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Olmsted County, Minnesota

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W MARK KRUPSKI-Asst Co Recorder, by \_\_\_\_\_ Deputy

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ROCHESTER, MN 55904

**COMMON INTEREST COMMUNITY NO. 307  
Planned Community**

**THE GARDENS**

**DECLARATION**

*Same as  
A-1101243*

This Declaration is made in the County of Olmsted, State of Minnesota, on this 25<sup>th</sup> day of May, 2006, by The Gardens Manufactured Home Community LLC, a Minnesota limited liability company, (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 The Gardens as a planned community under the Act.

WHEREAS, Declarant is the owner of certain real property located in Olmsted County, Minnesota, legally described in Exhibit A attached hereto, and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act as a planned community; and

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

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

THEREFORE, Declarant makes this Declaration and submits the Property to the Act as a planned community under the name "The Gardens," initially consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth herein, all of which shall be binding upon all

Persons owning or acquiring any right, title or interest therein, and their heirs, personal representatives, successors and assigns.

## SECTION 1. DEFINITIONS

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

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

1.2. "Assessments" shall mean and refer to all assessments levied by the Association pursuant to Section 6 of this Declaration, including annual assessments, special assessments and limited allocation assessments.

1.3. "Association" shall mean The Gardens Owners' Association Inc., a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the state of Minnesota and Section 515B.3-101 of the Act, whose members consist of all Owners.

1.4. "Board" shall mean the Board of Directors of the Association as provided for in the By-Laws.

1.5. "By-Laws" shall mean the By-Laws governing the operation of the Association, as amended from time to time.

1.6. "Common Elements" shall mean all parts of the Property except the Units, including all improvements thereon, owned by the Association for the common benefit of the Owners and Occupants. The Common Elements are legally described in Exhibit B attached hereto.

1.7. "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 Assessments and items otherwise identified as Common Expenses in the Declaration or By-Laws.

1.8. "Dwelling" shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single-family residence, and located within the boundaries of a Unit. The Dwelling includes any garage attached thereto or otherwise included within the boundaries of the Unit in which the Dwelling is located.

1.9. "Eligible Mortgagee" shall mean any Person owning a mortgage on any Unit, which mortgage is first in priority upon foreclosure to all other mortgages that encumber such Unit, and which has requested the Association, in writing, to notify it regarding any proposed action which requires approval by a specified percentage of Eligible Mortgagees.

1.10. "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and By-Laws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.

1.11. "Limited Common Elements" shall mean a portion of the Common Elements allocated by the Declaration or by operation of Section 515B.2-102(d) or (f) of the Act for the exclusive use of one or more but fewer than all of the Units.

1.12. "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.

1.13. "Occupant" shall mean any person or persons, other than an Owner, in possession of or residing in a Unit.

1.14. "Owner" shall mean a Person who owns a Unit, but excluding contract for deed vendors, mortgagees 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.

1.15. "Person" shall mean a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.

1.16. "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.

1.17. "Property" shall mean all of the real property submitted to this Declaration, now or in the future, including the Dwellings and all other structures and improvements located thereon. The Property is legally described in Exhibit A attached hereto.

1.18. "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.6.

1.19. "Unit" shall mean any platted lot subject to this Declaration upon which a Dwelling is located or intended to be located, as described in Section 2.1 and shown on the Plat, including all improvements thereon, but excluding the Common Elements.

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

## **SECTION 2. DESCRIPTION OF UNITS, BOUNDARIES AND RELATED EASEMENTS**

2.1. Units. There are one hundred twenty-nine (129) Units. All Units are restricted exclusively to residential use. Each Unit constitutes a separate parcel of real estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference. 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, 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 a perpetual appurtenant easement for access to a public street or highway on or across those portions of the Common Elements paved for use as streets, as shown on the Plat, subject to any restrictions set forth in the Governing Documents or the Rules and Regulations.

2.4. Use and Enjoyment Easements. Each Unit shall be the beneficiary of perpetual appurtenant easements for use and enjoyment on and across the Common Elements, and for use and enjoyment of any Limited Common Elements allocated to the Unit, subject to any restrictions authorized by the Governing Documents.

2.5. Utility and Maintenance Easements. Each Unit shall be subject to and shall be the beneficiary of perpetual appurtenant easements for all services and utilities servicing the Units and the Common Elements, and for maintenance, repair and replacement as described in Section 9.

2.6. Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of perpetual appurtenant easements for encroachments as described in Section 12.

2.7. Declarant's Easements. Declarant shall have and be the beneficiary of easements for construction and sales activities as described in Section 16.

2.8. Recorded Easements. The Property shall be subject to such other easements as may be recorded against it or otherwise shown on the Plat.

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

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

2.11. 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 a lease or otherwise, does not have the use and other easements rights in the Property during such delegated occupancy, except as a guest of an Owner or Occupant or in connection with the inspection of the Unit or recovery of possession of the Unit from the Occupant pursuant to law.

