unit, (iii) liens for real estate taxes and other governmental assessments or charges against the unit.

Section 2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Subject Property and for the improvements and maintenance of the Common Elements and other areas that the Association is obligated to maintain as provided herein. The annual assessments shall be payable in regular installments and shall be used for (but not limited to) hazard insurance for Common Elements and Dwellings; maintenance to be performed by the Association pursuant to Article VIII; an adequate reserve fund for maintenance, repairs and replacement of the Common Elements and improvements thereon and other areas that must be replaced on a periodic basis; and maintenance, repairs and replacement of water, sewer and the utility lines and fixtures that are not the responsibility of the City of Maplewood, which serve the Common Elements or any Unit. Said annual assessments shall also be used for maintenance and replacement of lawn, landscaping and shrubbery on Common Elements, for snow removal from paths and sidewalks located on Units and Common Elements and public sidewalks; and for maintenance and replacement of lawn, landscaping and shrubbery located on public boulevards and exterior maintenance of the Dwellings situated upon the Subject Property.

Section 3. BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS.

Except as provided in Section 7, below, annual and special assessments shall be levied equally between all the Units and may be collected on a monthly basis, provided, however, that assessments arising out of the negligence or nonperformance of any obligation of an Owner shall be for additional nonuniform amounts and shall be immediately due in full from the Owner and assessments against fewer than all Units shall be set pursuant to Section 6 below. In addition, upon determination by the Board the costs of insurance may be assessed in proportion to risk or coverage of the Unit being assessed.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of Members holding at least seventy-five percent (75%) of the voting power of the Association and who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4.

Written notice of any meeting of the general membership required for an action authorized under Sections 3 or 4 shall be sent to all Members not less than thirty (30) nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the entire voting power of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be

one-half of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. ANNUAL AND SPECIAL ASSESSMENTS.

Except as provided in Section 7, below, both annual and special assessments must be allocated equally between all the Units. This requirement shall not apply to:

- (a) common expenses or portions thereof benefiting fewer than all of the Units, which may be assessed exclusively against those Units benefitted in equal proportion;
- (b) reasonable attorneys' fees incurred by the Association in connection with the collection of assessments or the enforcement of the Governing Documents or the Rules against a Member, which may be assessed against the Member's Unit;
- (c) fees and charges, interest, fines and late charges for: services provided to specific Units, late payments of assessments, violations of the Governing Documents or Rules, fees for preparation of Association documents, resale certificates, etc.; and
- (d) willful or negligent acts as set forth in Section 11 hereof.

Section 7. ALTERNATIVE ASSESSMENT PROGRAM FOR DECLARANT.

The Declarant hereby establishes an alternative assessment program as permitted by Minnesota Statutes, Section 515B.3-115(b). Specifically, if a common expense assessment has been levied, any Unit owned by the Declarant shall be assessed at the rate of 25% of the assessment that would otherwise be levied on such Unit until such Unit is substantially completed as evidenced by a certificate of occupancy issued with respect to such Unit by the City of Maplewood; provided, however, that that part of any assessment allocated to a replacement reserve shall be fully levied against each Unit, including Units owned by Declarant, upon substantial completion of the exterior of the building containing the Unit. Following issuance of a certificate of occupancy, each Unit owned by Declarant shall be assessed at the full rate. This reduced assessment shall apply to each Unit owned by the Declarant, and shall continue as to each such Unit until such unit is substantially completed as evidenced by 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.

Section 8. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS, DUE DATES.

The annual assessments provided for herein shall commence as to all Units on the date that the first Unit is sold to an Owner other than Declarant.

The first annual assessment shall be made for the balance of the calendar year and shall become due and payable in equal installments on payment dates to be established by the Board of Directors.

The amount of annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in the year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property, which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 shall be fixed by the resolution authorizing such assessment.

Section 9. INITIATION FEE.

Each initial purchaser of a Unit from the Declarant shall pay to the Association an initiation fee in an amount equal to two (2) times the then estimated monthly common expense assessment against the Unit. Said payment is not a deposit or advance payment of assessments which the purchaser is otherwise required in this Declaration to pay to the Association, but is rather a payment to a working capital fund established by the Association for the initial months of its operations.

Section 10. DUTIES OF THE BOARD OF DIRECTORS.

The Board of Directors of the Association shall fix the amount of the assessment against each Unit for each assessment period at least thirty (30) days in advance of such date or period.

