

WEST PARK HILLS
AMENDED AND RESTATED
DECLARATION

COMMON INTEREST COMMUNITY NO. _____
WEST PARK HILLS
AMENDED AND RESTATED DECLARATION
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COMMON INTEREST COMMUNITY NO. _____
PLANNED COMMUNITY
WEST PARK HILLS
AMENDED AND RESTATED DECLARATION

This Amended and Restated Declaration (the "Declaration") of West Park Hills is made, effective on the date of recording hereof, by the West Park Hills Home Owners Association, a Minnesota non-profit corporation (the "Association"), with the approval of the required number of Owners of the lots (now defined as "Units") described in Exhibit A attached hereto. This Declaration is made for the purpose of subjecting the Property as defined herein to Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act ("the Act"), as a planned community.

WITNESSETH:

WHEREAS, there is filed of record in the office of the Hennepin County Registrar of Titles that certain Declaration of Covenants, Restrictions and Easements of West Park Hills Home Owners Association as Document No. 1204621, (the "Original Declaration") and Supplementary Declarations thereto filed on the property in the Office of the Registrar of Titles for Hennepin County, and

WHEREAS, the Original Declaration established a plan for the use, operation, maintenance and preservation of the real estate described in Exhibit A attached hereto (the "Property"), and

WHEREAS, there is no longer a Class B Membership in the Association, and

WHEREAS, the Association and the Owners desire to provide for the preservation of the residential character, value, architectural character, architectural integrity and amenities which are a part of the Property, and for the maintenance of open spaces and improvements located therein, and

WHEREAS, the Association and the Owners desire to amend and restate the Original Declaration in accordance herewith and to subject the Property to the Act, and to the covenants, restrictions, easements, charges and liens set forth herein, pursuant to the requirements and procedures prescribed in Section 515B.1-102 (d) of the Act, and

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

NOW THEREFORE, the Association, with the written approval of Owners entitled to cast not less than seventy-five percent (75%) of the votes in the Association, hereby declares that the Property and any additions thereto shall be subject to and shall be held, transferred, sold, conveyed, used and occupied subject to the Act and to the covenants, restrictions, easements, charges and liens

set forth herein; that all persons or entities having or acquiring any interest in the Property shall be bound hereby; and that the Original Declaration shall be restated and amended in its entirety by this Declaration upon filing of this Declaration and which shall not affect the Supplementary Declarations filed prior hereto on the property which Supplementary Declarations shall remain in full force and effect.

SECTION 1

DEFINITIONS

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

1.1 “Act” shall mean the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B, as amended.

1.2 “Assessments” shall mean all assessments levied by the Association pursuant to Section 6 of this Declaration, including, without limitation, annual assessments, special assessments and limited allocation assessments.

1.3 “Association” shall mean the West Park Hills Home Owners Association, a Minnesota non-profit corporation organized under the laws of the state of Minnesota, whose members consist of all Owners as defined herein.

1.4 “Board” shall mean the Board of Directors of the Association as provided for in the Bylaws.

1.5 “Bylaws” shall mean the Amended and Restated Bylaws governing the operation of the Association, as amended from time to time.

1.6 “Common Expenses” shall mean and include all expenditures made or liabilities incurred by or on behalf of the Association and incident to its operation, including without limitation allocations to reserves and those items specifically identified as Common Expenses in the Declaration or Bylaws.

1.7 “Dwelling” shall mean a building, or part of a building if there is more than one (1) Dwelling per building, occupying one (1) or more floors, designed and intended for occupancy as a single family residence, and located within the boundaries of a Unit. The Dwelling includes, without limitation, any garage attached thereto or otherwise included within the boundaries of the Unit within which the Dwelling is located.

1.8 “Eligible Mortgagee” shall mean any Person owning a mortgage on any Unit, (1) which mortgage is first in priority upon foreclosure as to all other mortgages that encumber such

Unit, and (2) which Mortgage holder has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.

1.9 “Governing Documents” shall mean this Amended and Restated Declaration (hereinafter “Declaration”), and the Restated Articles of Incorporation and Amended and Restated Bylaws of the Association, as amended from time to time, and any Declaration of Easements recorded previously hereto, all of which shall govern the use and operation of the Property.

1.10 “Member” shall mean all Persons who are members of the Association by virtue of being Owners as defined in this Declaration. The words “Owner” and “Member” may be used interchangeably in the Governing Documents.

1.11 “Occupant” shall mean any Person or Persons, other than an Owner, in possession of or residing in a Unit.

1.12 “Owner” shall mean a Person who owns a Unit, but excluding contract for deed vendors, mortgagees, holders of reversionary interests in life estates and other secured parties within the meaning of Section 515B.1-103(29) of the Act. The term “Owner” includes, without limitation, contract for deed vendees and holders of a life estate.

1.13 “Party Wall” shall mean the interior shared wall between two (2) Dwellings.

1.14 “Person” shall mean a natural individual, corporation, limited liability company, limited liability partnership, partnership, trustee, or other 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 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. The recorded Plat for the Property existing as of the date of this Declaration, or amended from time to time, shall constitute the Plat.

1.16 “Property” shall mean, collectively, all of the real property subjected to this Declaration, including the Dwellings and all other improvements located thereon, now or in the future. The Property as of the date of this Declaration is legally described in Exhibit A attached hereto.

1.17 “Private Common Driveway” shall mean and refer to access driveways from public streets to the Units, as described in Section 13.5.

1.18 “Private Yard Area” shall mean and refer to that portion of a Unit not covered by a Dwelling or by a Private Common Driveway, as described in Section 13.7.

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 “Unit” shall mean any platted lot subject to this Declaration upon which a Dwelling is located, as shown on the Plat, including all improvements thereon.