### SECTION 3. COMMON ELEMENTS, LIMITED COMMON ELEMENTS AND OTHER PROPERTY

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

- a. All of the Property not included within the Units constitutes Common Elements. The Common Elements include, but are not limited to, all areas and items listed in this Section 3, and those parts of the Property described in Exhibit B attached hereto or designated as Common Elements on the Plat or in the Act. The Common Elements are owned by the Association for the benefit of the Owners and Occupants.
- b. The Common Elements shall be subject to (i) certain easements as described in Section 2, Section 12, and Section 16; (ii) the rights of Owners and Occupants in Limited Common Elements appurtenant to their respective Units and (iii) the right of the Association to establish reasonable Rules and Regulations governing the use of the Property.
- c. Except as otherwise expressly provided in the Governing Documents, all maintenance, repair, replacement, management and operation of the Common Elements shall be the responsibility of the Association.
- d. Common Expenses for the maintenance, repair, replacement, management and operation of the Common Elements shall be assessed and collected from the Owners in accordance with Section 6.

3.2. Limited Common Elements. The Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Occupants of the Units to which they are allocated. The rights to the use and enjoyment of the Limited Common Elements are automatically conveyed with the conveyance of such Units. The Limited Common Elements are described and allocated to the Units, as follows:

- a. Those items or areas designated as Limited Common Elements on the Plat or by the Act.
- b. Chutes, flues, ducts, pipes, wires, conduit or other utility installations, bearing walls, bearing columns, or any other components or fixtures lying partially within and partially outside the boundaries of a Unit, and serving only that Unit, are allocated to the Unit they serve. Any portion of such installations serving or affecting the function of more than one Unit or any portion of the Common Elements is a part of the Common Elements, but is not a Limited Common Element.
- c. Improvements, if any, such as decks, patios, porches, balconies, shutters, awnings, window boxes, doorsteps, stoops, perimeter doors and windows, constructed as part of the original construction to serve a single Unit, and replacements and modifications thereof authorized pursuant to Section 8,

if located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

- d. Heating, ventilating or air conditioning equipment serving only a certain Unit or Units, and located wholly or partially outside the Unit or Unit's boundaries, are allocated to the Unit or Units served by such equipment.

3.3. Annexation of Other Property. Other real property may be annexed to the common interest community as Units or Common Elements, or any combination thereof, and subjected to this Declaration, with the approval of (i) Owners (other than Declarant) of Units to which are allocated at least 67 percent of the votes in the Association and (ii) Declarant so long as Declarant owns any unsold Unit for sale.

#### **SECTION 4. ASSOCIATION MEMBERSHIP; RIGHTS AND OBLIGATIONS**

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

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

4.2. Voting and Common Expenses. Voting rights and Common Expense obligations are allocated equally among the Units, subject to Sections 6.4 and 6.7.

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. However, if there are multiple Owners of a Unit, only the Owner or other Person designated pursuant to the provisions of the By-Laws may cast such vote. The voting rights of Owners are more fully described in the By-Laws.

#### **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 Common Elements. The Association shall have all powers described in the Governing Documents, the Act and the statute under which the Association 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 Common Elements for the purposes of (i) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Governing Documents and the Rules and Regulations, (ii) maintaining, repairing and replacing the Common Elements and (iii) preserving the value, and the architectural uniformity and character of the Property.

5.3. Binding Effect of Actions. All agreements and determinations made by the Association in accordance with the powers and voting rights established by the Governing Documents or the Act shall be binding upon all Owners and Occupants, and their lessees, guests, heirs, personal representatives, successors and assigns, and all secured parties as defined in the Act.

5.4. By-Laws. The Association shall have By-Laws. The By-Laws shall govern the operation and administration of the Association, and shall be binding on all Owners and Occupants.

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 by law.

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 remaining after payment of or provision for Common Expenses and reserves shall be credited against future assessments or added to reserves, as determined by the Board.

## SECTION 6. ASSESSMENTS

6.1. General. Assessments shall be determined and assessed against the Units by the Board, in its discretion; subject to the requirements and procedures set forth in this Section 6, and the requirements of the By-Laws. 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 equally, in accordance with the allocation formula set forth in Section 4.2. Limited Allocation Assessments under Section 6.4 shall be allocated to Units as set forth in that Section.

6.2. Annual Assessments. Annual Assessments shall be established and levied by the Board, subject to the limitations set forth hereafter. Each annual Assessment shall cover all of the anticipated Common Expenses of the Association for that year which are to be shared equally by all Units in accordance with the allocation set forth in Section 4.2. Annual Assessments shall be payable in equal monthly installments. Annual Assessments shall provide, among other things, for an adequate reserve fund for the maintenance, repair and replacement of the Common Elements and those parts of the Units for which the Association is responsible. Except for the variations authorized by Section 6.4, and except for premiums on insurance carried by the Association, the increase in the annual Assessment for any fiscal year shall not exceed the greater of (i) \$120.00, (ii) 5 percent of the previous year's annual Assessment or (iii) the percentage increase in the National Bureau of Labor Statistics Consumer Price Index for the Minnesota Twin City Metropolitan Area (or comparable index if not available) for the most recent available year, multiplied times the total annual Assessment for the Association's previous year; unless the increase is approved by the vote of 67 percent of those Owners (other than Declarant) voting, in person or by proxy, at a meeting called for that purpose, or voting by mail. Notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting. The foregoing restriction shall apply only during the period of Declarant control of the Association, as described in Section 16.