Written notice of the assessment shall be sent to every Owner subject thereto, provided, however, that the failure to send such written notice shall not render any assessment invalid.

The Board shall have the right to collect any annual or special assessment on a monthly basis. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a given Unit have been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 11. ASSESSMENT OF COST DUE TO WILLFUL OR NEGLIGENT ACTS.

If the need for maintenance or repair is due to the willful or negligent acts of an Owner or the Owner's family, guests, tenants or invitees, the cost of such maintenance less the net insurance proceeds received by the Association due to such act or neglect, if any, shall be assessed against such Owner's Unit and shall be added to and become a part of the current annual assessment against that Unit and, at the option of the Board, shall be payable in full with the next monthly installment of the then current annual assessment, or divided equally over the remaining months for the then current annual assessment and payable with and in addition to the monthly installments of the then current annual assessment.

Section 12. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring (a) an action at law against the Owner personally obligated to pay the assessments, and/or (b) foreclose its lien for the amounts owed by the Owner.

To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit and file or record the same, but such notice of lien shall not be recorded until such assessment has been wholly or partially unpaid for at least thirty (30) days from the due date. Such lien may be enforced and foreclosed by the Association in the same manner in which mortgages on real property may be foreclosed by action or by advertisement under a power of sale in Minnesota. Each Owner, by acceptance of a deed for any Unit, does further hereby give full and complete power of sale to the Association and does consent to a foreclosure of the assessment lien as if such lien were a mortgage containing a power of sale. In the event of any such foreclosure, and in the further event that the Association shall prevail in any such foreclosure, the person personally obligated to pay the same shall be required to pay all costs of foreclosure, including but not limited to, reasonable attorneys' fees. The person personally obligated to pay such lien shall also be required to pay the Association any assessments against the Unit, which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the Unit as the Owner thereof. Prior to reselling the Unit after foreclosure, no assessments shall be levied against the subject Dwellings; provided, however, that if the Association rents or leases the Dwelling, the Association shall once again have the right to levy assessments against said Dwelling. A release or satisfaction of the notice of lien shall be executed by an officer of the Association and recorded upon payment of all sums secured by such lien.

Section 13. SUBORDINATION OF LIEN TO MORTGAGES.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon a Unit. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof (including the delivery of a deed in lieu thereof) shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall release such Unit from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

All other parties acquiring liens on any Unit after this Declaration is recorded shall be deemed to consent that their liens shall be and remain inferior to future liens provided for herein.

The Association shall, upon written request, report to any first Mortgagee or other encumbrancer of a Unit the amount of the assessments remaining unpaid for a period longer than ninety (90) days after the same shall become due.

Section 14. EXEMPT PROPERTY.

The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All properties exempted from taxation by the laws of the State of Minnesota upon the terms and to the extent of such legal exemption; and
- (c) All Common Elements as defined in Article I hereof.
- (d) Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

**ARTICLE VII.
PARTY WALLS**

Section 1. GENERAL RULES OF LAW TO APPLY.

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

Section 2. SHARING OF REPAIR AND MAINTENANCE.

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

Section 3. DESTRUCTION BY FIRE OR OTHER CASUALTY.

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

Section 4. WEATHERPROOFING.

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

Section 5. RIGHT TO CONTRIBUTION RUNS WITH LAND.

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. ARBITRATION.

In the event of any dispute arising concerning any party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

Section 7. LIEN RIGHTS.

As soon as any expenses for repair and maintenance of a party wall are known, each Owner agrees to make the necessary payments due as soon as reasonably possible. If an Owner fails to make any payment which is due or is necessary to avoid a payment to any contractor, supplier or creditor becoming delinquent, the other Owner shall have the right to make such payment and upon making such payment, such payment shall be deemed to be due and owing from the defaulting Owner and the nondefaulting Owner shall have the right to file a lien against the defaulting Owner's Unit together with interest at the judgment rate as that rate is established from time to time. To evidence such lien, the non-defaulting Owner may prepare a written notice of lien, setting forth the amount due together with the interest, which notice shall be filed against the defaulting Owner's Parcel in the office of the Ramsey County Recorder. This lien shall be superior to all other liens and encumbrances except liens for general real estate taxes and assessments and the lien of any first mortgage. Such lien can be enforced and foreclosed by an action in the same manner in which mechanic's liens can be enforced and foreclosed under the laws of the State of Minnesota and in such action the defaulting Owner shall be liable for all costs of such action including attorneys' fees.