SECTION 2

DESCRIPTION OF UNITS AND APPURTENANCES

2.1 Units. There are one hundred fifty-six (156) Units, all of which are restricted 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. 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 as set forth on Exhibit A. The Unit identifier for a Unit shall be its lot and block numbers 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 and Section 3.2 infra, all spaces, walls, and other improvements within the boundaries of a Unit are a part of the Unit.

2.3 Access Easements. Each Unit shall be the beneficiary of an appurtenant easement for access to a public street or highway on or across the Private Common Driveway serving the Unit, as described in Section 13 and the Declaration of Easements (as defined in Section 2.7), subject to any restrictions authorized by the Declaration of Easements and this Declaration.

2.4 Use and Enjoyment Easements. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment of its Private Yard Area, subject to any restrictions authorized by the Governing Documents and the Declaration of Easements.

2.5 Utility and Maintenance Easements. Each Unit shall be subject to and shall be the beneficiary of appurtenant easements for all services and utilities servicing the Unit and other Units, and for maintenance, repair and replacement, as described in Section 13 and the Declaration of Easements.

2.6 Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of the easements for encroachments, as described in Section 13.

2.7 Declaration of Easements. The Property shall be subject to all of those certain Declarations of Easements as previously filed on the Property in the office of the Hennepin County Registrar of Titles (collectively the “Declaration of Easements”), and such other easements as have

been filed against the property and shown on the Plat.

2.8 Easements are Appurtenant. All easements and similar rights burdening or benefiting a Unit or any other part of the Property shall run with the land and 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.

2.9 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.

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

SECTION 3

PROPERTY

3.1 Property. The Property is legally described in Exhibit A attached hereto. The Property shall be subject to the covenants, conditions, easements, restrictions, charges and liens described in this Declaration and any other recorded instruments, as amended from time to time.

3.2 Annexation of Additional Property. Other real property may be annexed to the Property, and subjected to this Declaration as common elements or otherwise, as provided by and in accordance with the Act. Upon approval of the annexation, the Association shall be authorized to act as a declarant to execute an amended Declaration and Plat, and all other documents necessary to complete the annexation of the other real property to the Property, on behalf of all Owners, secured parties and any other Persons holding an interest in the Property, and to take all other actions necessary to complete such annexation.

3.3 De-annexation of Property. Portions of the Property may be severed from the common interest community and released from this Declaration, as provided in the Act.

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. The Owner's membership shall terminate when the Owner's ownership terminates. When more than one (1) 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 and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Units, except that limited allocation Assessments shall be permitted as provided in Section 6.4. Subject to the multiple ownership rule in Section 4.1, an Owner shall have one (1) vote for each Unit owned.

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

4.4 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association. Each Unit shall be allowed one (1) vote upon all issues wherein a member is allowed to vote unless a member's voting rights have been suspended pursuant to the Governing Documents. However, if there are multiple owners of a Unit, only the Owner or other Person designated, pursuant to the provisions of the Bylaws, may cast such vote. The voting rights of Owners are more fully described in Section 3 of the Bylaws.

SECTION 5

ADMINISTRATION

The administration and operation of the Association and 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, the Rules and Regulations, 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) improving, maintaining, repairing and replacing those portions of the Property for which it is responsible and (iii) preserving the value and architectural integrity, 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, family members, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined in the Act.

5.4 Bylaws. The Association shall have Bylaws. The Bylaws shall govern the operation and administration of the Association, and shall be binding on all Owners and Occupants. The Bylaws, and any amendments thereto, shall be in the form approved by 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. However, such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and the Act.

5.6 Rules and Regulations. The Board shall have exclusive authority to approve and implement such reasonable Rules and Regulations as it deems necessary from time to time for the purpose of operating and administering the affairs 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, including but not limited to collected special assessments, 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.

5.8 Board Powers. In addition to the powers of the Board contained in the Governing Documents, the Board shall have the power to provide for reasonable procedures governing the

conduct of meetings and exercise any other powers as are reasonably necessary and proper for the governance and operation of the Association.

SECTION 6

ASSESSMENTS

6.1 General. Assessments shall be determined and assessed against the Units by the Board, in its discretion, subject to the limitations set forth in this Section 6, and the requirements of the Bylaws. Assessments shall include annual Assessments under Section 6.2, and may include special Assessments under Section 6.3 and limited allocation Assessments under Section 6.4. Annual and special Assessments shall be allocated among the Units, in accordance with the allocation formula set forth in Section 4.2. Limited allocation Assessments under Section 6.4 shall be allocated as set forth in that Section.

6.2 Annual Assessments. Annual Assessments shall be established and levied by the Board, subject only to the limitations set forth hereinafter. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared by all Units in accordance with the allocation set forth in Section 4.2. Annual Assessments shall be paid in equal monthly installments. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of those parts of the Units for which the Association is responsible. Except for the variations authorized by Section 6.4, and except for the premiums on insurance carried by the Association, the increase in the annual Assessment for any fiscal year shall not exceed five percent (5%) 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, or voting by mail. Written notice of the meeting shall be sent to all Owners not less than twenty-one (21) days nor more than thirty (30) days in advance of the meeting.

6.3 Special Assessments. In addition to annual Assessments, the Board may levy in any fiscal year a special Assessment against all Units equally for the purpose of defraying in whole or in part (i) the cost of any foreseen, unforeseen 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, and any fixtures or other property related thereto. Notwithstanding the foregoing, any special Assessment shall be subject to approval by the vote of sixty-seven (67%) of the Owners voting, in person or by proxy, at a meeting called for that purpose, or voting by mail. Written notice of the meeting shall be sent to all Owners not less than twenty-one (21) days nor more than thirty (30) days in advance of the meeting.

