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Timberland Estates Home Owners Association  
Amended and Restated Declaration  
Number 63, Revised 5/12/03

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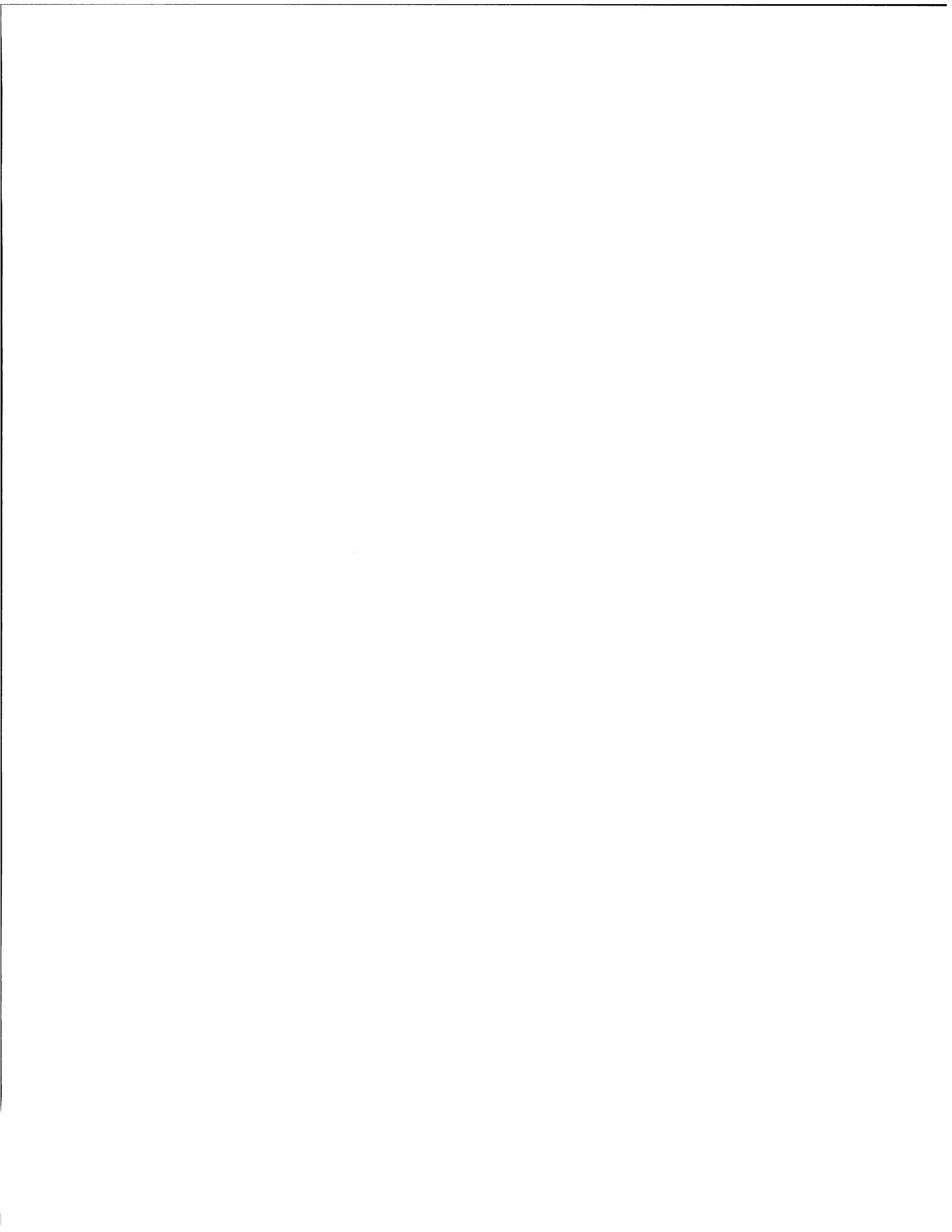
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**FILED**  
OCT 13 2003  
RANDY R. SCHREIFELS  
COUNTY AUDITOR

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COMMON INTEREST COMMUNITY NUMBER 63  
(Planned Community)

TIMBERLAND ESTATES

AMENDED AND RESTATED DECLARATION

This Amended and Restated Declaration (the "Declaration") of Timberland Estates, is made, effective on the date of recording hereof, by the St. Cloud Timberland Estates Home Owners Association (the "Association"), with the consent of the required number of Owners of the lots (now Units) described in Exhibit A attached hereto, 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 are filed on record in the office of the Stearns County Recorder, a certain Declaration of Covenants, Condition, and Restrictions, Document No. 551489, as amended (and replaced) by the Amended Declaration of Covenants, Conditions, and Restrictions, Document No. 562443, as amended by Document No. 905603 (collectively the "Original Declaration"); 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, the Association and the Owners desire to provide for the preservation of the residential character, value, architectural character, architectural uniformity, and amenities, which are a part of the Property, and for the maintenance of open spaces and other common facilities; and

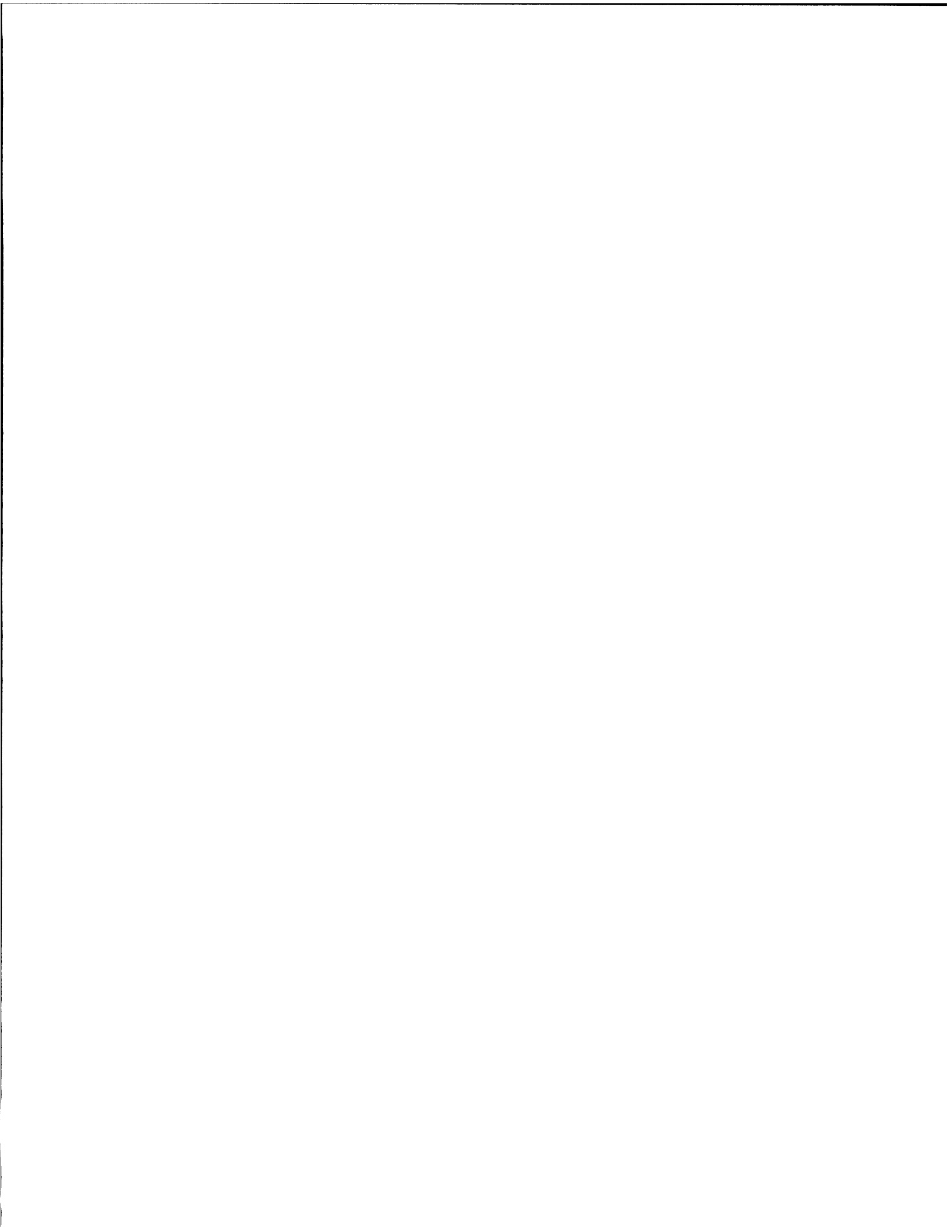
WHEREAS, the Association and the Owners desire to amend and restate the Original Declaration in accordance herewith, and to subject the Property to the Act, and to the covenants, conditions, restrictions, easements, charges and liens set forth herein, pursuant to the requirements and procedures prescribed by 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(d) of the Act, governing conversions to common interest ownership, and is not subject to a master association as defined in the Act.

NOW THEREFORE, the Association, with the written consent of those Owners constituting not less than seventy-five percent (75%) of the Owners whose signatures are on file with the Association or its attorney, and further, with the consent of those First Mortgagees constituting not less than seventy-five percent (75%) of First Mortgagees, whose signatures are on file with the Association or its secretary, hereby declares that the Property and any additions thereto shall be subject to the Act as a planned community, and shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth herein; that all persons or entities having or acquiring any right, title, or interest in the Property shall be bound hereby; and that the Original Declaration shall be revoked and superseded in its entirety by this Declaration upon its recording.

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## SECTION 1

### DEFINITIONS

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

- 1.1 "Assessment" (Annual/Monthly) shall mean charges levied to cover anticipated yearly expenses, to provide reserve funds for the Common Elements, and to cover any other expenditures.
- 1.2 "Association" shall mean the St. Cloud Timberland Estates Home Owners Association, a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the State of Minnesota and Minnesota Statutes Section 515B.3-101, whose Members consist of all Owners as defined herein.
- 1.3 "Board" shall mean the Board of Directors of the Association, as provided for in the Bylaws.
- 1.4 "Bylaws" shall mean the Bylaws governing the operation of the Association, as amended from time to time.
- 1.5 "Common Elements" shall mean all parts of the Property except the Units, 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.
- 1.6 "Common Expenses" shall mean all expenditures made or liabilities incurred by or on behalf of the Association or for the Common Elements together with any allocations to reserves.
- 1.7 "Dwelling" shall mean a part of a building consisting of one or more floors, designed and intended for occupancy as a single-family residence, and located within the boundaries of a Unit. The Dwelling includes any garage within the boundaries of the Unit.
- 1.8 "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 who has requested, in writing, that the Association notify it regarding any proposed action that requires approval by a specified percentage of Eligible Mortgagees.
- 1.9 "Governing Documents" shall mean this Declaration, and the Articles of Incorporation and Bylaws of the Association, as amended from time to time, all of which shall govern the use and operation of the Property.
- 1.10 "Limited Common Elements" shall mean a portion of the Common Elements allocated by the Declaration or the Act to the exclusive use of one or more but fewer than all of the Units.
- 1.11 "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.
- 1.12 "Occupant" shall mean any Person or Persons, other than an Owner, in possession of or residing in a Unit.