ARTICLE VIII.

Section 1. DUTIES OF ASSOCIATION

The Association shall provide for maintenance upon the Units and Common Elements as follows: exterior maintenance upon each Unit which is subject to assessment hereunder; snow removal from driveways and sidewalks; paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces; maintain trees, shrubs, grass, walks, private streets and roads, driveways, sidewalks, irrigation systems, and other exterior improvements; and trash removal. Exterior maintenance shall not include glass, windows, front Unit entrance doors, patio doors, or electricity for exterior garage lights.

Section 2. OTHER DUTIES

- a. The Association shall enforce the covenants, conditions and restrictions set forth herein and any amendments hereto and any rules and regulations adopted by the Association.

- b. The Association shall provide a master or common policy of property insurance for all Units within the Association.
- c. The Association shall undertake, at its discretion, such further duties as determined by the Board of Directors.

Section 3. Miscellaneous.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, invitee, or lessees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject.

**ARTICLE IX.
ARCHITECTURAL CONTROL COMMITTEE**

No exterior additions, removals or alterations (including changes in color or appearance) to any building on the Subject Property, additional fences, hedges, walls, walkways, and other structures shall be commenced, erected or maintained except such as are installed or approved by the Declarant in connection with the initial construction of the improvements on the Subject Property, until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings erected upon the Subject Property by an architectural committee composed of the Board of Directors of the Association or three (3) or more representatives appointed by the Board of Directors. In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval shall be deemed to have been given. If no application has been made to the architectural committee or their representatives, or if such application has been rejected, a suit to enjoin or remove such additions, alterations or changes may be instituted at any time by the Association or any Owner, in which suit the Association or any Owner shall have the right to collect reasonable attorneys' fees, costs and expenses. None of the members of the architectural committee shall be entitled to any compensation for their services performed pursuant to this paragraph, but compensation may be allowed to independent professional advisors retained by such committee.

**ARTICLE X.
BUILDING AND USE RESTRICTIONS**

Section 1. LAND USE.

No Unit/Dwelling shall be used for any purpose except residential purposes.

Section 2. NUISANCES.

No noxious or offensive activities shall be carried on upon any Unit, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. PETS.

No animals, reptiles, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Dwelling or in the Common Elements, except that dogs, cats or other household pets may be kept in the Dwellings subject to rules and regulations adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose, and provided further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Subject Property upon 30 days written notice from the Board of Directors. Pets may be kept outside a Dwelling only when personally attended on a leash by a Member (or a member of a Member's family) who shall immediately pick up and properly dispose of any pet wastes.

Section 4. GARBAGE, REFUSE AND RECYCLING DISPOSAL.

No Unit shall be use or maintained as a dumping ground for rubbish. Trash, garbage, recycling or other waste shall be kept in sanitary containers within the dwelling garages and there shall be no exterior burning of household refuse.

Section 5. PROHIBITED STRUCTURES, WINDOW TREATMENTS AND LAWN ORNAMENTS.

No structure of a temporary character, basketball hoop, trailer, tent, shack, boat house, barn or other out-building shall be constructed on any Unit. No garage shall be used at any time as a residence either temporarily or permanently. Window treatments must be in harmony with the design of the Dwelling and the surrounding area and must be properly installed. No blankets, sheets, loose fabric or excessively-brightly colored window treatments shall be permitted. No lawn ornaments or sculptures shall be permitted on any Unit unless inside a Dwelling and not visible from the exterior of the Dwelling. The Architectural Control Committee shall be the final arbiter of any disputes under this Section.

Section 6. STORAGE.

The enclosed garage spaces are maintained for vehicle parking and parking of snowmobiles, boats, RV's and other recreational vehicles in the driveway is discouraged. The storage of anything in the garage or driveway, which would prevent the storage and parking of vehicles, is prohibited. No trailers, boats, buses, motor homes, campers, snowmobiles or other types of recreational vehicles shall be parked on any Unit for more than forty-eight (48) consecutive hours unless such vehicle is parked within a garage; provided that the Board of Directors of the Association may grant permits to park such vehicles on Units for limited periods of time not to exceed fourteen (14) days in any twelve month (12) period. No such vehicles shall be parked on any Common Element. These requirements cannot be changed without the written consent of the City of Maplewood.