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

- a. Any assessment benefiting fewer than all of the Units may be assessed exclusively

against the Unit or Units benefited, equally, based upon the cost per Unit or on such other fair basis as the Board shall determine;

- b. Reasonable attorney fees and other costs incurred by the Association in connection with (i) the collection of assessments and (ii) the enforcement of the Governing Documents, the Act, or the Rules and Regulations, against an Owner or Occupant or their guests, may be assessed against the Owner's Unit;
- c. Fees, charges, late charges, fines and interest may be assessed as provided in Section 14;
- d. Assessments levied under Section 515B.3-116(a) of the Act to pay a judgment against the Association may be levied only against the Units existing at the time the judgment was entered, in proportion to their Common Expense liabilities;
- e. If any damage to a Unit is caused by the act or omission of any Owner or Occupant, or their guests, the Association may assess the costs of repairing the damage, or any increase in insurance rates directly attributable to the act or omission, exclusively against the Owner's Unit to the extent not covered by insurance;
- f. If any Assessment or installment of an Assessment becomes more than thirty (30) days past due, then the Association may, upon ten (10) days written notice to the Owner, declare the entire amount of the Assessment immediately due and payable in full; and
- g. If Common Expense liabilities are reallocated for any purpose authorized by the Act, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities;

Assessments levied under this Section 6.4., may, at the Board's discretion, be assessed as part of, or in addition to, other Assessments levied under Section 6.

6.5 Liability of Owners for Assessments. The personal obligation of an Owner to pay Assessments shall commence at the time at which the Owner acquires title to the Unit. The Owner at the time an Assessment is due and 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 Assessments by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the 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 14 in addition to any remedies provided elsewhere in the Governing Documents, The Act, the Rules and Regulations,

or by law, for the purpose of enforcing its rights hereunder. Notwithstanding the foregoing, and at the discretion of the Board, the President, the Treasurer, the Landscape and Grounds Director, and the Architectural Director of the Association, may be exempted from the payment of their annual Assessments or installments thereof, or the Association shall pay their annual Assessments, pursuant to Section 7.8 of the Bylaws.

6.6 Assessment Lien. The Association has a lien on a Unit for any Assessment levied against that Unit from the time the Assessment becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. Fees, charges, late charges, fines, attorney fees and interest charges imposed by the Association pursuant to Section 515B.3-102(a)(10), (11) and (12) of the Act are liens, and are enforceable as Assessments, under this Section. 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. The release of the Property from the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

6.7 Foreclosure of Lien; Remedies. A lien for Assessments may be foreclosed against a Unit under the laws of the state of Minnesota (i) by action, or (ii) by advertisement. The Association shall have the power of sale to foreclose the lien in the same manner as 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 the acceptance or assertion of any interest in the Unit, grants to the Association a power of sale and full authority to accomplish the foreclosure. The Association shall, in addition, 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. All of the remedies listed herein shall be cumulative.

6.8 Lien Priority; Foreclosure. A lien for Assessments is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the Original Declaration, (ii) any first mortgage on the Unit, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, if (1) a first mortgage on a Unit is foreclosed, (2) the first mortgage was recorded on or after the date of recording of this Declaration, and (3) 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 levied pursuant to Sections 515B.3-115(a), (h)(1) to (3), (i), and (l) of the Act which became due, without acceleration, during the six (6) months immediately preceding the first day following the end of the Owner's period of redemption.

6.9 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 released. Any seller or buyer shall be entitled to a statement, in recordable form, from the Association setting forth the amount of the unpaid Assessments against the Unit, including all Assessments payable in the Association's current fiscal year, which statement shall be binding on the Association, seller and buyer.

6.10 Interest on Delinquent Assessments. All Assessments shall be due on the first day of each month. Assessments not paid on or before the first day of each month shall accrue interest on the unpaid balance at the greater of the rate of 8% per annum or the highest rate allowed by Minnesota law at the time the outstanding amount is due.

6.11 Governmental Assessments. If a governmental assessment or other charge is levied against any Units for improvements to roadways, utilities or other infrastructure improvements serving the Property, the Association shall have authority to allocate and levy such assessments or charges equally against all Units, notwithstanding the fact that the levy made by the municipality or other governmental authority affects only certain of the Units.

SECTION 7

RESTRICTIONS ON USE OF PROPERTY

All Owners and Occupants, and all secured parties, by their acceptance or assertion of an interest in or lien on 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 part of the Property may be subdivided or partitioned without the prior written approval of all Owners and secured parties holding first mortgages on the Units, and any governmental authority having jurisdiction over the Property;

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 7.4. The number of occupants per Dwelling shall be restricted in accordance with the Building Officials and Code Administration (BOCA) occupancy restrictions. Any lease of a Unit (except for occupancy by

guests with the consent of the Owner) for a period of less than seven (7) days, or any occupancy which includes services customarily furnished to hotel guests, shall be presumed to be for transient purposes;

7.4 Business Use Restricted. No business, trade, occupation or profession of any kind, whether carried on for profit or otherwise, shall be conducted, maintained or permitted on the Property except as follows:

- a. An Owner or Occupant residing in a Unit may maintain a home occupation in such Unit and handle matters relating to such home occupation by telecommunications or correspondence therefrom; provided, that such uses are incidental to the residential use; do not involve physical alteration of the Unit visible from the exterior; are in compliance with all governmental laws, ordinances, and regulations; and do not involve any observable business activity such as signs, advertising displays, bulk mailings, regular deliveries, or pedestrian or vehicular traffic to and from the Unit by customers or employees; and
- b. The Association may maintain offices on the Property for management and related purposes;

7.5 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association, and subject to the following conditions: (i) that no Unit shall be leased for transient or hotel purposes, (ii) that no Unit may be subleased, (iii) that all leases shall be in writing with a copy of the lease provided to the Association, and (iv) that all leases shall provide that they are subordinate and subject to the provisions of the Governing Documents, the Act, and the Rules and Regulations, 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;