6.3. Special Assessments. In addition to annual Assessments, and subject to the limitations set forth hereafter, the Board may levy in any Assessment year a special Assessment against all Units equally in accordance with the allocation formula set forth in Section 4.2. Special assessments shall be used for the purpose of defraying in whole or in part the cost of any unforeseen and unbudgeted Common Expense. Notwithstanding the foregoing, any special Assessment shall be subject to approval by the vote of a 67 percent of the Owners voting, in person or by proxy, at a meeting called for that purpose, or voting by mail. Notice of the meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting. The foregoing restriction shall apply only during the period of Declarant control of the Association, as described in Section 16.

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 associated with the maintenance, repair, or replacement of a Limited Common Element may be assessed exclusively against the Unit or Units to which that Limited Common Element is assigned.



- b. Any Assessment or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Unit or Units benefited.
- c. The costs of insurance may be assessed in proportion to the square footage or actual cost per Unit, and the costs of utilities may be assessed in proportion to usage.
- d. Reasonable attorneys' 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.
- e. Late charges, fines and interest may be assessed as provided in Section 13.
- f. 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.
- g. If any damage to the Common Elements or another 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 exclusively against the Owner's Unit to the extent not covered by insurance.
- h. If any Assessment or installment of an Assessment becomes more than 30 days past due, then the Association may, upon 10 days' written notice to the Owner, declare the entire amount of the Assessment immediately due and payable in full.
- i. 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 Sections 6.4 a. through g. may, at the Board's discretion, be assessed as a part of, or in addition to, the Assessments levied under Section 6.

6.5. Working Capital Fund. There shall be established a working capital fund to meet unforeseen expenditures or to purchase additional equipment or services during the Association's beginning years of operation. The Board shall include in each subsequent annual budget a reasonable amount of working capital, based upon the anticipated needs of the Association for the year in question. There shall be contributed on a one-time basis for each Unit sold an amount equal to two months installments of the estimated Common Expense Assessment for the Unit. The contribution shall be paid at the earlier of the time of closing of sale of the Unit or the time of termination of the period of Declarant control under Section 16.5. The contributions to this fund are in addition to the regular monthly installments of Assessments. The funds shall be deposited into a segregated Association account no later than the termination of the period of

Declarant control. Declarant may not use the funds to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficit while Declarant is in control of the Association. However, upon the closing of the sale of an unsold Unit, Declarant may reimburse itself from funds collected from the purchaser at the closing for any contributions made by Declarant to the working capital fund with respect to that Unit.

6.6. Liability of Owners for Assessments. The obligation of an Owner to pay Assessments shall commence at the later of (i) the time at which the Owner acquires title to the Unit, or (ii) the due date of the first Assessment levied by the Board, subject to the alternative Assessment program described in Section 6.7. The Owner at the time an Assessment is payable with respect to the Unit shall be personally liable for the share of the Common Expenses assessed against such Unit. Such liability shall be joint and several where there are multiple Owners of the Unit. The liability is absolute and unconditional. No Owner is exempt from liability for payment of 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 13, in addition to any remedies provided elsewhere in the Governing Documents, the Rules and Regulations, or by law, for the purpose of enforcing its rights hereunder.

6.7. Declarant's Alternative Assessment Program. The following alternative Assessment program is established pursuant to Section 515B.3-115(a)(2) of the Act. Notwithstanding anything to the contrary in this Section 6, if a Common Expense Assessment has been levied, any unsold Unit owned by Declarant shall be assessed at the rate of 25 percent of the Assessments levied on other Units of the same type until a certificate of occupancy has been issued with respect to such Unit by the municipality in which the Unit is located. This reduced Assessment shall apply to each Unit owned by Declarant at the time that the Unit is created, and shall terminate with respect to each such Unit, upon the issuance of the certificate of occupancy for the Unit. Although this alternative Assessment program will not affect the allocated share of replacement reserves attributable to Units owned by Declarant, there are no assurances that there will be no effect on the level of services for items set forth in the Association's budget.

6.8. 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 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 6. Recording of the Declaration constitutes record notice and perfection of any lien under this Section 6, and no further recordation of any notice of or claim for the lien is required. The release of the lien shall not release the Owner from personal liability unless agreed to in writing by the Association.

6.9. Foreclosure of Lien; Remedies. A lien for Assessments may be foreclosed against a Unit under the laws of the state of Minnesota (i) by action, or (ii) by advertisement in a like 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 to its other remedies, have the right to pursue any other remedy at law or in equity against the Owner who fails to pay any Assessment or charge against the Unit.

6.10. 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 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 for Common Expenses 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 months immediately preceding the first day following the end of the Owner's period of redemption.

6.11. 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.

## SECTION 7. RESTRICTIONS ON USE OF PROPERTY

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

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

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

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 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 in any Unit or the Common Elements except:

- 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, regular deliveries, or pedestrian or vehicular traffic to and from the Unit by customers or employees.
- b. The Association may maintain offices on the Property for management and related purposes.
- c. Declarant may maintain offices, sales facilities and other business facilities on the Property in connection with the exercise of its special declarant rights.