Section 7. SEWER FACILITIES.

The sewer disposal facilities in the Subject Property shall be limited to the municipal sanitary sewer system.

Section 8. TIME SHARES.

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.

Section 9. RENTAL OF DWELLINGS.

None of the Dwellings may be rented for any period of time. Any rental of a Dwelling by an Owner, or Owner's representative, will be a violation of the terms of this Declaration.

Section 10. SIGNAGE.

No sign of any kind shall be displayed to the public view on any Unit except one professional sign of not more than one (1) square foot and 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 Subject Property such signs as it deems appropriate to advertising the Units until the Declarant conveys the last Unit.

Section 11. ANTENNAS.

No aerial, antenna or satellite dish which is (i) over four feet in height, as measured from the point on any structure to which the aerial, antenna or satellite dish is affixed; (ii) more than one meter in diameter; (iii) not attached to a Unit, or (iv) of a color not approved by the Association, shall be permitted on any Unit.

Section 12. ABANDONED VEHICLES.

No abandoned motor vehicle as defined in Minnesota Statutes Section 168B.02, subdivision 2, as amended from time to time, shall be permitted to remain upon the streets or driveways or on any Unit or parking area. The Association shall have the right to remove any such vehicle at any time, and assess the costs of such removal against the Unit, which is owned or occupied by the person in control or possession of such vehicle.

Section 13. BUSINESSES.

Except as herein permitted for Declarant, no business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted on any Unit, except: (i) 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 thereto by telephone, computer, facsimile, or correspondence therefrom, provided that such uses are incidental to the residential use of the Unit; and (ii) the Association may maintain offices on the

Subject Property for management and related purposes.

Section 14. DRIVING IN COMMON ELEMENTS.

Owners, occupants, and the guests and invitees of Owners and occupants are prohibited from driving motor vehicles on the Common Elements except for those parts of the Common Elements designated as streets, roads, parking areas and driveways.

**ARTICLE XI.
EASEMENTS**

Section 1. UTILITIES AND DRAINAGE EASEMENTS.

Easements for installation and maintenance of utilities and drainage facilities are hereby created and dedicated in, over and upon the Common Elements owned by the Association. Within these easements, no structure, fence, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements, or which may interfere with snow plowing or snow storage within these easements.

Section 2. WATER AND ELECTRICITY EASEMENTS.

The rights and easements of enjoyment by the Owner of each Unit and the title of such Owner in said Unit shall be subject to the rights of the Association to an exclusive easement on and over said Unit for the purpose of installing and maintaining a source of water and electricity from Dwellings to serve the Common Area.

If water or electricity taken from such Unit is used to serve the Common Area and such water and electricity is not separately metered, the Association and the Owner of the affected Unit shall agree on a reasonable method and amount of compensation payable therefore by the Association to the Owner. In the event that the parties cannot agree on a reasonable method and amount of compensation, each party shall choose one arbitrator and the two (2) arbitrators shall choose a third arbitrator and the decision of the majority of all arbitrators shall be final and conclusive of the method and amount of compensation to be paid.

**ARTICLE XII.
INSURANCE**

Section 1. REQUIRED COVERAGE.

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

- (a) Property insurance in broad form covering all risks of physical loss for the full insurable replacement costs of the improvements on the Common Area, less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The policy or policies shall cover personal property owned by the Association and shall name the Association as the named insured. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available.
- (b) Comprehensive public liability insurance covering the ownership, existence, use, operation or management of the Subject Property, with minimum limits of \$1,000,000 per occurrence, against claims for death, bodily injury and property damage, and such other risks as are customarily covered by such policies for projects similar in construction, location, and use to the Subject Property. Unit owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, operation or management of the Common Area. The policy shall contain a "severability of interest" endorsement, which shall preclude the insurer from denying the claim of an owner or occupant of a Unit because of the negligent acts of the Association or other owners or occupants and shall cover claims of one or more insured parties against other insured parties.
- (c) Fidelity bond or insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the board. The fidelity bond or insurance shall name the Association as the named insured and shall, be written in an amount equal to the greater of (i) the estimated maximum of Association funds, including reserves, in the custody of the Association or management agent at any given time while the bond is in force, or (ii) a sum equal to three months aggregate assessments on all Units plus reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers, or a waiver of defense based upon the exclusion of persons serving without compensation shall be added.
- (d) Worker's compensation insurance, as required by law.