7.6 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 related uses as may be authorized in writing by the Association. Garages shall not be converted to other uses or used for storage or other purposes which would prevent the parking of at least one (1) automobile in the garage. 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 without notice and assess all associated costs against the offending Unit;

7.7 Animals. No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. However, the Board shall have the exclusive authority to prohibit, or to allow and regulate, by Rules and Regulations, the keeping of animals on the Property. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans. The Board's authority under this Section 7.7 may be exercised so as to permit or

prohibit different types of animals, but those animals which are permitted (if any) shall be limited to common domestic housepets such as dogs, cats, fish, birds and the like;

7.8 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;

7.9 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;

7.10 Alterations. Subject to Section 8.5, no alterations (as defined in Section 8) shall be made, or caused or allowed to be made, by any Owner or Occupant, or their guests, on the exterior parts of any Unit, or in the structure of any 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 judge of whether the criteria are satisfied;

7.11 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;

7.12 Signs. No signs of any kind shall be displayed to the public view on any Unit except one (1) sign of not more than five (5) square feet advertising the Property for sale or rent, which sign shall be placed in a location approved by the Board. Notwithstanding the foregoing, the Board shall have the exclusive authority to regulate by Rules and Regulations, the use or display of signs on the Property. Further, all signs of any kind must comply with all ordinances of the City of Bloomington;

7.13 Access to Units. In case of emergency, the Units and any improvements thereon are subject to entry, without notice and at any time, by an officer or member of the Board of the Association, by the Association's management agents or by any public safety personnel. Entry is also authorized for maintenance purposes under Sections 9 and 13 and for enforcement purposes under Section 14;

7.14 Ponds, Wetlands and Trees. Ponds, marshes, wetland areas, vegetation and trees, located on the Property, whether natural or otherwise, shall be maintained in substantially the same condition as originally established or constructed, subject only to (i) changes authorized by the Association consistent with all statutes, requirements, rules and regulations imposed on such areas and items by governmental authorities having jurisdiction and (ii) the prior approval of any such governmental authorities, if required. No cutting, mowing, trimming, draining, dredging or other

alteration of such areas and items shall be permitted, except as authorized by this Section;

7.15 Delegation of Use. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of their Unit to persons living in the Unit pursuant to a legal right of possession, other than lessees or tenants; provided, that such persons shall be subject to the Governing Documents, the Act, and Rules and Regulations. Unless otherwise authorized in writing by the Board, if persons other than the Owner or the Owner's family (e.g., lessees) have been given the legal right to possess the Owner's Unit, then those persons shall have the right to use any common recreation facilities, parking, storage and other amenities on the Property, if any, in lieu of the Owner and the Owner's family;

7.16 Vehicles, Trailers, Watercraft and Other Personal Property. The outside storage, parking, repair and restoration of vehicles, trailers, watercraft and other personal property shall be governed by the Governing Documents and the Rules and Regulations; and

7.17 Traffic Regulations. All vehicular traffic on the Property shall be subject to federal, state and local laws and regulations. All vehicles operated on the Property shall be operated in a careful, prudent, and safe manner; and with due consideration for the rights of all Owners and Occupants.

SECTION 8

ARCHITECTURAL CONTROL

8.1 Restrictions on Alterations. One of the purposes of this Declaration is to ensure that those parts of the Units which are visible from the exterior be kept architecturally attractive and uniform in appearance. Therefore, except as set forth in Section 8.5, the following restrictions and requirements shall apply to alterations on the Property:

- a. Except as expressly provided in this Section, no temporary or permanent structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, antenna or other type of sending or receiving apparatus, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, sports equipment, nor any other exterior improvements to or alteration of any Dwelling or any other part of a Unit, or which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected or maintained, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials and locations of the alterations shall have been approved in writing by the Board or a committee appointed by it;
- b. The Board may appoint, supervise and establish an architectural committee, and specifically delegate to it part or all of the functions which the Board exercises under this Section 8, in which case the references to the Board shall refer to the

architectural committee where appropriate. The architectural committee shall consist of at least three Members, and be subject to the supervision of the Board;

- c. The Board shall establish the criteria for approval of alterations, which 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, (v) compliance with governmental laws, codes and regulations, and (vi) substantial preservation of other Owners' sight lines. The Board, or the appointed architectural committee, if authorized by the Board, shall be the sole judge of whether such criteria are satisfied; and
- d. A file of the resolutions approving the alterations shall be maintained permanently as a part of the Association's records.

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

- a. Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board, shall be submitted to the Board at least forty-five (45) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval;
- b. The Board shall give the Owner written notice of approval or disapproval. If the Board fails to approve or disapprove within forty-five (45) days after receipt of said plans and specifications and all other information requested by the Board, then approval shall be deemed to be granted, provided that the alterations are done in accordance with the plans, specifications and related information which are submitted; and
- c. If no request for approval is submitted, approval shall be deemed to be denied.

8.3 Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section, and shall be entitled to recover from the Owner causing or permitting the violation all attorney fees and costs of enforcement incurred by the Association, whether or not a legal action is started. Such attorney 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.

8.4 Hold Harmless. The Owner who causes an alteration to be made, regardless of whether the alteration is approved by the Board, shall be solely responsible for the construction standards and specifications relating to the alteration, and the construction work. The Owner, and not the Association, is responsible for determining whether any alteration is in violation of any restrictions imposed by any governmental authority having jurisdiction over the Property. The Owner shall hold the Association harmless and indemnify the Association, and its officers and directors, from and against any expenses, claims, damages, losses or liabilities, including without limitation attorney fees and costs of litigation, arising out of (i) any alteration which violates any governmental laws, codes, ordinances or regulations, (ii) the adequacy of the specifications for construction of the alterations and (iii) the construction of the alterations.