- 1.13 "Other (Special) Assessments" shall mean any additional assessments for expenses or liabilities incurred by or on behalf of Owners of Units for their portions of those expenditures, which are not included in the Annual Assessment.
- 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(30) of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate.
- 1.15 "Party Wall" shall mean any shared wall between two Dwellings.
- 1.16 "Person" shall mean a natural individual, corporation, a limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.
- 1.17 "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.
- 1.18 "Property" shall mean all of the real property submitted to this Declaration, including the Dwellings and all other structures and improvements located thereon now or in the future. The Property as of the date of this Declaration is legally described in Exhibit A attached hereto.
- 1.19 "Real Estate" shall mean any estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate may include spaces with or without upper or lower boundaries, or spaces without physical boundaries.
- 1.20 "Rules and Regulations" shall mean the Rules and Regulations of the Association as approved from time to time pursuant to Section 5.
- 1.21 "Unit" shall mean any platted lot subject to this Declaration upon which a Dwelling is located, including all improvements thereon, but excluding the Common Elements.

Any terms used in the Governing Documents, which are defined in the Act but not in this Section 1, shall have the meaning set forth in the Act.

## SECTION 2

### DESCRIPTION OF UNITS AND APPURTENANCES

- 2.1 Units. There are thirty-six (36) Units, all of which are restricted exclusively to residential use. Each Unit constitutes a separate parcel of Real Estate. No additional Units may be created by the subdivision or conversion of Units pursuant to Section 515B.2-112 of the Act. The Unit identifiers and locations of the Units are as shown on the Plat, which is incorporated herein by reference, and a schedule of Units is set forth in Exhibit A. The Unit identifier 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 lot upon which the Dwelling is 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 part of that Real Estate.
- 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 Common Elements as shown on the Plat.
- 2.4 Use and Enjoyment Easements. Each Unit shall be the beneficiary of appurtenant easements for use and enjoyment on and across the Common Elements, and for use and enjoyment of any Limited Common Elements allocated to that Unit, subject to any restrictions authorized by the Declaration.
- 2.5 Encroachment Easements. Each Unit shall be subject to and shall be the beneficiary of the appurtenant easements for encroachments as described in Section 13.
- 2.6 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 Units and the Common Elements, and for maintenance, repair, and replacement as described in Section 13.
- 2.7 Recorded Easements. The Property shall be subject to such other easements as may be recorded against it or otherwise 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, as more fully specified in Section 13, shall be appurtenant thereto, and shall be permanent, subject only to termination in accordance with the Act or the terms of the easement. Any recorded easement benefiting or burdening the Property shall be construed in a manner consistent with, and not in conflict with, the easements created by this Declaration.
- 2.9 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.

### SECTION 3

#### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

- 3.1 Common Elements. All of the Property not included within the Units constitutes Common Elements. The Common Elements are owned by the Association for the benefit of the Owners and Occupants. The Common Elements and their characteristics are as follows:
  - A. The Common Elements shall be subject to certain easements, as described in Sections 2 and 13, and to the rights of Owners and Occupants in the Limited Common Elements appurtenant to their Units.
  - B. Subject to Sections 5, 6, and 9, all maintenance, repair, replacement, management, and operation of the Common Elements shall be the responsibility of the Association, unless otherwise provided in this Declaration.

- 3.2 Limited Common Elements. Limited Common Elements are those parts of the Common Elements reserved for the exclusive use of the Owners and Occupants of Units. The rights to the use and enjoyment thereof are automatically conveyed with the conveyance of such Units. The Limited Common Elements are described and allocated to the Units as follows:
- A. Including, but not limited to, chutes, flues, ducts, chimneys, vents, 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;
  - B. Improvements, such as perimeter doors and windows, window wells, doorsteps, and stoops are part of the original construction and serve a single Unit;
  - C. Authorized replacements and modifications, located outside the Unit's boundaries; and
  - D. The parking spaces are immediately adjacent to each garage and extend to the end of the driveway islands, are Limited Common Elements. According to past practices, additional parking areas shall remain assigned to Units having single car garages.

## SECTION 4

### ASSOCIATION MEMBERSHIP: RIGHTS AND OBLIGATIONS

- 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 voting rights among any Unit's multiple Owners.
- 4.2 Voting. Voting rights are allocated equally among the Units.
- 4.3 Authority to Vote. The Owner, or some natural person designated to act as proxy on behalf of the Owner, and who need not be an Owner, may cast the vote allocated to such Unit at meetings of the Association; provided that, if there are multiple Owners of a Unit, only the Owner or other Person designated pursuant to the provisions of the Bylaws may cast such vote. The voting rights of Owners are more fully described in Section 3 of the Bylaws.
- 4.4 Expense. All expense obligations are allocated among the Units as provided in Section 6.
- 4.5 Appurtenant Rights and Obligations. The ownership of a Unit shall include the voting rights and Common Expense obligations described in Section 4. Said rights, obligations and interests, and the title to the Units, shall not be separated or conveyed separately. The allocation of the rights, obligations, and interests described in this Section 4 may not be changed, except in accordance with the Governing Documents and the Act.

## 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 Minnesota Statutes Chapter 317A under which it is incorporated. All power and authority of the Association shall be vested in the Board of Directors, 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:
- A. Administering and enforcing the covenants, conditions, restrictions, easements, charges, and liens set forth in the Governing Documents and the Rules and Regulations;
  - B. Maintaining, repairing, and replacing those portions of the Property for which it is responsible; and
  - C. Preserving the value, architectural uniformity, structural quality, and residential and aesthetic 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 Bylaws. The Association shall have Bylaws. The Bylaws and any amendments thereto shall govern the operation and administration of the Association.
- 5.5 Management. The Board may delegate to a manager or managing agent the management duties imposed upon the Association's officers and directors by the Governing Documents and the Act; provided, however, that such delegation shall not relieve the officers and directors of the ultimate responsibility for the performance of their duties as prescribed by the Governing Documents and by law.
- 5.6 Rules and Regulations. The Board shall have authority to approve and implement such reasonable and uniform 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 be consistent with the Governing Documents or the Act, and shall be subject to any provisions for Owner review in the Bylaws. Otherwise, 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 at least thirty (30) days notice has been given to the Owners.

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

## SECTION 6

### ASSESSMENTS FOR EXPENSES

Assessments for expenses of Common Elements and Limited Common Elements shall be divided into two categories: Annual (Monthly) and Other (Special). Financial obligations that shall be the responsibility of the individual Owner(s) are described in Sections 9 and 11.

- 6.1 Annual (Monthly) Assessments. Assessments shall be collected to cover all of the anticipated yearly expenses for the Common Elements.
- A. Annual Assessments shall be shared equally by all Units in the Association. Annual Assessments shall be levied by the Board, assessed uniformly, allocated equally, and paid in equal monthly installments among the Units unless otherwise provided in this Declaration.
1. The following shall be exceptions:
- a. Assessments for reserve funds, roofing, siding, and foundations as described in this Section 6;
  - b. Other (Special) Assessments as described in this Section 6; and
  - c. Any increase in insurance premiums, as determined by the Association's insurer, which shall be assessed proportionally, as described in Section 11.
- B. Any reserve or surplus funds shall be collected from the Annual Assessment to cover the periodic cost of maintenance, repair, and replacement of the Common Elements.
- C. Any reserve or surplus funds may be collected to cover the periodic cost of maintenance, repair, and replacement of the Limited Common Elements, roofs, siding, and foundations, as the Association deems necessary.
1. Reserve funds for Limited Common Elements, roofing, siding, and foundations shall be levied by one of the following methods:
- a. Proportionally according to the square footage of the area being maintained, repaired, or replaced;
  - b. Proportionally according to the ratio of square footage of the Unit benefited to the square footage of all Units benefited, as specified in a formula approved by all members;
  - c. According to the actual cost incurred for each Unit or Units benefited; or
  - d. On such basis as is reasonably appropriate to the nature of the Assessment as determined by the Board of Directors.

6.2 Other (Special) Assessments. Expenses shall be assessed against each Unit to cover the periodic cost of maintenance, repair, and replacement of any other items the Association deems necessary.

- A. The Board may levy in any Assessment year or for a set period of time an Assessment against all Units to defray in whole or in part:
  - 1. The cost of any unforeseen or unbudgeted expense; and
  - 2. The maintenance, repair, or replacement of any part of the property, and any fixtures or other property related thereto.
- B. Other (Special) Assessments shall be levied by one of the following methods, when undertaken by the Association:
  - 1. Proportionally according to the square footage of the area being maintained, repaired, or replaced;
  - 2. Proportionally according to the ratio of square footage of the Unit benefited to the square footage of all Units benefited, as specified in a formula approved by all members;
  - 3. According to the actual cost incurred for each Unit or Units benefited; or
  - 4. On such basis as is reasonably appropriate to the nature of the Assessment.

6.3 Methods of Assessments.

- A. Annual Assessments shall be determined by the Board and presented to the Members at the Annual Meeting or at a meeting called for such purpose.
  - 1. The method of allocating any non-uniform portions of the Annual Assessment, such as insurance, and the application of any required formula shall be determined by the Board and presented to the Members at the Annual Meeting or at a meeting called for such purpose.
- B. The method of allocating other assessments and the application of any required formula shall be determined by the vote of Owners, in person or by proxy, at a meeting called for that purpose, before the start of any such project. Written notice of the meeting shall be sent to all Owners not less than twenty-one (21) days, and no more than thirty (30) days, in advance of the meeting.
  - 1. The quorum requirements for such meetings shall be fifty (50) percent of all votes in the Association, and a two-thirds (2/3) majority shall be required for approval of any such special assessments.
  - 2. If the required quorum is not present at any meeting, another meeting may be called, and the quorum required at such meeting shall be one-half (1/2) of the quorum at the preceding meeting, provided no subsequent meeting shall be held more than forty (40) days following the preceding meeting.