Policies carried pursuant to subsections (a) and (b) shall provide that:

- (1) each Member and any secured party of the Member's Unit is an insured person under the policy with respect to liability arising out of the Member's interest in the Common Elements or the Member's membership in the Association;
- (2) the insurer waives its rights to subrogation under the policy against any Member (or members of Member's household) and against the Association and Directors;

- (3) no act or omission by any Member or secured party, unless acting within the scope of authority on behalf of the Association, shall void the policy or be a condition to recovery under the policy; and
- (4) the Association's policy shall be the primary insurance if, at the time of a loss under the policy, there is other insurance in the name of a Member covering the same property covered by the Association's policy.

Section 2. ASSOCIATION COVERAGE OF UNITS.

In addition to casualty insurance on the Common Elements, the Association, through the Board of Directors, may elect to obtain and continue in effect, on behalf of all Owners, adequate broad-form blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Dwellings, including the structural portions and fixtures thereof but exclusive of land, footings, excavation and other items normally excluded from coverage, owned by such Owners. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be an expense of the Association to be included in the regular annual assessments of the Owners, as levied by the Association. The insurance coverage with respect to the Dwellings shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners.

Section 3. REPLACEMENT OR REPAIR OF PROPERTY.

Any portion of the Subject Property that has been damaged or destroyed by a loss covered by the Association's insurance shall be promptly repaired or replaced by the Association unless (i) the Community is terminated; (ii) such repair or replacement would be illegal; or (iii) Members holding at least 80% of the voting power of the Association (including every Member and first mortgagee on a Unit which shall not be rebuilt) vote not to rebuild. If less than the entire Subject Property is repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Community, the proceeds attributable to Units which are not rebuilt shall be distributed to the owners of those Units and the secured parties of those Units, as their interests may appear, and the remainder of the proceeds shall be distributed to all Unit Owners and secured parties as their interests may appear, in proportion to their common expense liability. The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves shall be paid as a common expense, and the cost of repair of a Unit in excess of insurance proceeds shall be paid by the respective Unit Owner.

Section 4. CANCELLATION; NOTICE OF LOSS.

All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be cancelled or substantially modified, for any reason, without at least 30 days prior written notice to the Association, all of the insureds, and all mortgagees of Units.

Section 5. REVIEW OF POLICIES.

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

Section 6. BLANKET CASUALTY INSURANCE BY OWNER.

If the Association does not elect to maintain blanket casualty and fire insurance pursuant to Section 2 of this Article, then any Owner of a Unit shall carry, maintain, and timely pay the premium or premiums on a policy of fire, extended coverage, vandalism, and malicious mischief, with all risk endorsement insurance. Said insurance shall cover a minimum of the entire replacement cost of the improvements on such Unit and shall provide for at least ten (10) days' notice to the Board of Directors of the Association before cancellation or material change in such insurance.

Section 7. REALLOCATION OF INTERESTS FOR DESTROYED UNITS.

If, pursuant to Section 3, a Unit is not rebuilt after a casualty, that Unit's entire interest in the Common Elements, votes in the Association and common expense liability are automatically reallocated upon the vote as if the Unit had been condemned, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

**ARTICLE XIII.
SPECIAL PROVISIONS**

Section 1. OVERRIDING PROVISIONS.

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

Section 2. NOTICE OF DEFAULT.

A first mortgagee of a Unit, upon request, is entitled to written notification from the Association of any default in the performance by the Owner of any obligation under the Governing Documents known to the Association, which is not cured within sixty (60) days.

Section 3. EXEMPTION FROM RIGHT OF FIRST REFUSAL.

Any first mortgagee of a Unit who obtains title to a Unit pursuant to the remedies provided in its mortgage, or by foreclosure of its mortgage, or by deed or assignment in lieu of foreclosure, will be exempt from any right of first refusal contained in the Declaration or By-Laws.

Section 4. LIABILITY FOR UNPAID ASSESSMENTS.

Any first mortgagee of a Unit who obtains title to a Unit pursuant to the remedies provided in its mortgage or by foreclosure of its mortgage shall not be liable for the unpaid assessments of the Unit, which accrue prior to the acquisition of title to such Unit by the mortgagee.

Section 5. RESTRICTED ACTIVITIES.