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, and (iv) that all leases shall provide that they are subject to the Governing Documents, the Rules and Regulations and the Act, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. The Association may impose such reasonable Rules and Regulations as may be necessary to implement procedures for the leasing of Units, consistent with this Section.

7.6. Delegation of Use. An Owner may delegate, in accordance with the Governing Documents, the Owner's right of use and enjoyment of the Unit to persons living in the Unit pursuant to a legal right of possession; provided, that such persons shall be subject to the Governing Documents and the Rules and Regulations. If lessees, or other persons other than the Owner or the Owner's family, have been given the legal right to possess the Owner's Unit, then those persons shall have the right to use any common recreational facilities, parking, storage and other amenities on the Property in lieu of the Owner and the Owner's family.

7.7. Parking. Garages and parking areas on the Property shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests, and such other incidental uses as may be authorized in writing by the Association. Garages shall not be converted to other uses or used for storage or other purposes which would prevent the parking of at least one automobile in a 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.

7.8. Animals. No animal may be bred, or kept or maintained for business or commercial purposes, anywhere on the Property. However, subject to the previous restriction, 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. This authority 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 house pets such as dogs, cats, fish, birds and the like. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans.

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

7.10. 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.

7.11. Improvements. Except for those made by Declarant in consideration of its initial sale of a Unit, no Improvements (as defined in Section 8) shall be made, or caused or allowed to be made, in any part of the Common Elements, or in any part of the Unit which affects the Common Elements or another Unit or which is visible from the exterior of the Unit, without the prior written authorization of the Board, or a committee appointed by it, as provided in Section 8.

7.12. Ponds; Wetlands and Trees. Ponds, marshes, wetland areas, vegetation and trees, whether located on the Units or the Common Elements, and whether natural or otherwise, shall be maintained in substantially the same condition as originally established, 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 7.12, it being the intention that such areas and items remain and be maintained in substantially their condition as of the date of recording of this Declaration, and subject to natural changes.

7.13. 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.

## SECTION 8. ARCHITECTURAL STANDARDS

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, the following restrictions and requirements shall apply to alterations on the Property:

- a. Except as expressly provided in this Section 8, no 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, nor any other exterior improvements to or alteration of any Dwelling or any other part of a Unit which affects the Common Elements or another Unit, or which is visible from the exterior of the Unit (collectively referred to as "Improvements"), 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. Notwithstanding the foregoing, Declarant's written consent shall also be required for Improvements until the expiration of the Declarant control period described in Section 16.5.
- b. The Board may appoint, supervise and disestablish 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 be subject to the supervision of the Board.
- c. The Board shall establish the criteria for approval of Improvements, which shall include and require, at a minimum:
  - (1) substantial uniformity of color, size, location, type and design in relation to existing Dwellings and topography,
  - (2) comparable or better quality of materials as used in existing Dwellings,
  - (3) ease of maintenance and repair,
  - (4) adequate protection of the Property, the Association, Owners and Occupants from liability and liens arising out of the proposed Improvements, and
  - (5) compliance with governmental laws, codes and regulations.

The Board, or the appointed committee if so authorized by the Board, shall be the sole judge of whether the criteria are satisfied.

- d. Notwithstanding the foregoing, the installation of an antenna one meter or less in diameter for the purpose of receiving direct broadcast/satellite service or video programming services, or any antenna for receiving television broadcast signals, may be installed on a Dwelling, as permitted by applicable federal law; provided, that the antenna shall be installed so as to minimize its visibility and otherwise camouflage its appearance, and so as not to impose a greater maintenance burden on the Association or damage any Dwelling. The Board shall have authority to impose further, reasonable requirements consistent with law.

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

- a. Detailed plans, specifications and related information regarding any proposed Improvement, in form and content acceptable to the Board, shall be submitted to the Board at least 60 days prior to the projected commencement of construction. No Improvements shall be commenced prior to approval.
- b. The Board shall give the Owner written notice of approval or minimize its visibility and otherwise camouflage its appearance. If the Board fails to approve or disapprove within 60 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 Improvements are done in accordance with the plans, specifications and related information which were submitted.
- 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 attorneys' fees and costs of enforcement incurred by the Association, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Dwelling or Unit to its prior condition if any Improvements 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 Improvement to be made, regardless of whether the Improvement 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 Improvement 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 other liabilities, including without limitation attorneys' fees and costs of litigation, arising out of (i) any Improvement which violates any governmental laws, codes, ordinances or regulations, (ii) the adequacy of the specifications for construction of the Improvements, and (iii) the construction of the Improvements.

## SECTION 9. MAINTENANCE

9.1. Maintenance by Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements, including all improvements thereon.

9.2. Maintenance by Owner. All maintenance of the Dwellings and Units shall be the sole responsibility and expense of the Owners thereof. The Limited Common Elements allocated to a Unit shall be maintained by the Owner of that Unit. However, the Owners and Occupants shall have a duty to promptly notify the Association of defects in or damage to those parts of the Property which the Association is obligated to maintain. The Association may require that any exterior maintenance to be performed by the Owner be accomplished pursuant to specific uniform criteria established by the Association. The Association may also undertake any exterior maintenance which the responsible Owner fails to or improperly performs, and charge and assess the Unit for the cost thereof. Such cost shall be a personal obligation of the Owner and a lien against the Owner's Unit.