6.4 Liability of Owners for Assessments. The obligation of an Owner to pay Assessments shall commence when the Owner acquires title to the Unit. 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. This liability is absolute and unconditional. No Owner is exempt from liability for payment of his or her share of Common Expenses by right of set-off, by waiver of use or enjoyment of any part of the Property, by absence from or abandonment of the Unit, by the waiver of any other rights, or by reason of any claim against the Association or its officers, directors or agents, or for their failure to fulfill any duties under the Governing Documents or the Act. The Association may invoke the charges, sanctions, and remedies set forth in Section 14, in addition to any remedies provided elsewhere in the Governing Documents, or by law, for the purpose of enforcing its rights.

- A. 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 that Owner's or Occupant's Unit.
- B. Fees, charges, late charges, fines, and interest may be assessed as provided in Section 14.
- C. Assessments levied under Section 515B.3-116 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.
- D. 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 that Owner's or Occupant's Unit to the extent not covered by insurance.
- E. If any installment of an Assessment becomes more than forty-five (45) 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.
- F. If Common Expense liabilities are reallocated for any purpose authorized by the Act, Common Expense Assessments and any installment not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

6.5 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 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, and no further recordation of any notice of, or claim for, the lien is required.

6.6 Foreclosure of Lien; Remedies.

- A. A lien for Common Expenses may be foreclosed against a Unit under the laws of the State of Minnesota by:
  - 1. Action; or
  - 2. Advertisement as a lien under a mortgage containing a power of sale.
- B. 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;
- C. 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;
- D. 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; and
- E. The commencement of an action to recover the sums is not an election of remedies if it is dismissed before commencement of foreclosure of the lien provided for by Section 515B.3-116 of the Act.



6.7 Lien Priority; Foreclosure.

- A. A lien under this Section is prior to all other liens and encumbrances on a Unit except for:
1. Liens and encumbrances recorded before the Declaration;
  2. Any first mortgage encumbering the fee simple interest in the Unit; and
  3. Liens for real estate taxes and other governmental assessments or charges against the Unit.
- B. The holder of the sheriff's certificate of sale from the foreclosure of the first mortgage shall take title to the Unit subject to a lien in favor of the Association for unpaid Assessments for Common Expenses levied pursuant to Sections 515B.3-115(a), (e)(1) to (3), (f), and (i) 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, if:
1. A first mortgage on a Unit is foreclosed;
  2. The first mortgage was recorded on or after June 1, 1994; and
  3. No Owner redeems during the Owner's period of redemption provided by Chapters 580, 581, or 582.

- 6.8 Voluntary Conveyances; Statement of Assessments. In a voluntary conveyance of a Unit, the buyer shall not be personally liable for any unpaid Assessments and other charges made by the Association against the seller or the seller's Unit prior to the time of conveyance by the buyer, unless expressly assumed by the buyer. However, the lien of such Assessments shall remain against the Unit until satisfied. 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, conditions, 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. No Unit nor any part of the Common Elements may be subdivided or partitioned.

- 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. 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 (e.g., room service for food and beverages, maid, laundry and linen, and bellboy) 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 keep and maintain his or her business or professional records in such Unit and handle matters relating to such business by telephone or correspondence provided that:
    - 1. Such uses are incidental to the residential use;
    - 2. Do not involve physical alteration of the Unit; and
    - 3. Do not involve any observable business activity such as signs, advertising displays, bulk mailings, deliveries other than customary deliveries typical for residential communities, or visitation or use of the Unit by customers or employees.
  - B. The Association may maintain offices on the Property for management and related purposes.
  - C. Notwithstanding anything to the contrary contained herein, an Owner or Occupant may engage in professional business activities within a Unit. "Professional activities" shall be defined as such business activities, which may be conducted primarily by telephone or through the use of personal computer equipment and do not involve any business activity observable from the exterior of the Unit, such as signs, advertising, or undue visitation of the Unit by clients or employees.
- 7.5 Leasing. Leasing of Units shall be allowed, subject to reasonable regulation by the Association in its Rules and Regulations, and subject to the following conditions:
- A. No Unit shall be purchased or sold for the sole purpose of leasing;
  - B. No Unit shall be leased for transient or hotel purposes;
  - C. No Unit may be subleased;
  - D. All leases shall be in writing with a minimum rental period of six (6) months;
  - E. All leases shall provide that they are subordinate and subject to the provisions of the Governing Documents, the Rules and Regulations, and the Act, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease; and
  - F. Any Owner leasing said Owner's Unit shall notify the Board of Directors and provide it with a copy of the written lease agreement at least seven (7) days prior to the commencement of the lease term.
- 7.6 Parking. Garages, parking areas, which are immediately adjacent to garages and extend to the end of the main driveway islands, and parking areas, which are adjacent to the main driveways on the Property and assigned to those Units having single car garages, shall be used only for parking of vehicles owned or leased by Owners and Occupants and their guests. Other incidental uses must be authorized in writing by the Board. 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 in its Rules and Regulations, including without limitation, the right of the Association to tow illegally parked vehicles or to remove unauthorized personal property.

- 7.7 Animals. No animal may be bred, kept, or maintained for business or commercial purposes, anywhere on the Property. Otherwise, Owners may keep animals as pets, provided that the Board shall have the authority to regulate, in accordance with the Bylaws and Rules and Regulations, the number, type, and keeping of animals on the Property, in addition to any restrictions imposed by Ordinances of the City of St. Cloud or other governmental agency. The word "animal" shall be construed in its broadest sense and shall include all living creatures except humans.
- 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, guests, and family members, in addition to any restrictions imposed by Ordinances of the City of St. Cloud or other governmental agency.
- 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 and includes damage, misuse, or destruction 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. No Owners or Occupants shall permit anything to be done to or kept in their Units or on the Common Elements that will result in cancellation of insurance coverage on the Property.
- 7.10 Alterations. Alterations, including, but not limited to, changes, improvements, repairs, or replacements of any type, temporary or permanent, structural, aesthetic, or otherwise (collectively referred to as "alterations") shall not be made, caused to be made, or allowed to be made by any Owners or Occupants, or their guests, 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 an appointed committee, as provided in Section 8. The Board, or the aforementioned committee, shall have the authority to establish reasonable criteria and requirements for alterations and shall determine whether the criteria are satisfied.
- 7.11 Time Shares Prohibited. The time share form of Ownership, or any comparable form of leasing, 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 Access to Units. In case of emergency, all Units and Limited Common Elements are subject to entry, without notice and at any time:
- A. By any public safety personnel;
  - B. By the Association's management agent;
  - C. For maintenance purposes with prior notice to the Owner under Section 9; and
  - D. For enforcement purposes without notice under Section 14.

## SECTION 8

### ARCHITECTURAL CONTROL

- 8.1 Restrictions on Alterations. The following restrictions and requirements shall apply to alterations on the Property:
- A. Except as expressly provided in this Section 8, no structure, building, addition, deck, patio, fence, wall, enclosure, window, exterior door, sign, display, decoration, color change, shrubbery, material topographical or landscaping change, nor any other exterior repairs or improvements to, or alteration of, or any other part of a Unit which is visible from the exterior of the Unit (collectively referred to as "alterations"), shall be commenced, erected, or maintained in a Unit, unless and until the plans and specifications showing the nature, kind, shape, height, color, materials, and locations of the alterations shall have been approved in writing by the Board of Directors or a committee appointed by it.
  - B. The criteria for approval shall include and require, at a minimum:
    - 1. substantial uniformity of color, size, location, type, and design in relation to existing improvements and topography;
    - 2. comparable or better quality of materials as used in the existing improvements, construction, or landscaping;
    - 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 alterations; and
    - 5. compliance with governmental laws, codes, and regulations.
  - C. No additions, subdivisions, or conversions shall be allowed in so far as they alter the original exterior architectural structure of a Unit.
  - D. Approval of features or fixtures, which encroach upon another Unit or the Common Elements, shall create an appurtenant easement for such encroachment in favor of the Unit for which the alterations are approved. Any easement, other than as originally constructed, shall be approved by resolution of the Association to insure that Owners of other Units are not disturbed. A file of such resolutions shall be maintained permanently as a part of the Association's records.
- 8.2 Review Procedures. The following procedures shall govern requests for alterations under this Section 8:
- A. Detailed plans, specifications, and related information regarding any proposed alteration, in form and content acceptable to the Board of Directors and meeting the minimum requirements of this Section 8, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. The Board of Directors may further prescribe the form and content of any request for alteration in the Rules and Regulations. No alterations shall begin prior to approval.
  - B. The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications requested by the Board of Directors, then approval will not be required. This Section shall be deemed to be in

full compliance so long as the alterations are done in accordance with the plans, specifications, and related information that was submitted to the Board of Directors.

- 8.3 Remedies for Violations. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner, causing or permitting the violation, all attorneys' fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Dwelling or Unit to its prior condition, if any alterations were made in violation of this Section, and the cost of such restoration shall be a financial obligation of the Owner and a lien against the Owner's Unit.
- 8.4 Modification to Allow Access to the Disabled. Subject to the provisions of applicable law, an Owner, at the Owner's expense, may make improvements or alterations to a Unit as necessary for the full enjoyment of the Unit by any person residing in the Unit who has a handicap or disability, as provided in the Fair Housing Amendments Act, United States Code, Title 42, Section 3601, *et seq.*, and the Minnesota Human Rights Act, Chapter 363, and any amendments to those statutes. The Association may not prohibit such improvements or alterations referred to in this Section 8, but may reasonably regulate the type, style, and quality of the improvements or alterations as they relate to health, safety, and architectural standards. In addition, improvements or alterations made pursuant to this subsection must satisfy the requirements of Section 515B.2-113(a) (i), (ii), (iii), and (iv) of the Act.

## SECTION 9

### MAINTENANCE

Maintenance is classified into two categories: Maintenance by the Association and Maintenance by the Individual Owners. The Association is responsible for the maintenance, repair, and replacement of the Common Elements. Unit Owners are responsible for the maintenance, repair, and replacement of that Owner's Unit. Damage to the Common Elements or any Unit as a result of the acts or omissions of a Unit Owner or the Association is the financial responsibility of the person causing the damage, or whose agents or invitees caused the damage.