8.5 Exemptions. Notwithstanding the requirements set forth in this Section 8 (except Section 8.4): the following antennas may be installed on a Unit, as permitted by applicable federal law: (i) one (1) antenna one meter or less in diameter for the purpose of receiving direct broadcast/satellite service or video programming services, or (ii) any antenna for receiving television broadcast signals; provided, that the Board or an architectural committee appointed by it may require that the antenna be installed so as to minimize its visibility from the front of the Unit and otherwise camouflage its appearance, unless such requirements would unreasonably delay installation, or unreasonably increase the cost of installation, maintenance or use of the antenna, or preclude reception of an acceptable quality signal. Such installation shall be subject to all governmental laws, codes and ordinances. The Board shall have authority to impose further, reasonable requirements consistent with laws, codes and ordinances. The Owner is responsible for all maintenance and repair of any antenna installed on a Unit.

SECTION 9

MAINTENANCE

9.1 Maintenance by Association. For the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall provide for exterior maintenance, repair, and replacement (collectively referred to as "maintenance") upon the Dwellings and Units as follows: (i) maintenance of roofs and roof decking, (including related fixtures such as shingles, vents, and flashing); exterior bricks of chimney (excluding cleaning or replacing flues) (ii) maintain or replace privacy wall between decks, paint deck railings and supports, replace rotted deck floor boards which must be reported by Homeowner to the Architectural Control Director on the proper form; (iii) paint, maintain and repair garage doors (except hardware), exterior siding, soffits, fascia, trim, and other building surfaces; (iv) maintain and repair driveways, sidewalks, steps and railings; and (v) provide for lawn, shrub and tree maintenance on the yard areas of all Units; except for watering of lawns and other vegetation; (vi) provide snow removal of driveways, sidewalks and steps. The Association's maintenance obligations shall exclude foundations and foundation walls, dwelling walls and other structural components, floors, ceilings, and interior parts of the Dwellings, mechanical, electrical, plumbing and sewer systems, patio doors/screens and glass within patio doors, patios, entry doors (except for the storm door), door hardware, air conditioning, heating and ventilation supports and equipment,

glass and window frames, window screens and any other items not specifically referred to in this Section, unless otherwise approved under Section 9.2. The Association shall have easements as described in Section 13 to perform its obligations under this Section 9. The Association may, by Rules and Regulations, further define its obligations within the categories of maintenance obligations set forth in this Section 9.1. Subject to Section 6.4, all maintenance provided by the Association pursuant to Section 9.1, shall be funded by annual Assessments under Section 6.2.

9.2 Optional Maintenance by Association. In addition to the maintenance described in Section 9.1, the Association may, (i) with the approval of a majority of the total votes in the Association cast in person, or by proxy, at a meeting duly called for such purposes, undertake to provide additional exterior maintenance to the Units or Dwellings, the cost of which shall be assessed as part of the annual or special Assessments pursuant to Sections 6.2 or 6.3, and (ii) upon the agreement of an Owner, repair or replace other components of the Owner's Dwelling, the cost of which shall be assessed against the Owner's Unit pursuant to Section 6.4.

9.3 Maintenance by Owner. Except for the exterior maintenance required to be provided by the Association under Section 9.1 or 9.2, all other maintenance of the Dwellings and Units shall be the sole responsibility, obligation 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 maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any maintenance which the responsible Owner fails to or improperly performs and assess the Unit and the Owner for the cost thereof. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit.

9.4 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 his or her 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 the Unit and any improvements thereon to do so), and the cost thereof may be charged against the Owner and assessed against the Unit of the Owner responsible for the damage. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit. In the case of party walls between Dwellings, the Owners of the affected Dwellings shall be liable as provided in Section 10.

SECTION 10

PARTY WALLS

10.1 General Rules of Law to Apply. Each wall built as part of the original construction of the Dwellings and located on the boundary line between Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

10.2 Repair and Maintenance. The Owners of the Units which share the party wall shall be responsible for the maintenance, repair and replacement of said party wall in equal proportions; provided, (i) that any maintenance, repair or replacement necessary due to the acts or omissions of a certain Owner or Occupant sharing such party wall shall be paid for by such Owner, and (ii) that the Association may contract for and supervise the repair of damage caused by an Owner or Occupant and assess the Owners for their respective shares of the cost to the extent not covered by insurance. Such cost shall be a personal obligation of the Owner(s) and a lien against the Owner's Unit(s).

10.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has use of the party wall may, with the consent of the Association, restore it, and the other Owner shall promptly reimburse the Owner who restored the party wall for his or her share of the cost of restoration thereof; provided, however, that the cost of restoration resulting from destruction or other casualty resulting from the acts or omissions of certain Owners shall be the financial responsibility of such Owners, and the Association may assess the responsible Owners for their share of the costs, without prejudice to the right of an Owner to recover a larger contribution from the other Owner. Insurance claims shall be made promptly following any casualty.

10.4 Weatherproofing. Notwithstanding any other provision of this Section, any Owner who, by his or her negligent or willful act, causes a party wall to be exposed to the elements shall bear the whole cost of the repairs necessary for protection against such elements.

10.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Unit and shall pass to such Owner's assigns and successors in title.

10.6 Encroachments. Dwellings may in fact be originally so placed or located because of survey difficulties or inaccuracies that the center of a party wall is not centered in fact on a dividing line. During the life of such Dwelling, the offended Unit shall be fully subject to an easement for maintenance of the wall as so located and for all purposes, the wall shall be treated as if centered precisely upon the Unit lot.

10.7 Arbitration. In the event of any dispute arising concerning a party wall, and if the same is not resolved within thirty (30) days of the event causing the dispute, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association, upon the written demand of the Association or any Owner whose Dwelling shares the party wall. Each party agrees that the decision of the arbitrator(s) shall be final and conclusive of the questions involved. The fees of the arbitrator(s) shall be shared equally by the parties, but each party shall pay its own attorney fees and other costs incurred in the arbitration. Notwithstanding the foregoing, if the arbitrator(s) determine that the demand for arbitration is made in bad faith, is frivolous, or is otherwise without a reasonable basis, then the arbitrator(s) may order that the party making the demand pay part or all of the other party's or parties' attorney fees and costs for participation in the

arbitration.