9.3. Damage Caused by Owner. Notwithstanding any provision to the contrary in this Section, if, in the judgment of the Association, the need for maintenance of any part of the Property is caused by the willful or negligent act or omission of an Owner or Occupant, or their guests, or by a condition in a Unit which the Owner or Occupant, has willfully or negligently allowed to exist, the Association may cause such damage or condition to be repaired or corrected (and enter the yard area of upon any Unit to do so), and the cost thereof may be charged 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.

## SECTION 10. INSURANCE

10.1. Required Coverage. The Association shall obtain and maintain, at a minimum, a master policy or policies of insurance in accordance with the insurance requirements set forth 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. Comprehensive public liability insurance covering the use, operation and maintenance of the Common Elements, with minimum limits, of \$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.

- b. Fidelity insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, employees or other persons responsible for handling funds belonging to or administered by the Association if deemed to be advisable by the Board or required by the regulations of the FHA or FNMA as a precondition to the purchase or financing of a mortgage on a Unit. The fidelity bond or insurance shall name the Association as the named insured and shall, if required by the regulations of the FHA or FNMA as a precondition to their insuring, purchasing or financing of a mortgage on a Unit, 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.
- c. Workers' Compensation insurance as required by law.
- d. Directors and officers liability insurance with such reasonable limits and coverages as the Board shall determine from time to time.
- e. Such other insurance as the Board may determine from time to time to be in the best interests of the Association and the Owners.

10.2. Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as an annual Assessments, and allocated among the Units as determined by the Board consistent with the Governing Documents. The insurance need not cover improvements and betterments to the Units installed by Owners, but if improvements and betterments are covered, any increased cost may be assessed against the Units affected. 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.

10.3. Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to, the Association (or a qualified insurance trustee selected by it) as trustee for the benefit of the Owners and secured parties, 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.

10.4. Required Policy Provisions. All policies of property insurance carried by the Association shall provide that:

- a. Each Owner and secured party is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.
- b. The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household and against the Association and members of the Board.
- c. No act or omission by any Owner 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.
- d. If at the time of a loss under the policy there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy is primary insurance.

10.5. Cancellation; Notice of Loss. All policies of 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, to the FHA, VA or FNMA (if applicable), all of the insureds and all Eligible Mortgagees.

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

10.7. 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.

10.8. 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.

10.9. 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 and the Dwelling located thereon, personal property or personal liability. All insurance policies

maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association.

## **SECTION 11. RECONSTRUCTION, CONDEMNATION AND EMINENT DOMAIN**

11.1. Reconstruction. The obligations and procedures for the repair, reconstruction or disposition of the Property following damage or destruction thereof shall be governed by the Act. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property as initially constructed and subsequently improved. Notice of substantial damage or destruction shall be given as provided in Section 15.10.

11.2. 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 15.10, (ii) that the Association shall be the attorney-in-fact to represent the Owners in any related proceedings, negotiations, settlements or agreements and (iii) that any awards or proceeds shall be payable to the Association for the benefit of the Owners and the mortgagees of their Units. Eligible Mortgagees shall be entitled to priority for condemnation awards in accordance with the priorities established by the Act and the Governing Documents, as their interests may appear.

11.3. 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 based upon the value of the Units as determined by their relative value for property insurance purposes, and shall be made to Owners and their mortgage holders, as their interests may appear, as provided in the Act.

11.4. Notice. The Association shall give written notice of any condemnation proceedings or substantial destruction of the Property to the Eligible Mortgagees entitled to notice under Section 15.10.

11.5. Association's Authority. In all cases involving reconstruction, condemnation, eminent domain, termination or liquidation of the common interest community, 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.

## **SECTION 12. EASEMENTS**

12.1. Easement for Maintenance, Repair, Replacement and Reconstruction. Each Unit, and the rights of the Owners and Occupants thereof, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of construction, maintenance, repair, replacement, reconstruction and removal of the Dwellings and other improvements located within the Units, and utilities serving the Units, as may be reasonably necessary. Upon the use of any such easement for the construction, maintenance, repair, replacement, reconstruction or removal of a Dwelling, the Unit shall be restored to its prior condition.

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

12.3. Emergency Access to Units. In case of emergency, all Units and Limited Common Elements are subject to an easement 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 locations of the keys, so as to allow access for emergencies when the Owner or Occupant is absent for extended periods.

12.4. Project Sign Easements. Declarant shall have the right to erect and maintain monument signs identifying the common interest community and related decorative improvements on the Common Elements. Those parts of the Property on which monument signs or related decorative improvements are located shall be subject to appurtenant, exclusive easements in favor of the Association for the continuing use, maintenance, repair and replacement of said signs and improvements. In exercising its rights under said easements, the Association shall take reasonable care to avoid damaging the improvements to the Property.