- 9.1 Maintenance by Association.
- A. The Association shall provide for all maintenance, repair, or replacement of the following for the purpose of preserving the architectural character, quality, and uniform and high standards of the appearance of the Property, including but not limited to:
1. Basic lawn, shrub, tree maintenance, limited to landscaped areas in the Common Elements, which were originally planted by the Association;
  2. Trees and landscaping originally planted by the Association;
  3. Garage lighting, patio divider fences, and those sections of sidewalks that adjoin main driveway islands and are parallel to overhead garage doors;
  4. Periodic maintenance including, but not limited to, resurfacing, resealing, seal coating, and repair of cracks of asphalt surfaces;
  5. Property line fences, to the extent such may extend into a Unit, signage for the Property, USPS boxes and foundations;
  6. Water spigots, lines, and meters that provide water for maintenance of the Common Elements or other portions of the Property maintained by the Association but exclusive of any water spigots or lines serving a single Unit;



7. Sump pumps originally installed by the Association in each building;
  8. All electrical connections located on the Property for electrical service provided to the Common Elements or other portions of the Property that is maintained by the Association, but exclusive of electrical outlet(s) serving a single Unit;
  9. Driveway islands;
  10. Gutters and downspouts installed by the Association;
  11. Vents associated with roof ventilation; and
  12. Snow removal on sidewalks, driveways, and parking spaces.
- B. Unless otherwise provided in the Declaration, roofs, siding, and foundations shall be maintained as Common Elements by the Association but at the expense of Owners.
- C. The Association shall have easements, as described in Section 13, to perform its obligations under this Section 9.
- D. 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.

9.2 Maintenance by Individual.

- A. Owners shall be responsible for the following, including but not limited to, (also refer to Exhibit C):
1. Windows, window frames, sashes, screens, cracked and broken glass (including multi-paned glass);
  2. Window wells;
  3. Water spigots serving a single Unit or Dwelling;
  4. All external chimneys and vents originating inside the Units on an annual basis;
  5. All external electrical outlets and lighting fixtures, which serve a single Unit;
  6. Gutters and downspouts not installed by the Association;
  7. Air-conditioning units, pads, and any surrounding fence or lawn edging;
  8. Concrete areas, including but not limited to, sidewalks along garages, garage floors and aprons, steps from patio door and French door, patio area, and air conditioning pad;
  9. Patio gates;
  10. Any and all Owner installed features, including but not limited to landscaping, electrical outlets, egress windows, window well, electronic equipment;
  11. Landscaping areas inside patios, along individual garages, and out to the drip lines of roof edges on the French door sides of buildings; and
  12. Any plantings on Common Property by Unit Owners, who have obtained approval from the Association and agree to assume financial responsibility for maintaining them:
    - a. Unit Owners and their successors shall maintain these plantings at their expense and in accordance with the standards of the Association; and
    - b. Documentation of any planting by Unit Owners on Common Property shall be on record at the office of the managing agent.
  13. Repairs to parking spaces, which are adjacent to garages and extend to the end of the main driveway islands, and parking areas, which are adjacent to the main driveways and are assigned to Units with single care garages, due to damages, such as fluid leaks and gouges that are caused by vehicles belonging to Owners and Occupants including, but not limited to, vehicles of family members, guests, and service technicians.

- B. Maintenance shall be undertaken by the Owner, with the written permission of the Board, as further specified in Sections 7 and 8, for the purpose of preserving the architectural character, quality, and uniform and high standards for the appearance of the Property:
1. The Association may obtain bids and arrange for the maintenance, repair, or replacement of Property, for which Owners are financially responsible, upon the request of the Owner. The Owner shall be billed directly by the contractor. The Association shall not be obligated in any way for payment of any work.
  2. The Owner may choose to subcontract the project at the Owner's expense with prior written approval of the Board.
  3. The Association shall require that any exterior maintenance by the Owner be performed pursuant to specific uniform criteria established by the Association.
  4. The Association shall also undertake any exterior maintenance, which the responsible Owner fails to or improperly performs, and assess the Unit and the Owner for the cost. Such cost should be a personal obligation of the Owner and a lien against the Owner's Unit.
- C. Except for the exterior maintenance, which is required to be provided by the Association under this Section 9, maintenance shall be the responsibility and personal expense of Owners, as described in Section 6, this Section 9, and Exhibit C.

9.3 Optional Maintenance by Association. In addition to the maintenance described elsewhere in this Section 9, the Association may undertake to provide additional exterior maintenance to the Units, or maintenance of water and sewer systems within the Units, with the approval of a majority of votes cast in person or by proxy at a meeting called for such purposes. This may include the painting of window frames and sashes, garage service door and Unit doors, during a restoration project.

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 any 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 shall cause such damage or condition to be repaired or corrected, as set forth in Section 7, and the cost including the insurance deductible, shall be assessed against the Unit of the Owner responsible for the damage.

A. In the case of Party Walls between Dwellings, the Owners shall also be financially liable for any damage to Party Walls between Units, 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 negligence, or willful acts, or omissions shall apply.

- 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 the Party Wall in proportion with their use, provided that:
- A. Any necessary maintenance, repair, or replacement due to the acts or omissions of an Owner or Occupant sharing such Party Wall shall be paid for by such Owner; and
  - B. The Association:
    - 1. May contract for and supervise the repair of damage caused by an Owner or Occupant; and
    - 2. Shall assess the Owners for their respective shares of the cost to the extent not covered by insurance and including the insurance deductible.
- 10.3 Destruction by Fire or Other Casualty. Insurance claims shall be made promptly following any casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has use of the wall may restore it, and the Owner of the adjoining Unit shall promptly reimburse that Owner for his or her share of the cost of restoration, provided that:
- A. Restoration shall have been approved by the Board of Directors;
  - B. The cost of restoration, due to the destruction or other casualty resulting from the acts or omissions of Owners in adjoining Units, shall be the financial responsibility of those Owners, who are responsible for the damages; and
  - C. The Association shall assess the responsible Owners for their share of the costs, without prejudice to the right of an Owner to recover a larger contribution from Owners of the adjoining Units, who are responsible for damages.
- 10.4 Weatherproofing. Notwithstanding any other provision of this Section, any Owner who by his 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 Arbitration. If any dispute arises 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, upon the written demand of the Association or any Owner whose Unit shares the Party Wall. Each party shall name an arbitrator. If the two (2) arbitrators cannot agree on a resolution within thirty (30) days of appointment:
- A. Arbitrators shall appoint a third arbitrator, and the decision of the majority, to be rendered within thirty (30) days of the appointment shall be binding on all parties;
  - B. Each party shall agree that the decision of the arbitrators shall be final and conclusive of the question(s) involved; and;
  - C. The fees of the arbitrators shall be shared equally by the parties, but each party shall pay its own attorney's fees or other costs to prove its case.

## 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. This shall be paid as a Common Expense from the Annual Assessments, as defined in Section 6. The additional requirements set forth herein, issued by a reputable



insurance company or companies authorized to do business in the State of Minnesota, are 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, including both the Common Elements and the Units, less deductibles, exclusive of land, footings, excavations, and other items normally excluded from coverage;
1. The policy or policies may, but need not, cover the following items within individual Units:
    - a. Ceiling or wall finishing materials;
    - b. Floor covering;
    - c. Cabinetry;
    - d. Finished millwork;
    - e. Electrical or plumbing fixtures serving a single Unit;
    - f. Built-in appliances including, but not limited to, furnaces, refrigerators, washers, dryers, water heaters; or
    - g. Other improvements and betterments, regardless of the dates of installation.
  2. The policy or policies shall cover personal property owned by the Association;
  3. The policy or policies shall contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available;
  4. Such policy or policies shall include such additional endorsements, coverage, and limits with respect to the foregoing and other hazards, as may be required from time to time by the regulations of the FHA or Federal National Mortgage Association, "FNMA", as a precondition to their insuring, purchasing, or financing a mortgage on a Unit;
  5. The Board may also enter into binding written agreements with a mortgagee, insurer, or servicer, including without limitation, the FHA or FNMA, on behalf of the Association, which obligates the Association to keep certain specified coverages or endorsements in effect;
  6. The Association is responsible for providing Owners on a regular basis, or upon request, with a full list of what is and what is not specifically covered, as further specified in the Bylaws.
- B. Comprehensive public liability insurance shall include coverage including, but not limited to, the use, operation, and maintenance of the Common Elements, with minimum limits of \$1,000,000 per occurrence, against claims for death, bodily injury, and property damage, and such other risks, as are customarily covered by such policies for projects similar in construction, location, and use to the Property;
1. 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; and
  2. The policy shall include such additional endorsements, coverage, and limits with respect to such hazards, as may be required by the regulations of the FHA 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, manager, trustees, employees, or persons responsible for handling funds belonging to or administered by the Association:
1. 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 a mortgage on a Unit, be written in an amount equal to the greater of :

- a. 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
      - b. A sum equal to three (3) months aggregate assessments on all Units plus reserves;
    - 2. 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, which shall be 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.
  - G. In the event the Association is unable to carry reasonable insurance, each homeowner shall be notified pursuant to 515B.3-113 of the Act. The Association may carry any other insurance that is appropriate to protect the Association, Unit Owners or officers, directors, or agents of the Association.
- 11.2 Owner's Required Coverage. In the event insurance policies of the Association do not cover all or some of the optional items listed in Section 11 of the Declaration, Owners shall obtain insurance at their own expense on their own Unit and shall provide coverage that is at least sufficient to restore the Unit to its original condition. Such coverage shall include, but is not necessarily limited to, fire and other casualties to the internal unit, furnace, hot water heater, cabinetry and finished millwork, electrical and plumbing fixtures, and floor coverings to the extent not covered by the Association's policy or policies.
- 11.3 Premiums; Deductibles; Improvements. All insurance premiums pursuant to this Section 11, shall be assessed and paid as a Common Expense.
  - A. In the case of a claim for damage to a Unit:
    - 1. The Association may:
      - a. Pay the deductible amount as a Common Expense;
      - b. Assess the deductible amount against the Unit(s) causing any damage to Units by negligence, carelessness, or intentional action; or
      - c. Require the Unit Owners of those Units affected to pay the deductible amount entirely and directly. If Owners do not comply, the amount shall be placed as a lien on their Units.
  - B. In accordance with the Act insurance need not cover items within Units or Owner-installed improvements and betterments to Units. If items within Units or betterments and improvements are covered, any increased costs may be assessed against those Units affected.
  - C. Any increase in required insurance premiums, which shall be determined by the Association's insurer due to unique or additional features, size, risks, and value of any one Unit, shall be assessed proportionally to that Unit.
  - D. Any additional insurance not required in this section shall be assessed in proportion to assessed value, size, coverage, features, and risks as determined by the Association's insurer.