Until the Association has received written approval from all of the first mortgagees of Units, all Owners other than the Declarant, the Association shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements owned, directly or indirectly, by the Association for the benefit of the Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this subsection;
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;
- (c) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the maintenance of the Common Elements, party walls or common fences and driveways, or the upkeep of lawns and plantings;
- (d) Fail to maintain first and extended coverage on insurable Common Elements on a current replacement cost basis in an amount not less than 100% of the insurable value, based on current replacement costs; or
- (e) Use hazard insurance proceeds received for losses to any Common Elements other than for the repair, replacement or reconstruction of such Common Elements.

Section 6. EXAMINATION OF BOOKS AND RECORDS.

First mortgagees shall have the right to examine the books and records of the Association.

Section 7. RIGHT TO CURE DEFAULT.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements and may pay overdue premiums in hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 8. PRIORITY OF FIRST MORTGAGEES.

No provision of the Declaration or By-laws shall be construed as giving to the Owner or to any other party priority over any rights of first mortgagees of Units pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Elements.

Section 9. FORECLOSURE OF FIRST MORTGAGES AND CONTRACTS.

The sale or transfer of any Unit pursuant to the foreclosure of a first Mortgage, or pursuant to any other proceeding or arrangement in lieu of such foreclosure or cancellation, shall extinguish the lien of all other assessments as to the installments which became due prior to the effective date of such sale, transfer or acquisition by the Mortgagee to the end that no assessment liability shall accrue to an acquiring Mortgagee except with respect to installments of assessments becoming due after possession has passed to such acquiring Mortgagee, whether such possession has passed at the termination of any period of redemption or otherwise; provided, however, that if a first mortgage on a Unit is foreclosed, the first mortgage was recorded after June 1, 1994, and no Owner redeems during the Owner's period of redemption provided by Minnesota Statutes Chapters 580, 581 or 582, then the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to unpaid assessments for Common Expenses levied pursuant to Sections 515B.3-115 (a), (e)(1) to (5), (f), and (i) of the Act, which became due, without acceleration, during the six months immediately preceding the first day following the end of the Owner's period of redemption. In the event of the extinguishment of such assessment lien as aforesaid, the entire amount of such unpaid assessment shall be reallocated and assessed against, and payable by the Owners of, all other Units in the Association, exclusive of such encumbered Unit. No such sale, transfer or acquisition of possession shall relieve an Owner of a Unit from liability for any assessments thereafter becoming due or from the lien thereof, nor shall it relieve the person personally obligated to pay the assessments which were levied prior to the transfer of such Unit from the personal obligation to pay the same.

ARTICLE XIV.
MAINTENANCE

Section 1. MANDATORY MAINTENANCE.

The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Elements and all improvements thereon, and including furnishings and equipment related thereto, and shall keep the same in good, clean, attractive and sanitary condition, order and repair (consistent with its natural character). In addition to maintenance upon the Common Elements, the Association shall provide exterior maintenance for the Dwelling upon each Unit which is subject to assessment hereunder, as follows: painting, repair, replacement, cleaning and care of roofs, soffits, facia, gutters, downspouts and exterior building surfaces, care and replacement of trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include windows, doors, screens and garage doors (except painting, which shall be a responsibility of the Association), exterior air conditioning units, gardens, shrubs and other plantings established by

Owners and not by the Association and private decks or patios except that if an Owner after notice neglects to replace broken glass in exterior surfaces, or fails to maintain the appearance of its air conditioning unit, or private deck or patio, the Association may do so, charging the cost thereof to such Owner. At the option of the Board, the Association may undertake to clean exterior glass surfaces. All such painting, repair and maintenance shall be done as and when, and to the extent that, the Board deems it necessary or desirable. The Association shall remove snow from the Common Elements, driveways, parking areas and sidewalks (including sidewalks located on Owners' Units), but shall not be required to remove snow from decks or patios.

Section 2. ACCESS AT REASONABLE HOURS.

For the purpose solely of performing the maintenance and repairs authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter any Dwelling and upon any Unit with such persons and material as the Association deems necessary at reasonable times during the day.

Section 3. EMERGENCY ACCESS.

For the purpose of performing emergency action to seal a Dwelling from weather or otherwise to prevent damage or destruction to any Dwelling, the Association through its duly authorized agents or employees, shall have the right to enter any Dwelling, and upon any Unit at any time, without notice, with such persons and material as the Association deems necessary to accomplish such emergency repairs or to take such emergency action.