12.5. Reservation of Easements. Declarant hereby reserves the right to exercise the following rights and create the following perpetual, non-exclusive easements appurtenant to the real estate owned by Declarant and/or Maine Street Investors of Rochester LLP adjacent to the Property (the "Adjacent Real Estate") over, upon, and under portions of the Common Elements, all in accordance with the following authority and conditions:

- a. To connect any improvements constructed on the Adjacent Real Estate to any natural gas, storm sewer, sanitary sewer, electrical, telephone or other utility line, cable TV line, pipe, wire or other facilities which are or may be located within or serve the Property, including the right to connect any improvements constructed on the Adjacent Real Estate into, and the right to utilize, such lines, pipes, wires or other facilities.
- b. To obtain natural gas, water, electricity, telephone, cable TV and other utility services from, and to discharge storm and sanitary waste into, all such lines, pipes, wires or other common utility facilities which are or may be located within or serve the Property.

- c. To install, repair, maintain, operate and replace all such natural gas, storm sewer, water sanitary sewer, electrical, telephone or other utility lines, pipes, wires or other facilities which are or may be located within or serve the Property.
- d. To do such other acts as are necessary in order to connect into and/or to utilize such utility facilities to serve any improvement constructed or to be constructed on the Adjacent Real Estate; provided, however, that the owner or owners of the Adjacent Real Estate benefited by any reserved easements shall be responsible for the restoration of any damage done in connection with or use of such easements.
- e. Non-exclusive easements for the purposes of: (i) affording the Adjacent Real Estate and any improvements constructed or to be constructed thereon with access to and from a public road; (ii) installing, repairing, maintaining, surfacing, resurfacing, grading, replacing and extending any private drives, streets, roads, or rights-of-way over which the easements hereby reserved are or may be located; and (iii) performing such other acts as are necessary in order to afford any improvement constructed or to be constructed on the Adjacent Real Estate with access to a public road; provided, that Declarant, its successors or assigns, as the owner or owners of the Adjacent Real Estate, shall be responsible for the restoration of any land, driveways, streets, roads or rights-of-way which are disturbed in connection with the use of such easements, and provided further, that the location of the easements hereby reserved shall, to the extent practicable, be limited to the location of the private driveways, streets, roads, easement areas and rights-of-way existing within the Common Elements at the time or times that said easements are created.

12.6. Documentation of Easements. The reserved easements may be created from time to time as required to provide the necessary access and utility services to the Property and the Adjacent Real Estate. As evidence of the creation of one or more of the reserved easements, the then owner or owners of the Adjacent Real Estate for whose benefit the easement is created shall execute and cause to be filed for record a Declaration of Easement or comparable instrument setting forth a description of the easements created and a description of the Adjacent Real Estate benefited by the easements. No consent or joinder of the Association or any Owner or any mortgagee or other secured party in any Unit or the Adjacent Real Estate, nor any release therefrom, shall be required to create the easements. In addition, the owner of the Adjacent Real Estate or of a platted lot within the Adjacent Real Estate may at any time waive or terminate its easement rights by the execution and recording of an instrument specifying such waiver or termination, and without the necessity of any consent or joinder by the Association, any Owner, or any mortgagee or other secured party in any Unit or any part of the Adjacent Real Estate. Such waiver or termination shall not affect any obligations incurred by any owner of the Adjacent Real Estate arising out of its acts or omissions prior to such determination.

12.7. Maintenance of Easements. In the event that the reserved easements are created, the Unit Owners and the owner of the Adjacent Real Estate benefited by such easements shall, so

long as the easements are in existence, share all expenses of maintaining, repairing and replacing the private drives, lanes, streets, roads, or rights-of-way, and the utility lines, pipes, wires and other facilities, which may be commonly used pursuant to the easements in the following manner. A portion of any such expenses equal to a fraction, the numerator of which is the number of Units, and the denominator of which is the total number of Units plus the total number of dwellings, lots or other individual parcels within the Adjacent Real Estate benefited by such easements, shall be paid by the Unit Owners. The balance of any such expenses shall be paid by the owner or owners of the Adjacent Real Estate benefited by such easements. Any portion of the expenses to be paid by the Owners shall be paid by the Association as a Common Expense. Notwithstanding the foregoing, if the Adjacent Real Estate benefited by such easements is used for other than residential purposes, then such costs and expenses shall be apportioned to, and shared by the Owners and the owner or owners of the Adjacent Real Estate on a fair and equitable basis as agreed upon by the Association and such other owner or owners.

12.8. Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this Section 12 shall supplement and not limit any easements described elsewhere in this Declaration or recorded, and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of maintenance, repair, replacement and reconstruction. All easement rights shall include a right of reasonable access to maintain, repair and replace the utility lines and related equipment.