- 11.4 Loss Payee; Insurance Trustee. All insurance coverage maintained by the Association shall be written in the name of, and the proceeds shall be payable to, the Association or a qualified insurance trustee selected by the Association, which shall act as trustee for the benefit of the Owners and secured parties, including Eligible Mortgagees, who suffer losses. 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.
- 11.5 Waivers of Subrogation. All policies of insurance shall contain waivers of subrogation by the insurer against the Association, Owners, members of Owners' household, officers, or directors, if applicable, and, if available, waivers of any defense based on co-insurance or of invalidity from any acts of the insured.
- 11.6 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 thirty (30) days prior written notice to the Association, to the FHA, or FNMA, if applicable, and to all Owners and all Eligible Mortgagees.
- 11.7 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:
- A. Without the prior written approval of the Association or any insurance trustee; or
  - B. When in conflict with provisions of any insurance trust agreement to which the Association may be a party, or of any requirement of law.
- 11.8 No Contribution. All insurance policies maintained by the Association shall be the primary insurance. If other insurance in the name of the Owner covers the same property, the Association insurance may not be brought into contribution with that insurance purchased by Owners or their Eligible Mortgagees.
- 11.9 Effect of Acts Not within the Association's Control.
- A. All policies of insurance maintained by the Association shall provide that the coverage shall not be voided by or conditioned upon:
    - 1. Any act or omission of an Owner or Eligible Mortgagee, unless acting within the scope of authority on behalf of the Association; or
    - 2. 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.
  - B. The insured for any policy obtained by an Owner shall be the Owner, and the standard mortgage clause shall be in favor of each mortgagee for the Unit of such Owner. Such insurance shall be payable to such Owner and each such mortgagee as their interests may appear, and need not be held and used pursuant to the provisions of this Section 11.
  - C. Each Owner may obtain additional personal insurance coverage at his or her own expense to cover personal property or personal liability. All insurance policies maintained by Owners shall provide that they are without any contribution from the insurance purchased by the Association.

- D. Each Owner, as may be further specified in the Rules and Regulations, shall provide insurance certification to the Association. If the Owner does not provide proof of insurance to restore the Unit to, at the least, the original construction, the Association shall purchase such coverage and the costs shall be assessed to the Owner.

## SECTION 12

### RECONSTRUCTION, CONDEMNATION, AND EMINENT DOMAIN

- 12.1 Reconstruction. The obligations and procedures for the repair, reconstruction, or disposition of the Property, following damage to or destruction, shall be governed by the Act.
- A. Any repair or reconstruction shall be substantially in accordance with the plans and specifications of the Property, as initially constructed and subsequently improved; and
- B. Notice of substantial damage or destruction shall be given pursuant to Section 16. The Association shall have all authority necessary to cause the Property to be reconstructed, including without limitation, the authority:
1. To require Owners to enter into reconstruction contracts on their respective Units; or
  2. To contract for the reconstruction of the Units on behalf of the Owners.
- 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 that notice shall be given pursuant to Section 16. 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.
- 12.3 Notice. All Eligible Mortgagees shall be entitled to receive notice of any condemnation proceedings or substantial destruction of the Property, and the Association shall give written notice to all Eligible Mortgagees pursuant to Section 16.

## SECTION 13

### EASEMENTS

- 13.1 Easement for Encroachments. Each Unit, the Common Elements, and the rights of the Owners and Occupants, shall be subject to an exclusive easement for encroachments in favor of the adjoining Units for fireplaces, walls, roof overhangs, air conditioning systems, patios, utility installations, and other appurtenances, which are part of the original construction on the adjoining Unit or the Property, or which are added pursuant to Section 8. Such easements shall continue for as long as the encroachment exists and shall not affect the marketability of title.
- A. If there is an encroachment by a Dwelling, other building, or improvement located in a Unit, upon another Unit or Dwelling 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 have been approved and constructed as required by this Declaration.

- 13.2 Easement for Maintenance, Repair, Replacement, and Reconstruction. Each Unit, and the rights of the Owners and Occupants, shall be subject to the rights of the Association to an exclusive, appurtenant easement on and over the Units for the purposes of maintenance, repair, replacement, and reconstruction of the Units, and utilities serving the Units, to the extent necessary to fulfill the Association's obligations under the Governing Documents.
- 13.3 Utilities Easements. The Property shall be subject to non-exclusive, appurtenant easements for all utilities, including but not limited to, water and sewer, and similar services, which exist from time to time, as constructed or referred to in the Plat, or as otherwise described in this Declaration or any other duly recorded instrument.
- A. Each Unit, and the rights of the Owners and Occupants, shall be subject to a non-exclusive easement in favor of the other Units for all such services, including without limitation, any sewer or water lines servicing other Units.
- B. Each Unit shall also be subject to an exclusive easement in favor of the Association and all utilities companies providing service to the Units for the installation and maintenance of utilities metering devices.
- 13.4 Continuation and Scope of Easements. Notwithstanding anything in this Declaration to the contrary, in no event shall an Owner or Occupant be denied reasonable access to his or her Unit or the right to utility services thereto. The easements set forth in this Section shall supplement and not limit any easements described elsewhere in this Declaration or recorded elsewhere, and shall include reasonable access to the easement areas through the Units and the Common Elements for purposes of maintenance, repair, replacement, and reconstruction.

## SECTION 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 Act, the Governing Documents, the Rules and Regulations, the decisions of the Association, and such amendments thereto as may be made from time to time. A failure to comply shall entitle the Association to the relief set forth in this Section 14, in addition to the rights and remedies authorized elsewhere by the Governing Documents and the Act.

- 14.1 Entitlement to Relief. The Association may commence legal action to recover sums due for damages, for injunctive relief, to foreclose a lien owned by it, or any combination of those, to undertake an action for any other relief authorized by the Governing Documents, or available at law or in equity.
- A. 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.
- B. No Owner may withhold any assessments payable to the Association, as more fully specified in Section 6, 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 or more of the following actions against Owners and Occupants and/or their family members and 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 twenty dollars (\$20.00), or fifteen percent (15%) of any amount due, for each past due assessment or installment, and charge interest at up to the highest rate permitted by law;
  - C. In the event of default of more than forty-five (45) days in the payment of any assessment or installment, all remaining installments of Assessments assessed against the Unit owned by the defaulting Owner may be accelerated.
    - 1. Assessments shall then be payable in full, if all delinquent assessments, together with all costs of collection and late charges, are not paid in full prior to the effective date of the acceleration; and
    - 2. A ten (10) day written notice of the effective date of the acceleration shall be given to the defaulting Owner;
  - D. Impose reasonable fines, penalties, or charges for each violation of the Act, the Governing Documents, or the Rules and Regulations of the Association;
  - E. Suspend the rights of any Owner or Occupant and their guests or family members to use any Common Elements amenities, provided that this limitation shall not apply to either the Limited Common Elements appurtenant to the Unit or 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 thirty (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, their family members or 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:
    - 1. A violation or breach of Governing Documents exists which materially affects, or is likely to materially affect in the near future, the health or safety of other Owners, Occupants, family members or their guests, or the safety or soundness of any Unit or other part of the Property or the property of other Owners or Occupants; and
    - 2. 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;
      - a. Provided that any improvements which are a part of a Unit may be altered or demolished only pursuant to a court order or with the agreement of the Owner; and

- H. Foreclose any lien arising under the provisions of the Governing Documents or under the law, in the manner provided for the foreclosure of mortgages by action or under a power of sale in the State of Minnesota.
- 14.3 Rights to Hearing. In the case of imposition of any of the remedies authorized by this Section 14, the Board shall, upon written request of the offender, grant to the offender, grant to the offender a fair and equitable hearing as contemplated by the Act.
- A. The offender shall be given notice of the nature of the violation and the right to a hearing, and at least ten (10) days within which to request a hearing;
  - B. The Board shall schedule the hearing within thirty (30) days of the Board's receipt of the hearing request, and with at least ten (10) days' prior written notice to the offender;
  - C. If the offending Owner fails to appear at the hearing, then the Owner's right to a hearing shall be deemed waived, and the Board may take such action as it deems appropriate;
  - D. The decision of the Board and the rules for the conduct of hearings, which shall be established by the Board, shall be final and binding on all parties; and
  - E. The Board's decision shall be delivered in writing to the offender within ten (10) days following the hearing, if not delivered to the offender at the hearing.
- 14.4 Lien for Charges, Penalties, Etc. Any Assessments, charges, fines, penalties, or interest imposed under this Section 14 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.
- A. The lien shall attach as of the date of imposition of the remedy, but shall not be final as to violations for which a hearing is held until the Board gives written notice following the hearing; and
  - B. All remedies shall be cumulative, and the exercise of, or failure to exercise, any remedy shall not be deemed a waiver of the right to pursue any other remedy.
- 14.5 Costs of Proceeding and Attorneys' Fees. With respect to any collection measures, or any measures of action, legal, administrative, or otherwise, which the Association takes to enforce the provisions of the Act, the 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 for 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. Notwithstanding anything to the contrary contained herein, attorneys' fees and costs of any action to restrain violation, compel compliance, or recover damages shall be assessable against and payable to the prevailing party by any such Person so restrained, or compelled, or required to pay damages.
- 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 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.

- 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, the Rules and Regulations, and the Act as provided therein.

## SECTION 15

### AMENDMENTS

- 15.1 This Declaration may be amended by the consent of:
- A. Owners or Units to which are allocated at least sixty-seven percent (67%) of the votes in the Association, except as may be required by the Act; and
  - B. The percentage of Eligible Mortgagees, based upon one vote per first mortgage owned, required by Section 16.
- 15.2 Consent of the Owners shall be obtained in writing, in the form of written instruments signed by all Owners consenting to an amendment;
- 15.3 Consents of Eligible Mortgagees shall be in writing;
- 15.4 Any amendment shall be subject to any greater requirements imposed by the Act;
- 15.5 The Amendment shall be effective when recorded as provided in the Act; and
- 15.6 An affidavit by the Secretary of the Association, as to the execution of the foregoing agreements or consents, shall be adequate evidence for all purposes including, without limitation, the recording of the amendment.