SECTION 11

INSURANCE

11.1 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 in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property, 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. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverages and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the Federal Housing Administration ("FHA"), the U.S. Department of Veterans' Affairs ("VA"), or the Federal National Mortgage Association ("FNMA") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA, VA or FNMA, obligating the Association to keep certain specified coverages or endorsements in effect;
- b. Comprehensive public liability insurance covering the Association's operation and maintenance of the Property, with minimum limits of one million dollars (\$1,000,000.00) 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 Property. The policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association or other Owners or Occupants. The policy shall include such additional endorsements, coverages and limits with respect to such hazards as may be required by the regulations of the FHA, VA or FNMA as a precondition to their insuring, purchasing or financing a mortgage on a Unit;
- 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. 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 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 such other greater amount as may be required by the FHA, VA, or FNMA. 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. Workers' Compensation insurance as required by law;
- e. Directors' and officers' liability insurance with such reasonable limits and coverages as the Board shall determine from time to time; and
- f. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

11.2 Premiums; Deductibles. Except as provided in Section 6.4, insurance premiums shall be assessed and paid as an annual Assessment, payable in equal monthly installments. The Association may, in the case of a claim for damage to a Unit or Units, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly, if it is determined the said loss was caused by the Homeowner's negligence. Also, the Association may assess any other loss not covered by insurance, affecting a Unit against the Unit or Units affected.

11.3 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, including Eligible Mortgagees, which suffer loss. The Association, or any insurance trustee selected by it, shall have exclusive authority to negotiate, settle and collect upon any claims or losses under any insurance policy maintained by the Association. Each Owner and secured party is an insured person under the policy with respect to liability arising out of the Owner's membership in the Association.

11.4 Waiver of Subrogation. All policies of insurance carried by the Association shall contain waivers of subrogation by the insurer against the Association, or an Owner, members of the Owner's household, officers or directors, as applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured.

11.5 Cancellation; Notice of Loss. All policies of property insurance and comprehensive liability insurance maintained by the Association shall provide that the policies shall not be canceled or substantially modified, for any reason, without at least sixty (60) days prior written notice to the

Association, to the FHA, VA or FNMA (if applicable), all of the insureds and all Eligible Mortgagees.

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

11.7 No Contribution. All policies of insurance maintained by the Association shall be the primary insurance where there is other insurance in the name of the Owner covering the same property, and may not be brought into contribution with any insurance purchased by Owners or their Eligible Mortgagees.

11.8 Effect of Acts Not Within Association's Control. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon (i) any act or omission of an Owner or Eligible Mortgagee, unless acting within the scope of authority on behalf of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

11.9 Owner's Personal Insurance. Each Owner may obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property and/or personal liability. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association. The Association shall have the right to review any Owner's personal insurance coverage, which an Owner must submit to the Association within ten (10) days of a demand in writing by the Association.

SECTION 12

RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN

12.1 Reconstruction. In the event of a casualty on or to any portion of the Property, the obligations and procedures for the repair, reconstruction or disposition of the Property following damage or destruction thereof shall be governed by the Act. Any repair and reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved, and be approved pursuant to Section 8. Notice of substantial damage or destruction to any portion of the Property shall be given as provided in Section 16.9.

12.2 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; provided (i) that notice shall be given as provided in Section 16.9, (ii) that the Association shall be the attorney-in-fact of, and have authority to act on behalf of, the Owners in all proceedings, negotiations and

settlement of claims, and (iii) that any awards or proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and the mortgagees of their Units, as their interests may appear. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Governing Documents, as their interests may appear.

12.3 Association's Authority. In all cases involving reconstruction, condemnation, eminent domain, termination or liquidation of West Park Hills, the Association shall have authority to act on behalf of the Owners in all proceedings, negotiations and settlement of claims. All proceeds shall be payable to the Association to hold and distribute for the benefit of the Owners and their mortgage holders, as their interests may appear, in accordance with the Act.

12.4 Termination and Liquidation. The termination of the common interest community, and the distribution of any proceeds therefrom, shall be governed by the Act. Any distribution of funds shall be made to Owners and their mortgage holders, as their interests may appear, as provided in the Act.

SECTION 13

EASEMENTS

13.1 General. Each Unit and the Common Elements and the rights of the Owners and Occupants therein, shall be subject to the appurtenant easements and rights granted and reserved in this Section 13.

13.2 Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants therein, shall be subject to the appurtenant easements and rights granted and reserved in this Section 13. 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 and any improvements thereon for the purposes of maintenance, repair, replacement and reconstruction of the Dwellings and other improvements located within the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.

13.3 Utility Easements. The Property shall be subject to non-exclusive, appurtenant easements in favor of the City of Bloomington, and all public utility companies and other utility providers for the installation, use, maintenance, repair and replacement of all utilities, including but not limited to, natural gas, electricity, cable TV and electronic or other method of communication, telephone, water, sewer, wells, and similar necessary or desirable services, and metering and control devices, installed from time to time, constructed as part of the development of the Property, or which are referred to in the Plat or otherwise described in this Declaration, the Declaration of Easements, 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 gas, sewer or water lines servicing other Units; provided that the utilities and services shall be installed, used, maintained and repaired so as not to interfere with the

use and quiet enjoyment of the Units by Owners and Occupants, nor affect the structural integrity of the Units or Dwellings. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utility vendors providing service to the Units for the installation and maintenance of utility lines, metering devices, and related equipment.