Section 4. LAWN AND PLANTING MAINTENANCE.

The Association shall mow, water, rake and maintain, to the extent the Board deems necessary or desirable, all lawns and exterior plantings, and including an irrigation system; except that the Association may, but shall not be required to, water gardens and plantings established by Owners, and to the extent the Association undertakes to do so, it will not be responsible for any damage to such gardens and plantings due to overwatering, underwatering or improper watering. In lieu of maintaining separate water lines for the Common Elements, the Association may draw water for such common purposes from exterior sillcocks on each Dwelling, provided that it rotates such drawing among all Dwellings by a schedule or other reasonable means so as to approximately equalize the amount of water taken from each Dwelling over the course of a season. The Association shall maintain all retaining walls on the Common Elements and on the Units.

**ARTICLE XV.
EMINENT DOMAIN**

Section 1. TOTAL TAKING OF UNIT AND DWELLING.

If a Unit and Dwelling is acquired by eminent domain, or if so much of a Unit and Dwelling is acquired by eminent domain as to effectively leave the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award, including severance damages, shall compensate the Owner of the Unit and Dwelling and holder of

a first mortgage or other security interest of record as their interests may appear. Any such remnant of a Unit and Dwelling remaining after part of a Unit and Dwelling is taken shall be conveyed to the Association and shall thereafter be Common Area. The voting rights and liability for expenses attributable to the Unit and Dwelling acquired by eminent domain shall be reapportioned among the remaining Units.

Section 2. PARTIAL TAKING OF UNIT AND DWELLING.

Unless treated as a total taking under Section 1, if part of a Unit and Dwelling is acquired by eminent domain, the award shall compensate the Owner and first mortgagee of the Unit and Dwelling as their interests may appear for the reduction in value of the Unit and Dwelling. A partial taking of a Unit or Dwelling shall not affect the voting rights or liability of that Unit or Dwelling for common expenses.

Section 3. TAKING OF COMMON ELEMENTS.

If part of the Common Elements is acquired by eminent domain, the award shall be paid to the Association. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements among the Owners and first mortgagees as their interests may appear in proportion to their votes in the Association before the taking.

**ARTICLE XVI.
GENERAL PROVISIONS**

Section 1. ENFORCEMENT.

The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. RULES AND REGULATIONS.

The Association may make reasonable rules and regulations governing the use of the Units and of the Common Areas, which rules shall be consistent with the rights and duties established in this Declaration. The Declaration shall supersede any conflicting rules by the Association.

Section 3. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions, which shall remain in full force and effect.

Section 4. ENFORCEMENT AND AMENDMENT.

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Association or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

Except as provided in the Act or as hereinafter provided, the covenants and restrictions of this Declaration may be amended only by the assent of Members holding at least seventy-five percent (75%) of the voting power of each class of Members. Any amendment must be properly recorded and a recorded certificate of the Secretary of the Association certifying that the amendment was approved by Members holding at least 75% of the voting power shall be sufficient evidence of such fact. The prior written approval of all the first mortgagees of Dwellings or Owners other the Declarant shall be required for any amendment of this Declaration which would affect the right of the Association to do any of the acts specified in Article XIII, Section 5(a), (b), (c), (d) and (e).

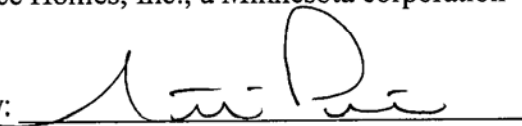
Section 5. NOTICES.

Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage-paid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of mailing.

Section 6. MERGERS.

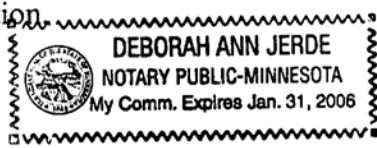
Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Subject Property except as hereinabove provided.

Masterpiece Homes, Inc., a Minnesota corporation

By: 
Steven M. Peters
Its: President

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

On this 16 day of October, 2005, before me, a Notary Public, personally appeared Steven M. Peters, to me personally known, who, after being first duly sworn, did state that he is the president of Masterpiece Homes, Inc., a Minnesota corporation, and that he signed the same on behalf of said corporation.