## SECTION 16

### 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:

- 16.1 Consent to Certain Amendments. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Units that are subject to first mortgages held by Eligible Mortgagees, based upon one vote per first mortgage owned, shall be required for any amendment to the Governing Documents, which causes any change in the following:
- A. Voting rights;
  - B. Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), changes in provisions regarding assessment liens, or priority of assessment liens;
  - C. Reductions in reserves for maintenance, repair, and replacement of Common Elements;
  - D. Responsibility for maintenance and repairs;
  - E. Reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
  - F. Redefinition of any Unit boundaries;



- G. Convertibility of Units into Common Elements or vice versa;
- H. Expansion or contraction of the Property, or the addition to, annexation of, or withdrawal of property from the Property;
- I. Hazard or fidelity insurance requirements;
- J. Leasing of Units;
- K. Imposition of any restrictions on the leasing of Units;
- L. After a hazard damage or partial condemnation, restoration or repair of the Property in a manner other than that specified in the Governing Documents;
- M. Any action to terminate the legal status of the planned community after substantial destruction or condemnation occurs; or
- N. Any provisions that expressly benefit mortgage holders or insurers or guarantors of mortgages.

Notwithstanding the foregoing, implied approval of a proposed amendment shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within forty-five (45) days after it receives proper notice of the proposal, provided that the notice was delivered by certified mail with a return receipt requested, and further provided that a specific reference to this time limit is included in the covering materials requesting consent to any proposed amendment.

- 16.2 Consent to Certain Actions. The written consent of Eligible Mortgagees representing at least sixty-seven percent (67%) of the Units that are subject to first mortgages, based upon one vote per first mortgage owned, shall be required to abandon or terminate the common interest community, subject to any greater requirements contained in the Act.
- 16.3 No Right of First Refusal. The right of Owners to sell, transfer, or otherwise convey their Units shall not be subject to any right of first refusal or similar restrictions.
- 16.4 Priority of Lien. Any holder of a first mortgage on a Unit, or any purchaser of a first mortgage at a foreclosure sale, who 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 except:
  - A. As provided in Section 6 and the Act; and
  - B. That any unpaid Assessments or charges with respect to the Unit may be reallocated among all Units in accordance with their interest in the Common Elements.
- 16.5 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.
- 16.6 Priority for Condemnation Awards. 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. No provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the Eligible Mortgagees of the Unit pursuant to its mortgage in the case of:
  - A. A distribution to such Owner of insurance proceeds; or
  - B. Condemnation awards for losses to or a taking of the Unit and/or the Common Elements.

16.7 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, for a moderate fee to cover the cost of photocopying, and upon written request, copies of the Association's annual reports and other financial statements.

- A. Financial statements, including those which are audited, if any, shall be available within ninety (90) days of the end of the Association's fiscal year; and
- B. Any Eligible Mortgagees or institutional guarantors or insurers of a mortgage loan against a Unit, upon request and at their own expense, shall be entitled to cause an audit of the Association's financial statements for the preceding year, and the Association shall deliver a copy of the audited financial statements to the requesting party.

16.8 Notice Requirements.

- A. A holder, insurer, or guarantor shall be entitled to timely written notice of the following:
  - 1. A condemnation loss or any casualty loss, which affects a material portion of the Property or the Unit securing the mortgage;
  - 2. 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;
  - 3. A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
  - 4. A proposed action which requires the consent of a specified percentage of Eligible Mortgagees.
- B. Notices shall be provided after a written request and identification of the following have been submitted to the Association:
  - 1. The name and address of the holder, insurer, or guarantor of a mortgage on a Unit; and
  - 2. The Unit number or address.

## SECTION 17

### MISCELLANEOUS

17.1 Management Agreement Requirements. 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:

- A. With cause upon thirty (30) days prior written notice; and
- B. Without cause upon ninety (90) days prior written notice.

17.2 Severability. If any term, covenant, or provision of this instrument or any attached exhibit is held to be invalid or unenforceable for any reason, such determination shall not be deemed to alter, affect, or impair in any manner any other portion of this instrument or its exhibits.

17.3 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.

- 17.4 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 of Directors, the Association officers, or the Owners or Occupants shall be in writing and shall be effective upon hand delivery, or by depositing in the United States mail, if addressed with postage prepaid.
- A. Registrations of Owners and Occupants pursuant to the Bylaws shall be effective upon receipt by the Association.
- 17.5 Attorneys' Fees and Costs. Subject to the provisions of this Declaration, the prevailing party in any measure, action, legal, or administrative proceeding, irrespective of whether such measure, action, or proceeding is initiated by the Association, shall be entitled to an award for reasonable attorneys' fees and costs incurred by the prevailing party in connection with such action, measure, or proceeding.
- A. If such measure, action, or proceeding is between an Owner and the Association, and the Association is the prevailing party, irrespective of whether such measure, action, or proceeding was initiated by the Association, then such attorneys' fees and costs may be assessed against that Owner and his or her Unit.
- 17.6 Conflicts Among Documents. In the event of any conflict among the provisions of the Act, the Declaration, the Bylaws or any Rules and Regulations approved by the Association, the Act shall control. In the event of any conflict among the provisions of the Declaration, Bylaws, and Rules and Regulations, the Declaration shall control, and as between the Bylaws and the Rules and Regulations, the Bylaws shall control.

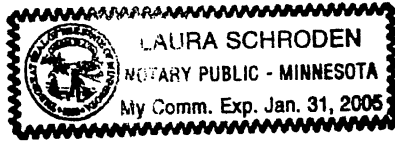
IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year first set forth in accordance with the requirements of the Act.

ST. CLOUD TIMBERLAND ESTATES HOME OWNERS ASSOCIATION

By Its President

*Bonita Young*

STATE OF MINNESOTA )  
COUNTY OF Stearns ) SS.



The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of September 2003, by Bonita Young, the President of St. Cloud Timberland Estates Home Owners Association, a Minnesota corporation, on behalf of the corporation.

*Laura Schroden*  
Notary Public

Timberland Estates\MCIOA Opt In\Amended Declaration 5/12/03

Drafted By  
Timberland Estates Documents Committee  
c/o Northern Mgmt  
P.O. Box 7792  
St. Cloud MN 56302

COMMON INTEREST COMMUNITY NUMBER \_\_\_\_

TIMBERLAND ESTATES

EXHIBIT A TO DECLARATION

SCHEDULE OF UNITS/LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 7 inclusive, Block 1, Timberland Estates

Lots 1 through 31 inclusive, Block 1, Timberland Estates Phase Two

all in Stearns County, Minnesota.

COMMON INTEREST COMMUNITY NUMBER \_\_\_\_

TIMBERLAND ESTATES

EXHIBIT B TO DECLARATION

DESCRIPTION OF COMMON ELEMENTS

Lot 7, Block 1, Timberland Estates;

Lot 31, Block 1, Timberland Estates Phase Two

all in Stearns County, Minnesota.

COMMON INTEREST COMMUNITY NUMBER \_\_\_\_  
TIMBERLAND ESTATES  
EXHIBIT C TO DECLARATION  
MAINTENANCE RESPONSIBILITY OF HOMEOWNER

Exhibit C contains diagrams of those portions of the Property's exteriors for which homeowners are financially responsible. In order to preserve the architectural character, quality, and high standards of property appearance, homeowners shall maintain, repair, and/or replace the following areas in accordance with Section 9:

- A. All doors, windows at all levels, concrete steps, patios, patio gates, garages and their floors, and chimneys;
- B. Concrete areas including, but not limited to, sidewalks along garages, air-conditioning units and their pads located several feet from each Unit;
- C. Landscaping areas along the sides of garages and out to the drip line of the roofed edges on the French door side of each building; and
- D. Parking spaces, which are adjacent to garages and extend to the end of the main driveway islands, and parking areas, which are adjacent to the main driveways and are assigned to Units with single car garages. [Based on past practices, snow removal and resurfacing of asphalt surfaces are the responsibility of the Association.]

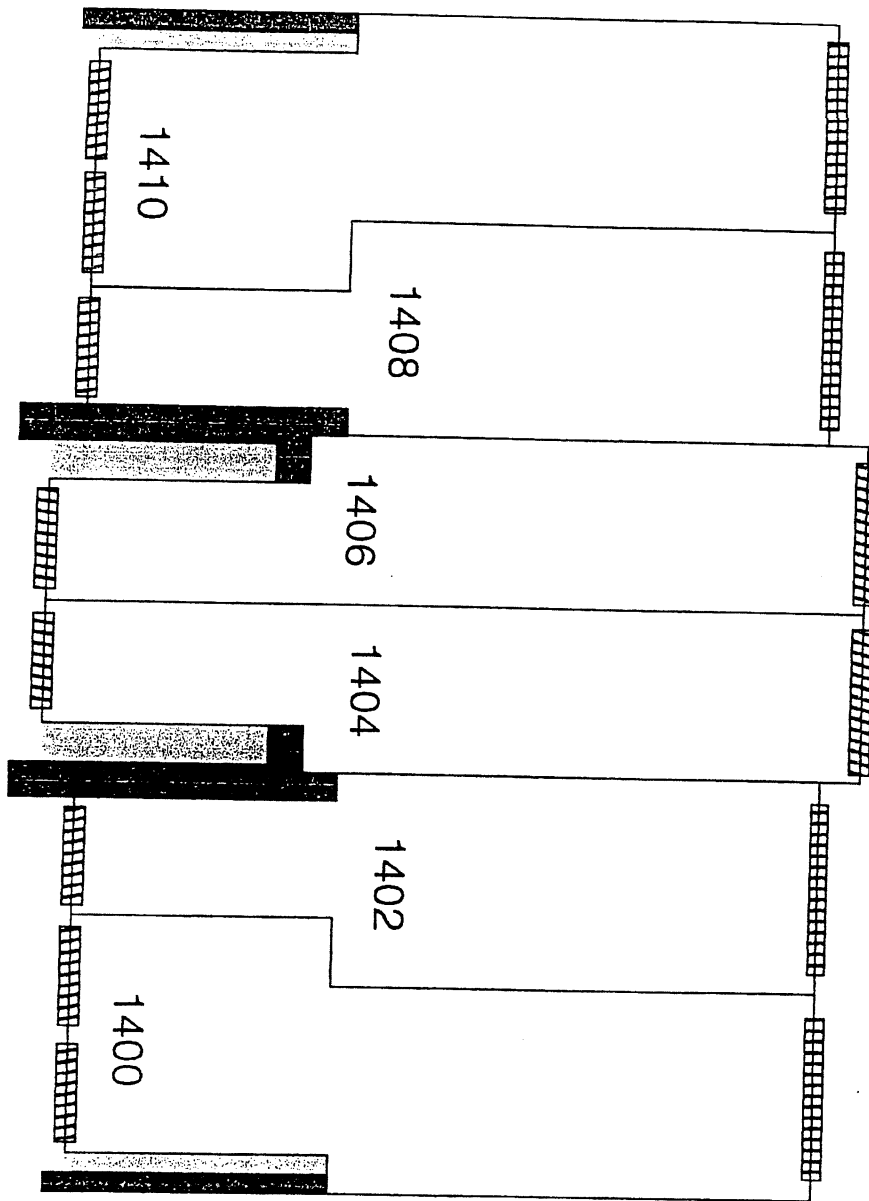
Note: The following items are not illustrated on the diagrams in Exhibit C:

- 1) Air-conditioning units and their pads;
- 2) Drip lines of Units;
- 3) Assigned parking areas.