### **SECTION 13. COMPLIANCE AND REMEDIES**

Each Owner and Occupant, and any other Person owning or acquiring any interest in the Property, shall be governed by and comply with the provisions of the Act, the Governing Documents, the Rules and Regulations, and such amendments thereto as may be made from time to time, and the decisions of the Association. A failure to comply shall entitle the Association to the relief set forth in this Section, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

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

13.2. Sanctions and Remedies. In addition to any other remedies or sanctions, expressed or implied, administrative or legal, the Association shall have the right, but not the obligation, to implement any one or more of the following actions against Owners and

Occupants and/or their guests, who violate the provisions of the Governing Documents, the Rules and Regulations or the Act:

- a. Commence legal action for damages or equitable relief in any court of competent jurisdiction.
- b. Impose late charges of up to the greater of \$20.00, or 15 percent of the amount past due, for each past-due Assessment or installment thereof, and impose interest at the highest rate permitted by law beginning on the first day of the month after the Assessment or installment was due.
- c. In the event of default of more than 30 days in the payment of any Assessment or installment thereof, all remaining installments of Assessments assessed against the Unit owned by the defaulting Owner may be accelerated and shall then be payable in full if all delinquent Assessments or installments thereof, together with all attorneys' fees, costs of collection and late charges, are not paid in full prior to the effective date of the acceleration. Not less than 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, and suspend the rights of any Owner or Occupant and their guests to use any Common Element amenities; provided, that the suspension of use rights shall not apply to Limited Common Elements, or deck, balcony, porch or patio easements, appurtenant to the Unit, and those portions of the Common Elements providing utilities service and access to the Unit. Such suspensions shall be limited to periods of default by such Owners and Occupants in their obligations under the Governing Documents, and for up to 30 days thereafter, for each violation.
- f. Restore any portions of the Common Elements or Limited Common Elements damaged or altered, or allowed to be damaged or altered, by any Owner or Occupant or their guests in violation of the Governing Documents, and to assess the cost of such restoration against the responsible Owners and their Units.
- g. Enter any Unit or Limited Common Element in which, or as to which, a violation or breach of the Governing Documents exists which is likely to materially affect 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 or Limited Common Elements which is causing the violation; provided, that any improvements which are a part of a Dwelling may be altered or demolished only pursuant to a court order or with the agreement of the Owner.

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

13.3. Rights to Hearing. Before the imposition of any of the remedies authorized by Section 13.2 d., e., f. or g., the Board shall, upon written request of the offender, grant to the offender an opportunity for a fair and equitable hearing as contemplated by the Act. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least 10 days within which to request a hearing. The hearing shall be scheduled by the Board and held within 30 days of receipt of the hearing request by the Board, and with at least 10 days' prior written notice to the offender. If the offender fails to timely request a hearing or to appear at the hearing, then the right to a hearing shall be deemed waived and the Board may take such action as it deems appropriate. The decision of the Board and the rules for the conduct of hearings established by the Board shall be final and binding on all parties. The Board's decision shall be delivered in writing to the offender within 10 days following the hearing, if not delivered to the offender at the hearing. The Board may delegate the foregoing hearing authority to a committee of three or more disinterested Owners, who shall conduct the hearing and make a recommendation to the Board regarding the disposition of the matter.

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

13.5. Costs of Proceeding and Attorneys' 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, the Association may assess the violator and his or her Unit with any expenses incurred in connection with such enforcement, including without limitation fines or charges previously imposed by the Association, reasonable attorneys' fees, and interest (at the highest rate allowed by law) on the delinquent amounts owed to the Association. 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. Such collection or contingency fees or costs shall be the personal obligation of such Owner and shall be a lien against such Owner's Unit.

13.6. Liability for Owners' and Occupants' Acts. An Owner shall be liable for the expense of any maintenance, repair or replacement of the Property rendered necessary by such



Owner's acts or omissions, or by that of Occupants or guests in the Owner's Unit, to the extent that such expense is not covered by the proceeds of insurance carried by the Association or such Owner or Occupant. However, any insurance deductible amount and/or increase in insurance rates, resulting from the Owner's acts or omissions may be assessed against the Owner responsible for the condition and against his or her Unit.

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

## SECTION 14. AMENDMENTS

14.1. Approval Requirements. Except for amendments by Declarant pursuant to Sections 515B.2-111 and 515B.2-112(c) of the Act, this Declaration may be amended only by the approval of:

- a. Owners of Units to which are allocated at least 67 percent of the total votes in the Association.
- b. The percentage of Eligible Mortgagees (based upon one vote per Unit financed) required by Section 15 as to matters prescribed by said Section.
- c. The FHA or VA, as applicable, during the period of Declarant control under Section 16.5, as to the following matters:
  - (1) The annexation of Additional Real Estate.
  - (2) The merger or consolidation of the Association with another Association or other legal entity.
  - (3) The acquisition, dedication or mortgaging of Common Elements.
  - (4) The dissolution of the Association.
  - (5) The amendment of this Declaration, or the Articles of Incorporation or By-Laws of the Association.
- d. Declarant as to certain amendments as provided in Section 16.6.

14.2. Procedures. Approval of the Owners may be obtained in writing or at a meeting of the Association duly held in accordance with the By-Laws. Consents of Eligible Mortgagees, the FHA, the VA and Declarant shall be in writing. Any amendment shall be subject to any greater requirements imposed by the Act. The amendment shall be effective when recorded as provided in the Act. An affidavit by the Secretary of the Association as to the outcome of the vote, or the execution of the foregoing agreements or consents, shall be adequate evidence thereof for all purposes, including without limitation, the recording of the amendment.