Deborah A. Jerde
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
George A. LeTendre
3900 Northwoods Drive
Suite 250
Arden Hills, MN 55112
651-482-8900

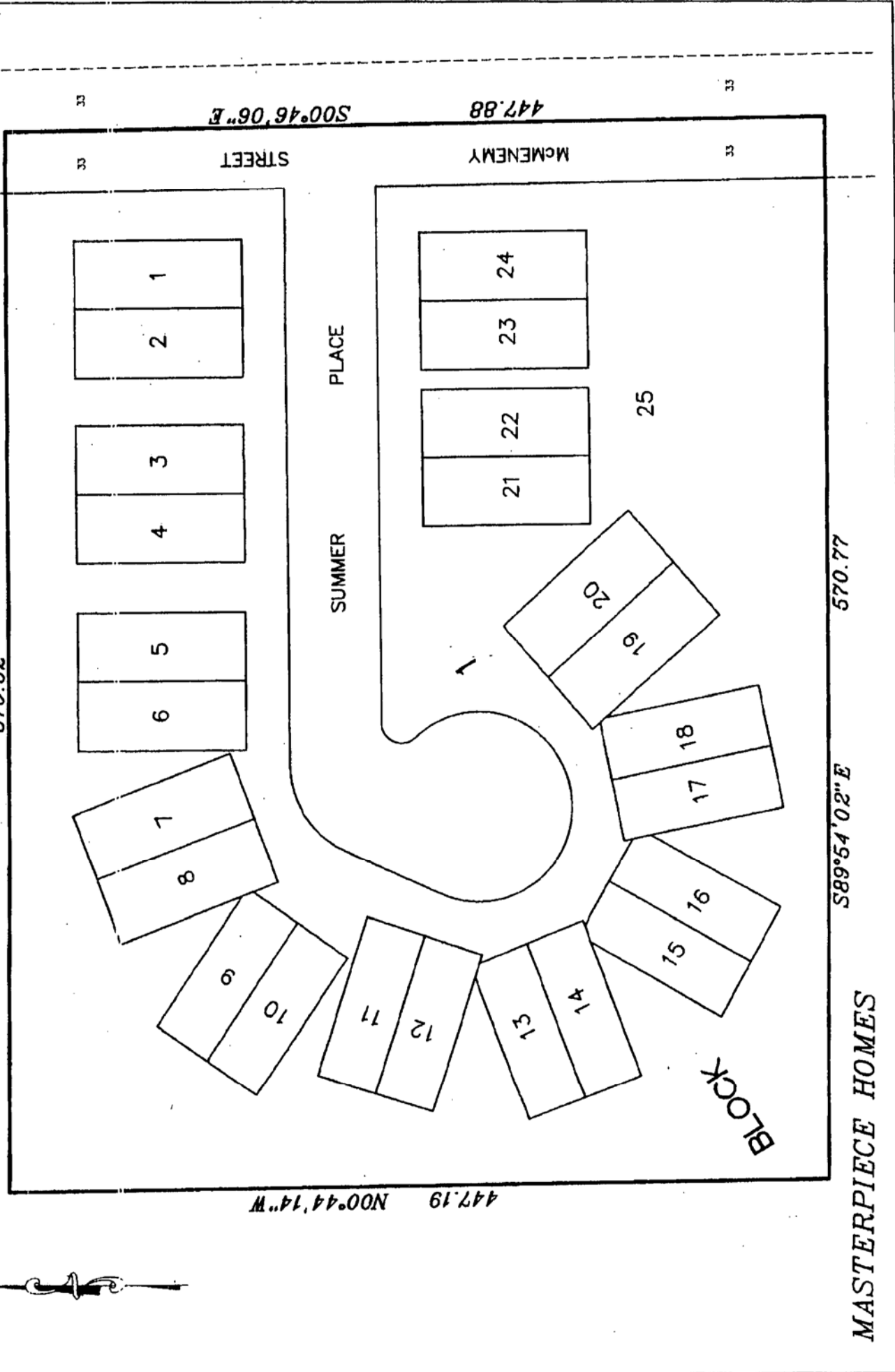
EXHIBIT A

Subject Property

OVERVIEW

24 TOWNHOME UNITS

N89°58'10"W
570.52



447.88
S00°46'06"E

447.19
N00°44'14"W

570.77

S89°54'02"E

MASTERPIECE HOMES

BLOCK