Maintenance Responsibility of Homeowners  
 Timberland Estates - Unit's 1400 - 1410  
 Exhibit C

Parking Area



All doors, windows at all levels, concrete steps, patios, patio gates, garages and their floors, and chimneys,



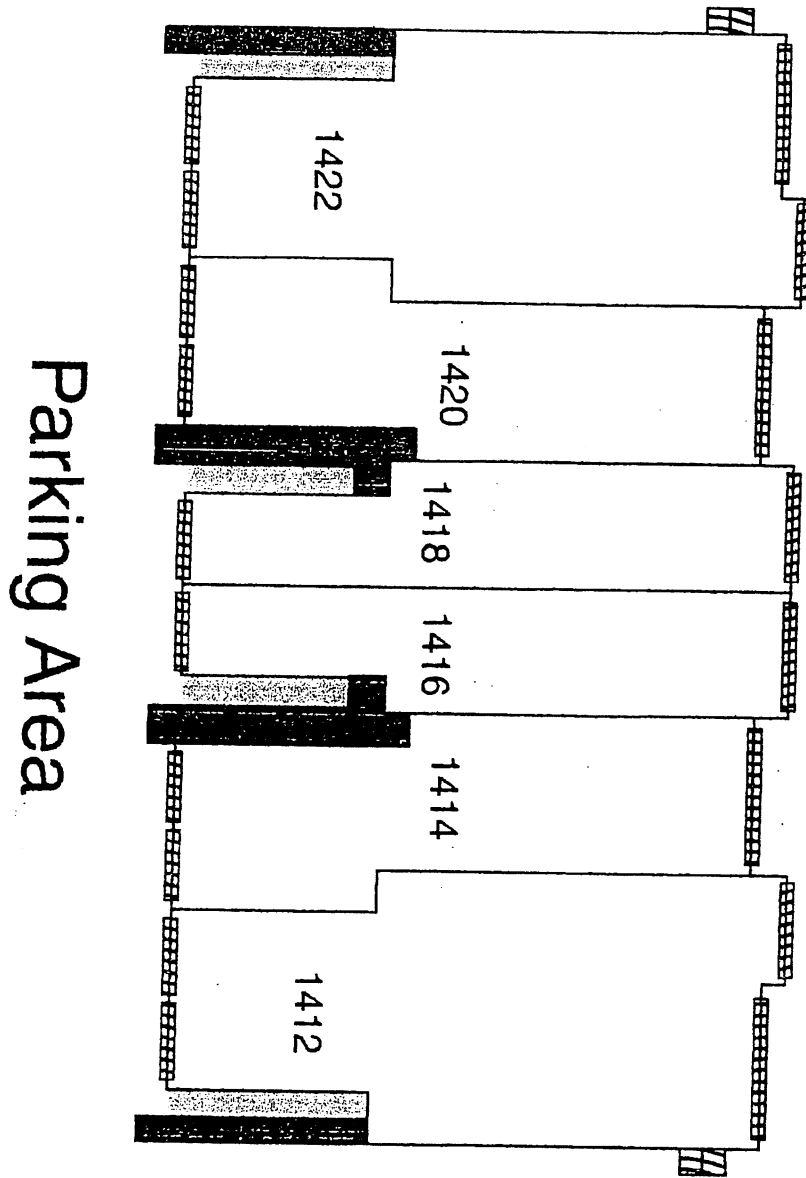
Concrete areas including, but not limited to, sidewalks along garages, air-conditioning units and their pads located several feet from each Unit (air-conditioning units and pads are not illustrated),






Landscaping areas along the sides of garages and out to the drip line of the roofed edges on the French door side of each building, and (drip line not illustrated)

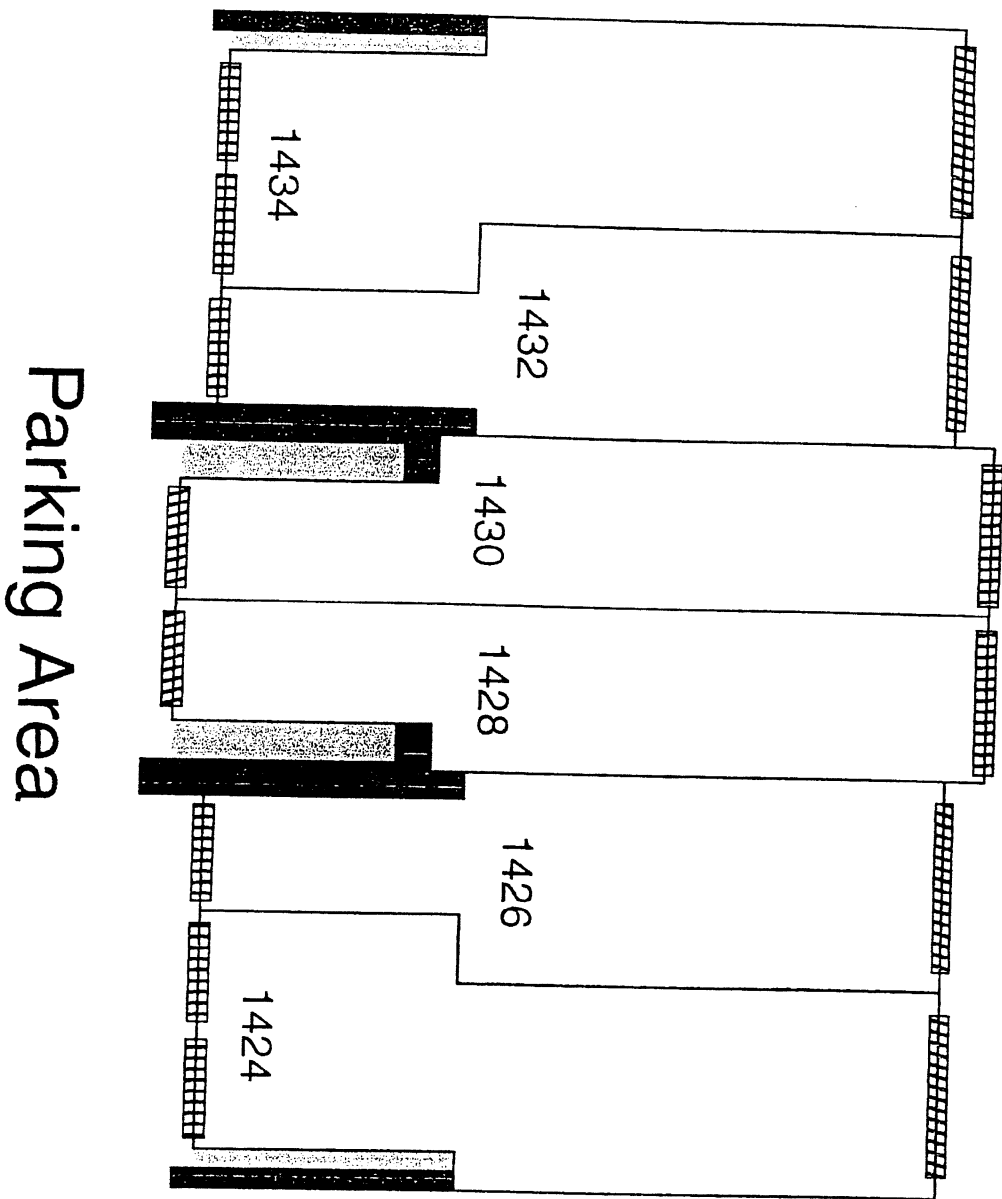


Maintenance Responsibility of Homeowners  
 Timberland Estates - Unit's 1412 - 1422  
 Exhibit C



-  All doors, windows at all levels, concrete steps, patios, patio gates, garages and their floors, and chimneys,
-  Concrete areas including, but not limited to, sidewalks along garages, air-conditioning units and their pads located several feet from each Unit (air-conditioning units and pads are not illustrated),
-  Landscaping areas along the sides of garages and out to the drip line of the roofed edges on the French door side of each building, and (drip line not illustrated)

Maintenance Responsibility of Homeowners  
 Timberland Estates - Unit's 1424 - 1434  
 Exhibit C



All doors, windows at all levels, concrete steps, patios, patio gates, garages and their floors, and chimneys,