13.4 Emergency Access to Units. In case of emergency, all Units and any improvements thereon are subject to an easement in favor of the Association for access, without notice and at any time, by an officer or member of the Board, by the Association's management agents or by any public safety personnel. The Board may require that an Owner or Occupant leave keys to the Unit with another Owner of his or her choice and to advise the manager or Board of the location(s) of the keys, so as to allow access for emergencies when the Owner or Occupant is absent for extended periods.

13.5 Common Driveway Easements. The Units shall be subject to and benefited by Private Common Driveway easements for ingress and egress to and from each of the Units served by such driveways, as more fully described in any recorded Declaration of Easements. The Association may establish reasonable Rules and Regulations consistent with the Declaration of Easements regarding the operation and use of the easement areas.

13.6 Utility Easements. The Units shall be subject to and benefited by Utility Easements as more fully described in any recorded Declaration of Easements.

13.7 Private Yard Easements. Except as regulated by the Association pursuant to this Declaration, each Owner shall be entitled to the exclusive use and occupancy of the Private Yard Area within the Owner's Unit; provided, that other Owners shall be entitled to a visual easement over all Private Yard Areas, subject to and limited by the original structures erected thereon or added pursuant to Section 8.

13.8 Unit Easements. Except as herein provided, each owner shall be fully entitled to the use and occupancy of the area in his or her Unit to the exclusion of others except as indicated herein. The Association, generally, and the other Owners shall be entitled to a visual easement over the same.

13.9 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 except in emergency or exigent circumstances. 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 for purposes of maintenance, repair, replacement and reconstruction.

13.10 Easement for Encroachments. Each Unit, and the rights of the Owners and Occupants therein, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, decks, balconies, porches, patios, utility installations and other exterior fixtures and appurtenances (i) which are part

of the original construction of the adjoining Unit or the Property or (ii) which are added in compliance with Section 8. If there is an encroachment by a Dwelling, or other building or improvement located on a Unit, upon another Unit 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 has been approved and the proposed improvements constructed, as required by this Declaration. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.

SECTION 14

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

14.1 Entitlement to Relief. The Association may commence a 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.

14.2 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 (1) or more of the following actions against Owners and Occupants and/or their guests, who violate the law, provisions of the Governing Documents, the Rules and Regulations, any action by the Board, or the Act:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction;
- b. Impose reasonable late charges on each payment more than fifteen (15) days late of an Assessment or installment thereof. The amount of said late charge shall be determined by the Board on an annual basis. If no determination has been made, the

late charge shall be the amount of the last determination made by the Board;

- c. In the event of default of more than thirty (30) days in the payment of any Assessment or installment thereof, all remaining installments of Assessments assessed against the Unit owned by the defaulting Owner may be accelerated, and shall then be payable in full if all delinquent Assessments or installments thereof, together with all attorney fees, costs of collection, interest and late charges, are not paid in full prior to the effective date of the acceleration. Not less than ten (10) days advance written notice of the effective date of the acceleration shall be given to the defaulting Owner;
- 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 to vote when the Assessments due with respect to the Owner's Unit are past due. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents;
- f. Restore any portions of the Property 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 Owner's Unit;
- g. Enter any Unit 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 other 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 which is causing the violation; and
- h. Foreclose any lien arising under the provisions of the Governing Documents or under law, in any manner authorized by the Governing Documents or the Act.

14.3 Right to Hearing. In the case of imposition of any of the remedies authorized by Section 14.2.d., e., f. or g., the Board shall, upon written request of the offender, grant to the offender a hearing as contemplated by the Act. The hearing may be held before the Board or a committee of three (3) or more disinterested Owners appointed by the Board. The offender shall be given notice of the nature of the violation and of the right to a hearing, and at least ten (10) days within which to request a hearing. The hearing shall be scheduled by the Board/committee and held within thirty (30) days of receipt of the hearing request by the Board/committee, and with at least ten (10) days prior written notice to the offender. If the offending Owner fails to timely request a hearing or fails to appear at the hearing, then the right to a hearing shall be waived and the Board/committee may take such action as it deems appropriate. Hearings shall be conducted in a fair and equitable manner.

The decision of the Board/committee and the rules for the conduct of hearings established by the Board/committee shall be final and binding on all parties. The Board's/committee's decision shall be delivered in writing to the offender within ten (10) days following the hearing, if not delivered verbally or in writing to the offender at the hearing.

14.4 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/committee 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 Association's right to pursue any other remedies.

14.5 Cost of Proceedings and Attorney Fees. With respect to any collection measures, or any measures or 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, or whether or not in conjunction with a lawsuit, the Association may assess the Unit owned by the violator with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, attorney fees and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association. Such expenses shall also include any collection or contingency fees or costs charged to the Association by a collection agency or other Person acting on behalf of the Association in collecting any delinquent amounts owed to the Association by an Owner or Occupant. The assessment shall be the personal obligation of the Owner of the Unit and shall be a lien against the Owner's Unit.

14.6 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 by such insurance carried by an 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.

14.7 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, and/or Rules and Regulations and the Act as provided therein.

SECTION 15

AMENDMENTS

This Declaration may be amended by the approval of all of the following: (i) the Board, (ii)

Owners entitled to cast at least seventy-five percent (75%) of the total votes in the Association, and (iii) the percentage of eligible Mortgagees (based upon one (1) vote per first mortgage owned) required by Section 16 as to matters prescribed in Section 16. Consent of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the Bylaws. Consents of Eligible Mortgagees shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act, and 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. Owners shall cooperate to make available their Owners Duplicate Certificate of Title in connection with the recording of the amendment, if necessary.