## SECTION 15. RIGHTS OF ELIGIBLE MORTGAGEES

Notwithstanding anything to the contrary in the Governing Documents, and subject to any greater requirements of the Act or other laws, Eligible Mortgagees shall have the following rights and protections:

15.1. Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least 51 percent of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per Unit financed) shall be required for any amendment to the Governing Documents which causes any change in provisions including the following: (i) voting rights; (ii) increases in Assessments over 25 percent, Assessment liens, or priority of Assessment liens; (iii) reductions in reserves for maintenance, repair and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use; (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) hazard or fidelity insurance requirements; (x) imposition of restrictions on the 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 (if the project involves 50 or more Units) 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, or insurers or guarantors of mortgages.

15.2. Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least 67 percent of the Units that are subject to first mortgages held by Eligible Mortgagees (based upon one vote per Unit financed) shall be required to (i) abandon or terminate the common interest community; (ii) change the allocations of voting rights, Common Expense obligations or interests in the Common Elements; (iii) partition or subdivide a Unit except as permitted by statute; (iv) abandon, partition, subdivide, encumber or sell the Common Elements; or (v) use hazard insurance proceeds for other than the repair, replacement or reconstruction of the Property, except as otherwise provided by law.

15.3. 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.

15.4. 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 or similar restrictions.

15.5. 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 mortgage holder or purchaser; (i) except as provided in Section 6.10 and the

Act and (ii) except that any unreimbursed Assessments or charges may be reallocated among all Units in accordance with their interests in the Common Elements.

15.6. 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.

15.7. 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 and/or the Common Elements. 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.

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

15.9. 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 120 days of the end of the Association's fiscal year. If the common interest community consists of fewer than 50 Units, FNMA, or any institutional guarantor or insurer of a mortgage loan against a Unit, may require that, at its own expense, an audit of the Association's financial statements be made for the preceding year, in which case the Association shall cooperate in having an audit made and a copy given to the requesting party. If the common interest community consists of 50 or more Units, the Association shall provide the requested audit at its expense.

15.10. 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 holder, insurer or guarantor shall be entitled to 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 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 16. SPECIAL DECLARANT RIGHTS

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

16.1. Complete Improvements. To complete all the Units and other improvements indicated on the Plat, or otherwise included in Declarant's development plans or allowed by the Declaration, and to make alterations in the Units and Common Elements to accommodate the exercise of any special declarant rights.

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

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

16.4. Easements. To have and use easements, for itself, its employees, contractors, representatives, agents and prospective purchasers through and over the Common Elements and the yard areas of the Units for the purpose of exercising its special declarant rights.

16.5. Control of Association. To control the operation and administration of the Association, including without limitation the power to appoint and remove the members of the Board pursuant to Section 515B.3-103 of the Act, until the earliest of: (i) voluntary surrender of control by Declarant, (ii) an Association meeting which shall be held within 60 days after conveyance to Owners other than Declarant of 75 percent of the total number of Units authorized to be included in the Property or (iii) the date 5 years following the date of the first conveyance of a Unit to an Owner other than Declarant. Notwithstanding the foregoing, the Owners other than Declarant shall have the right to nominate and elect not less than 33 1/3 percent of the directors at a meeting of the Owners which shall be held within 60 days following the conveyance by Declarant of 50 percent of the total number of Units authorized to be included in the Property.

16.6. Consent to Certain Amendments. Until such time as Declarant no longer owns any Unit for initial sale, Declarant's written consent shall be required for any amendment to the Governing Documents or Rules and Regulations which directly or indirectly affects Declarant's rights under the Governing Documents or the Act.

## 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 Declaration or exhibits attached hereto.

17.2. Construction. Where applicable, the masculine gender of any word used herein shall mean the feminine or neutral gender, or vice versa, and the singular of any word used herein shall mean the plural, or vice versa. References to the Act, or any section thereof, shall be deemed to include any statutes amending or replacing the Act, and the comparable sections thereof.

17.3. Tender of Claims. In the event that any incident occurs which could reasonably give rise to a demand by the Association against Declarant for indemnification pursuant to the Act, the Association shall promptly tender the defense of the action to its insurance carrier, and give Declarant written notice of such tender, the specific nature of the action and an opportunity to defend against the action.

17.4. Notices. Unless specifically provided otherwise in the Governing Documents or the Act, all notices required to be given by or to the Association, the Board, the Association officers or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or mailing if properly addressed with postage prepaid and deposited in the United States mail.

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

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



Exhibit A

Description of Real Property

All of The Gardens Fourth Subdivision, in the City of Rochester, Olmsted County, Minnesota.

Together with and subject to the rights and obligations contained in that certain Access Easement Agreement dated May 25, 2006, and recorded May 25th, 2006, as Document No. A-1101245, between Maine Street Investors of Rochester LLP and The Gardens Manufactured Home Community LLC.

Exhibit B

Common Elements

Outlots A, B, C and D, The Gardens Fourth Subdivision, in the City of Rochester, Olmsted County, Minnesota.

Together with and subject to the rights and obligations contained in that certain Access Easement Agreement dated May 25, 2006, and recorded May 25, 2006, as Document No. A-1101245, between Maine Street Investors of Rochester LLP and The Gardens Manufactured Home Community LLC.