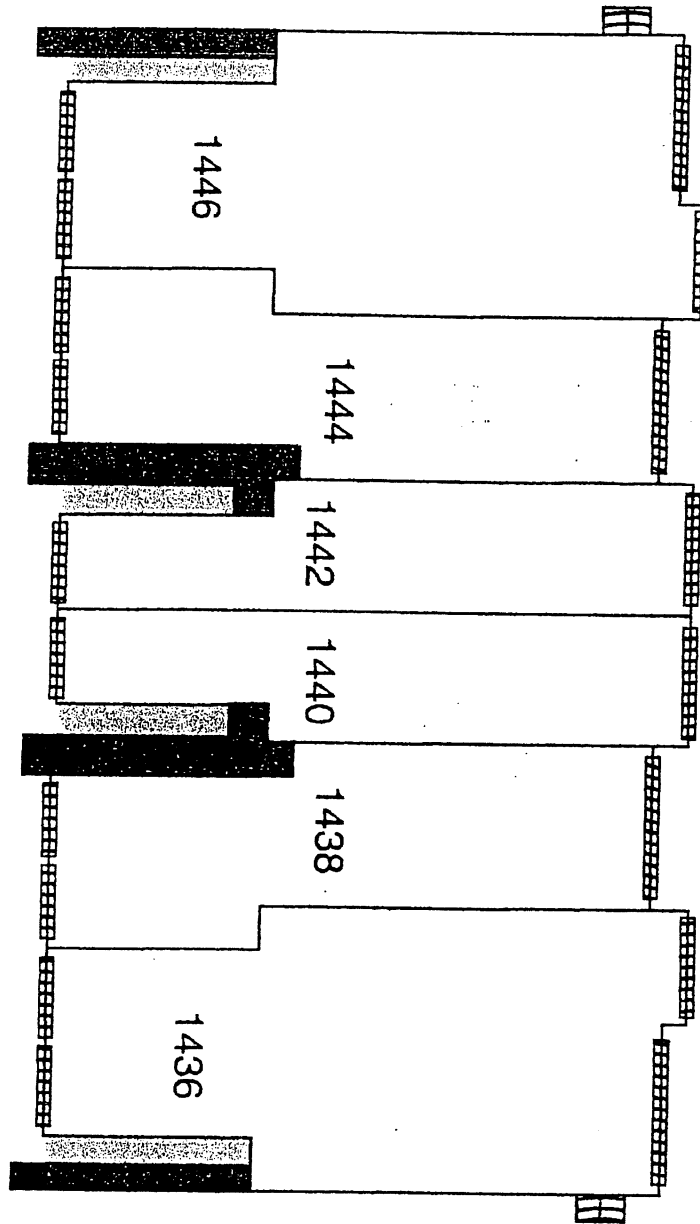
Concrete areas including, but not limited to, sidewalks along garages, air-conditioning units and their pads located several feet from each Unit (air-conditioning units and pads are not illustrated),





Landscaping areas along the sides of garages and out to the drip line of the roofed edges on the French door side of each building, and (drip line not illustrated)


Maintenance Responsibility of Homeowners  
 Timberland Estates - Unit's 1436 - 1446  
 Exhibit C

Parking Area



 All doors, windows at all levels, concrete steps, patios, patio gates, garages and their floors, and chimneys,

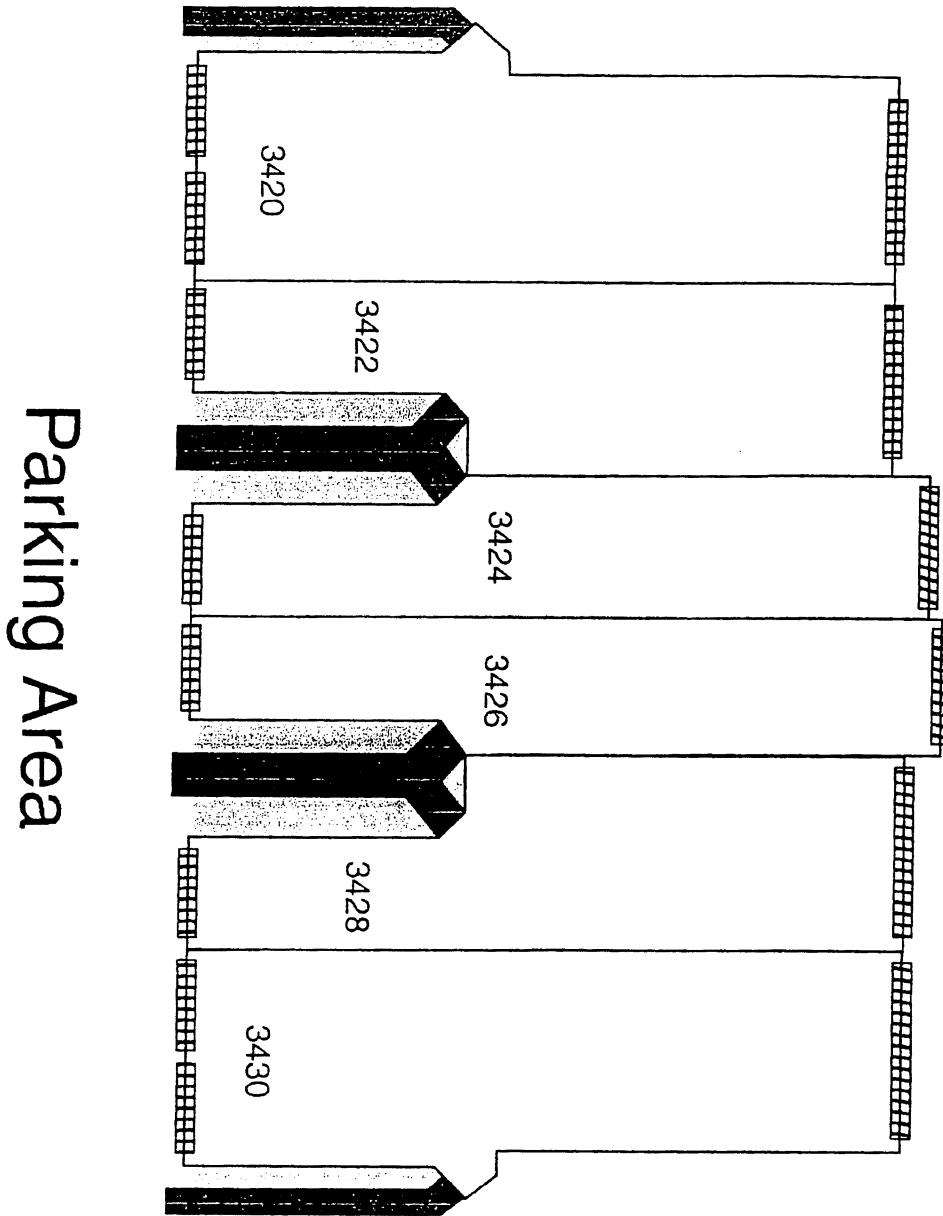
 Concrete areas including, but not limited to, sidewalks along garages, air-conditioning units and their pads located several feet from each Unit (air-conditioning units and pads are not illustrated),


 Landscaping areas along the sides of garages and out to the drip line of the roofed edges on the French door side of each building, and (drip line not illustrated)


SCR 37 of 67


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Maintenance Responsibility of Homeowners  
 Timberland Estates - Unit's 3420 - 3430  
 Exhibit C

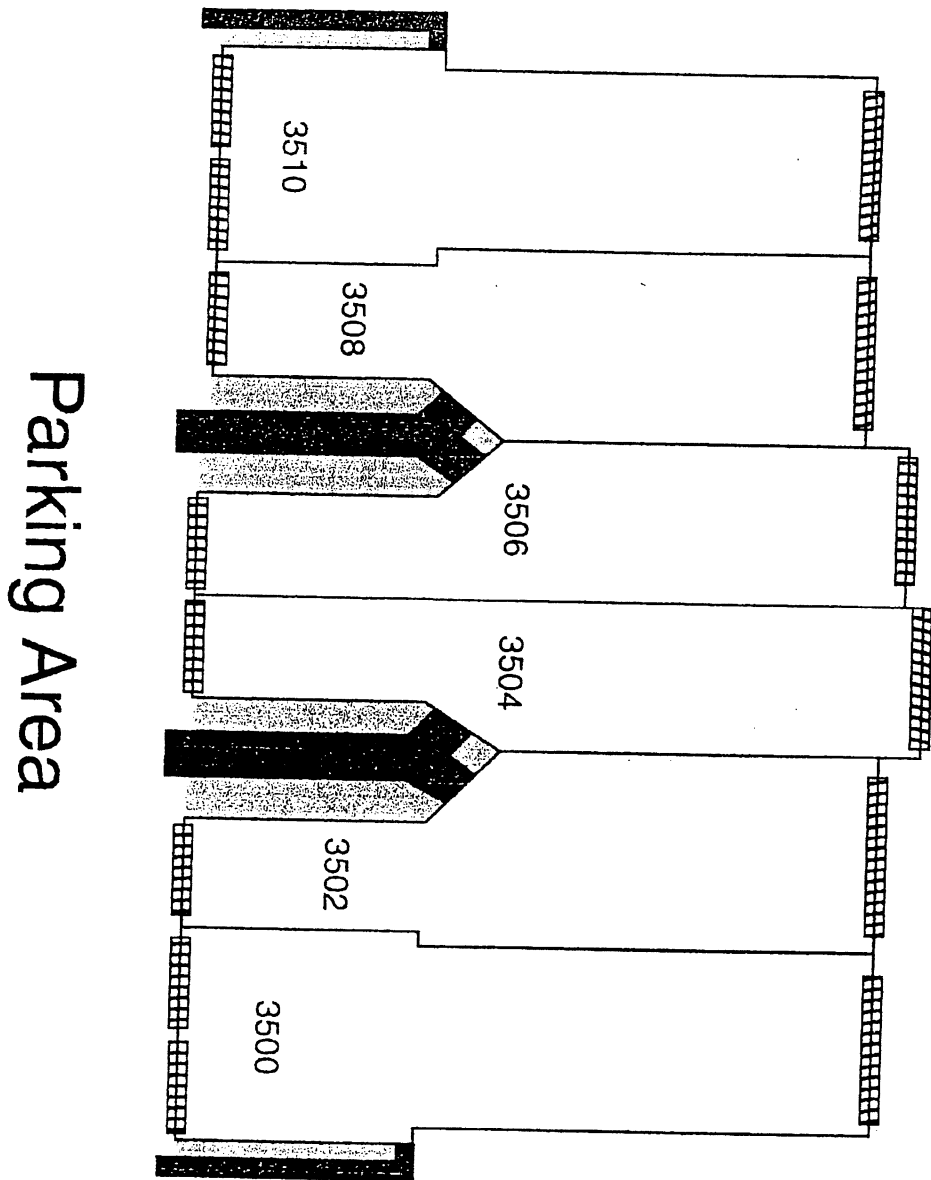





 All doors, windows at all levels, concrete steps, patios, patio gates, garages and their floors, and chimneys,

 Concrete areas including, but not limited to, sidewalks along garages, air-conditioning units and their pads located several feet from each Unit (air-conditioning units and pads are not illustrated),

 Landscaping areas along the sides of garages and out to the drip line of the roofed edges on the French door side of each building, and (drip line not illustrated)

Maintenance Responsibility of Homeowners  
 Timberland Estates - Unit's 3500 - 3510  
 Exhibit C



-  All doors, windows at all levels, concrete steps, patios, patio gates, garages and their floors, and chimneys,
-  Concrete areas including, but not limited to, sidewalks along garages, air-conditioning units and their pads located several feet from each Unit (air-conditioning units and pads are not illustrated),
-  Landscaping areas along the sides of garages and out to the drip line of the roofed edges on the French door side of each building, and (drip line not illustrated)