SECTION 16

RIGHTS OF ELIGIBLE MORTGAGEES

Notwithstanding anything to the contrary in the Governing Documents, Eligible Mortgagees shall have the following rights and protections:

16.1 Consent to Certain Amendments. The written consent of at least fifty-one percent (51%) of the Eligible Mortgagees (based upon one (1) vote per first mortgage owned) shall be required for any amendment to the Governing Documents which causes any change in the following: (i) voting rights; (ii) Assessments, Assessment liens, or priority of Assessment liens; (iii) reserves for maintenance, repair and replacement of those parts of the Property which the Association is obligated to maintain; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in, or rights to use, the Property; (vi) redefinition of any Unit boundaries; (vii) convertibility of Units into common elements or vice versa; (viii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (ix) insurance or fidelity bonds; (x) leasing of Units; (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association to establish self management when professional management is in effect as required previously by the Governing Documents or an Eligible Mortgagee; (xiii) restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xiv) any action to terminate the legal status of the common interest community after substantial destruction or condemnation occurs; or (xv) any provisions that expressly benefit Eligible Mortgagees, insurers or guarantors.

16.2 Consent to Certain Actions. The written consent of at least sixty-seven (67%) of the Eligible Mortgagees (based upon one (1) vote per first mortgage owned) shall be required to (i) abandon or terminate the common interest community; (ii) change the allocations of voting rights or Common Expense obligations; (iii) partition or subdivide a Unit except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Property other than Unit sales; or (v) use hazard insurance proceeds for purposes other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

16.3 Consent to Subdivision. No Unit may be partitioned or subdivided without the prior written approval of the Owner and Eligible Mortgagee thereof, and the Association.

16.4 No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his or her Unit shall not be subject to any right of first refusal in favor of any mortgagee or similar restrictions.

16.5 Priority of Lien. Any holder of a first mortgage on a Unit, or any purchaser of a first mortgage at a foreclosure sale, that comes into possession of a Unit by foreclosure of the first mortgage or by deed or assignment in lieu of foreclosure, takes the Unit free of any claims for unpaid Assessments or any other charges or liens imposed against the Unit by the Association which have accrued against such Unit prior to the acquisition of possession of the Unit by said first mortgagee holder or purchaser; (i) except as provided in Section 6.8 and the Act and (ii) except that any unreimbursed assessments or charges may be reallocated among all Units in accordance with their Common Expense obligations.

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

16.7 Priority for Condemnation Awards. No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit. The Association shall give written notice to all Eligible Mortgagees of any condemnation or eminent domain proceeding affecting the Property promptly upon receipt of notice from the condemning authority.

16.8 Access to Books and Records/Audit. Eligible Mortgagees shall have the right to examine the books and records of the Association upon reasonable notice during normal business hours, and to receive free of charge, upon written request, copies of the Association's annual reports and other financial statements. Financial statements, including those which are audited, shall be available within one hundred-twenty (120) days of the end of the Association's fiscal year. If a request is made by FNMA or any institutional guarantor or insurer of a mortgage loan against a Unit, for an audit of the Association's financial statements for the preceding year, the Association shall cause an audit to be made at the requesting parties' expense and deliver a copy to the requesting party.

16.9 Notice Requirements. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a mortgage on a Unit, and the Unit number or address, the Association shall use its best efforts to provide timely written notice of:

- a. a condemnation loss or any casualty loss which affects a material portion of the Property or the Unit securing the mortgage;

- b. a sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of a Unit on which it holds a mortgage;
- c. a lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- d. a proposed action which requires the consent of a specified percentage of Eligible Mortgagees.

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 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 upon mailing if properly addressed with postage prepaid and deposited in the United States Mail.

17.4 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the Bylaws or any Rules and Regulations, the Act shall control unless it permits the documents to control. As among the Declaration, Bylaws and Rules and Regulations, the Declaration shall control, and as between the Bylaws and Rules and Regulations, the Bylaws shall control.

17.5 Governing Law. All Governing Documents and all matters related to the Association shall be governed by Minnesota law.

17.6 Duration of Covenants. The covenants, conditions, restrictions, easements, liens and charges contained in or referred to in this Declaration shall be perpetual, subject only to termination as provided in this Declaration or by court order.

17.7 Requirements for Management Agreements. The term of any agreement for professional management of the Property may not exceed two (2) years. Any such agreement must provide at a minimum for termination without penalty or termination fee by either party (i) with cause upon thirty (30) days prior written notice, and (ii) without cause upon ninety (90) days prior written notice.

IN WITNESS WHEREOF, the Association, and Owners holding seventy-five percent (75%) or more of the total votes in the Association, have approved this Declaration, effective as of the date of recording, all in accordance with the requirements of the Original Declaration and in accordance with the requirements of the Act.

**WEST PARK HILLS HOME OWNERS
ASSOCIATION**

By: Sandra L. Escareno
Its: President

STATE OF MINNESOTA)
)ss.
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 10th day of July, 2000, by Sandra L. Escareno, the President of West Park Hills Home Owners Association, a Minnesota non-profit corporation, on behalf of the corporation.

Carol A. Pelzel
Notary Public

This instrument was drafted by:
MILLER & KELLERMEIER, P.A.
Attorneys at Law
Centennial Lakes Office Park
7701 France Avenue South
Suite 625
Edina, MN 55435
(612) 820-1155



COMMON INTEREST COMMUNITY NO. _____

WEST PARK HILLS

**EXHIBIT A TO AMENDED AND RESTATED DECLARATION
SCHEDULE OF UNITS/LEGAL DESCRIPTION OF PROPERTY**

- Lots 1-20, Block 1, West Park Hills, Hennepin County, Minnesota;
- Lots 1-40, Block 1, West Park Hills Plat Three, Hennepin County, Minnesota;
- Lots 1-32, Block 1, West Park Hills Plat Four, Hennepin County, Minnesota;
- Lots 1-32, Block 1, West Park Hills Plat Six, Hennepin County, Minnesota;
- Lots 1-32, Block 1, West Park Hills Plat Seven, Hennepin County, Minnesota.

Note: Each Lot constitutes a Unit, as defined in this Declaration.

RAK3:1189-15.a115a

rev. 5/11/00

